



Commission of Inquiry into
the Tasmanian Government's
Responses to Child Sexual
Abuse in Institutional Settings

Who was looking after me? Prioritising the safety of Tasmanian children

Volume 4: Children in out of home care

August 2023

**Commission of Inquiry into the Tasmanian Government's
Responses to Child Sexual Abuse in Institutional Settings Report**

Volume 4
Children in out of home care

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Introduction to Volume 4

This volume considers the care of children who the Tasmanian Government have removed from their families of origin and placed in out of home care since 2000. This is in line with the Order establishing our Commission of Inquiry. Where we refer to children who were in care before 2000, their experiences are relevant to informing the present system.

Out of home care is provided when children cannot live with their families because of safety concerns. In most cases, these children are placed with kinship or foster carers. Placements in residential care settings are far less common.

The Government is obligated to protect children in out of home care from abuse, including sexual abuse. This is enshrined in the *Children, Young Persons and Their Families Act 1997* ('Children, Young Persons and Their Families Act'). When a child is taken into care, the Secretary for the relevant department (currently the Department for Education, Children and Young People) applies to the Magistrates Court for guardianship and/or custody to be assigned to someone who is not the child's parent—either the Secretary of the Department or a third party—for the period of the order.¹ In exercising functions and powers under the Children, Young Persons and Their Families Act, the Secretary and their delegated officers must give 'paramount consideration' to the 'best interests of the child'. The State is obligated to protect these children from further harm, as well as provide them with opportunities to heal and support them to flourish.²

Unlike other groups of children receiving support from the Government, those in care live within the system and rely on government or government funded services and workers for their welfare. Children in care do not always have an advocate external to the Government (a role normally assumed by parents) who can supervise, support and protect them. Therefore, there is a heavy burden of responsibility on a statutory authority that has used the powers of the State to legally remove a child from their family of origin. Any failure to protect children from abuse in care is a significant betrayal of the trust conferred upon the State by such powers.

Children in care often, if not inevitably, have unresolved trauma from experiences of abuse or neglect that gave rise to them being taken into care. Tragically, children in care are much more likely to experience further maltreatment and exploitation, including sexual abuse, than children who are not in out of home care, and they find it more difficult to talk about their abuse and to get support for their healing and growth.

The Government has been alerted to the risk of sexual abuse for children in care several times through the findings of previous reviews of the Tasmanian statutory child protection and out of home care systems. The National Royal Commission also examined this. Throughout this volume we consider the progress that the Department

for Education, Children and Young People has made towards implementing the recommendations from these reports that relate to improving the safety of children in care from sexual abuse.

A note on language

Unless otherwise stated, references to ‘the Department’ in this volume are to the Tasmanian government department responsible for out of home care. During the period under examination by our Commission of Inquiry (that is, responses to reports of child sexual abuse since 1 January 2000), this Department has been called the Department of Health and Human Services, the Department of Communities (also referred to as Communities Tasmania) and the Department for Education, Children and Young People. In October 2022, departmental responsibility for out of home care transitioned from the Department of Communities to the newly formed Department for Education, Children and Young People. When we specifically refer to the previous Department of Communities or the new Department for Education, Children and Young People, we use the full name.

As described in the glossary, the terms ‘the Child Safety Service’ or ‘Child Safety Services’ are used generically across our report to describe the child protection functions of the Department, including its Strong Families, Safe Kids, Advice and Referral Line.

As well as assessing and investigating notifications about children in the community, the Child Safety Service (and specifically Child Safety Officers) perform case management functions for children in out of home care.

The Child Safety Service, including out of home care services and the Strong Families, Safe Kids Advice and Referral Line, are positioned within a Directorate, which has been variously named ‘Child and Youth Services’, ‘Children and Family Services’ and, currently, ‘Services for Children and Families’. We generally refer to the variously named Directorates as Services for Children and Families.

Our Inquiry into out of home care, laid out in this volume, has shown there is much more to be done. It has concluded that Tasmania’s out of home care system lacks many of the safeguards that help protect children from sexual abuse. We heard that few mechanisms are in place to engage Aboriginal communities in decision making about their children; there are no consistently applied standards for out of home care providers; professional development and other support for staff and carers is inconsistent; and monitoring and oversight of the system, internally and externally, is inadequate. Each of these problems, alone and together, increases the risk of child sexual abuse for children in care.

We also heard that the structures and processes to respond to reports of suspected child sexual abuse (as well as other abuses of children in care)—such as the care concern process and Serious Events Review Team—have been in transition, without a clear replacement. This means there has been no guarantee that the response to child sexual abuse has been consistent or appropriate. This failure of the State is deeply concerning and must be addressed as a matter of urgency.

We have concluded that problems in protecting children from, and responding to, child sexual abuse in out of home care partly stem from a lack of strategic, expert and active executive leadership. Fundamentally, however, these failings are the result of consecutive governments' chronic underfunding of, and failure to prioritise, out of home care and the statutory child protection system more generally

When approaching the issue of child sexual abuse in out of home care, we faced a dilemma: how to shine a light on an important issue for the safety of Tasmanian children in out of home care at the same time as acknowledging the challenging environment of child protection and the difficulties dedicated child protection workers face in any jurisdiction.

Soon after our hearings on out of home care in June 2022, a series of media articles highlighted problems in statutory child protection in every Australian jurisdiction.³ Tasmania is not alone in facing the challenge of safeguarding children in care. However, the magnitude of the challenge should not deter those involved from continuing to try to improve the systems charged with protecting Tasmania's most vulnerable children, who have the right to be shielded from harm and given every opportunity to grow and thrive.

As former Child Safety Service staff told us, not only are many of the children who have been taken into care traumatised by their experiences of abuse and neglect, so too can the staff tasked with protecting them. We acknowledge that in scrutinising a traumatised system, people in that system may perceive our Inquiry as threatening.

We were reluctant to add to the stress that overburdened staff already feel. We consider most staff in the system are working to the best of their ability under difficult conditions and are often underappreciated. We acknowledge the skill and dedication required to work in child protection. To do their jobs well, Child Safety Service staff need to be enormously resourceful, particularly those on the 'frontline'. As a former Department employee noted in her statement:

Many children and young people heal and thrive, due in no small part to their own extraordinary resilience and determination, and the commitment of those who care for them. This includes staff working in [the Child Safety Service], our service providers, our foster and kinship carers, and those supporting the [out of home care] system.⁴

We consider there should be greater accountability for Tasmania's out of home care system. Increased accountability for Government would motivate it to prioritise and assign the necessary resources to ensure the system works for the benefit of children in care. Increased accountability for executive staff would help to establish priorities, maintain the necessary structures and processes, and provide the leadership required to enable the out of home care system to operate safely for children in care.

We are also conscious that, because of our Inquiry, there will be families of children in care who become concerned about whether their children have been sexually abused. Family members may reasonably ask questions of the Child Safety Officer who is responsible for their child in care. We hope they will receive honest and transparent answers to their questions and be reassured that any known risks have been addressed.

While the scrutiny brought by our Inquiry may be unwelcome for some, there are many others who have bravely come forward because they believe, as we do, that the most vulnerable children in Tasmania—those who experience hurt, damage and shame, and are often forgotten—deserve the best possible protection from abuse, or further victimisation, when in out of home care. We have strived to be direct and honest in our assessment of the current system and of what needs to occur in future

This volume has three chapters. In Chapter 7, we cover the background and context for our Inquiry, describing Tasmania's out of home care system, discussing the risk factors and sources of risk for the sexual abuse of children in out of home care. We summarise the numerous reviews of the out of home care and child protection systems in Tasmania.

In Chapter 8, we outline our approach to inquiring into the out of home care system in Tasmania, including the scope of our Inquiry, the evidence we drew on and the picture we formed of the scale and nature of child sexual abuse in the system.

In Chapter 9, we analyse the systemic problems of out of home care in Tasmania that expose children to greater risk of sexual abuse. We make recommendations to change the system to measurably improve the safety and wellbeing of children in care.

7 Background and context: Children in out of home care

1 Introduction

In this chapter, we lay the foundation for our later analysis by understanding the Tasmanian out of home care system as it currently functions.

In Section 2, we describe the current arrangements for out of home care provision in Tasmania. We outline the legislative basis for the State removing a child into out of home care and the responsibilities of the statutory guardian of children in care—the Secretary of the Department. We detail the number of children in the various types of out of home care provided in Tasmania. Last, we describe the Department’s organisational structure in relation to out of home care.

In Section 3, we briefly outline the risks and protective factors for sexual abuse of children in care identified by the National Royal Commission. Sources of risk include adults in the out of home care system, other children with whom children have contact while in care, and adults from outside the system who sexually exploit children in care. We identify the increased risk that some children face by virtue of their Aboriginality or disability.

Section 4 summarises the findings of the National Royal Commission, as well as those of the many reviews and reports into the out of home care and child protection systems in Tasmania that have been published since the early 2000s. We briefly consider the large number of recommendations that were made by these reviews but were too often not actioned.

2 Tasmania's out of home care system

In this section, we have attempted to describe the out of home care system in Tasmania. This was not an easy task. Our understanding of the system was derived from multiple sources and we have highlighted any contradictory information.

2.1 Defining 'out of home care'

The Department defines out of home care as:

... the system that provides formal care to children and young people who are assessed as unable to live safely at home. Where the Child Safety Service assesses that a child or young person is at risk in their home, they will seek a court application for the short or longer term care for those children and young people and an out of home care arrangement will be made for their day to day care. The Secretary of the Department of Communities Tasmania then becomes responsible for the care and protection of those children and young people.⁵

The Department's definition is broadly consistent with the nationally agreed definition of out of home care, namely: 'overnight care for children aged under 18 who are unable to live with their families due to child safety concerns', including 'placements approved by the relevant department for which there is ongoing case management and financial payment'.⁶ Since 2018, for data collection purposes, the nationally agreed definition of out of home care has not formally included children on third-party guardianship orders. However, we consider that the Department still owes these children protection from abuse in care because the Department is the entity that statutorily intervened to remove the child from their family of origin and assigned guardianship or custody to a third party.⁷ We explore this issue in more detail in Chapter 9.

In recent decades, Tasmania has followed other Australian jurisdictions in changing the way out of home care is provided. The out of home care model has moved from primarily housing children in large institutions to placing children in home-based settings with kinship or foster carers. Some children are still cared for in residential care settings, but these usually aim to be home-like and are small in scale.⁸ Decreasing numbers of carers and increasing numbers of children in care have created, by necessity, new care types such as 'emergency care', which has paid rotational carers looking after children in temporary accommodation such as hotel rooms.⁹ Different categories of out of home care are discussed in more detail in Section 2.5.

In Tasmania, the out of home care system primarily comprises the Department and non-government services that provide support to children on the Department's behalf. A range of government and non-government agencies also support 'the system'. These agencies are responsible for meeting the broad needs of children (including health, education and disability) and should play a part in protecting children.¹⁰

In this chapter, a reference to a child who is ‘in out of home care’, ‘in care’ or ‘in the care of the Department’ means a child who has been placed under the guardianship or custody of the Secretary—this includes children under a third-party guardianship order (their guardian is not the Secretary) following statutory removal by the Department, as the State retains obligations to protect such children.

2.2 A child’s pathway through the system

2.2.1 Entering care

The Department typically becomes aware of a child who is at risk of abuse or neglect when someone who is concerned about the child contacts the Department’s Strong Families, Safe Kids Advice and Referral Line (‘Advice and Referral Line’). If staff on the Advice and Referral Line believe there is sufficient concern to warrant an assessment, they refer the matter to the Child Safety Service, whereupon a Child Safety Officer assesses the situation.¹¹

If the assessment determines that the child needs care and protection, the Secretary can apply to the Magistrates Court (Children’s Division) for a care and protection order for the child.¹² If the Court is satisfied that the child is at risk and that a care and protection order is necessary, it may make an order placing the child under the guardianship of the Secretary (among other possible orders).¹³ Placing a child under the guardianship of the Secretary is a last resort, when a child cannot be properly protected from risk by any other means, and no other order would be in the child’s best interests.¹⁴ A child may be placed in care for a short time (for example, six months) or for a long time—sometimes until the child turns 18 years old.

Once a child has been placed under the Secretary’s guardianship, the Secretary is responsible for deciding where the child should live, making arrangements for the child’s education and medical treatment, and making any other arrangements for the child’s care (these responsibilities are discussed in Chapter 9).¹⁵ Increasingly, child protection departments across Australia are recognising that their obligations to support and care for children in care do not end when the child turns 18, with several states announcing extensions of support to the age of 21.¹⁶

When a Child Safety Officer collects the child to take them into care, they need to find somewhere for the child to stay until a longer-term arrangement can be made. Sometimes the Child Safety Officer can place the child with a family member (kinship care), but often the Child Safety Officer needs to find a temporary non-familial ‘placement’. Respite carers or foster carers might look after the child until a decision is made about where the child should ultimately live.

The Child Safety Officer will try to find a foster family that is suitable for the child in the longer term. Often children will live with several foster carers throughout their time in care. For some children, their time in care is short-lived, but others ‘grow up in care’, living with carers or workers for more than a decade. Where possible, the number of placements is kept to a minimum, but many children live in multiple homes or settings, which can be unsettling and reinforce their sense of instability and rejection.

Some children cannot be placed with a foster family and are therefore placed in ‘residential care’, which is usually a house where the child lives on their own or with other children, under the supervision of youth workers or other paid carers. Although considered an option of ‘last resort’, many children are placed in residential care due to a lack of available foster or kinship carers, particularly a lack of carers who can meet the needs of children who are older, children with behavioural and mental health issues or those with disability. For some, residential care is the best placement option, but for many, residential care can be marked by an ongoing sense of a lack of safety and can lead to poorer outcomes.

The Department funds non-government organisations to provide some foster care and all residential care. The child’s allocated Child Safety Officer supports the child on behalf of the Secretary, including by enrolling the child in school and ensuring they stay connected with their family of origin. Foster, kinship or paid residential carers provide the child with day-to-day physical, emotional and cultural support. Where a non-government service provider is contracted, it supports the carers to carry out their role.

At the time of writing, the Department had a team of Child Safety Officers who support the Department’s own foster and kinship carers. These officers are separate to the Child Safety Officers who support children.

2.2.2 While in care

Children do best when they are surrounded by a network of supportive adults who understand and respond to their needs. While in care, it is the Department’s policy that a child has a care team around them, coordinated by a Child Safety Officer.¹⁷ This team should include important adults in the child’s life—such as their carer, teacher, counsellor and paediatrician or doctor—and a representative from their cultural community (this is particularly important for Aboriginal children).¹⁸

The Department’s policy is that the care team should meet regularly to develop and monitor the child’s care plan. The plan should outline the child’s needs and who is responsible for meeting those needs, and be updated to reflect the child’s changing needs. Depending on the child’s age, they may have a say in the plan through attending care team meetings.¹⁹

Members of the care team are jointly responsible for keeping the child safe from sexual abuse. They develop trusting relationships with the child, so if a child wants to disclose a concern about sexual abuse, they may feel comfortable to talk to a trusted adult in their

care team. The Child Advocate can also help a child raise a concern or get help if they are not feeling heard. When a child (or anyone else) raises a safety concern or discloses abuse, the Department uses its 'care concern process' to investigate the matter (discussed in Chapter 9).

2.3 The Secretary's responsibilities as guardian

Under the Children, Young Persons and Their Families Act, the Secretary is conferred 'the same rights, powers, duties, obligations and liabilities as a natural parent of the child' when assigned guardianship.²⁰ These duties include:

- deciding where the child will live, being mindful of securing a stable home²¹
- arranging education and medical care, and providing anything else that is necessary (including financial assistance)²²
- providing for the physical, intellectual, psychological and emotional development of the child²³
- reviewing the child's care and protection order to ensure it is still in the child's best interests.²⁴

In carrying out the duties and responsibilities of a guardian, the Secretary must consider the best interests of the child to be paramount.²⁵ This is one of the objects of the Children, Young Persons and Their Families Act, and the guiding principle that underpins all decisions the Department makes in relation to children.²⁶ The Secretary relies on a detailed instrument of delegation to exercise these duties and responsibilities through departmental staff.²⁷

Section 10E of the Act sets out a range of matters that must be considered in determining the best interests of a child. These matters are directly relevant to reducing the risk of child sexual abuse for children in out of home care.

Section 10E of the Children, Young Persons and Their Families Act

1. In performing functions or exercising powers under this Act, the best interests of the child must be the paramount consideration.
2. Without limiting the matters that may be taken into account in determining the best interests of a child, the following matters are to be taken into account for that purpose:
 - a. the need to protect the child from physical, psychological and other harm and from exploitation;

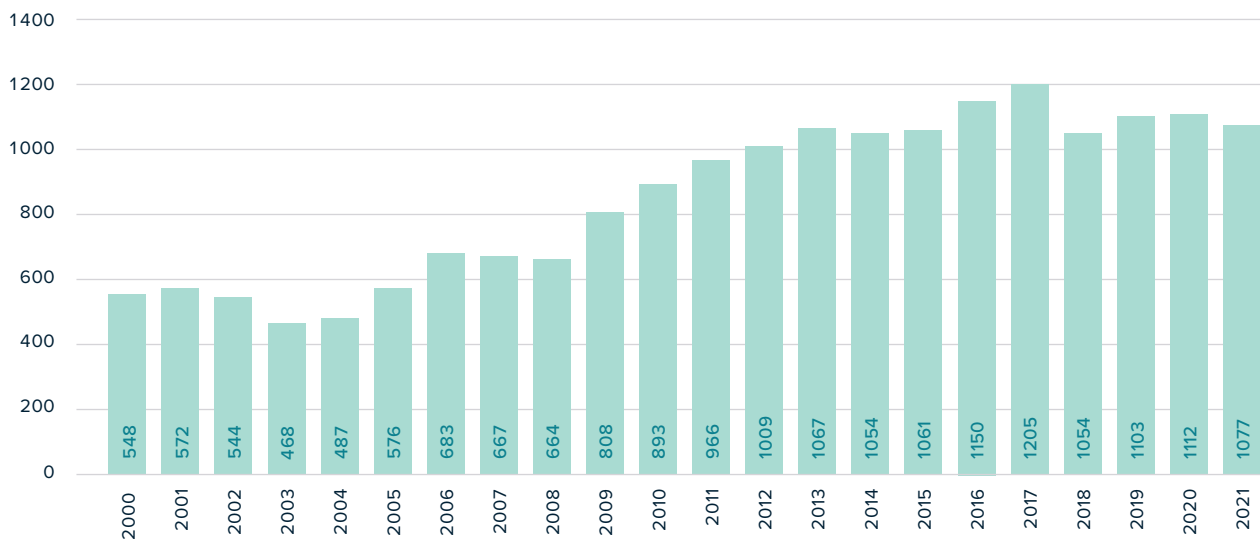
- b. the views of the child, having regard to the maturity and understanding of the child;
- c. the capacity and willingness of the child's parents or other family members to care for the child;
- d. the nature of the child's relationships with his or her parents, other family members and other persons who are significant in the child's life, including siblings;
- e. the child's need for stable and nurturing relationships with his or her parents, other family members, other persons who are significant in the child's life and the community;
- f. the child's need for stability in living arrangements;
- g. the child's physical, emotional, intellectual, spiritual, developmental and educational needs;
- h. the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's guardians;
- i. the need to provide opportunities for the child to achieve his or her full potential;
- j. the child's age, maturity, sex, sexuality and cultural, ethnic and religious backgrounds;
- k. any other special characteristics of the child;
- l. the likely effect on the child of any changes in the child's circumstances;
- m. the least intrusive intervention possible in all the circumstances;
- n. the opportunities available for assisting the child to recover from any trauma experienced—
 - i. in relation to being separated from his or her parents, family and community; or
 - ii. as a result of abuse or neglect;
- o. any persuasive reports of the child being harmed or at risk of harm and the cumulative effects of such harm or risk.

2.4 The number of children in care

The number of children in out of home care in Tasmania is reported monthly on the Department’s website.²⁸ In April 2022, the website stated that 1,256 children were in out of home care in Tasmania; however, Michael Pervan, then Secretary, Department of Communities, reported that 1,034 children were in out of home care in the same period.²⁹ Secretary Pervan explained that the figures reported on the website include children on third-party guardianship orders.³⁰ For the sake of clarity, we will state whether data includes children on third-party guardianship orders where it is relevant to do so.

Since 2007, the number of children in out of home care in Tasmania in any given year has fluctuated, although the trend has been an increase (refer to Figure 7.1).

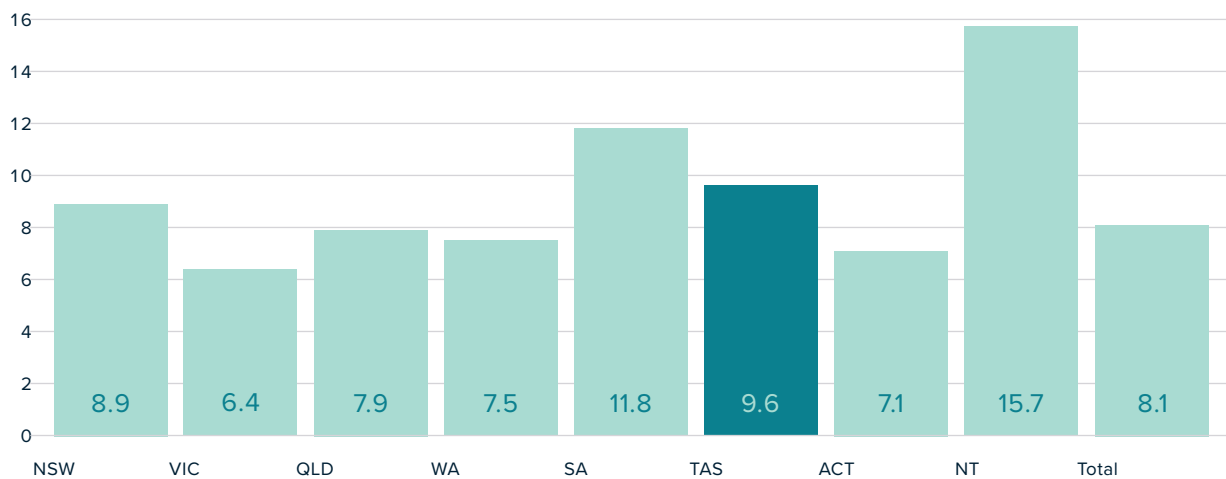
Figure 7.1: Number of children in out of home care in Tasmania, excluding third-party guardianship orders, from 30 June 2000 to 30 June 2021³¹



Source: Australian Institute of Health and Welfare, *Child Protection Australia* reports 2000–01 to 2020–21.

Given Tasmania’s small population, it is also worth considering the relative number of children in care in Tasmania compared with other Australian jurisdictions. At 9.6 per 1,000 children in out of home care, Tasmania sits above the national average of 8.1 per 1,000 children (Figure 7.2).³²

Figure 7.2: Rate of children per 1,000 in out of home care by state and territory³³



Source: Australian Institute of Health and Welfare, *Child Protection Australia 2020–21*.

2.5 Types of out of home care

In her first Monitoring Report, covering 2018–19, Leanne McLean, Commissioner for Children and Young People, outlined the characteristics of the different forms of out of home care provided in Tasmania as follows:

Foster care: A form of [out of home care] where the caregiver is authorised and provided a contribution for the cost of care by the state/territory for the care of the child. (This category excludes relatives/kin who are provided a contribution for the cost of care).

Kinship care: A form of [out of home care] where the caregiver is either:

- a relative (other than parents); or
- considered to be a family member or a close friend; or
- a member of the child or young person’s community (in accordance with their culture); and
- who is provided a contribution for the cost of care by the state/territory for the care of the child.

For Aboriginal and Torres Strait Islander children, a kinship carer may be another Indigenous person who is a member of their community or a compatible community or from the same language group.

...

Residential care: Where the placement is in a residential building whose purpose is to provide placements for children where there are paid staff. It appears through monitoring activities that the term ‘residential care’ is used by [out of home care] providers to describe [out of home care] arrangements provided to children and

young people by paid staff on a rostered 24/7 basis. Within this broad definition, arrangements of this sort ranged from a single child or young person living in a house with paid staff to two or more children and young people (who may or may not be related) living in a house with paid staff.

Respite care: A form of [out of home care] used to provide short-term accommodation for children and young people, where the intention is for the child to return to their prior home. In family-based [out of home care], this may be planned and regular to give the child's usual carers, parents or guardians a break.

...

Third-party guardianship: Transfer of guardianship to a third party is where a person other than the Secretary may be granted guardianship for a child or young person under a care and protection order. Under such an order, the guardian has the same rights, power, duties, obligations and liabilities as a natural parent of the child or young person would have.³⁴

The Department describes sibling group care as 'a placement option for groups of three or more connected children who cannot be placed together in foster or kinship care'.³⁵

More recently, the Department has funded children in residential care under 'special care packages', which were intended to enable 'a specific child's extraordinary level of need for care to be matched to care options including therapeutic, medical, disability or similar support'.³⁶ We discuss concerns about the Department's Special Care Package funding in Chapter 9.

Commissioner McLean reported that some children have 'independent living' arrangements.³⁷ Such arrangements presumably involve older children in care living independently, either in private or supported rental accommodation.

Table 7.1 sets out the most recent figures for the number of children in out of home care in Tasmania by the form of care (or type of placement). The table does not include children on third-party guardianship orders. National figures are included for comparison. The data indicates that:

- Like other jurisdictions, most children in out of home care in Tasmania live in a home-based environment.
- Within home-based care types, Tasmania has a higher proportion of children in foster care than in kinship care arrangements.
- Tasmania has a slightly lower proportion of children in residential care environments.

Table 7.1: Children in out of home care in Tasmania by type of placement, 2020–21³⁸

Type of placement	Number of Tasmanian children	Placement type, Tasmania (%)	Placement type, national (%)
Foster care	556	51.6	36.1
Relative/kinship care	449	41.7	53.7
Other home-based care	0	0.0	1.3
<i>Total home-based care</i>	<i>1,005</i>	<i>93.3</i>	<i>91.1</i>
Family group homes	0	0.0	0.3
Residential care	64	5.9	7.3
Independent living	Not published due to small numbers	Not published due to small numbers	0.5
Other/unknown	Not published due to small numbers	Not published due to small numbers	0.8
Total	1,077	100.0	100.0

Source: Australian Institute of Health and Welfare, *Child protection Australia 2020–21*.

2.6 Government and non-government providers

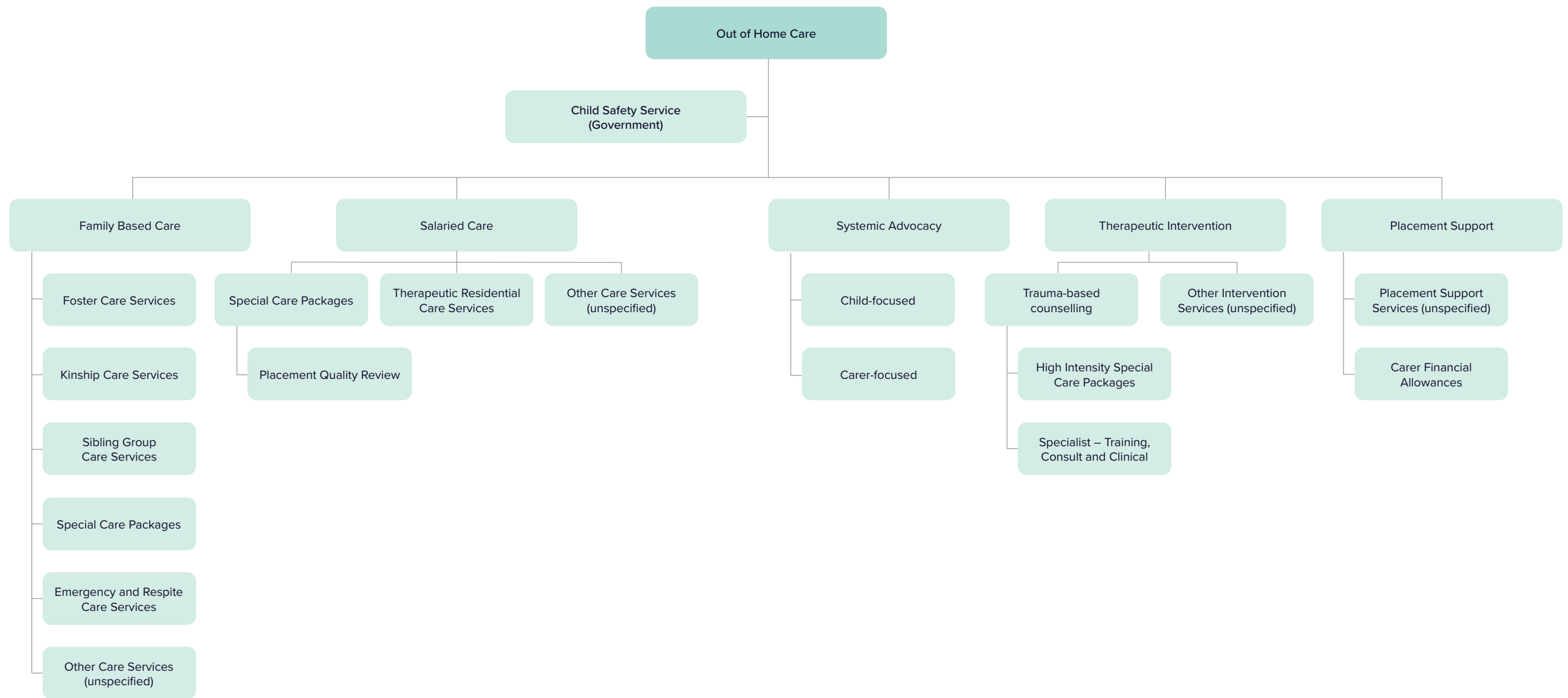
Out of home care in Tasmania is a ‘hybrid system’, where the Department directly provides some out of home care services and others are provided by Department funded non-government providers.³⁹

The Department’s out of home care ‘service directory’ maps the funded services available for children in out of home care under the categories of ‘family-based care’ (foster and kinship care) and ‘salaried care’ (residential care). Available funded support services are also independently listed in the directory.⁴⁰ This directory is reproduced at Figure 7.3.

Figure 7.3: Out of home care service directory provided by the Secretary⁴¹

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Figure 7.3: Out of home care service directory provided by the Secretary⁴¹



Source: Statement of Michael Pervan, 6 June 2022.

We heard that the Department directly provides kinship care, foster care and respite care. It also supports children who are in independent living arrangements or on third-party guardianships.⁴² The Department is the only facilitator of kinship care, but there are plans for a non-government organisation to share support for kinship care in the future.⁴³

Of 968 children in family-based out of home care on 22 April 2022, the Department directly facilitated the care of 700 children (72 per cent), while the remaining 268 children (28 per cent) were living in foster care arrangements overseen and supported by non-government providers.⁴⁴ In 2020–21, 449 of the 1,005 children in departmental family-based care were living in kinship care.⁴⁵

The non-government organisations the Department funded to provide out of home care services, or support for children in out of home care or their carers, in 2021–22 are listed in Table 7.2 (up to 22 April 2022). Several non-government providers—including Mosaic Support Services, Oak Tasmania and St Giles Society—are specialist disability support agencies.

Table 7.2: Non-government organisations the Department funded to provide out of home care services by type of service and number of children in the service, 1 July 2021 – 22 April 2022⁴⁶

Organisation	Service provided	Number of children who received the service on 22 April 2022
Anglicare	Special care packages	1
Australian Childhood Foundation	Special care packages and Australian Childhood Foundation-only packages	Not reported
Australian Childhood Foundation	Therapeutic assessment and review	Not reported
Australian Childhood Foundation	Therapeutic services for children in out of home care	Not reported
Australian Childhood Foundation	Therapeutic operating model for the Many Colours One Direction program	Not reported
Baptcare	Family-based foster care	15
Caring Hearts	Special care packages	1
Catholic Care	Capability – salaried care	0
Catholic Care	A team for special care packages and Bringing Baby Home program	0
Catholic Care	Special care packages	5
Choice Supports Tasmania	Special care packages	1
CREATE Foundation Ltd	Advocacy (Connect, Empower and Change program)	Not reported
Devonfield	Special care packages	0
Eskleigh	Special care packages	2
Foster and Kinship Carers Association of Tasmania	Advocacy	Not reported

Organisation	Service provided	Number of children who received the service on 22 April 2022
Glenhaven Family Care Inc.	Emergency and respite care	3,000 (bed nights block-funded)
Glenhaven Family Care Inc.	A team for special care packages and Bringing Baby Home program	0
Glenhaven Family Care Inc.	Family-based foster care	21
Glenhaven Family Care Inc.	Special care packages	19
iCare	Special care packages	1
Inglis Support Services	Special care packages	1
Kennerley Children's Home Inc.	Emergency and respite care	2,158 (bed nights block-funded)
Kennerley Children's Home Inc.	Moving On Program (transition from care)	Not reported
Kennerley Children's Home Inc.	Family-based foster care	105
Key Assets	Sibling group care	59 (bed nights block-funded)
Life Without Barriers	Family-based foster care	66
Life Without Barriers	Special care packages	7
Langford	Special care packages	3
Many Colours One Direction (Northern Territory)	Special care packages	0
Mosaic Support Services	Special care packages	5
MSJ Aust	Special care packages	Not reported
Nexus	Special care packages	0
Oak Tasmania	Special care packages	0
St Giles Society	Special care packages	1

Source: Statement of Michael Pervan, 7 June 2022.

The Foster and Kinship Carers Association of Tasmania advised us that Baptcare also provides statewide support for kinship carers.⁴⁷

2.7 Number of foster and kinship carers

The Foster and Kinship Carers Association of Tasmania believes there are about 1,200 foster and kinship carers in Tasmania. Of these, the Department directly engaged about half, and non-government out of home care providers engaged the other half.⁴⁸

According to the Australian Institute of Health and Welfare, on 30 June 2021 there were 566 Tasmanian households that were officially caring for at least one child in out of home care as foster carers or kinship carers.⁴⁹ Table 7.3 lists the number of Tasmanian households, type of placement and number of children in each home. It shows that foster care households are more likely to have larger numbers of children in care living with them than kinship care households.

Table 7.3: Tasmanian carer households by number of children in the placement and type of placement, 2020–21⁵⁰

Number of children in placement	Number of foster care households	Number of kinship care households
1	112 (41.6%)	196 (66.0%)
2	80 (29.7%)	68 (22.9%)
3+	77 (28.7%)	33 (11.1%) ⁵¹
Total	269 (100%)	297 (100%)

Source: Derived from Australian Institute of Health and Welfare, *Child Protection Australia 2020–21*.

In addition to these figures, the Foster and Kinship Carers Association informed us of ‘thousands’ of informal kinship carers in Tasmania who are not included in official statistics and who do not have access to the same supports as formal carers.⁵² While we acknowledge the incredible commitment of these informal kinship carers, their situations fall outside the scope of our Inquiry because the children they care for are not in ‘institutional’ care.

2.8 Department structure

In October 2022, the Department of Communities’ child protection and out of home care functions transferred to the new Department for Education, Children and Young People.⁵³ In the new Department, the child protection and out of home care systems sit under an Executive Director who reports to a Deputy Secretary for Keeping Children Safe (refer to Appendix G for the organisational structure of the new Department). The Child Advocate, whose role is described in detail in Chapter 9, reports directly to the Secretary, as was the case in the Department of Communities. The current Secretary of the Department for Education, Children and Young People is Timothy Bullard.

Given that the Department of Communities was responsible for statutory child protection and out of home care for most of our Inquiry, it is also important to understand the structure of that Department, particularly the mechanisms that were in place to protect children from sexual abuse in out of home care and to respond when they had been harmed.⁵⁴

Michael Pervan was the Secretary of the Department of Communities (and its predecessor, the Department of Health and Human Services), from May 2014 to October 2022, with a gap between July 2018 and September 2019, when Ginna Webster filled the role. Before this, between 2000 and May 2014, seven people held the position at different times.⁵⁵

In the Department of Communities, the Children, Youth and Families division was one of four large service divisions that each sat under a Deputy Secretary. Within this division, an Executive Director headed Children and Family Services. The Child Advocate sat outside Children, Youth and Families and reported directly to the Secretary.

Secretary Pervan described Children and Family Services as follows:

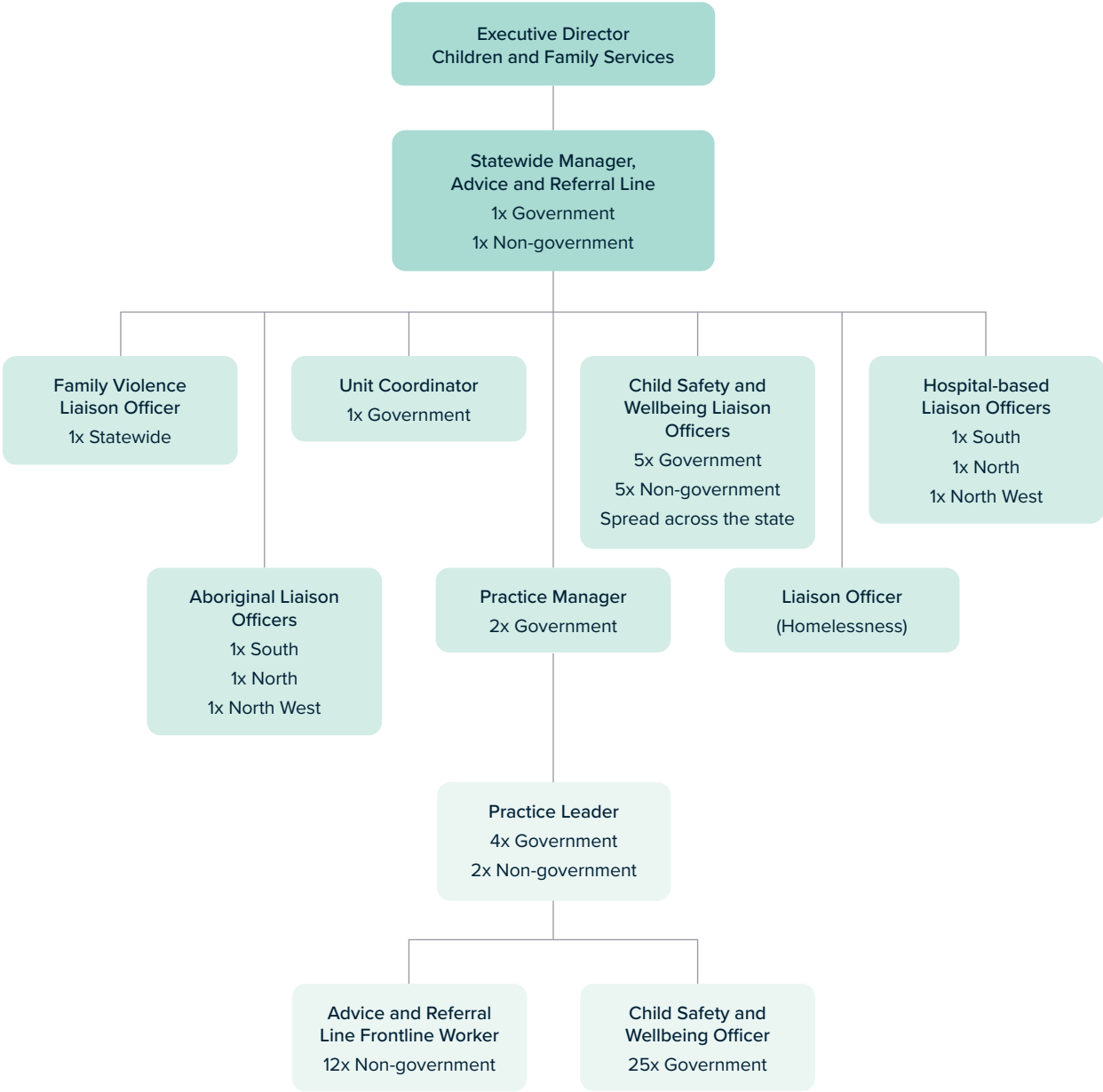
Children and Family Services ... includes the Strong Families Safe Kids Advice and Referral Line, the Child Safety Service, Out of Home Care; Adoptions, Permanency and After Care Support, Intensive Family Engagement Services, and the Child Safety After-Hours Emergency Service, and is currently holding Community Youth Justice.⁵⁶

We asked Secretary Pervan to describe the internal organisational structure of the Strong Families, Safe Kids Advice and Referral Line, the Child Safety Service and Out of Home Care services (which exist in the current and older organisational structures), and the ways in which these service components relate to one another on a day-to-day basis.⁵⁷ He indicated the following:

- The Advice and Referral Line receives concerns about the wellbeing of a child. A brief assessment decides if the concern requires advice and referral to support services, or referral to the Child Safety Service for support or investigation.⁵⁸
- Child Safety Service staff are in regional offices and receive notifications of child abuse and neglect. Child Safety Officers provide case management for children who are being assessed for risk of harm or neglect, or who are already in out of home care.⁵⁹
- Out of Home Care services recruit and assess prospective foster or kinship carers, provide support to carers, monitor compliance of foster carers with requirements, and facilitate placements for children with foster carers.⁶⁰

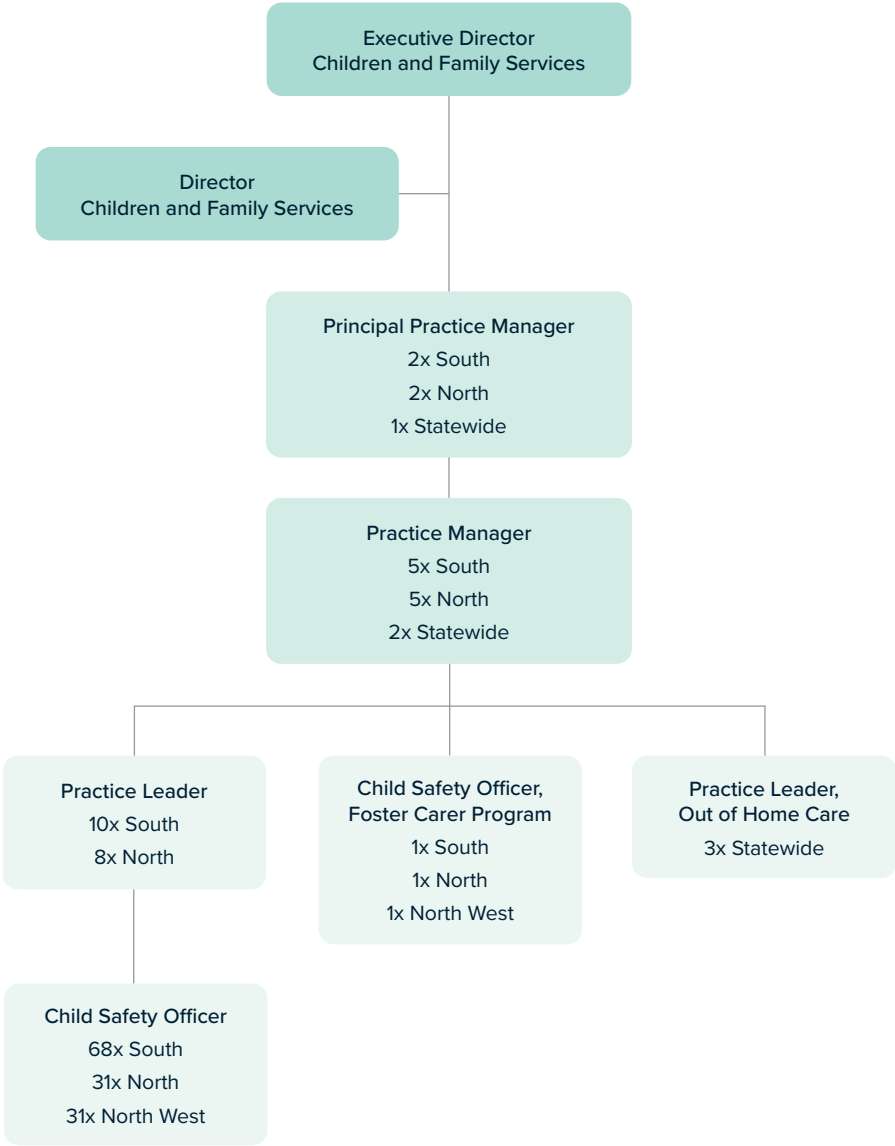
Secretary Pervan provided information on the reporting lines of staff on the Advice and Referral Line and in the Child Safety Service, as well as the full-time-equivalent staff allocation for each role (refer to Figure 7.4 and Figure 7.5). He advised us that the Child Safety Service receives more than \$19.6 million in funding each year and employs 204.85 permanent full-time-equivalent staff.⁶¹ Secretary Pervan also described the Out of Home Care services staffing complement and structure, which is shown at Figure 7.6. We understand these arrangements have been augmented in the new Department by additional funding for 10 new Child Safety Officer positions and 13 new administrative roles.⁶² In the absence of any evidence to the contrary, we have assumed this reflects the current internal organisation of the Advice and Referral Line and the Child Safety Service.

Figure 7.4: Staffing structure of the Advice and Referral Line⁶³



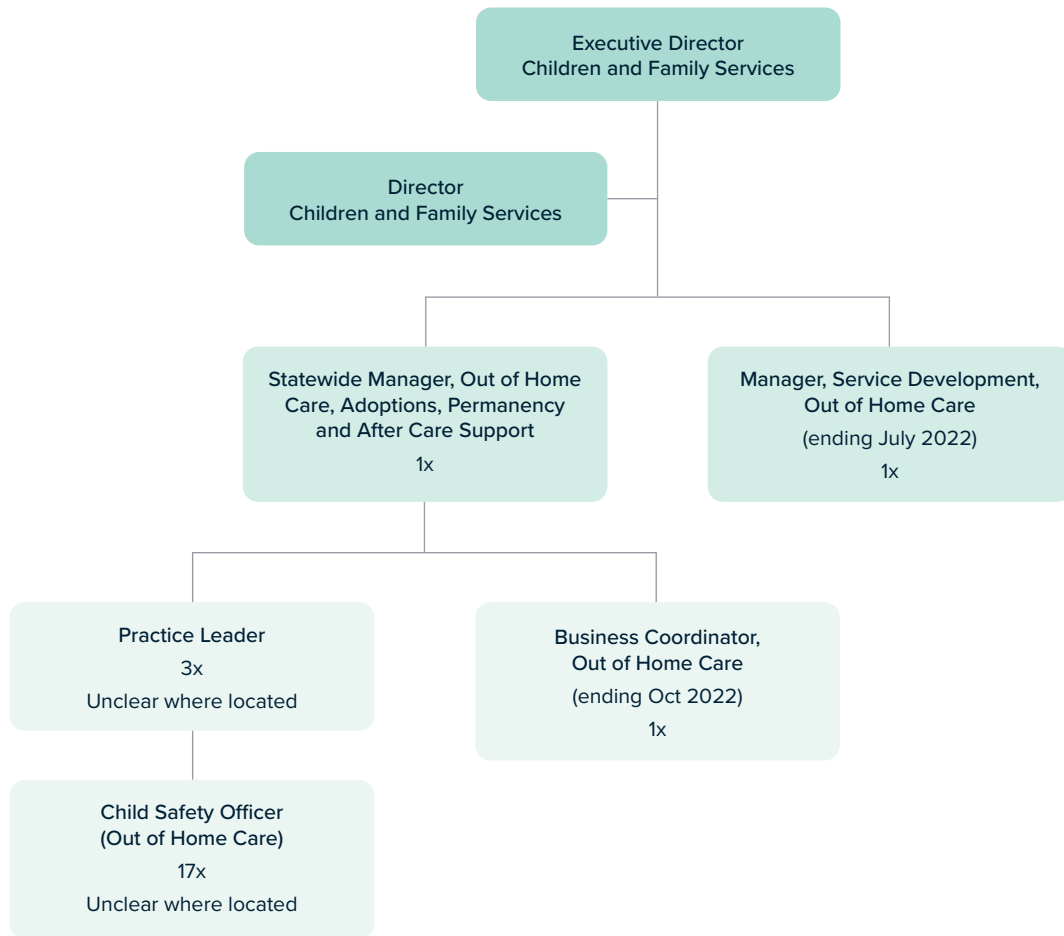
Source: Compiled from statement of Michel Pervan, 7 June 2022.

Figure 7.5: Staffing structure of Child Safety Services⁶⁴



Source: Compiled from statement of Michael Pervan, 7 June 2022.

Figure 7.6: Staffing structure of Out of Home Care services⁶⁵



Source: Compiled from statement of Michael Pervan, 6 June 2022.

When comparing the structure of the Out of Home Care services and the Child Safety Service, some information provided about some positions is unclear:

- the Practice Leader (Out of Home Care) positions appear in both structures but report to different managers
- the Child Safety Officer (Foster Carer Program) positions are in the Child Safety Service but would seem to sit more naturally in Out of Home Care services.

We heard that the Department’s Out of Home Care team supports departmental carers, while the Child Safety Service provides case management for a child for the length of their contact with the Department, from their referral by the Strong Families, Safe Kids Advice and Referral Line to their transition out of care.⁶⁶

Claire Lovell, Executive Director, Children and Family Services, explained that the Out of Home Care teams work from three locations across the State (South, North and North West) and sit alongside the Child Safety Service teams, which provide assessment and case management for children in contact with the service or in out of home care.⁶⁷

Ms Lovell told us that in June 2022 there were between 26 and 30 vacant positions across the Advice and Referral Line, Child Safety Service and Out of Home Care services.⁶⁸

We heard that frontline practitioners may receive clinical supervision from senior practitioners who sit outside their direct line management; for example, staff in Out of Home Care services access clinical supervision from a Practice Manager (location unspecified) who has no line management responsibility for them.⁶⁹ Secretary Pervan also told us that an unspecified number of Clinical Practice Consultants and Educators were assigned to case management and out of home care teams in the Child Safety Service statewide to support clinical practice.⁷⁰ However, these roles were not included in the organisational charts or descriptions we received, so we have no other information about them.

Ms Lovell also told us that, in addition to the out of home care staffing contingent outlined above, the Manager of Strategic Commissioning, who sits outside the Children and Family Services portfolio, is responsible for engaging and contracting non-government organisations to provide out of home care services (among other commissioning activities for the Children, Youth and Families division).⁷¹ She advised that this single role has limited capacity to oversee non-government organisations' compliance with contractual obligations.⁷² Instead, oversight of contractual obligations is 'spread to different positions in different ways' between Child Safety Officers, reviews by the Australian Childhood Foundation and reports received from non-government agencies.⁷³ We discuss the need to improve commissioning in Chapter 9.

3 Child sexual abuse in care: risks and protective factors

The National Royal Commission heard horrific accounts of abuse in 'old-fashioned' care institutions. It also found that many children were still experiencing sexual abuse in contemporary out of home care:

Despite reforms in every jurisdiction, there are weaknesses and systemic failures that continue to place children in care at risk of sexual abuse. Abuse by carers, family members, visitors and workers still occurs, and sexual exploitation, especially of children in residential care, is an emerging concern. Frequent placement changes, poor information sharing, gaps in training and supports, especially to kinship carers, still exist. Given the increasing number of children in care and the inherent vulnerability of children in care, such weaknesses need to be addressed.⁷⁴

Despite the National Royal Commission having reported over five years ago, we heard that similar problems still exist in Tasmania. These problems are discussed throughout this chapter.

3.1 Factors that increase risk

As mentioned in Chapter 3, the National Royal Commission identified several factors that increase the risk of child sexual abuse.⁷⁵ Characteristics specific to the out of home care context that increase risk of child sexual abuse include:

- situational factors, such as aspects of the physical environment; the dislocation from culture that can occur when Aboriginal children are placed with non-Aboriginal families; a lack of culturally sensitive supports for children from culturally diverse backgrounds; and the absence of trusted adults created through disconnection from family and placement instability, including frequent placement moves⁷⁶
- vulnerability factors, such as children lacking an understanding that particular behaviour is sexual abuse, prior maltreatment, being younger, having disability, or having a history of trauma or mental illness, which are disproportionately more likely in out of home care populations than the broader community⁷⁷
- propensity factors, such as the risk of abusers targeting children in residential care settings for the purposes of child sexual exploitation⁷⁸
- institutional factors, some of which are particularly associated with residential care, including:
 - placement of vulnerable children with other children or within families where they are at greater risk of harm (due to poor assessment, placement matching and monitoring)⁷⁹
 - inadequate professional development and supervision of staff, lack of role clarity for staff and unclear expectations of relationships between staff and young people⁸⁰
 - the absence of policies and procedures that protect children in care from sexual abuse, and an organisational culture that does not actively promote child welfare⁸¹
 - inconsistent data collection and reporting among service providers, making it difficult to monitor incidents and responses⁸²
 - large caseloads that overwhelm child protection staff, reducing their ability to respond and their frequency of visits to children in care⁸³
 - low remuneration, work stress and public criticism of child protection staff, making it difficult to attract and retain highly skilled staff.⁸⁴

We identified that most of the institutional risk factors are present in Tasmania’s statutory child protection system. In Chapter 9, we explore the policies and practices that the Department should adopt to reduce these and other risk factors as they relate to out of home care.

The National Royal Commission, Australian and international research has shown that children and young people in residential care are more likely to experience child sexual abuse, peer sexual victimisation and sexual exploitation than their peers in kinship and foster care (who are still at greater risk than those who do not live in care). This is often because children in residential care are more likely to have behavioural and mental health issues, have disabilities and be older than children in other placement types. They tend to lack a stable and secure relationship with a trusted adult and are also more likely to be placed with peers who engage in harmful sexual behaviours.⁸⁵

3.2 Sources of risk

The main sources of risk for children in out of home care are the adults working in the statutory child protection system or other adults in their lives. Another source of risk is other children in the out of home care system.

3.2.1 Adults working in the child protection system

We recognise that most adults in the out of home care system are hard-working and committed people who are trying to provide children with the supports they need. Despite these positive contributions, the nature of out of home care—whereby foster carers and their family members, Child Safety Officers and staff from non-government organisations contracted by the Department have opportunities to be alone with children outside of public view—means that children are exposed to a greater risk of child sexual abuse.

Research commissioned by the National Royal Commission found the following:

- adults who sexually abuse children in out of home care settings are more likely to be male, charismatic, controlling and in positions of power⁸⁶
- such abuse is often accompanied by grooming so children will trust the abuser and believe they have consented to the abuse⁸⁷
- such abusers can engage in ‘institutional grooming’ where they manipulate systems and communities into trusting them and setting them outside the usual safety nets that exist to prevent child sexual abuse, and so can abuse multiple children over long periods.⁸⁸

The National Royal Commission noted that it can be difficult to distinguish grooming from legitimate caring activities, particularly where the abuser is a carer. A key aspect of grooming is creating a trusting relationship with the child and making them feel special and cared for—the same behaviours we want from carers. Grooming is often associated with boundary breaches, such as taking a child on an unauthorised shopping trip or supplying them with alcohol, drugs or cigarettes.⁸⁹

We heard of several instances of departmental staff having engaged in grooming behaviours and boundary violations. We identified many more allegations of sexual abuse of children by foster carers and adults associated with foster families. These issues are discussed in Chapter 8.

We address measures that can, reduce the risk to children in care from adults in the out of home care system in Chapter 9.

3.2.2 Adults outside the child protection system: child sexual exploitation

The National Royal Commission defined child sexual exploitation as arising when ‘children are coerced or manipulated into engaging in sexual activity in return for something (such as alcohol, money or gifts)’.⁹⁰ It can take different forms, including the child perceiving it as a ‘loving relationship’ and the adult manipulating the child into sex work. It can also include the production, consumption, dissemination and exchange of child sexual exploitation material.⁹¹ The abuser may meet the child in the community but often initially grooms a child online. In the context of out of home care, the relationship with the abuser is sometimes initiated by other children in care.⁹²

In addition to unknown adults from the community, children in care may be at risk of child sexual abuse from adults and other family members from within their families of origin while on unsupervised contact visits. We heard of only a few instances of this form of harm.

We focus on the risk of child sexual exploitation and measures that are necessary to reduce the risk and respond more appropriately in Chapter 9.

3.2.3 Other children in the out of home care system: harmful sexual behaviours

The National Royal Commission noted that the out of home care sector has been aware of risks to children in out of home care from harmful sexual behaviours for some time; however, policies, procedures and professional development that address these risks was lacking in all Australian jurisdictions.⁹³ The National Royal Commission also noted that therapeutic treatment programs for young people who engage in harmful sexual behaviours were under-resourced and limited in their availability.⁹⁴

We also identified that a high proportion of concerns about the sexual abuse of children in care in Tasmania related to the harmful sexual behaviours of other children (refer to Chapter 8). As we discuss in Chapter 9, the Department does not have a policy for preventing, identifying or responding to harmful sexual behaviours in out of home care and has only recently funded limited specialist support for children engaging in such behaviour. Chapter 21 discusses the broader need for a coordinated approach to harmful sexual behaviours in children across Tasmanian institutional settings.

3.3 Over-representation of particular groups of children

In addition to specific vulnerabilities referred to above, Aboriginal children and children with disability are at increased risk of experiencing sexual abuse in out of home care due to their over-representation in the system.

3.3.1 Aboriginal children

On 30 June 2021, there were 403 Aboriginal children in Tasmanian out of home care, which is 37.4 per cent of the number of children in out of home care.⁹⁵ The proportion of Aboriginal children in out of home care in Tasmania was 34.4 per 1,000 children compared with 6.5 per 1,000 non-Aboriginal children.⁹⁶ This means that Aboriginal children in Tasmania are a little over five times more likely to be in out of home care than non-Aboriginal children. However, because there are high numbers of children in care whose Aboriginal status is recorded as ‘unknown’, it is likely that the number is higher than reported.⁹⁷

Australia-wide, the proportion of Aboriginal children in out of home care has increased over the past five years from 57.8 per 1,000 children in 2017 to 65.7 per 1,000 children in 2021.⁹⁸ Without urgent action to reverse this trend, the number of Aboriginal children in out of home care in Australia is predicted to increase by 54 per cent (to just over one in 10 children) by 2030.⁹⁹

Aboriginal children are more likely to experience abuse and maltreatment in out of home care because they are over-represented and therefore ‘have more contact with high risk institutional settings’ such as ‘residential and contemporary out of home care’.¹⁰⁰ The ongoing impacts of colonisation, the treatment of Aboriginal children in the past and subsequent intergenerational trauma continues to place them at risk.¹⁰¹ There is also a range of culturally specific barriers to Aboriginal children disclosing abuse.¹⁰² In Chapter 9, we examine the steps the Department is taking to address the over-representation of Aboriginal children in out of home care, and we make recommendations for more significant reforms.

3.3.2 Children with disability

The Australian Bureau of Statistics reports that 10.2 per cent of children aged 0–14 years in Tasmania have disability, which is higher than the national average of 7.7 per cent.¹⁰³ When compared with the general population, Tasmanian statistics indicate that children and young people with known disability are over-represented in out of home care: 21.0 per cent have known disability, 47.2 per cent are recorded as having no disability and the disability status of the remaining 31.8 per cent of children in care is unknown.¹⁰⁴

Research commissioned by the National Royal Commission noted that, in general, children with disability are about three times more likely to experience sexual abuse than children who do not have disability.¹⁰⁵ There is little Australian data to understand the reasons for this increased risk, although it is likely that multiple interacting factors are at play.¹⁰⁶

The National Royal Commission observed that children with disability in out of home care face unique challenges because services and supports are not tailored to their individual needs.¹⁰⁷ Research commissioned by the National Royal Commission found that children with disability are more vulnerable to child sexual abuse in out of home care where:

- their disability means they need help with intimate care activities¹⁰⁸
- they have an intellectual disability, behavioural disorder or communication disorder¹⁰⁹
- the child and carers have little control over daily activities¹¹⁰
- the child is expected to be compliant¹¹¹
- the child has difficulty communicating to others that child sexual abuse is occurring.¹¹²

Our examination of 22 departmental files, discussed in Chapter 8, confirmed these observations. As we explore in Chapter 9, there are several steps that the Department must take to reduce the risk of sexual abuse for children with disability in out of home care.

3.4 Protective factors

According to the National Royal Commission, maintaining positive connections with family, community and culture may be protective factors against sexual abuse for children in out of home care.¹¹³

The National Royal Commission heard that placing a child in kinship care increases the likelihood that he or she ‘will grow up and know that they’re loved, they’re claimed, they belong’.¹¹⁴ The National Royal Commission also heard that:

Children who are part of a broader community with an interest in their wellbeing are more likely to be noticed when they are in danger and have networks of support to draw upon when they feel unsafe.¹¹⁵

For these reasons, kinship care may offset some of the ‘psychic trauma’ for a child caused by being removed from parents, provide the child with a familiar environment with known carers and maintain ‘the perceived warmth and safety of a family during the placement process’.¹¹⁶ Kinship care can also provide ‘a strong parent/child relationship, family cohesion and positive social connection and support’, which are all important protective factors for children in care.¹¹⁷

For Aboriginal children, connection to culture can increase protective factors by ‘helping them to develop their identities, fostering high self-esteem, emotional strength and resilience’, while positive relationships with their family and communities of origin can also increase protective factors against the risk of sexual abuse.¹¹⁸ This is discussed in Chapter 9.

Associate Professor Tim Moore, Deputy Director, Institute of Child Protection Studies, Australian Catholic University, told us that healthy relationships with ‘trustworthy adults’ were ‘more protective than risky’:

Inquiries and research has demonstrated that children and young people who are socially isolated are more at risk of experiencing abuse than their peers who are not, while those who are surrounded by trustworthy adults who will protect them, watch out for them and intervene and be available when they have safety concerns are safer than those who are not.¹¹⁹

The National Royal Commission also found that children in care who had regular visits from their Child Safety Officer were less likely to be sexually abused than children who were not visited regularly.¹²⁰ We explore the barriers to regular visitation in Chapter 9.

4 Previous reviews and reforms

In this section, we consider the Tasmanian Government’s progress on implementing the numerous recommendations that have been made to improve the out of home care system in Tasmania since 2000, including the National Royal Commission’s recommendations for contemporary out of home care.

4.1 National Royal Commission

The National Royal Commission made 22 recommendations aimed at improving the safety of children in contemporary out of home care. These recommendations encompassed:

- strengthening data collection and reporting (Recommendations 12.1–12.3)
- accrediting out of home care service providers (Recommendations 12.4 and 12.5)
- improving processes for authorising carers (Recommendations 12.6–12.8)
- developing a child sexual abuse prevention strategy (Recommendation 12.9)
- creating a culture that supports disclosure and identifying child sexual abuse (Recommendation 12.10)
- measures to strengthen the capacity of carers, residential care staff and child protection workers to understand trauma and abuse and its impact on children (Recommendation 12.11)
- measures to address the known risks of children in out of home care engaging in harmful sexual behaviours (Recommendations 12.12 and 12.13)
- measures to reduce the risk of child sexual exploitation in out of home care (Recommendations 12.14 and 12.15)
- strategies to increase placement stability to protect children in out of home care against the risk of sexual abuse (Recommendation 12.16)
- measures to support kinship carers and for children in care to maintain relationships with their birth families (Recommendation 12.17)
- developing an ‘intensive therapeutic model of care framework’ for residential care to meet the complex needs of children with histories of abuse and trauma, and regular professional development and supervision for residential care staff (Recommendations 12.18 and 12.19)
- measures to reduce the over-representation of Aboriginal children in out of home care, including full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (Recommendation 12.20)
- measures to improve out of home care systems’ responses to children with disability, including adequate assessment, and developing and implementing care plans that identify specific risk management and safety strategies for the child (Recommendation 12.21)
- supporting care leavers who experienced sexual abuse while in care (Recommendation 12.22).¹²¹

The National Royal Commission also made seven recommendations for setting up and maintaining a carers' register (Recommendations 8.17–8.23).¹²²

The Tasmanian Government has reported on its progress towards implementing the recommendations of the National Royal Commission in annual reports and action plans since 2018, most recently in December 2022 ('Fifth Progress Report').¹²³ In response to our notice to produce, the Department provided information that essentially replicated the Fifth Progress Report, with some minor additional details.¹²⁴ We note that in relation to the recommendations relevant for this chapter, the main updates in the Fifth Progress Report relate to the Government's release of the Tasmanian Out of Home Care Standards during 2022 (discussed in Chapter 9), a current review of the Children, Young Persons and Their Families Act, plans for a Carer Register to be completed by 2024 and an Out of Home Care Accreditation Framework to be completed by 2026.¹²⁵

Following is an overview of the Government's responses to the National Royal Commission recommendations. Throughout Chapter 9, we examine in detail the Government's progress on implementing relevant National Royal Commission recommendations where they relate to specific issues identified in the Tasmanian out of home care system.

4.2 Tasmanian reviews and reports into out of home care

Tasmanian out of home care is a highly examined system. We identified 22 reviews or reports on out of home care or statutory child protection in Tasmania since 2003, which, in total, contained several hundred recommendations. Of the 22 reviews or reports, 13 were either planned or responses to known general challenges facing the sector and nine were prompted by public reporting of specific adverse care situations. The reports were prepared by various entities, including the Commissioner for Children and Young People, the Tasmanian Auditor-General and the Tasmanian Government.

While most of the reports did not consider the issue of child sexual abuse in out of home care in detail, all raised important issues about out of home care in Tasmania and features of the system that increase the risks of child sexual abuse in that setting. The reports repeatedly highlighted that the systems in place to protect children from abuse and neglect, including child sexual abuse, had not performed in the way intended.

The remaining nine reports were strategic documents about out of home care or child protection in Tasmania that outlined the various attempts at reform in response to the recommendations made in the various reviews.

The Department has initiated three main reforms to out of home care since 2003: the *Out of Home Care Strategic Framework (2007)*, *Out of Home Care Reform in Tasmania (2014)* and the *Strategic Plan for Out of Home Care in Tasmania (2017)*. All reforms were ambitious and aimed to improve the experience of children in out of home care. Alongside these reforms, the Department has attempted two main reforms of the child protection system, the most recent being the ‘Strong Families, Safe Kids’ redesign. These reforms are discussed in Section 4.2.

However, despite attempts to reform Tasmania’s child protection and out of home care systems, reviews continue to identify similar problems that directly affect the experience of children in care and increase their risk of child sexual abuse. These include:

- insufficient support for carers
- poor recruitment practices and insufficient support and professional development for staff
- inappropriate placements for children
- inadequate monitoring of children in care
- poor record keeping
- too few out of home care placements compared with the number of children in need
- poor monitoring of non-government out of home care providers and governance of funding agreements
- inadequate complaints processes
- over-representation of Aboriginal children in out of home care and low compliance with the Aboriginal and Torres Strait Islander Child Placement Principle
- over-representation of children with disability in out of home care
- poor support for children taking part in decision making
- variable understanding of and compliance with the *National Standards for Out-of-Home Care*, and poor monitoring of compliance
- no accreditation, registration or licensing system for out of home care providers
- poor information sharing between non-government providers and the Department.

Unfortunately, these themes have changed little over time and were echoed in the evidence we heard, which we explore in Chapter 9.

Some internal changes have been achieved over the past 19 years, such as appointing the Child Advocate and the incremental implementation of the Strong Families, Safe Kids redesign. However, out of home care is not a priority in that reform, and little apparent progress has been made on implementing the 2014 reform agenda *Out of Home Care Reform in Tasmania*. The various reports highlight that previous reform recommendations have not always been implemented in a timely manner, have been under-resourced or, when implemented, have not been subject to appropriate monitoring and oversight to ensure the intended outcomes are achieved.

Importantly, underfunding of statutory child protection was raised with us repeatedly as a fundamental contributing factor to the lack of implementation of recommendations over time. According to Sonya Enkelmann, a former Department employee:

There seems to be a long tradition of undertaking reviews into Child Protection/Child Safety and [out of home care] which then quietly drop from sight. Understanding what sustains this systemic inertia is difficult and I will leave that to others – but a history of chronic underfunding in the Department to build its capacity and infrastructure cannot be overlooked. I am not referring to services (although they are too often underfunded) so much as capacity – having the right people and sufficient number of people in the right jobs to manage and implement change over the long term. A system in crisis is not well placed to manage change.¹²⁶

Secretary Pervan described how:

... budgetary pressure [from an expenditure overrun on special care packages] ... resulted in an immediate loss of impetus for, and opportunity to, resource significant operational reforms in Family Based Care, which were suspended.¹²⁷

He added that ‘the Government has been consistent in not providing funds to the Department ... to implement change’, citing this factor as fundamental to the slow progress towards improving systems in the Department.¹²⁸

In her statement, the Child Advocate also noted the pattern of repeated reviews and little change, commenting that ‘Tasmania is guilty of partial reform’ and needs ‘doers not reviewers’.¹²⁹ She attributed this inertia to ‘significant leadership churn’ in the executive, underfunding of reforms, the lack of a focused change management team in the corporate structure and distraction caused by the demands of external scrutiny.¹³⁰ Other former senior departmental employees expressed similar views.¹³¹

Ms Lovell acknowledged that the Child Safety Service struggles to ‘keep up with reasonable community expectation around the services that we deliver and the safety and quality of those services’, as well as the demand on the service. She stated that efforts to reform the service have been repeatedly interrupted by new concerns demanding their focus:

... we acknowledge that we're not doing well in relation to one aspect; we commit to doing better, we have a strategy around how to do that, but it's immediately superseded by the next area where it's determined that we're failing, and so on and so on.¹³²

When providing evidence to our Inquiry, Ms Lovell's frustration was clear:

We can't do everything at once, so the expectation on us—we certainly agree that we need to improve in all of those areas. That's what continuous improvement is about. But we can only do so much at once, and the more things we try and do simultaneously, it seems, the more that our efforts are diluted and we don't do anything as perfectly as we would aspire to.¹³³

We imagine this sense of not being able to 'catch up' on reforms has affected the morale and culture of the Child Safety Service and those working in the out of home care sector.

Inertia in implementing recommendations of inquiries and reviews is not unique to Tasmania. Analyses of previous inquiries for the National Royal Commission highlighted factors that enable and constrain reforms in the child protection and out of home care systems. Central to successfully implementing reforms are effective leadership, adequate resourcing and sufficient internal and external accountability.¹³⁴ We explore these factors in relation to the Department in Chapter 9.

We are aware that our Commission of Inquiry is yet another review, with the potential to cause harm if our scrutiny does not translate into change. With this in mind, we aspire to recommendations that will help create a system that can sustain a journey of continuous improvement. Dr Samantha Cromptoets, an expert on organisational change processes, told us that sustainable organisational change can be achieved, but it can take a long time. She recommended regularly evaluating the impact of the change to track progress, breaking it down into manageable steps.¹³⁵ We recognise that even with the best leadership and systems of accountability, the reforms we recommend will not lead to meaningful improvements for children without the commitment of the Tasmanian Government to provide the infrastructure and resources to enable the Department to drive and sustain change.

We recognise that the Department has been undergoing change for many years and may well be fatigued by the partial reforms. While we have compassion for the people within an overwhelmed and underfunded system, it is our view that little meaningful change has been sustained for children and their families or carers. Improved experiences for children in care must be the benchmark for success, and a system that is enabled to create and sustain change is urgently required to achieve this outcome. We outline our recommendations for reform in Chapter 9.

Notes

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- 3 'Attorney-General "Deeply Concerned" about Child Protection System', ABC News (online 21 June 2022) <<https://www.abc.net.au/news/2022-06-21/attorney-general-deeply-concerned-about-child/13938526>>; 'Veteran Child Protection Worker Calls Out Inadequate Staff Training', ABC NewsRadio (online 20 June 2022) <<https://www.abc.net.au/news/2022-06-20/veteran-child-protection-worker-calls-out/13936804>>; 'Calls for Overhaul of Australia's Child Protection System', ABC News (online 20 June 2022) <<https://www.abc.net.au/news/2022-06-20/calls-for-overhaul-of-australias-child-protection/13936456>>; 'National Children's Commissioner Critical of Government Inaction on Child Protection', ABC NewsRadio (online 20 June 2022) <<https://www.abc.net.au/news/2022-06-20/national-childrens-commissioner-criticises/13936774>>; 'The Forgotten Children Subjected to Abuse in State Care', ABC News (online 19 June 2022) <<https://www.abc.net.au/news/2022-06-19/the-forgotten-children-subjected-to-abuse-in-state/13936094>>; Katri Uibu, 'Bad Parent', ABC News (online, 20 June 2022) <<https://www.abc.net.au/news/2022-06-20/hundreds-of-people-speak-out-against-child-protection-system/101094220>>.
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- 8 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) Preface and Executive Summary, 39.
- 9 For example, The Hon Margaret Nyland AM Commissioner, *The Life They Deserve: Child Protection Systems Royal Commission Report* (Summary and Report, August 2016) vol 1, 309, 312.
- 10 The Court can assign guardianship to any appropriate person, who may come from the child's family or community: refer to *Children, Young Persons and Their Families Act 1997* s 42(4).
- 11 Transcript of Zaharenia Galanos, Jurek Stopczynski, Emily Churches and Rachel Hales, 4 May 2022, 315 [35–41].
- 12 *Children, Young Persons and Their Families Act 1997* s 42(2).
- 13 *Children, Young Persons and Their Families Act 1997* ss 42(3), 42(4)(c)(i). Other orders that the Court can make include a supervision order (where the child remains with their natural guardian/s but the Secretary is responsible for supervising the welfare of the child), an order granting custody to the Secretary or another person, or an order granting guardianship to a person other than the Secretary (a third-party guardianship order): *Children, Young Persons and Their Families Act 1997* ss 42(4), 42A.
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- 16 Refer to Department of Families, Fairness and Housing Victoria, 'Home Stretch', *Young People* (Web Page, 2021) <<https://services.dffh.vic.gov.au/home-stretch#:~:text=Home%20Stretch%2C%20part%20of%20the,from%20a%20Better%20Futures%20worker>>; Leanne Linard, Minister for Children and Youth Justice, 'Support for Young People Leaving Care Makes History (Media Release 18 June 2022)' <<https://statements.qld.gov.au/statements/95435>>.
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- 21 *Children, Young Persons and Their Families Act 1997* s 69(1)(a)–(c), (2)(d).
- 22 *Children, Young Persons and Their Families Act 1997* s 69(1)(d)–(f).
- 23 *Children, Young Persons and Their Families Act 1997* s 69(2)(c).
- 24 *Children, Young Persons and Their Families Act 1997* s 71(1)–(2).
- 25 *Children, Young Persons and Their Families Act 1997* s 69(2)(a).
- 26 *Children, Young Persons and Their Families Act 1997* ss 7(1)(a), 10E.
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- 31 Figures compiled from several Australian Institute of Health and Welfare *Child Protection Australia* reports 2000–01 to 2020–21 to cover the period. Source materials contain cautions about variations between years in how the total number was calculated. Reports can be found at Australian Institute of Health and Welfare, 'Report Editions', *Child Protection* (Web Page, 2023) <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/report-editions>>.
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- 66 Statement of Michael Pervan, 6 June 2022, 24 [97].
- 67 Transcript of Claire Lovell, 14 June 2022, 1187 [11–17].
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- 69 Statement of Michael Pervan, 6 June 2022, 22 [82].
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- 75 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 12, 90.
- 76 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 12, 39, 94, 111; *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) Preface and Executive Summary, 40.
- 77 Keith Kaufman et al, *Risk Profiles for Institutional Child Sexual Abuse: A Literature Review* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, October 2016) 26; Gwynnyth Llewellyn, Sarah Wayland and Gabrielle Hindmarsh, *Disability and Child Sexual Abuse in Institutional Contexts* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, November 2016) 44.
- 78 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 12, 90, 116.
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- 87 Keith Kaufman et al, *Risk Profiles for Institutional Child Sexual Abuse: A Literature Review* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, October 2016) 72.
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8 Case examples and our approach: Children in out of home care

Content warning

Please be aware that the content in this report includes descriptions of child sexual abuse and may be distressing or raise issues of concern for some readers.

We encourage readers to exercise discretion in their engagement with this content and to seek support and care if required.

1 Introduction

In this chapter we outline our approach to inquiring into the out of home care system in Tasmania. This includes the scope of our Commission of Inquiry, the evidence we drew on and the picture we formed of the scale and nature of child sexual abuse in this system.

2 Interpreting our scope

When considering the issue of sexual abuse of children in out of home care, we needed to establish the scope of our Inquiry.

First, the out of home care system sits within the broader statutory child protection system. For reasons discussed below, we have focused on out of home care specifically, and only include those aspects of the wider statutory child protection system that relate to the risk of sexual abuse for children in care.

Second, we decided to consider all aspects of out of home care in Tasmania that might affect the risk of sexual abuse to children. We explain our rationale later in this section.

2.1 Focusing on out of home care, not the whole of child protection

As discussed in Chapter 7, out of home care in Tasmania is part of the wider child protection system and sits alongside the Child Safety Service and Strong Families Safe Kids Advice and Referral Line ('Advice and Referral Line') functions in the Department.

Had we interpreted our terms of reference broadly, we might have inquired into the child protection system as a whole, on the basis that preventing children from entering out of home care would protect them from experiencing child sexual abuse while in care. With the exception of our discussion of the Aboriginal and Torres Strait Islander Child Placement Principle in Chapter 9, we have not adopted this interpretation, because the core business of the child protection system is to respond to abuse and neglect in a familial, rather than institutional, setting. Moreover, the time and resources allocated to our Inquiry do not allow us to do justice to a review of the entire child protection system in addition to our inquiries into the health, education and youth detention systems. We note that the National Royal Commission did not examine the child protection system as a whole but similarly limited its inquiry to the out of home care system.

For these reasons, we have limited our Inquiry to those aspects of the Advice and Referral Line and Child Safety Service functions that relate directly to children who have been taken into the Department's care. For example, Child Safety Service decisions about where a child will live once a guardianship order has been made are within the scope of our Inquiry, whereas the actions of Child Safety Service staff in relation to children who are not yet in the care of the Department are outside the scope. Our decision to consider these aspects of the Department as out of scope should not be interpreted as an endorsement of these functions in Tasmania. In hearings and sessions with Commissioners, we heard evidence of problems in the statutory child protection system's responses to sexual abuse in and out of family settings. These included failings of the Advice and Referral Line and the Child Safety Service more broadly.¹ What we heard, while outside the scope of our Inquiry, was concerning.

Between 2000 and 2021, the rate of children in out of home care in Tasmania rose substantially from 548 children on 30 June 2000 (4.6 per 1,000 children living in Tasmania) to 1,077 children on 30 June 2021 (9.6 per 1,000 children).² During the same period the number of children living in Tasmania decreased.³ Even more concerning, for every 1,000 Aboriginal children living in Tasmania in June 2021, 34.4 were in out of home care. This over-representation is a direct and continuing effect of colonisation.⁴

These figures show that the system is not preventing children from entering out of home care. The most effective strategy to prevent child sexual abuse in out of home care is for families and communities to be supported to keep children safe in their families of origin. This requires an appropriate child safety system.

We heard evidence about the importance of early intervention and prevention in an effective child safety system.⁵ However, we caution against using the term ‘early intervention’ without being specific about the context and purpose of that intervention, particularly as the new Department brings together a broad range of children’s services. For example, early intervention could be used to refer to intervention with:

- children in the early years
- families in need of support
- families with multiple and complex needs who are known to statutory child protection
- adolescents at risk of entry into youth justice, school disengagement or early parenting.

During our hearings, we heard from multiple witnesses about the significant number of children and their families in need, and the complexity of those needs that stem from a range of circumstances and experiences.⁶

There is also growing evidence of intergenerational contact with the statutory child protection system; that is, the children likely to end up in the system are often those born to parents with complex needs who themselves have had contact (perhaps for multiple generations) with the system. This research shows that most families known to the child protection system have multiple profound impacts that accumulate over time and need intensive therapeutic responses.⁷ Concerns have been raised about whether the dominant governmental model of providing general family support is effectively meeting such multiple and complex needs.⁸ Unmanaged mental illness, substance addiction, domestic violence and housing instability are common features in families known to statutory child protection.⁹ A whole of government response is required to prevent these problems and treat children and adults for their impacts as well as the effects—often intergenerational—of abuse and neglect.

We note the results of the Australian Child Maltreatment Study, which showed that 62.2 per cent of the Australian population had experienced at least one form of child abuse, maltreatment or neglect.¹⁰ The study also showed that this is not merely a historical problem: 40.2 per cent of young people aged 16–24 had experienced two or more forms of child maltreatment.¹¹ The study further showed that Australians who have experienced abuse and neglect are likely to experience profound mental health impacts.¹²

Given this context, we do not suggest a review of the statutory child protection system in Tasmania. Such a review would fail to address the factors that result in children and families becoming known to the Advice and Referral Line and the Child Safety Service.

Instead, we urge the Tasmanian Government to focus its efforts and resources on ensuring that it has a whole of government response to meeting the health and human service needs of children and adults who have experienced abuse or neglect. To break the intergenerational cycle of involvement in statutory child protection, the Government should provide coordinated responses that address the support and specialist intervention needs of:

- first-time parents with childhood histories of abuse and neglect
- families who have complex needs in which children have experienced abuse and neglect
- children and young people in out of home care and youth detention who are struggling to overcome the impacts of violence, abuse and neglect.

Using the language of a public health model, we see these as tertiary therapeutic needs that require an appropriate response (in addition to primary and secondary child abuse prevention and family support services) to serve the volume of families in this situation.

2.2 A broad understanding of out of home care

Within the out of home care system itself, we have taken a broad approach to our Inquiry to fully appreciate the risks and potential sources of protection for children in care.

While the sexual abuse of children in care remained central, many victim-survivors shared with us other experiences they had of violence, abuse and neglect in care. For some, these other experiences of abuse and neglect occurred alongside the sexual abuse; for others, their maltreatment increased their vulnerability to sexual victimisation and harm.¹³

In addition, the structures and processes to protect children from harm in out of home care are often the same as those needed to maintain children’s wellbeing and care generally. Effective structures and processes provide children with trusted and responsible adult supervision and care, give children a voice, meet children’s needs, and establish clear and supported avenues for raising and addressing concerns.

3 Evidence we have drawn on

Our understanding of the Tasmanian Government’s responsibility for children in care is based on the extensive research from the National Royal Commission about the risks of child sexual abuse for children in out of home care.

We received information from numerous sources about the experiences of children in out of home care. These included submissions, community consultations, written and oral evidence at our hearings, and documents produced by the Tasmanian Government. We received targeted information about out of home care from the following sources:

- a stakeholder consultation session for non-government providers of out of home care held in Hobart on 25 October 2021
- the relevant sections of Child Safety Service files for 22 children who were in care between 2000 and 2021 and were recorded as having been at risk of child sexual abuse while in care¹⁴
- evidence provided in the out of home care hearings held in Hobart from 14 to 17 June 2022
- statements from local and interstate experts on preventing and responding to sexual abuse of children in out of home care
- material that was publicly available on the websites of the Department of Communities and the Department for Education, Children and Young People
- internal material available to staff on the Department of Communities and the Department for Education, Children and Young People’s intranet
- strategic documents and reports, some of which were publicly available and some of which the Tasmanian Government provided in response to our notice to produce
- previous reviews and reform agendas for out of home care in Tasmania.

3.1 Evidence from children in care and victim-survivors

We considered it essential to understand the experience of out of home care from those people who spent time in care because they can best identify how the out of home care system has affected them.

We heard from children who live in out of home care about their experiences of the system as it is today. Many children, including those currently in out of home care, shared their experiences through a research project we commissioned from Associate Professor Tim Moore and Emeritus Professor Morag McArthur (refer to Chapter 1).¹⁵

In sessions with a Commissioner and through oral evidence at hearings, we heard directly from victim-survivors who recalled being sexually abused in out of home care as children. We also heard from their carers and family members.

We closely tracked the journey of some children in the 22 files we received from the Department (refer to Section 4).

The following case examples illustrate common experiences.

Case example: Azra

The alleged abuse

Azra told us that she does not know why she came to be in out of home care but that she was very young at the time.¹⁶ In the 1990s, Azra recalled being placed in a foster home where she experienced physical and emotional abuse from her foster mother.¹⁷ She said that once, when she was about five years old, her foster mother broke her arm and then slapped her for crying in pain.¹⁸ Azra described her foster father as 'loving but passive' and said that he did not protect her from her foster mother's abuse.¹⁹

Azra felt unloved and unwanted, so when a person associated with the foster family started paying her attention, she said she experienced this attention as love.²⁰ When this man began to sexually abuse her, she did not identify what he was doing as wrong and even sought out his company to escape her foster mother's cruelty.²¹ When one of her foster father's work colleagues also started sexually abusing her, Azra told us that she also did not recognise this as wrong.²² In Azra's words, she only realised much later in life, when she had children of her own, that she had not recognised 'wrong love'.²³

Azra said she recalls very few visits from her departmental case worker and reflected that she may have been able to tell her case worker about the physical and sexual abuse if she had seen her more often.²⁴ She thinks that the Department trusted the carers because of their standing in the community.²⁵ Later in life, friends of her foster parents admitted to Azra that they knew about her abuse and apologised for not doing or saying something.²⁶

After Azra's sibling told someone about their foster mother's physical and emotional abuse, a representative of the Department interviewed Azra at school.²⁷ However, Azra's foster mother was present at this interview, so Azra was too frightened to tell the truth.²⁸ Azra told us that she remained in the same family until her behaviour became too extreme for them to manage, and they sent her away.²⁹

The impact

Azra described the impact of the abuse she recalls: 'I'm not sure I can even begin to recover and learn to live like a normal person. I'm completely ruined'.³⁰ She said that all her romantic relationships have been violent, which she links to her 'skewed love maps', and she believes her childhood experiences have negatively affected her parenting, with her children suffering as a result.³¹ Azra said she has been diagnosed with complex post-traumatic stress disorder and has flashbacks of the alleged abuse.³² She has tried medication, therapy and illicit drugs in her attempts to cope.³³ She attributes still being alive to her children and pets.³⁴

Reflections

Azra is concerned that abuse like what she recalls experiencing is continuing to happen to other children. She is aware of children currently in foster care who she believes are being sexually exploited or neglected, and that the care provider and the Department are aware of this but are not acting to protect the children.³⁵ She stated: 'It's too late for me, but it shouldn't be too late for them'.³⁶

Azra proposed several ways that out of home care could be made safer for children, such as listening to the voices of adults who grew up in out of home care and developing strategies to help break the intergenerational cycle of out of home care:

Now, more than ever, we need to have the mentality of it takes a village to raise a child, and frankly it takes a whole lot more to heal a traumatized child. Most parents with traumatic childhoods similar to mine want to do better, want to be better, but simply lack the resources and know-how to do so. We can help them and we can certainly better support current carers who take in these children who often come with more issues than *Vogue*. We need to stop relying on that one social worker. Each child and family needs that village of support. This will prevent future children from falling through the cracks.³⁷

Azra noted her experience of feeling devalued as a person, both in out of home care and when she sought recourse for the abuse against her. Her view is that the Government should take responsibility for past failures to protect children:

As an ex-ward of the state there has always been this stigma attached to me and to the many others like me. We are unfairly judged and completely dismissed because we are deemed 'trouble' and 'liars'. This shame should never have been mine to bear, nor any other victim of past sexual abuse whilst under government care. That should be on the Government's head. They should be ashamed and disgusted that they have sat back and allowed this to happen throughout the years knowing full well the damage it's done.³⁸

What we can learn

While Azra's experiences in out of home care occurred before 2000, they have continuing relevance for understanding how we can better protect children from child sexual abuse in out of home care, including:

- the importance of adequately monitoring the safety of a child in out of home care and having other adults such as case workers who visit the child and with whom they can develop a relationship
- the vulnerability of children, particularly those who have no positive and appropriate relationships, to grooming and sexual abuse
- the need to ensure children in care receive sexuality and respectful relationship education, so they can recognise abuse for what it is
- the need for appropriate interviewing techniques following a disclosure, such as not interviewing children in the presence of the person who has had a complaint made about them
- the importance of ongoing support, including mental health and parenting support, for adults traumatised by their childhood experiences in out of home care.

Case example: Hudson³⁹

Hudson (a pseudonym) was a small child when they came into Cassandra's (a pseudonym) care in the late 2010s, following a number of previous foster care placements.⁴⁰ Three years after entering her care, Cassandra discovered by chance that Hudson was Aboriginal.⁴¹

Cassandra told us that, at the time, there was a requirement for children to demonstrate Aboriginal heritage via specific documentation. She understood that although it was well known that Hudson was Aboriginal, Hudson's parents had not been able to provide the necessary documents. The outcome was Hudson did not receive cultural support in care.⁴² Cassandra, herself an Aboriginal woman, described how she felt Hudson missed out on taking part in cultural programs due to this situation. She saw this as 'systemic racism' and a denial of Hudson's right to 'develop a positive sense of culture and identity'.⁴³

Reflecting on the Child Safety Service, Cassandra referred to a 'broken system' and in her view, Hudson's case:

... raises significant questions that must be answered, such as ... how the failings of an individual Child Safety case worker can make or break a child's ability to not just heal but to learn and engage and be supported and appropriately resourced to do so.⁴⁴

What we can learn

Hudson's case illustrates the importance of cultural identification for children in care and the importance of providing cultural supports.

Case example: Faye

The alleged abuse

Faye (a pseudonym) was placed into foster care with her sibling in the mid-1990s, when she was in late primary school.⁴⁵ Faye recalled that her foster parents provided food and material comforts, and although they were strict, she experienced a stability and security she had not experienced before.⁴⁶

After one of the foster parents' adult sons moved back into the family home, Faye remembers case workers from the Department visiting and speaking with Faye and her sibling in the presence of their foster mother. She remembers these case workers asked if they wanted to stay in the home (which they did), although she does not remember them saying why they were asking. Faye told us she later found out that the son had been fired from his job for having a relationship with an underage person.⁴⁷ In retrospect, Faye thinks the case workers likely visited in response to the allegation. She told us:

We hadn't been told what had happened with [the son] and didn't understand the implications or risk of him coming to live in the house with us. We were children. We should have been removed from the house by Children and Youth Services, at least until the allegation in relation to [the son] had been resolved.⁴⁸

Faye said she and her sibling were left in the foster home, and case workers promised to visit regularly, but Faye said this didn't happen.⁴⁹

Faye explained that she was in early high school when the foster parents' adult son gained Faye's and her sibling's trust by acting 'cool', bending the rules for them and taking their side. Faye now realises he was grooming them.⁵⁰ Faye told us that his sexual abuse of her started with him pressing his genitals against her during play wrestling and trying to kiss her.⁵¹ Faye's bedroom was located away from her foster parents' bedroom, which she said made it possible for their son to sexually abuse her at night.⁵²

Disclosure of the alleged abuse

Eventually, Faye said she told her sibling about the abuse and each agreed to never leave the other alone with their foster parent's son.⁵³ Faye said her sibling told their foster mother about the abuse. Faye said her foster mother laughed when Faye told her that the son had touched her on the vagina, and dismissed Faye's experience, asking: 'Is that all?' Faye remembers that her foster father, however, seemed to believe Faye and her sibling, saying words to the effect of: 'This has happened too many times. It can't be a coincidence; they must be telling the truth'.⁵⁴

Faye recalled being quickly removed by the Department after she disclosed the alleged abuse, but she was heartbroken to be separated from her sibling, who was left with the family. She was also distraught when many of her few possessions were lost in the move. Faye believed her foster mother withheld these possessions as punishment for alleging abuse by the son.⁵⁵ Still, Faye missed her foster mother and wanted to see her again, but her foster mother did not attend an arranged meeting, and she never saw her again.⁵⁶

The Department supported Faye to make a statement to police, but Faye did not feel able to proceed with charges at that time because of her sense of loyalty to her foster mother.⁵⁷ She said she received specialist sexual assault counselling but did not feel comfortable and found it hard to open up.⁵⁸

Reflections

Faye believes the Department failed to protect her from a known risk of sexual abuse, stating:

If there is any risk to a vulnerable child, that child should be removed from the environment. I accept that it would have been traumatising for them to remove me and my sibling from the home, but it would have been far less traumatising than the abuse I endured.

They had the opportunity to protect me, but they didn't. They also failed to visit us more frequently, which they said they would. If they had have followed up I may have disclosed the abuse earlier.⁵⁹

Although Faye was removed from the foster family, she said her sibling was left there, other children were placed there, and the family requested only girls be placed with them, despite their adult son being a known risk.⁶⁰

What we can learn

We recognise that Faye was in care before 2000. However, Faye's case highlights important issues of continuing relevance in out of home care which, if not followed, may expose children to an increased risk of sexual abuse:

- placing children’s safety at the centre of decision making—while it is important to take into account the wishes of a child, adults need to ensure they are taking responsibility for decisions about risks to safety
- ensuring all children in a placement are protected from risk of harm
- case workers regularly visiting children in care, to swiftly identify risks, build trust and enable disclosures⁶¹
- facilitating the security and support that children can gain from sibling relationships and having their own possessions.

Case example: Lucas⁶²

Respite care

Lucas (a pseudonym), an Aboriginal man, and his partner Eleanor (a pseudonym), had a number of children in their care, including kinship care of several grandchildren.⁶³ The family occasionally accessed weekend respite care to cope with the complex needs of the children in their care.

On one occasion, Lucas told us he could not meet the respite carers at their home before his grandchildren went there for respite care. But he recalled being told that Child Safety Service staff had inspected the respite carers’ home and assessed it as safe. Lucas said when he collected the children at the end of the weekend, he discovered an unsafe and filthy house. Lucas recalled that the children had not been adequately fed. When he arrived, Lucas said he saw an unknown man run away from the house and jump over the back fence. Lucas told us that it later transpired that neither Child Safety Service staff nor the non-government provider involved had inspected the house. Lucas stated that ‘you think they’re being cared for, and obviously they’re not’.⁶⁴

Once home, Lucas said his granddaughter, Matilda (a pseudonym), who was under the age of five, started talking about being kicked by the respite carer as well as a man putting his penis in her vagina.⁶⁵ Lucas told us that he and Eleanor eventually pieced together that several older male children had touched Matilda’s genitals, and the carer had become aware of this. Lucas said a forensic hospital examination confirmed that male DNA was found on a vaginal swab. Following the abuse, Lucas recalled that Matilda began having nightmares and exhibiting behavioural changes.⁶⁶

Reflections

Lucas told us he was very concerned about the out of home care system: ‘The reality is, they’ve got no foster carers, they’ve got no emergency respite providers, they’ve got no respite providers’.⁶⁷ He was concerned that respite carers may not be ‘doing it for the right reasons’ and that they were not sufficiently remunerated for the hard work performed: ‘If it were increased, I’m sure a lot more people would do it’.⁶⁸

What we can learn

In addition to Lucas’ concerns about the system’s monitoring and support of respite carers, Lucas’ experience illustrates the importance of:

- processes and resources for assessing, training and monitoring out of home care providers—this includes ensuring respite carers have the capacity to provide the care required
- increasing the number of carers available to meet demand, particularly within suitable timeframes
- ensuring clarity of roles when both non-government agencies and the Department are involved in providing out of home care.

Case example: Orson and Ivan

Early experiences in care

Orson (a pseudonym) was taken into care while under the age of five and made subject to an order granting guardianship to the State until he turned 18.⁶⁹ A few years later, concerns were raised that Orson had displayed aggression and sexualised behaviours towards other children. It was then decided that Orson should be placed with a foster family where he would be ‘the only child or the youngest child’.⁷⁰

The alleged abuse

Orson’s new foster family already had an older child, Ivan (a pseudonym), in their care.⁷¹ The foster carers expressed concern that they might not be able to keep Orson safe because Ivan had previously displayed sexualised behaviours towards other children. The Child Safety Service decided this risk could be adequately managed.⁷²

Almost three years later, the foster carers again told the Child Safety Service they were worried that Ivan might abuse Orson. Around a year later, Orson told his carers that Ivan had sexually abused him and then punched him in the face when he told other children.⁷³ At this point, Orson's carers began monitoring Ivan at night and attempting to keep both children safe by the children 'never being unsupervised and not being permitted in the other's bedroom'.⁷⁴

The response

The foster carers immediately reported Orson's allegations to his Child Safety Officer. The Department did not take any action. A later internal report noted that 'this matter should have been notified and addressed when the concerns were [first] reported'.⁷⁵

The foster carers took various measures to keep Orson safe, including taking him with them everywhere they went.⁷⁶

Several months later, Orson also reported the alleged abuse to his teacher, who notified the Child Safety Service.⁷⁷ Tasmania Police was informed and interviewed both children. Orson said that Ivan had raped him on multiple occasions since the start of the placement. The police did not pursue the matter due to insufficient evidence.⁷⁸

The Child Safety Service referred the case to their Senior Quality Practice Advisor.⁷⁹ A safety plan developed at this time stipulated that Orson and Ivan could stay in the same placement provided they were not left alone together.⁸⁰ Orson's service provider expressed concern that he 'may be at risk' under this arrangement, given that it relied heavily on the carers' ongoing ability to provide 'a very high level of supervision'.⁸¹ A Severe Abuse and Neglect report was finalised three months later. The report recommended an evaluation 'to ensure the service is effectively meeting the identified need' and noted that the current level of caregiver supervision was not sustainable.⁸² There is no record that any protective actions followed this report.

New allegations

Six months later, Orson said that Ivan had sexually abused him again when they had been left alone together for a short period.⁸³ On this occasion, Tasmania Police sent the file to the Director of Public Prosecutions, and Ivan was charged with one count of rape.⁸⁴ Ivan was temporarily and then permanently removed from the home following 'grave concerns' expressed by Orson's service provider that he may be returned:

[Orson] now needs those responsible for his care to prioritise his need for safety and recovery ... To place him in a position of needing to be exposed to [Ivan] in any way will diminish his ability to feel safe in his home and will further retraumatise him.⁸⁵

What we can learn

Orson and Ivan's case highlights the importance of the following in preventing sexual abuse and supporting children to heal:

- taking a preventative approach to placement decisions where known risks exist
- taking action to alleviate risk of harmful sexual behaviours in an out of home care placement when concerns are raised
- recognising that persistent and severe harmful sexual behaviour cannot be effectively managed by carer supervision and requires specialist treatment
- responding appropriately to disclosures of harmful sexual behaviours, addressing risks to all children and ensuring carers have the capacity to carry out the response
- the need to follow through on implementing recommendations when cases have been reviewed (such as those made in a Severe Abuse and Neglect report)
- providing trauma-informed responses and prioritising the safety and healing needs of a child who has experienced sexual violence.

Case example: Linda

Early experiences in care

Linda (a pseudonym) came into care at a young age with a 'highly significant trauma history' due to chronic abuse and neglect by her parents.⁸⁶ Linda was placed in kinship care for a number of years, during which several notifications were made to the Child Safety Service about the carers' tendency to perpetuate 'trauma due to inadequate and inappropriate parenting responses'.⁸⁷ The Child Safety Service sent a letter to the family outlining these issues but assessed that the risk did 'not meet a threshold' for intervention.⁸⁸

When Linda was in her early teens, she began to self-harm and experience suicidal ideation.⁸⁹ She was admitted to hospital several times.⁹⁰ Linda's relationship with her carers ultimately broke down and the Child Safety Service applied for guardianship of Linda until she was 18.⁹¹ Linda was placed with a residential care provider.⁹²

The alleged abuse

In her mid-teens, Linda reported she had been taking nude photos of herself and sending them to men online who had requested them. In a statement to police, she disclosed she had also sent nude photos and videos to an older teenager who had expressed specific plans to 'lure little kids home' and 'engage in sexual activities with them'.⁹³ The Child Safety Service developed a safety plan for Linda that included extra monitoring, noting there was 'some potential for [Linda] to engage in these activities again as monitoring adolescent behaviour online in a residential care placement is problematic'.⁹⁴

Linda was receiving treatment for mental health issues at this time and was later referred to the Child and Adolescent Mental Health Service for further support.⁹⁵

Sometime later, Linda attempted suicide and was admitted to hospital.⁹⁶ She said she had been regularly leaving her placement to have unprotected sex with adult men she had met on social media, in exchange for illicit substances.⁹⁷ The Child Safety Service made a referral to Tasmania Police and deemed the probability of further harm to Linda 'highly likely'.⁹⁸

Leaving care

Soon after, the residential care provider advised the Child Safety Service they could no longer adequately care for Linda because she was not supervised overnight and could leave the facility at any time.⁹⁹ The following day, a healthcare provider told the Child Safety Service that Linda intended to run away.¹⁰⁰ Child Safety Service staff asked Linda's care provider to speak with her about this, and Linda 'denied' this was her intention.¹⁰¹ Five days later, Linda ran away.¹⁰²

The residential care provider expressed feeling they had received 'little' or 'no response regarding their concerned call' to police about Linda going missing, prompting a meeting between Tasmania Police, the Child Safety Service and the provider.¹⁰³ At the meeting, police first advised that this type of concern 'would not be considered a priority' and that they could not return Linda to her placement if she was unwilling to go, had not committed a crime and was not in immediate danger.¹⁰⁴ But upon reflection, police agreed to start looking for Linda due to 'significant concerns' for her welfare and located her.¹⁰⁵ The Child Safety Service referred Linda to another child welfare service 'for assessment and case work to assist in building a safety network'.¹⁰⁶

What we can learn

Linda's case involved a number of missed opportunities to protect her from risks of harm. Her experience highlights the importance of:

- providing a traumatised child with a safe, supportive placement where their needs can be addressed therapeutically
- a residential care provider having the resources and capacity to protect the physical and online safety of a young person in their care
- the Child Safety Service taking a leadership role in protecting vulnerable young people at significant risk
- the need to identify probable future harm based on previous risk-taking behaviour, abuse and mental health issues
- Tasmania Police playing a role in intervening early when presented with concerns about a vulnerable young person and illegal acts occurring (including sexual abuse and providing illicit drugs to a child)—they can play a role in preventing or disrupting perpetration or holding abusers accountable.

Case example: Brett

Coming into care

Brett was taken into the care of the Child Safety Service when he was in his first year of high school in the late 2000s.¹⁰⁷ At the time, he had moved from interstate to live with his father in Tasmania. He told us he generally felt loved and safe with his father.¹⁰⁸ Brett said he and his father had been diagnosed with mental health conditions and had been having loud arguments for about two weeks when the Child Safety Service arrived at their house and took Brett into the care of the Department.¹⁰⁹ Brett thought it would only be for a week, but the Child Safety Service applied for a six-month order.¹¹⁰

Once in out of home care, Brett lived in several different placements, including a rostered care house where one of the other residents had recently come out of youth detention and another was openly using illicit drugs.¹¹¹ When he was taken into care, Brett told us he stopped going to school and never returned.¹¹²

Brett recalled being confused and upset about being taken away from his father, so he tried to run home whenever he was able.¹¹³

The alleged abuse

During weekend respite from his foster placement, Brett said he was sexually abused by an older boy who was also in care.¹¹⁴ The older boy told Brett not to tell anyone, but eventually Brett told his foster carer.¹¹⁵ Brett told us his foster carer did not believe him.¹¹⁶ Brett recalled he then told his father during a visit to his family. It was Brett's father who contacted police.¹¹⁷ Brett explained that he tried to provide a statement to police about the sexual abuse, but he was too emotionally overwhelmed to finish it, so no further action was taken.¹¹⁸

Brett said he has accessed his Child Safety Service file, which included a record of his allegation of abuse by the older boy. Brett told us that the file indicated:

They didn't believe I was sincere and it was just me trying to get out of another foster home. It said there would be an investigation but I was never spoken to.¹¹⁹

After the alleged abuse

As Brett was moved around placements, he continued to try to return to his father's care, even when he was moved to the other end of the state.¹²⁰ He said his desire to return to his father's care to feel safe only increased after the alleged abuse: 'That's where I wanted to be, you know, I mean, that's where—that's where I felt safe, you know what I mean, that's where I needed to be'.¹²¹

He said he also often slept rough because of the care he received in his placements, stating:

... at that time anywhere was better than the care houses, so occasionally I would just sleep on the street or occasionally I'd—occasionally I'd break into a car and just sleep in the back of it ...¹²²

Because he had no income, Brett turned to stealing to provide for himself and eventually decided to engage in a robbery to pay for an aeroplane ticket to the mainland.¹²³ He was arrested and, within six months of being taken into care, he found himself remanded at Ashley Youth Detention Centre, where Brett said he was further abused.¹²⁴ We discuss Brett's experience in Ashley Youth Detention Centre in Chapter 11.

What we can learn

Brett's experience highlights the importance of:

- the out of home care system providing a stable, safe, consistent placement—Brett found himself at greater risk on a number of levels once he entered care, leading him to stop formal education and eventually engage in criminal behaviour to try to ensure his own safety

- carers having the capacity to identify risks and believe children when they disclose child sexual abuse, and reporting such disclosures
- the Child Safety Service investigating an allegation of child sexual abuse of a child in care.

Case example: Addison¹²⁵

My entire life ... no one has ever been there to protect me.¹²⁶

Coming into care

Before 2000, the mother of Addison (a pseudonym) was raised in out of home care and sexually abused in one of her foster homes.¹²⁷ To her great distress, her children's experiences mirrored her own: Addison and her siblings were exposed to family violence, neglect and emotional abuse from a young age, and were ultimately taken into out of home care in the mid-2010s. Addison had also been sexually abused by a family member.¹²⁸

The alleged abuse

Addison's experiences of sexual abuse did not end once she entered care. In one foster home she was abused by a 'foster uncle'.¹²⁹ In another, the abuse was perpetrated by her foster parents, Vanessa (a pseudonym) and Edmund (a pseudonym), and it was this abuse that most affected her.¹³⁰ Before this placement, Addison was never taught about personal hygiene and did not know she could shower alone. Addison told us Vanessa and Edmund exploited this lack of knowledge to abuse Addison, 'touching' her and eventually raping her in the shower, describing this as 'cleaning [her] insides'.¹³¹ Addison was unaware that this was not normal: 'I was 12, I really didn't know what that meant, I didn't know that [Edmund] was having sex with me'.¹³² The abuse continued for more than two years. Addison recalled that Vanessa also regularly physically abused her.

Addison said she also experienced neglect and suffered the trauma of witnessing other children being sexually and physically abused in foster homes and 'not knowing what to do'.¹³³

The response

Addison tried to get help. She said she disclosed the abuse to a teacher at her school who immediately confronted Vanessa. This resulted in more severe physical punishments from Vanessa, ‘sometimes using knives’.¹³⁴ Addison remembered also telling Department case workers of the abuse but said, time and time again, she was not believed: ‘They didn’t do anything about it’.¹³⁵ She said one case worker witnessed her being physically abused by Vanessa but chose to ignore it. It was not until Addison and her sister ‘weren’t taking no for an answer’ that they were finally moved to other foster homes.¹³⁶

When Addison said she was being abused by her ‘foster uncle’, Department staff told her to not worry about it because the abuser was already being investigated for another matter.¹³⁷ Addison felt her concerns were not heard. She told us she felt the response of police was similarly dismissive; Addison reported the abuse two years ago but heard nothing afterwards. She told us that she believed these institutions were uninterested in taking action because she had a history of mental health problems and her family was well known to the Department ‘for all the wrong reasons’.¹³⁸ Addison feared for her younger siblings who were still under the guardianship of the Department: ‘It’s like they’re blatantly ignoring us’.¹³⁹

Journey in out of home care

The alleged abuse drastically affected Addison’s subsequent experiences in care. Finally, presented with a ‘good, loving family’, Addison recalled that she could not regulate her behaviours and the placement broke down.¹⁴⁰ Addison remembered being moved to a group home where she felt her suicidal ideation was not managed in a trauma-informed way. For instance, Addison recalled that carers insisted on checking on her while she was showering, despite her abuse history and her requests for this not to occur. She said ‘it wasn’t until I didn’t just put myself but other people at risk’ that this ended.¹⁴¹

At 17, Addison said she was ‘thrown into the world’ by the Department without support or life skills for living independently.¹⁴² She continued to struggle with mental health issues and developed an addiction to alcohol as a result.

Everything that has happened has deteriorated my mental health to the point where it’s a struggle just being alive ... [The age of] Ten is the first time I can remember trying to take my own life.¹⁴³

Reflecting on the impact of the abuse and the lack of support afterwards, Addison noted that her worries were not those of a typical teenager. She emphasised that her life could have been different and much of the abuse prevented had someone listened to and supported her:

My worry should be college ... I didn't want my life to end up at this point, but due to everything and the fact that I never got any support, I ended up here with fears that someone much older should have ... As soon as someone reports, do something ... You don't know how long that has been going on, or what point it can get to ... People need to start taking kids seriously.¹⁴⁴

What we can learn

Addison's case demonstrates the importance of:

- preventative education to help children to identify what is normal behaviour and what is abuse
- Department staff listening to, believing and acting on disclosures of child sexual abuse and physical abuse
- recognising the increased risk of subsequent abuse (even by other offenders) once sexual abuse has occurred
- understanding the risks of an 'informal' approach, such as speaking to the foster carers and not making an appropriate report
- providing adequate mental health support after disclosures of child sexual abuse where psychological difficulties are a factor
- ensuring carers have the resources and capacity to manage children's behaviours in the context of a history of trauma
- supporting care leavers, ensuring they are prepared for living independently, particularly given a trauma history (contributed to through child sexual abuse while in care)
- police ensuring they follow up with a person reporting child sexual abuse.

3.2 Evidence from those with inside knowledge

We received numerous submissions about problems with the out of home care system from people who have worked in the Department or with non-government service providers. They expressed strikingly similar concerns about how the Department has structured, funded and operated out of home care in Tasmania. Many of these former employees had also worked in child protection interstate or overseas, allowing them to compare Tasmania's out of home care system with systems elsewhere.

Most of the former employees, or those who had previous contact with the Department, who contacted us were willing to make a formal statement to our Inquiry, and some provided evidence at our hearings. However, a number expressed concern about the possibility of experiencing negative consequences from the Department for expressing critical views, including impacting any future engagement with the Department.¹⁴⁵

One former senior employee described the Department as follows:

My sense is that the [out of home care] system is at best dysfunctional. It can also be an abusive system, capable of causing harm and trauma in its own right. Situated in the broader child safety system, it is perceived by many within the sector as a closed, defensive system, its approach crisis-driven and reactive. It is extremely difficult for those outside of the Department to gain information on how [the Child Safety Service] and [the out of home care service] operate or even its structure. I found there existed a culture of distrust by many children and young people, carers and its own workers towards the Department.¹⁴⁶

3.3 Evidence from the Department

Publicly available information about the out of home care system and its measures to reduce and respond to child sexual abuse within out of home care has lacked detail. In keeping with our approach to all the institutions we inquired into, we relied heavily on the former Secretary of the Department of Communities, Michael Pervan, to speak about the Department's operations. We also heard from the Executive Director of Children and Family Services, Claire Lovell, to assist our understanding of day-to-day decision making. Other members of the Department Executive, such as former Deputy Secretary for Children, Youth and Families, Mandy Clarke, were not asked by our Commission of Inquiry, nor offered by the State, to give evidence in relation to out of home care.

Despite the evidence we received about the evolution of the Department and areas that were under review, we remained unclear about key aspects of the Department's functioning in the present. We drew on Secretary Pervan's and Ms Lovell's evidence as well as material from the Department's Practice Manual, which guided staff practices and decision making relevant to out of home care. We outline our best understanding of the system in Chapter 7.

The challenges we confronted reflect the assertion of the former departmental employee quoted above—it is extremely difficult for those outside the Department to understand how the out of home care system is structured or operates.¹⁴⁷ We further observed difficulties among those *inside* the Department to explain the system's structures and operations.

4 The scale and nature of child sexual abuse in out of home care

There is little published information about the scale and nature of child sexual abuse in out of home care in Tasmania.

It is difficult to quantify the incidence of child sexual abuse in out of home care because such abuse appears to be under-reported.¹⁴⁸ The best publicly available data

is produced by the Australian Institute of Health and Welfare, which reports annually on the safety of Australian children in out of home care. Nationally, in 2020–21, 20.6 per cent of substantiated notifications of abuse or neglect of children in care related to child sexual abuse.¹⁴⁹

Data on the Victorian Reportable Conduct Scheme published by that state’s Commission for Children and Young People indicated that, in 2020–21, 1,877 allegations of misconduct were made across all sectors that involved working with children (including out of home care), 396 (or 21 per cent) related to ‘sexual misconduct’ and 137 (or 7 per cent) related to ‘sexual offences’.¹⁵⁰ In 2020–21, there were 49 allegations of sexual misconduct and 32 allegations of sexual offences in the out of home care sector.¹⁵¹ ‘Physical violence’ and ‘significant neglect of a child’ were reported more than any other type of abuse in out of home care in the same period.¹⁵²

The 2014 final report of the Tasmanian Claims of Abuse in State Care Program provided some data about sexual abuse of children in care. This program operated in Tasmania from 2004 to 2013.¹⁵³ Of a total of 541 claimants between 2011 and 2013, 394 were assessed as having experienced abuse (not limited to sexual abuse) while in care, and therefore, eligible for an ex gratia payment.¹⁵⁴ Two hundred ‘accepted’ claims of sexual abuse while in care were made by 167 claimants (98 male and 69 female), which accounted for 21.4 per cent of overall accepted claims.¹⁵⁵ Foster care was the setting of 128 (or 26.6 per cent) of all claims, although the period and nature of the abuse were not reported.¹⁵⁶ Chapter 12 contains our recommendations about the Tasmanian Government’s response to allegations against out of home care staff and carers identified in the Tasmanian Claims of Abuse in State Care Program.

4.1 Risk notifications of child sexual abuse in out of home care

To help us get a comprehensive picture of the risk of child sexual abuse in care during the period of our Inquiry, we asked the Department to provide the following information:

- the number of children in out of home care who had risk notifications raised about possible sexual abuse while in care
- information on complaints, investigations or disciplinary action in relation to any allegations or incidents of sexual abuse that related to children in out of home care
- the number of departmental staff who had been stood down (had their employment suspended) over allegations against them in relation to sexual abuse of children in the out of home care system.¹⁵⁷

In each case, we asked the Department to indicate, where records provided such information, what the Department’s response had been and the outcome of the concern or allegation. This information is discussed below.

Terminology regarding ‘concerns’

The Department uses several different terms relating to concerns about the sexual abuse of children in care. Some are used in a general sense, but others have a specific meaning in the context of out of home care. The following definitions explain how we use these terms in this volume.

Allegation or concern—we use these terms interchangeably to describe the situation where the Department has been made aware that a child in care may have been, or was at risk of being, sexually abused.

Care concern—a field in the Child Protection Information System that staff can select when recording an allegation or concern about a child in care being abused or neglected (refer to Chapter 9 for more about the care concern process).¹⁵⁸

Notification or risk notification—a field in the Child Protection Information System that a Child Safety Officer can select when recording an allegation or concern about a child who may or may not already be in care.¹⁵⁹

Incident—a field in the Child Protection Information System that a Child Safety Officer can select when recording an allegation or concern about a child, who may or may not already be in care.¹⁶⁰

Investigation—in the context of the sexual abuse of children in care, we use this term primarily to refer to the care concern process applicable to serious or severe allegations of abuse or neglect. The Department sometimes uses the term as part of its response to a notification. We make it clear if the term is being used in this way.

Assessment—following a risk notification or an incident, the Child Safety Service uses this term to describe the process of seeking information about the risk to a child who may or may not already be in care.¹⁶¹

Initially, the Department provided a list of 439 instances where children in out of home care were the subject of a risk notification relating to child sexual abuse between 1 July 2013 and 30 June 2021.¹⁶² These risk notifications included concerns about children with harmful sexual behaviours. We understand the data was obtained from a broad search of the Child Protection Information System. It included a search of the system’s records of all children under a care and protection order or in out of home care and where the record mentioned the word ‘sexual’ in an ‘abuse type’ field or in the abuse type field of the person believed responsible.¹⁶³ We understand this data reflects the number of concerns raised in relation to sexual abuse of children in out of home care—not the actual incidence of child sexual abuse in out of home care.

The Department reported the following information for each instance:

- the date of the notification
- the child's date of birth
- the child's age at the time of the notification
- the child's gender
- the child's Aboriginal status
- whether or not the child was identified as having disability
- the child's postcode at the time of the alleged incident
- the date of the alleged incident
- the alleged abuser's relationship to the child (for example, 'Carer: Foster or Parents')
- the alleged abuser's gender, date of birth, whether or not they were identified as having a disability, and their Aboriginal status.

The Department cautioned that its dataset was missing some information and the incidence of concerns about sexual abuse for children in care may be under-reported.¹⁶⁴

The Department also noted some limitations in the process of extracting this data from its Child Protection Information System, which may have adversely affected the quality of the data. In particular:

- The term 'care concern' was used as a search term but had not been consistently recorded by users when entering a risk notification into the system—a 'care concern' is a risk notification that a child in care is not being properly cared for and includes possible abuse or neglect of a child by a carer or someone associated with the household.
- The system allowed only one alleged person believed responsible to be recorded per incident, resulting in an undercounting of those believed responsible.
- The person believed responsible for many risk notifications was not recorded because the risk notification did not progress to assessment.¹⁶⁵

4.1.1 Our analysis

Our analysis of the 439 risk notifications revealed the following:

- The risk notifications related to 299 children. Most children (68.6 per cent) were the subject of only one risk notification, but in a substantial number of cases (31.4 per cent), two or more risk notifications were made in relation to the same child.

In one case, the Department had recorded eight separate instances of alleged abuse of the same female child.

- Numbers of risk notifications per year ranged from 35 to 81, with an average of 50, which equates to about one risk notification of possible sexual abuse against a child in care per week.
- While the ratio of female to male children in out of home care is about equal, 65.8 per cent of risk notifications were about the possible sexual abuse of a girl in care.¹⁶⁶
- While 21 per cent of children in out of home care were identified as having disability, 27.3 per cent of risk notifications were about the possible sexual abuse of a child with disability.¹⁶⁷
- Of children in out of home care, 37.4 per cent were identified as Aboriginal, although it is likely that the Aboriginal status of a child was not always accurately recorded (refer to Chapter 9). Just over one-quarter (27.8 per cent) of risk notifications concerned the possible sexual abuse of an Aboriginal child.¹⁶⁸
- The relationship of most people believed responsible (64.5 per cent) to the child concerned was recorded as 'not stated', although in some cases a deeper reading of the material identified the relationship.
- Of the alleged abusers whose relationship with the child was stated:
 - 17.1 per cent were adults in the role of a foster, kinship or residential carer
 - 16.2 per cent were identified as a parent or relative of the child
 - 2.3 per cent were identified as other children in care.

The low proportion of alleged abuse from other children contrasts with expert evidence indicating that children in out of home care are more likely to experience sexual harm from other children, rather than an adult carer.¹⁶⁹ It is possible this type of abuse is significantly under-reported or poorly recorded due to a lack of guidance to standardise identification and response (refer to Chapter 9). It is also possible some of the alleged abusers whose connection with the child was not recorded were other children or adults outside the care or family system who were engaged in child sexual exploitation.

Disputed figures

Secretary Pervan and Ms Lovell raised concerns about our analysis of the frequency of child sexual abuse risk notifications in out of home care.¹⁷⁰

Ms Lovell told us the Department handled only ‘small numbers’ of care concerns—for instance, in 2021–22, she said the Department recorded 172 care concerns for children in care, which covered a broad range of concerns.¹⁷¹ Ms Lovell warned that these figures should be ‘interpreted with caution’ due to ‘inconsistent recording practices’.¹⁷² It is not clear whether the inconsistent recording practices were perceived to have inflated or under-estimated the actual extent of suspected child sexual abuse in care. Secretary Pervan explained that a manual review by Practice Managers identified that, in the 2020–21 year, 24 of the care concerns related to the possible sexual abuse of a child in care, nine of which were substantiated.¹⁷³ And for the partial year from July 2021 to March 2022, Secretary Pervan stated there had been 13 notifications about the possible sexual abuse of children in care, five of which were substantiated.¹⁷⁴

We understand that the data originally provided by the Department related to risk notifications in out of home care and not only those allegations categorised as care concerns in the Child Protection Information System. Ms Lovell explained that allegations that relate to carers, including in relation to child sexual abuse, are treated as care concerns. In contrast, allegations about abuse of children in care by people who are not carers are responded to using the standard ‘Child Safety assessment’.¹⁷⁵ Therefore, we suspect the differences in figures have most likely arisen from the terms or categories used when recording concerns about children in care and during searches of the Department’s databases.

Secretary Pervan was concerned our Inquiry had misinterpreted the initial data the Department had provided to us, and had consequently overestimated the number of children who had been sexually abused in care.¹⁷⁶ He said:

... it would seem that numbers relating to potential child sexual abuse in multiple contexts were reported by Counsel Assisting [during the out of home care hearing] as being the number of incidents of child sexual abuse in out of home care.¹⁷⁷

We have considered Secretary Pervan’s concerns and conclude that our analysis of the data is sound for the following reasons.

Counsel Assisting used the term ‘439 allegations’ each time she referred to these numbers.¹⁷⁸ In doing so, Counsel Assisting was pointing out that the Department was alerted to the possibility of sexual abuse of a child in care at the frequency of about one allegation per week, rather than one substantiated incident each week.¹⁷⁹ Each of those 439 allegations required a response from the Department, even

if in the end they were not all substantiated. Failure to substantiate an allegation does not necessarily mean the alleged incident did not occur, but could mean that evidence was not sufficient to substantiate it or investigate it further.

As noted above, when the Department provided the original data on allegations, it cautioned that its dataset was missing some information due to limitations in its process for extracting data from the Child Protection Information System, and therefore, may under-report the true incidence of sexual abuse for children in care.¹⁸⁰

As described in Section 4.1.2, we sampled 22 children's cases, which involved 55 allegations from the 439 allegations provided (12.5 per cent of the allegations reported). The sample was deliberately selected to illustrate a diversity of child sexual abuse risks and characteristics of children in care in Tasmania.¹⁸¹

If the dataset contained irrelevant or false inclusions, we would have expected to see this reflected in our sample, but we did not. All 22 cases contained allegations of sexual abuse or concerns about the risk of sexual abuse for a child in care. We agree with Secretary Pervan's subsequent decision to address problems in recording child sexual abuse by widening the scope of the type of concerns recorded as a notification on the Child Protection Information System to include:

- generating notifications for observations of behaviour that may indicate abuse that would previously have been embedded in case notes and incident reports
- raising separate notifications for any children who have been exposed to a person believed responsible, even when the allegation does not relate directly to those children
- maintaining a very low bar for substantiation not linked to the evidentiary threshold used by police or courts, which we take to be the balance of probabilities
- substantiating for children who were at risk of abuse, or even future abuse, due to being exposed to an unsafe person
- initiating new notifications and new assessments if the first assessment is called into question after receiving new information or a review.¹⁸²

We consider that this broader view of child sexual abuse more accurately reflects contemporary understanding of the variety and complexity of risk concerns involving the sexual abuse of children in care.

Secretary Pervan was conscious that making these changes would increase the data on concerns about the sexual abuse of children in care:

Although the intentions of these changes is to improve safety for children, it will result in data indicating a higher number of notifications and substantiations. This may be misinterpreted as more children being at risk, or having experienced child sexual abuse.

Unintended consequences can include [an] incorrect narrative being published and discussed publicly, stigmatisation of children in out of home care and difficulty in recruiting staff and carers to a service which is viewed negatively.¹⁸³

In our view, broadening the data collected to include all risks of sexual abuse would improve safety for children in care by revealing a more accurate picture of concerns. Reputational issues may be managed by ensuring the public narrative is correctly informed of the reason behind the change in data collection—to improve the safety and wellbeing of children in care.

4.1.2 Detailed analysis of 22 cases

To better understand the nature of the 439 allegations and the Government's responses to them, we selected 20 children from the 299 children who were the subject of a concern about sexual abuse while in out of home care. Some of these were recorded as care concerns on the Child Protection Information System; others were recorded as notifications and some as incidents.¹⁸⁴

The 20 children were selected to ensure our analysis included the experiences of children with a range of genders, Aboriginal status, disability status, geographical area, relationship of the alleged abuser to the child, and age of the child at the time of notification. We added the files of the two children who had the highest number of reported risk notifications—six and eight risk notifications respectively. The files we included were for children who were in care during the period from 2013 to 2021.

The Department provided 592 documents from the 22 children's files relevant to the concerns, including notification records of care concerns, placement summaries, file notes of telephone conversations, emails, correspondence between departmental staff and carers or specialist therapy providers, Tasmania Police referrals, minutes of care team meetings, 'investigation of serious abuse and neglect' reports and file notes of home visits. We did not examine the child's whole file. The Department produced a cover sheet for each child's file that summarised the risk notifications identified and the Department's process for selecting documents from the child's file.

A review of the files revealed the following:

- All the children in the sample were either known, or strongly suspected, to have a history of sexual abuse before coming into the Department's care. This is consistent with the known increased risk of sexual abuse for children in out of home care when they already have that history.¹⁸⁵
- Multiple risk notifications of abuse or neglect in relation to a child in care was the norm in our sample. Across the 22 files reviewed, there were 55 risk notifications and most cases involved risk notifications of more than one form of child sexual abuse while in out of home care. The most common presentation was a combination of risk notifications relating to harmful sexual behaviours and abuse by an adult, or adults, whether a carer or a person outside the care environment.
- Risk notifications about harmful sexual behaviours were common. Eleven children were alleged to have either engaged in harmful sexual behaviours themselves, or experienced such behaviour from another child or children in care. Most of these children were alleged to have engaged in multiple instances of harmful sexual behaviours and/or been subject to more than one incident.
- Risk notifications about child sexual exploitation were represented. Four children in the sample were alleged to have been groomed or sexually exploited by multiple adults outside the care or family system, although some of the 'persons believed responsible' were recorded in the initial dataset as 'unstated'. All four of these children were female and three had a known intellectual disability. One of the risk notifications involved producing online child exploitation material and attempts to enlist the child to recruit other, very young children to be similarly exploited.
- Risk notifications of abuse by carers or residential care workers were also common. The files of 11 children contained risk notifications about a current or previous foster, residential or kinship carer.
- Sometimes risk notifications were recorded for a child when there was concern about possible exposure to risk, rather than a direct allegation. Three of the children had a risk notification recorded as a result of alleged sexual abuse of a sibling or another child in the same placement, but no allegation had been made at that time about the child in question.
- Children in out of home care were at risk of sexual abuse from a variety of sources. One risk notification involved a teacher allegedly grooming a child in care, another involved boundary breaches by a departmental employee, four risk notifications related to biological family members sexually abusing or grooming children during visitation, and one involved the alleged sexual assault of a girl by her same-aged boyfriend.

- The rate of criminal conviction was low. Of the 55 risk notifications recorded in the files, only two risk notifications were recorded as resulting in a criminal conviction. While police were involved in investigating many of the risk notifications and took statements, it was common for matters not to proceed to charges because the child did not want to give evidence.

These themes are similar to those identified by the National Royal Commission. They also reflect anecdotal evidence we heard at our targeted consultation with out of home care providers.

The Department's responses

Some aspects of the Department's responses to risk notifications of sexual abuse concerning children in out of home care appeared reasonable. Although it was not always clear what care concern process was followed (refer to Chapter 9 for more about care concern processes), overall there was evidence that departmental and out of home care staff undertook some form of investigation or assessment of each concern.

Positively, there was consistent evidence across the files that Tasmania Police were involved in investigating risk notifications of sexual abuse of children in out of home care. This evidence included formal referrals to and from police, and ongoing liaison about risk notifications in emails and file notes.

While there was evidence of some departmental staff and police describing children who were allegedly being sexually exploited outside the placement as engaging in 'risk taking behaviours', the Department and non-government out of home care providers appeared to regularly approach Tasmania Police for support with these concerns.¹⁸⁶ In addition to trying to educate the children involved about self-protective behaviours, staff had documented some proactive attempts to intervene, such as taking out a restraining order against an alleged abuser, police attending premises to retrieve a child, and staying in contact with the child.¹⁸⁷ We discuss the Department's response to child sexual exploitation in Chapter 9.

System and practice failures

The file reviews also revealed system and practice failures that may have adversely affected the Department's capacity to predict an increased risk of sexual abuse for a child in out of home care and therefore, to act protectively. These included the following:

- We observed inconsistent recording of Aboriginal status between documents within children's records, leading to uncertainty about a child's Aboriginal status. Without clarity of Aboriginal status, it would be difficult to know if cultural support was needed for a child.

- For those children who were identified as Aboriginal, we saw limited evidence in the records of the presence of cultural support plans or engagement in cultural support activities. Refer to Chapter 9 for a discussion of the need for cultural engagement for Aboriginal children in care and its centrality in protecting children from sexual abuse and facilitating disclosure.
- It was difficult to identify children with disability unless we read each file note in detail and again, this information was recorded inconsistently. Rarely did a child's disability feature as a vulnerability factor in the risk assessment section of a notification or assessment record. Our impression was that it would be difficult for staff accessing these records to identify the nature of the child's disability (and consequently, the support they might need) and to consider that information when assessing risk to a child, specifically in relation to the risk of child sexual abuse. In Chapter 9, we outline the importance of a clear understanding of each child's individual needs, including their disability support needs, to acting protectively.
- The review identified very few case and care plans among the documents provided. It is possible these documents were omitted during the Department's process of compiling the files for us. However, the absence of these plans is also consistent with concerns raised by witnesses such as Andrea Sturges from Kennerley Children's Services, who reported that less than 5 per cent of the 105 children in Kennerley's care had current case and care plans.¹⁸⁸ (Refer to Chapter 9 for a discussion of care plans.)
- The notes made by departmental staff often referred to following the 'care concern process', but it was not always clear which process was being followed: the 'quality of care concern' process or the more serious 'investigation of serious abuse and neglect' process. On occasion, notes referred to risk notifications being managed through other processes such as 'case consultation' or an 'incident response review' or a matter being 'handled in Assessment'. This use of different and unclear language made it difficult to assess what had occurred. We examine the care concern process in Chapter 9.
- The risk assessment section of the notification record was frequently not updated with current information to support the risk assessment and decision made, and often appeared to have been cut and pasted from previous notification records. In one instance, the risk assessment section content referred to the child being seven years of age and living with her parents, when she was in fact aged 17 and living in a residential care setting, and had been in care since she was seven.
- Staff regularly used the term 'self-selected' in their notes to describe why children and young people in care were not living in their placement. This confirmed concerns raised by others who work regularly with the Department of a pervasive practice among departmental staff of deferring responsibility to children to

decide where they live rather than viewing them as missing from placement (refer to Chapter 9). This is particularly concerning in light of the National Royal Commission's observations on groomed compliance of children experiencing sexual exploitation.

Harmful sexual behaviours

In relation to risk notifications about harmful sexual behaviours between children in out of home care, we observed the following from the files:

- The nature of alleged harmful sexual behaviours ranged from developmentally inappropriate to coercive or violent sexual behaviours (refer to Chapter 21 for more on the continuum of harmful sexual behaviours).
- Positively, there was strong evidence of departmental staff appropriately referring children involved in alleged incidents to specialist support and intervention agencies, such as the Australian Childhood Foundation, Laurel House or the Sexual Assault Support Service.
- All children who were believed to have displayed or been subject to harmful sexual behaviours, were known to have been involved in sexualised or harmful sexual behaviours before being moved to the placement where the alleged incidents took place. We were concerned the Department may not have sufficiently considered the known risk factor of a history of harmful sexual behaviours when making placement decisions.
- 'Adult supervision' was a strategy departmental staff relied on regularly to manage the risk of harmful sexual behaviours between children in out of home care. We are concerned this approach is not practically achievable in a home or residential care setting (refer to Chapter 9 for a discussion of managing harmful sexual behaviours in out of home care).
- There was no evidence that departmental staff referred to any harmful sexual behaviours framework or policy documents when assessing and managing the risk of harmful sexual behaviours for a child.
- The Department's response to alleged incidents of harmful sexual behaviours was varied—in some instances, the Department immediately removed one of the children involved from the placement, and in others, it left the children in the placement with increased supervision from the carers. It was not apparent that the different responses were determined by the nature of the behaviour.
- Many of the children involved in an incident of harmful sexual behaviour had an intellectual disability. There was evidence on the files that when the child who displayed the harmful sexual behaviour had an intellectual disability, some departmental staff downplayed the impact of the behaviour on the other child.

4.2 The Department's response to incidents and allegations

We asked the Department to provide information about 'complaints made, or investigations, or disciplinary action' in response to any allegations or incidents of child sexual abuse in out of home care, from 1 January 2000 to 9 March 2022. We asked for:

- the names of the person reporting the incident, the alleged victim-survivor and the alleged abuser
- the dates of the alleged incident and when the allegation was raised
- a summary of the allegation
- who in the Department was involved in responding to the allegation or incident
- any actions taken by the Department such as reporting the incident to police or regulatory agencies
- the outcome of the allegation.¹⁸⁹

We expected some overlap between the data already provided for 2013 to 2021, but this request differed from the initial data request in that we were asking primarily about the alleged abusers and the Department's response to them. The data the Department provided reflected this focus. It drew from the Children's Advice and Referral Line Digital Interface, the Child Protection Information System (from 2008 onwards), a manual review of documents produced for the Joint Review Team (a recent cross-jurisdictional document review led by Tasmania Police; refer to Chapter 16) and the Abuse in State Care Support Service (refer to Chapter 11). We understand the search of the documents focused on alleged abusers (the Department records these as 'persons believed responsible') and the Department's response to alleged abusers.

The Department told us minimal information was recorded for cases before the Child Protection Information System was introduced in 2008, and staff have only recently begun recording the persons believed responsible more consistently in the database.¹⁹⁰ The Department acknowledged a limitation of its data system for this purpose is that it is naturally 'child-centric', which means that relatively little information about other people in a child's life is captured on the child's record.¹⁹¹

Given this context, we expect the records the Department provided to us are not comprehensive in identifying those believed responsible for abuse in out of home care and that the data extracted underestimates the number of allegations of sexual abuse in out of home care.

Consequently, the Department listed 284 allegations, considerably fewer than the 439 instances they identified when the focus was on children's records rather than persons believed responsible.¹⁹²

Acknowledging the data limitations, we reviewed this second list to understand how the Department responded to alleged sexual abuse of a child in care by an adult. After removing allegations of harmful sexual behaviours, we focused on 106 allegations concerning adults believed responsible and observed that:

- most allegations were against foster or kinship carers, or an associate of the carers
- very few allegations related to child sexual exploitation
- allegations were recorded for 72 different persons believed responsible
- concerning, very few outcomes and actions resulting from the allegations were provided
- eighteen of the persons believed responsible had multiple allegations against them
- the care concern process was reported as having been initiated in 25–30 per cent of cases
- police referrals were recorded in about 40 per cent of cases.¹⁹³

4.3 Staff suspensions and terminations following allegations of abuse

The Department has provided us with a list of suspensions between January 2000 and 2023 in relation to out of home care—this includes reference to four suspensions.¹⁹⁴ We received information from Secretary Pervan about one other suspension that was not included in the Department’s list.¹⁹⁵ The four cases about which we received information from the Department are described in deidentified form below.

4.3.1 Suspension 1

In the late 2000s, a male child protection worker was suspended for alleged breaches of sections 9(2) and (14) of the *State Service Act 2000*. It was alleged he had sent ‘inappropriate texts’ to one of the teenagers he was case-managing and to a ‘vulnerable young woman’ over the age of 18. The terms of his suspension are unknown, but an Employment Direction No. 5—Breach of Code of Conduct investigation determined he had breached sections 9(1), (3) and (14) of the Act. The Department referred the matter to Tasmania Police, but no charges were laid. The man’s employment was terminated.¹⁹⁶

The Department could not identify the date it was notified of the allegations attached to this suspension. The Department’s records indicated two dates of suspension, six months apart. The Department therefore, could not say how long it had taken to suspend the employee after receiving the allegations. The man’s employment was terminated five months after the Employment Direction No. 5—Breach of Code of Conduct investigation started.¹⁹⁷

We received additional information that the man had been accused of sending inappropriate or sexualised texts to other children in care during his employment with the Department. The Department had conducted two previous Employment Direction No. 5—Breach of Code of Conduct investigations, but it was not clear if the employee was suspended during these investigations. In these instances, the Department had issued ‘lawful and reasonable directives’ to desist after conducting investigations.¹⁹⁸

4.3.2 Suspension 2

In the early 2000s, the Department became aware of allegations about a male departmental employee who worked as a carer. The allegations were that he was ‘having a sexual relationship with a [child aged less than 18 years] under the guardianship of the Secretary’. Tasmania Police charged him with sexual abuse charges, including four counts of ‘sexual intercourse with a young person’. According to the Department, ‘at least 166 days’ elapsed between the date police charged the man—when the Department became aware of the allegations—and the date he was suspended. The Department did not provide an explanation for the delay in suspending the man, nor did it describe the terms of his suspension or the outcome of the matter.¹⁹⁹

4.3.3 Suspension 3

A long-serving male Child Safety Officer was suspended after the start of our Commission of Inquiry. The Department instigated an Employment Direction No. 5—Breach of Code of Conduct investigation in relation to a longstanding pattern of boundary breaches involving children in the care of the Department. It was alleged the employee accessed the files of children in out of home care who were no longer under his management, interviewed children under his management at his home, and transported children in care in his personal vehicle. The Department advised that he had been given ‘lawful and reasonable directives’ and reminder letters of these directives, but his behaviour continued.²⁰⁰ At the time of writing, we are unaware of the outcome of this matter.

4.3.4 Suspension 4

A male support worker employed by the Department was stood down after the start of our Commission of Inquiry. The Department instigated an Employment Direction No. 5—Breach of Code of Conduct investigation into alleged unsafe practices by this worker, namely transporting children in care in an unsafe manner. The Department acknowledged it was aware of other concerns about the worker over a longer period, which had not resulted in an investigation. These concerns were:

- the worker being charged in the early 2000s with possession of child exploitation material that did not proceed to a conviction

- a conflict of interest arising from a personal relationship with a foster carer
- taking longer than was necessary to transport children in care, raising concerns about his activities with those children
- the negative response of a child in care to being transported by the worker.²⁰¹

The Department advised us it had notified the Registrar of the Registration to Work with Vulnerable People Scheme of these concerns. Subsequently we received documentation indicating that the worker’s registration to work with vulnerable people had been cancelled.²⁰²

These four cases constitute very few staff being suspended or terminated over more than 20 years. Because of poor record keeping, it is difficult to determine whether there has been more disciplinary action than that reported to us, or whether the Department has been slow to take action against staff for concerning behaviour.

5 Overview of systemic problems

Through our review of the information received by us—from children in care, case file reviews, from those working within and with the out of home care system, previous reviews and inquiries, and the documents and policies we have reviewed—we have identified a number of systemic problems with Tasmania’s out of home care system that should be addressed to better protect children in care from the risks of child sexual abuse, and improve the response when abuse does occur. We elaborate on these problems in more detail in Chapter 9, where we discuss our reasoning for our recommendations for the way forward. However, in summary, these problems include:

- challenges in adopting measures to prevent child sexual abuse, including ensuring appropriate placements of children
- difficulties consistently putting in place risk mitigation strategies when risks are identified, such as providing early treatment for serious and concerning harmful sexual behaviours
- not consistently addressing the trauma children have experienced before or during their out of home care experience, increasing their risk of child sexual abuse or reducing their confidence in disclosing such abuse
- not consistently addressing the cultural needs of Aboriginal children, increasing their risk of child sexual abuse or reducing their confidence in disclosing such abuse
- insufficient supports for staff and carers to manage risks of child sexual abuse, or respond appropriately when it occurs

- inconsistent and uneven responses when children disclose child sexual abuse while in care.

We consider that these problems are, at least partially, a result of a system under pressure. They need to be addressed through changes to the systems and processes of out of home care generally, rather than tweaks to the system. In Chapter 9, we consider in detail various aspects of the out of home care system, and explain our recommendations for keeping children in care safe and for improving departmental responses to child sexual abuse.

Notes

- 1 For example, we heard that some professionals in the community experience ‘pushback’ from the Advice and Referral Line (Transcript of Claire Lovell, 14 June 2022, 1189 [38]–1191 [22]) and that the Advice and Referral Line was understaffed, poorly administered and characterised by inconsistent timeframes in responding to child safety concerns (Statement of Jack Davenport, 3 June 2022, 4 [30]). We also heard that the Child Safety Service took a ‘very binary view’ of decision making, whereby children were either left with their family or removed and placed under statutory orders (Statement of Andrea Sturges, 16 June 2022, 19 [73]).
- 2 Australian Institute of Health and Welfare, ‘Summary’, *Child Protection Australia 1999–00* (Web Page, 10 May 2001) 2, 39 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-1999-00/contents/summary>>; Australian Institute of Health and Welfare, ‘Table 5.1. Children in out of home care, by state or territory 30 June 2021’, *Child Protection Australia 2020–21* (Web Page, 15 June 2022) <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/out-of-home-care/how-many-children-were-in-out-of-home-care>>.
- 3 Children 14 years of age and under: refer to Australian Bureau of Statistics, ‘Demographics and Education’, *Tasmania 2001 Census All Persons QuickStats* (Web Page, 7 August 2001) <<https://www.abs.gov.au/census/find-census-data/quickstats/2001/6>>; Australian Bureau of Statistics, ‘People and Population’, *Tasmania 2021 Census All persons QuickStats* (Web Page, 2021) <<https://www.abs.gov.au/census/find-census-data/quickstats/2021/6>>.
- 4 Australian Institute of Health and Welfare, ‘Data Tables: Child Protection Australia 2020–21’, *Child Protection Australia 2020–21* (Web Page, 15 June 2022) Table S5.5 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data>>.
- 5 Transcript of Robyn Miller, 14 June 2022, 1253 [5–33]; Transcript of Jack Davenport, 15 June 2022, 1371 [5–15]; Transcript of Jodie Stokes, 15 June 2022, 1295 [40]–1296 [29]; Transcript of Heather Sculthorpe, 15 June 2022, 1303 [3–19]; Transcript of Catia Malvaso, 3 May 2022, 173 [10–24]; Transcript of Helen Milroy, 4 May 2022, 237 [37–43].
- 6 Transcript of Anne Hollonds, 2 May 2022, 58 [3–5]; Transcript of Brett McDermott, 3 May 2022, 170 [24–28], 170 [43]–171 [1], 177 [11–15]; Transcript of Sally Robinson, 4 May 2022, 251 [23–26], 262 [11–16]; Transcript of Ignatius Kim, 9 May 2022, 682 [32–33]; Transcript of Timothy Bullard, 12 May 2022, 988 [27–32]; Transcript of Claire Lovell, 14 June 2022, 1192 [9–19]; Transcript of Muriel Bamblett, 15 June 2022, 1332 [7–12]; Transcript of Elena Campbell, 7 July 2022, 2566 [26–41]; Transcript of Alison Grace, 26 August 2022, 3478 [26–35]; Transcript of Cathy Taylor, 12 September 2022, 3915 [6–18].
- 7 Refer generally to Olivia Octoman et al, ‘Tailoring Service and System Design for Families Known to Child Protection: A Rapid Exploratory Analysis of the Characteristics of Families’ (2022) 31(5) *Child Abuse Review*; Olivia Octoman et al, ‘Subsequent Child Protection Contact for a Cohort of Children Reported to Child Protection Prenatally in One Australian Jurisdiction’ (2023) 32(1) *Child Abuse Review*; Miriam Jennifer Maclean, Scott Anthony Sims and Melissa O’Donnell, ‘Role of Pre-existing Adversity and Child Maltreatment on Mental Health Outcomes for Children Involved in Child Protection: Population-based Data Linkage Study’ (2019) 9(7) *BMJ Open*; Jason M Armfield et al, ‘Intergenerational Transmission of Child Maltreatment in South Australia, 1986–2017: A Retrospective Cohort Study’ (2021) 6(7) *Lancet Public Health*.
- 8 Refer to Jenna Meiksans et al, ‘Risk Factors Identified in Prenatal Child Protection Reports’ (2021) 122 *Children and Youth Services Review*; Sarah Louise Cox et al, ‘Opportunities to Strengthen Child Abuse Prevention Service Systems: A Jurisdictional Assessment of Child Welfare Interventions’, *Journal for the Society for Social Work and Research* (forthcoming).
- 9 Leah Bromfield et al, *Issues for the Safety and Wellbeing of Children in Families with Multiple and Complex Problems: The Co-occurrence of Domestic Violence, Parental Substance Misuse, and Mental Health Problems* (NCPC Issues No 33, Australian Institute of Family Studies, December 2020) 1.
- 10 Australian Child Maltreatment Study, Queensland University of Technology, *The Prevalence and Impact of Child Maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report* (Report, 2023) 14.

- 11 Australian Child Maltreatment Study, Queensland University of Technology, *The Prevalence and Impact of Child Maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report* (Report, 2023) 3.
- 12 Australian Child Maltreatment Study, Queensland University of Technology, *The Prevalence and Impact of Child Maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report* (Report, 2023) 24–27.
- 13 For example, Transcript of Azra Beach, 16 June 2022, 1443 [21–23]; Transcript of ‘Faye’, 14 June 2022, 1173 [33–45]; Anonymous session, 29 October 2022. The name ‘Faye’ is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 14 June 2022.
- 14 This was a sample of a much larger cohort of children identified by the Department; refer to Section 4.1.2 for methodology.
- 15 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023).
- 16 Transcript of Azra Beach, 16 June 2022, 1442 [36–41].
- 17 Transcript of Azra Beach, 16 June 2022, 1443 [3–9].
- 18 Transcript of Azra Beach, 16 June 2022, 1443 [21–24].
- 19 Transcript of Azra Beach, 16 June 2022, 1443 [13].
- 20 Transcript of Azra Beach, 16 June 2022, 1444 [2–24].
- 21 Transcript of Azra Beach, 16 June 2022, 1444 [26–31].
- 22 Transcript of Azra Beach, 16 June 2022, 1444 [33–39].
- 23 Transcript of Azra Beach, 16 June 2022, 1444 [41–45], 1445 [5–11].
- 24 Transcript of Azra Beach, 16 June 2022, 1443 [37–39]; Statement of Azra Beach, 14 June 2022, 3–4 [20].
- 25 Transcript of Azra Beach, 16 June 2022, 1449 [21–22].
- 26 Statement of Azra Beach, 14 June 2022, 5 [33]–6 [34].
- 27 Transcript of Azra Beach, 16 June 2022, 1445 [13–22]; Statement of Azra Beach, 14 June 2022, 4 [26]–5 [27].
- 28 Transcript of Azra Beach, 16 June 2022, 1445 [20–29].
- 29 Transcript of Azra Beach, 16 June 2022, 1446 [16–30].
- 30 Statement of Azra Beach, 14 June 2022, 10 [59].
- 31 Transcript of Azra Beach, 16 June 2022, 1448 [25–46]; Statement of Azra Beach, 14 June 2022, 10 [60].
- 32 Statement of Azra Beach, 14 June 2022, 10 [62].
- 33 Statement of Azra Beach, 14 June 2022, 10 [61].
- 34 Statement of Azra Beach, 14 June 2022, 10 [61].
- 35 Transcript of Azra Beach, 16 June 2022, 1449 [27–47].
- 36 Statement of Azra Beach, 14 June 2022, 10 [58].
- 37 Statement of Azra Beach, 14 June 2022, 11–12 [70].
- 38 Statement of Azra Beach, 14 June 2022, 13 [77].
- 39 In relation to this case study, the Commission of Inquiry received the information on the basis that those providing it would remain anonymous. Consequently, the State has not been provided with identifying information in relation to the case study and has not had the opportunity to fully consider or respond to the details of the case study.
- 40 The names ‘Hudson’ and ‘Cassandra’ are pseudonyms; Order of the Commission of Inquiry, restricted publication order, 30 August 2023.
- 41 Letter from ‘Cassandra’ to Child Safety Team Leader, 2020, 3.
- 42 Conversation with ‘Cassandra’ (staff, Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, 18 October 2022).

- 43 Conversation with 'Cassandra' (staff, Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, 18 October 2022); Letter from 'Cassandra' to Child Safety Team Leader, 2020, 3–4.
- 44 Letter from 'Cassandra' to Child Safety Team Leader, 2020, 7.
- 45 Transcript of 'Faye', 14 June 2022, 1169 [44–47].
- 46 Transcript of 'Faye', 14 June 2022, 1170 [5–15].
- 47 Transcript of 'Faye', 14 June 2022, 1170 [26]–1171 [1].
- 48 Transcript of 'Faye', 14 June 2022, 1171 [5–13].
- 49 Transcript of 'Faye', 14 June 2022, 1171 [15–17].
- 50 Transcript of 'Faye', 14 June 2022, 1171 [19–27].
- 51 Transcript of 'Faye', 14 June 2022, 1171 [29–35].
- 52 Transcript of 'Faye', 14 June 2022, 1171 [37]–1172 [5].
- 53 Transcript of 'Faye', 14 June 2022, 1172 [38–44].
- 54 Transcript of 'Faye', 14 June 2022, 1172 [46]–1173 [28].
- 55 Transcript of 'Faye', 14 June 2022, 1173 [33–45].
- 56 Transcript of 'Faye', 14 June 2022, 1175 [7–10].
- 57 Transcript of 'Faye', 14 June 2022, 1175 [3–7].
- 58 Transcript of 'Faye', 14 June 2022, 1175 [12–25].
- 59 Transcript of 'Faye', 14 June 2022, 1178 [33–45].
- 60 Transcript of 'Faye', 14 June 2022, 1173 [30–32], 1174 [6–7] [26–35].
- 61 Statement of 'Faye', 7 June 2022, 8 [40]; Transcript of 'Faye', 14 June 2022, 1178 [42–45].
- 62 Session with 'Lucas' (a pseudonym), 24 June 2022. The name 'Lucas' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 30 August 2023.
- 63 The name 'Eleanor' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 30 August 2023.
- 64 Session with 'Lucas', 24 June 2022.
- 65 The name 'Matilda' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 30 August 2023.
- 66 Session with 'Lucas', 24 June 2022.
- 67 Session with 'Lucas', 24 June 2022.
- 68 Session with 'Lucas', 24 June 2022.
- 69 Order of the Commission of Inquiry, restricted publication order, 17 June 2022; Department of Communities, 'Child Safety History', 4 April 2022, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 70 Department of Communities, 'Investigation of Severe Abuse and Neglect Report', 12 February 2021, 1, produced by the Tasmanian Government in response to a Commission notice to produce.
- 71 Order of the Commission of Inquiry, restricted publication order, 17 June 2022.
- 72 Department of Communities, 'Investigation of Severe Abuse and Neglect Report', 12 February 2021, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 73 Department of Communities, 'Investigation of Severe Abuse and Neglect Report', 12 February 2021, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 74 Department of Communities, 'Investigation of Severe Abuse and Neglect Report', 12 February 2021, 4, produced by the Tasmanian Government in response to a Commission notice to produce.
- 75 Department of Communities, 'Investigation of Severe Abuse and Neglect Report', 12 February 2021, 4, produced by the Tasmanian Government in response to a Commission notice to produce.
- 76 Department of Communities, 'Investigation of Severe Abuse and Neglect Report', 12 February 2021, 6, produced by the Tasmanian Government in response to a Commission notice to produce.

- 77 Department of Communities, 'Assessment Report', 3 March 2021, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 78 Department of Communities, 'Investigation of Severe Abuse and Neglect Report', 12 February 2021, 5, produced by the Tasmanian Government in response to a Commission notice to produce.
- 79 Department of Communities, 'Referral to a Senior Quality and Practice Advisor (SQPA)', 25 November 2020, 4, produced by the Tasmanian Government in response to a Commission notice to produce.
- 80 Email from SQPA investigator to her manager, 22 December 2020, 1, produced by the Tasmanian Government in response to a Commission notice to produce.
- 81 Email from service provider to SQPA investigator, 18 January 2021, 1, produced by the Tasmanian Government in response to a Commission notice to produce.
- 82 Department of Communities, 'Investigation of Severe Abuse and Neglect Report', 12 February 2021, 7–8, produced by the Tasmanian Government in response to a Commission notice to produce.
- 83 Notification Report to the Child Safety Service, 11 August 2021, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 84 Department of Communities, 'Responding to Quality of Care Concerns Relating to Children in Out of Home Care: Coordination Meeting – Agenda/Minutes', 12 August 2021, 3, produced by the Tasmanian Government in response to a Commission notice to produce; Letter from Tasmania Police to the Commission of Inquiry, 1 March 2023, 2.
- 85 Letter from service provider to Child Safety Officer, 17 August 2021, 1, produced by the Tasmanian Government in response to a Commission notice to produce.
- 86 Order of the Commission of Inquiry, restricted publication order, 17 June 2022; Department of Communities, 'Child Safety History', 4 April 2022, 5, produced by the Tasmanian Government in response to a Commission notice to produce.
- 87 Department of Communities, 'Child Safety History', 4 April 2022, 5–6, produced by the Tasmanian Government in response to a Commission notice to produce.
- 88 Department of Communities, 'Child Safety History', 4 April 2022, 5, produced by the Tasmanian Government in response to a Commission notice to produce.
- 89 Affidavit of Child Safety Officer, Magistrates Court of Tasmania, 5 June 2019, 3 [12(b)], produced by the Tasmanian Government in response to a Commission notice to produce.
- 90 Affidavit of Child Safety Officer, Magistrates Court of Tasmania, 5 June 2019, 3 [12(b)], produced by the Tasmanian Government in response to a Commission notice to produce.
- 91 Affidavit of Child Safety Officer, Magistrates Court of Tasmania, 5 June 2019, 2 [5], 4 [15]–5 [19], produced by the Tasmanian Government in response to a Commission notice to produce.
- 92 Department of Communities, 'Child Safety History', 4 April 2022, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 93 Department of Communities, 'Case note record of statement to Tasmania Police', 28 April 2020, produced by the Tasmanian Government in response to a Commission notice to produce.
- 94 Department of Communities, 'Child Safety History', 4 April 2022, 3, produced by the Tasmanian Government in response to a Commission notice to produce.
- 95 Department of Communities, 'Child Safety History', 4 April 2022, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 96 Department of Communities, 'Notification Report', 27 April 2021, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 97 Department of Communities, 'Notification Report', 27 April 2021, 4–5, produced by the Tasmanian Government in response to a Commission notice to produce.
- 98 Department of Communities, 'Notification Report', 27 April 2021, 10, produced by the Tasmanian Government in response to a Commission notice to produce.
- 99 Department of Communities, 'Case Notes Report', April 2021, 1, 3, produced by the Tasmanian Government in response to a Commission notice to produce.

- 100 Department of Communities, 'Notification Report', 27 April 2021, 6, produced by the Tasmanian Government in response to a Commission notice to produce.
- 101 Department of Communities, 'Case Notes Report', April 2021, 7, produced by the Tasmanian Government in response to a Commission notice to produce.
- 102 Department of Communities, 'Notification Report', 27 April 2021, 8, produced by the Tasmanian Government in response to a Commission notice to produce.
- 103 Department of Communities, 'Case Notes Report', April 2021, 11, produced by the Tasmanian Government in response to a Commission notice to produce.
- 104 Department of Communities, 'Case Notes Report', April 2021, 11, produced by the Tasmanian Government in response to a Commission notice to produce.
- 105 Department of Communities, 'Case Notes Report', April 2021, 12, produced by the Tasmanian Government in response to a Commission notice to produce.
- 106 Department of Communities, 'Notification Report', 27 April 2021, 8, produced by the Tasmanian Government in response to a Commission notice to produce.
- 107 Transcript of Brett Robinson, 17 June 2022, 1536 [8–37].
- 108 Transcript of Brett Robinson, 17 June 2022, 1535 [3–13].
- 109 Transcript of Brett Robinson, 17 June 2022, 1535 [27–41].
- 110 Transcript of Brett Robinson, 17 June 2022, 1537 [25–38].
- 111 Transcript of Brett Robinson, 17 June 2022, 1537 [13–23].
- 112 Transcript of Brett Robinson, 17 June 2022, 1538 [27–38].
- 113 Transcript of Brett Robinson, 17 June 2022, 1538 [1–11].
- 114 Transcript of Brett Robinson, 17 June 2022, 1539 [22]–1540 [3].
- 115 Transcript of Brett Robinson, 17 June 2022, 1540 [5–9].
- 116 Transcript of Brett Robinson, 17 June 2022, 1540 [12–14].
- 117 Transcript of Brett Robinson, 17 June 2022, 1540 [15–17].
- 118 Transcript of Brett Robinson, 17 June 2022, 1540 [19–35].
- 119 Statement of Brett Robinson, 2 June 2022, 3 [16].
- 120 Transcript of Brett Robinson, 17 June 2022, 1540 [40–45].
- 121 Transcript of Brett Robinson, 17 June 2022, 1541 [14–16].
- 122 Transcript of Brett Robinson, 17 June 2022, 1541 [25–28].
- 123 Transcript of Brett Robinson, 17 June 2022, 1541 [44]–1542 [9].
- 124 Transcript of Brett Robinson, 17 June 2022, 1542 [12–25].
- 125 Anonymous session, 29 September 2022. In relation to this case study, the Commission of Inquiry received the information on the basis that those providing it would remain anonymous. Consequently, the State and Tasmania Police have not been provided with identifying information in relation to the case study and have not had the opportunity to fully consider or respond to the details of the case study.
- 126 Anonymous session, 29 September 2022.
- 127 The name 'Addison' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 30 August 2023.
- 128 Conversation with mother of 'Addison' (staff, Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, 26 August 2022).
- 129 Anonymous session, 29 September 2022.
- 130 The names 'Vanessa' and 'Edmund' are pseudonyms; Order of the Commission of Inquiry, restricted publication order, 30 August 2023.
- 131 Anonymous session, 29 September 2022.
- 132 Anonymous session, 29 September 2022.
- 133 Anonymous session, 29 September 2022.

- 134 Anonymous session, 29 September 2022.
- 135 Anonymous session, 29 September 2022.
- 136 Anonymous session, 29 September 2022.
- 137 Anonymous session, 29 September 2022.
- 138 Anonymous session, 29 September 2022.
- 139 Anonymous session, 29 September 2022.
- 140 Anonymous session, 29 September 2022.
- 141 Anonymous session, 29 September 2022.
- 142 Anonymous session, 29 September 2022.
- 143 Anonymous session, 29 September 2022.
- 144 Anonymous session, 29 September 2022.
- 145 Refer to Letter from Thirza White to the Commission of Inquiry, 15 July 2022, 1; Staff survey results indicate that only 45 per cent of respondents were confident they would be protected from reprisals if they spoke out: refer to Transcript of Michael Pervan, 17 June 2022, 1612 [3]–1613 [6]; Anonymous session, 21 October 2022.
- 146 Statement of Sonya Enkelmann, 26 April 2022, 3 [12].
- 147 Statement of Sonya Enkelmann, 26 April 2022, 3 [12].
- 148 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 12, 99.
- 149 Australian Institute of Health and Welfare, ‘Data Tables: Safety of Children in Care 2020–21’, *Safety of Children in Care 2020–21* (Web Page, 10 December 2021) Table 3 <<https://www.aihw.gov.au/reports/child-protection/safety-of-children-in-care-2020-21/data>>. We note the definition used to collect this data limits ‘abuse in care’ to *substantiated* instances of abuse by someone living with the child in care, or where the carer failed to prevent the abuse. For the purposes of this report, we have adopted a broader definition to include all forms and sources of child sexual abuse of children while they are in care, without any limitation to the involvement of people in the child’s household. The Australian Institute of Health and Welfare’s definition of ‘substantiation’ is: ‘where it was concluded that there was reasonable cause to believe that the child had been, was being, or was likely to be, abused ... [and] does not necessarily require sufficient evidence for a successful prosecution’—refer to Australian Institute of Health and Welfare, ‘Glossary’, *Child Protection* (Web Page, 13 June 2023) <<https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/glossary>>.
- 150 Commission for Children and Young People (Victoria), *Annual Report 2020–21* (Report, October 2021) 79.
- 151 Commission for Children and Young People (Victoria), *Annual Report 2020–21* (Report, October 2021) 80.
- 152 Commission for Children and Young People (Victoria), *Annual Report 2020–21* (Report, October 2021) 80.
- 153 Eligibility required claimants to be aged 18 or over on 11 July 2003: Department of Health and Human Services, *Review of Claims of Abuse of Children in State Care: Final Report – Round 4* (Report, November 2014) 3–4.
- 154 Department of Health and Human Services, *Review of Claims of Abuse of Children in State Care: Final Report – Round 4* (Report, November 2014) 3, 18.
- 155 ‘Accepted’ meant deemed eligible for a claim: Department of Health and Human Services, *Review of Claims of Abuse of Children in State Care: Final Report – Round 4* (Report, November 2014) 13.
- 156 Department of Health and Human Services, *Review of Claims of Abuse of Children in State Care: Final Report – Round 4* (Report, November 2014) 10, 12.
- 157 Notice to produce served on the State of Tasmania, 20 July 2021.
- 158 Refer to Transcript of Claire Lovell, 14 June 2022, 1213 [4–17].
- 159 Refer to Transcript of Claire Lovell, 14 June 2022, 1213 [25–30].
- 160 Department of Communities, ‘Cover Sheet’, 9 September 2021, 1, produced by the Tasmanian Government in response to a Commission notice to produce.
- 161 Refer to Transcript of Claire Lovell, 14 June 2022, 1213 [4–45].
- 162 Department of Communities, ‘Excel Spreadsheet of Allegations Relating to Child Sexual Abuse of Children in Out of Home Care’, August 2021, produced by the Tasmanian Government in response to a Commission notice to produce.

- 163 Department of Communities, 'Cover Sheet', August 2021, 1, produced by the Tasmanian Government in response to a Commission notice to produce.
- 164 Department of Communities, 'Cover Sheet', 9 September 2021, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 165 Department of Communities, 'Cover Sheet', 9 September 2021, 2, produced by the Tasmanian Government in response to a Commission notice to produce.
- 166 Gender ratio of children in out of home care in Tasmania taken from Australian Institute of Health and Welfare, 'Data Tables: Child Protection Australia 2020–21', *Child Protection Australia 2020–21* (Web Page, 15 June 2022) Table S5.6 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/data>>.
- 167 Australian Institute of Health and Welfare, 'Data Tables: Child Protection Australia 2020–21', *Child Protection Australia 2020–21* (Web Page, 15 June 2022) table S5.8 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/data>>.
- 168 Australian Institute of Health and Welfare, 'Data Tables: Child Protection Australia 2020–21', *Child Protection Australia 2020–21* (Web Page, 15 June 2022) Table S5.5 <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/data>>.
- 169 Keith Kaufman et al, *Risk Profiles for Institutional Child Sexual Abuse: A Literature Review* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, October 2016) 71. Refer also to Statement of Dale Tolliday, 29 April 2022, 5 [19–20].
- 170 Statement of Michael Pervan, 4 August 2022, 2 [10]; Statement of Claire Lovell in response to Questions on Notice, 4 August 2022, 4 [7–8], 5 [18].
- 171 Transcript of Claire Lovell, 14 June 2022, 1211 [40–41]; Statement of Claire Lovell in response to Questions on Notice, 4 August 2022, 5 [17].
- 172 Statement of Claire Lovell in response to Questions on Notice, 4 August 2022, 5 [18].
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9 The way forward: Children in out of home care

1 Introduction

Out of home care environments should be safe for children and young people. A child in care is entitled to expect the Government, departmental staff, out of home care service providers and carers will always act to keep them safe. A child in care should also expect that if they disclose sexual abuse, the adults around them will have the knowledge to recognise the disclosure and to put in place supports to respond immediately and appropriately, and to ensure they are protected from further harm.

In Chapters 7 and 8, we outline the background and context of the out of home care system, discuss the risks of child sexual abuse in out of home care, describe how we approached our inquiry into out of home care and provide a series of case examples to highlight areas where the out of home care system can be strengthened. In this chapter—Chapter 9—we outline our recommendations for better preventing child sexual abuse in the out of home care context, and better addressing it when such abuse occurs.

The key principle underpinning our recommendations is that a high-quality and well-functioning out of home care sector is the best way to protect children from child sexual abuse and to respond appropriately when it occurs. As discussed in Chapter 7, there are factors of a child protection system that increase the risk of children and young people experiencing sexual abuse in out of home care. If addressed, these risk factors can be transformed into protective factors; that is, the likelihood that children and young people will experience sexual abuse in out of home care decreases when:

- an out of home care system has structures and processes in place to identify and respond proactively to risks of abuse
- leadership oversees and is accountable for delivering care services that are trauma-informed
- children are empowered through active inclusion in decision making, individually and systemically
- staff are set up for success by providing a supportive work culture and conditions, including an organisational commitment to supervision, ongoing professional development and serviceable caseloads.

While we consider that many carers, out of home care providers and departmental staff are dedicated to ensuring the safety and wellbeing of children in their care, the out of home care system requires urgent attention and resourcing to rebuild and, consequently, enable them to succeed.

1.1 Structure of this chapter

In this chapter, we make recommendations to improve the out of home care system. These recommendations will strengthen the systems and structures that can decrease the risk of sexual abuse for children in care, as well as improve how the Department responds when abuse occurs. We also make recommendations to improve the independent oversight of the out of home care system.

This chapter is structured in the following way.

Section 2 considers the damage done to the out of home care system by chronic underfunding and the need to inject resources into the Department to ensure the full range of reforms can be achieved for children in care.

Section 3 examines the role of the Department in the out of home care system and recommends that the Government completes its outsourcing of all out of home care services to non-government providers while retaining responsibility for setting the strategic framework for out of home care, for case management and for monitoring and supporting quality care.

Section 4 considers the ‘foundational pillars’ required within the Child Safety Service to support staff to work with confidence and to make complex decisions about the safety of children in out of home care. We consider these foundational pillars of an out of home care system to be:

- expert and active leadership
- strong governance structures with internal accountability

- a clear strategic direction for the out of home care sector
- public and transparent policies
- a process for continuous improvement
- a strong and capable workforce.

We make recommendations around each of these pillars.

Section 5 discusses the experiences of Aboriginal children in out of home care and makes recommendations for fully implementing the Aboriginal and Torres Strait Islander Child Placement Principle. The Placement Principle is Australia's national policy framework for preventing Aboriginal children from entering the out of home care system, promoting the self-determination of Aboriginal communities in relation to child safe decision making, and ensuring Aboriginal children who enter out of home care stay connected to family, community and culture, and are ultimately returned to their families.

Section 6 focuses on the key mechanisms the Department needs to support quality out of home care, with a view to enabling staff to protect children in care from sexual abuse and other harm, and to respond appropriately when harm occurs. We focus on clinical supervision, case management, providing trauma-informed therapeutic care, expectations of adults in the out of home care system, record keeping and risk assessments.

Section 7 considers assessment and training of, and support for, carers. We discuss problems with record keeping and carer screening and recommend setting up a Carer Register. We consider carers in all types of out of home care, including kinship carers, respite carers and third-party guardianship.

In Section 8, we discuss the specific needs of individual children in care, including ensuring suitable and stable placements and regular contact with safety officers. Section 9 considers the specific needs of children, known as 'crossover children', who live in out of home care and spend time in youth detention. We recommend that Child Safety Officers be responsible for specific case management tasks while such children are in detention.

Section 10 assesses the current high risk of children in care experiencing harmful sexual behaviours and sexual exploitation. We recommend measures so the Department can address these risks.

Section 11 examines the Department's response to complaints and concerns about sexual abuse of children in care. We recommend changes to the Department's response process, including its handling of allegations against current employees and its policies and procedures for managing and reviewing complaints more generally.

In Section 12, we discuss the oversight of the out of home care system and advocacy for children in that system.

1.2 Our recommendations

Our recommendations in this chapter outline an ambitious reform agenda to establish a strong out of home care system equipped to better protect children from harm, including sexual harm. Key recommendations include:

- increased funding in every area of out of home care to meet the needs of children in care and fully implement this reform agenda
- outsourcing care to non-government providers, with obligations to comply with the National Standards for Out of Home Care and Child Safe Standards, and for reporting incidents and complaints
- developing an empowerment and participation strategy for children and young people in out of home care to strengthen children's say in their own care and in the way the out of home care system works
- strengthening executive leadership, including establishing an executive role specifically for out of home care, an Office of the Chief Practitioner and an Office of Aboriginal Policy and Practice
- strong internal functions, governance and accountability measures including a Quality and Risk Committee and a harmful sexual behaviours unit
- an out of home care strategic plan to set a strong vision for out of home care and to guide policy and resource allocation
- developing a reporting framework for out of home care to inform quality assurance and continuous improvement processes
- a workforce strategy to increase recruitment and build capacity across the Child Safety Service and out of home care
- implementing all elements of the Aboriginal and Torres Strait Islander Child Placement Principle, including increasing self-determination by promoting and supporting recognised Aboriginal organisations
- a Carer Register to ensure carers meet minimum standards and departmental expectations
- more clinical supervision, assessments, case management and therapeutic care to meet the unique needs of all children
- developing policies in key areas including professional conduct, mandatory reporting, harmful sexual behaviours, child sexual exploitation, and complaints and care concerns

- establishing key oversight roles, including setting up a Tasmanian Commissioner for Aboriginal Children and Young People, enhanced functions for the new Commission for Children and Young People in relation to out of home care, establishing the Child Advocate as an independent Deputy Commissioner and a community visitor scheme.

2 Chronic underfunding

Appropriate funding is a key pillar of a quality out of home care system. During our Commission of Inquiry, stakeholders frequently raised underfunding of child protection as a major contributing factor to poor implementation of reform recommendations over time. A former senior departmental employee, Sonya Enkelmann, observed:

There seems to be a long tradition of undertaking reviews into Child Protection/ Child Safety and [out of home care] which then quietly drop from sight. Understanding what sustains this systemic inertia is difficult ... but a history of chronic underfunding in the Department to build its capacity and infrastructure cannot be overlooked.¹

In a statement to us, Michael Pervan, former Secretary of the Department of Communities, repeatedly noted budget constraints, including the redirection of resources to other departmental priorities, as hindering the reform agenda.² He stressed that funding for out of home care was the responsibility of the government of the day, and not his as Secretary.³ Secretary Pervan advised that he:

... was not given the resources he needed to run the Department in the manner that the Commission [of Inquiry] has concluded that it needed to be run, despite asking for them at every opportunity [from the Government].⁴

In fact, he told us that the Government effectively cut funding to the Department by requiring an ‘efficiency dividend’ from the Department that equated to a significant sum over several years.⁵

We consider that chronic underfunding of the Services for Children and Families section of the Department has adversely affected the Department’s capacity to perform many of its functions. For example, the Child Advocate said in June 2022 that Services for Children and Families had only recently received dedicated human resources support from the Department to address the chronic workforce issues in the Child Safety Service.⁶ She said that ‘there is simply not the resource[s] for the breadth of roles in the portfolio to perform all corporate functions’.⁷ Therefore, the task of responding to extra demands, such as external scrutiny, falls to key operational leadership positions.⁸

We consider that chronic under-resourcing has been at the expense of maintaining up-to-date and clear policies and procedures. It has stalled continuous improvement and strategic direction for the Department. It is particularly hard to understand how the amount spent per placement night could be decreasing over recent years when

the cost of living has increased.⁹ It raises questions about whether placements are adequately resourced to meet children's needs. At times, under-resourcing has hindered measures to protect the safety of children in care. Children in out of home care deserve better. They should be seen as the urgent priority, even in a context where there are limited resources.

Appropriate funding will be essential considering the significant reform agenda we outline in our recommendations in this chapter.

Recommendation 9.1

The Tasmanian Government should provide one-off funding to help implement the Commission of Inquiry's recommended out of home care reforms and significantly increase ongoing funding of out of home care, including out of home care services provided by Child Safety Services (such as out of home care governance and case management).

3 The Department's role

The Department is both a purchaser and a provider of out of home care services in Tasmania. The Department provides almost all kinship care and a significant amount of foster care for children in Tasmania. In 2007, the Department committed to outsourcing all forms of out of home care to non-government organisations by 2012.¹⁰ This has not occurred.

Outsourcing out of home care services has the benefit of clarifying the Department's role as system manager and overseer and facilitator of quality service provision, and not as service provider. We heard consistent evidence that the non-government sector in Tasmania had, in general, made much more progress in implementing systems to protect the safety of children in care than the Department.

In this section, we consider how the Department can effectively distinguish its role by:

- outsourcing all forms of out of home care services to non-government providers, including kinship and emergency care arrangements
- retaining and developing its unique and necessary role in setting the strategic framework, monitoring and supporting quality care, and ensuring public accountability
- embedding active contract management and oversight for care services.

During the period of transition to a clearer role of purchaser and administrator, the Department should ensure there are arrangements in place to track the quality of care provided by carers the Department directly supports.

3.1 Outsourcing care to non-government providers

The 2007 *Out of Home Care Strategic Framework* outlined a five-year plan to outsource all out of home care in Tasmania to the non-government sector.¹¹ The framework indicated that the Department would support out of home care delivery by:

- providing strategic planning and policy and by overseeing continuous quality improvement, data collection and ICT infrastructure
- budgeting and purchasing out of home care services from the non-government sector and managing workforce development
- responding to complaints about out of home care
- maintaining a Carer Register and collaborating with the community sector.¹²

Departmental child protection teams were to work alongside non-government out of home care services and be responsible for case planning, case management, placement coordination and placement decision making.¹³

In our Inquiry, non-government organisations generally perceived an inherent conflict of interest in the Department being a provider of out of home care services and having a regulatory role over those services.¹⁴ For example, Caroline Brown, a previous employee of the Department, suggested the Department should ‘hold its statutory role only and be strong in the assessment of statutory risk and the legal processes that follow’.¹⁵ Dr Julian Watchorn, clinical psychologist, Foster and Kinship Carers Association of Tasmania, expressed concern about the Department ‘effectively assessing themselves on their own standards and protocols’.¹⁶

Evidence suggests that some non-government providers can offer better quality out of home care than their Government counterpart. We were told that non-government providers can offer more frequent and regular support to carers because their staff-to-carer ratios are much lower.¹⁷ The Department said that it was struggling to find enough Child Safety Officers to support departmental carers, which was one of the reasons it stopped recruiting its own carers.¹⁸

Several out of home care providers said that non-government care providers apply higher standards and safeguarding principles to their services than does the Department.¹⁹ They told us they created and implemented their own quality frameworks and conducted their own internal audits.²⁰ In particular, we observed that many of the non-government providers with a national footprint comply with the much higher standards set in other jurisdictions. For example, several non-government providers had arranged Child Safe accreditation for their services.²¹ In contrast, the Department has not yet implemented the National Standards for Out-of-Home Care (‘national out of home care standards’) for itself.²²

We consider that by the Department stepping away from directly providing out of home care but retaining its obligations for ensuring the safety and wellbeing of children under the guardianship of the Secretary, Tasmania may benefit from progress made nationally and keep Tasmanian children safer. Secretary Pervan told us that this proposal was the subject of a budget bid in January 2021, however it was not adopted.²³

The Department should develop a plan with timeframes for achieving full transition, and the Government should allocate enough resources to complete it in full. Transition may take some time to implement because it requires the Department to improve the commissioning of new providers and for each carer household to be transitioned to a non-government provider. The process of developing a transition plan should begin immediately. The transition should be orderly, staged, and trauma-informed for carers and children currently in government care.²⁴ It should be guided by the following principles:

- children are supported throughout the process
- minimum disruption to the placements of children in care so children transition with their carers wherever possible
- minimum disruption to sibling placements
- consideration is given to the Aboriginal and Torres Strait Islander Child Placement Principle
- capacity is developed concurrently in Aboriginal community organisations to assume care of Aboriginal children (refer to Recommendation 9.15)
- transition priorities are developed, and timeframes established
- open and clear communication with all parties about the process, roles and expectations.

The Department should develop a minimum dataset to support transition.²⁵

Recommendation 9.2

1. The Department for Education, Children and Young People should outsource the provision of all forms of out of home care to the non-government sector.
2. The Department should maintain and improve its role in:
 - a. the budgeting and purchasing of out of home care services from the non-government sector
 - b. establishing and leading the strategic plan and policy framework for out of home care

- c. monitoring the quality of out of home care
 - d. providing case management and leadership in out of home care
 - e. ensuring carers and staff receive adequate education and skill development
 - f. responding to complaints and safety and wellbeing concerns about children in out of home care
 - g. cross-sector (government and non-government) data collection, ICT infrastructure and public reporting
 - h. carer registration and monitoring.
3. The outsourcing of the provision of out of home care should be achieved through an orderly, staged and trauma-informed transition process and commissioning strategy.
 4. The Department should establish a minimum out of home care dataset and a plan for two-way data sharing between the Department and non-government out of home care providers.

3.2 Contract management and auditing

As ‘the system owner’, the Department is responsible for ensuring the out of home care services it contracts to non-government providers are achieving the right outcomes for children.²⁶

As outlined below, the Department does not have the systems in place to ensure non-government providers comply with any contractual requirements specific to out of home care services. In particular:

- the Department does not appear to routinely include performance measures in its funding agreements with non-government out of home care providers that relate to outcomes for children in care
- the Department, at least until recently, lacked the capacity to audit non-government providers’ compliance with contract obligations
- the Department appears to only require non-government providers to regularly report on basic statistics and financial acquittals.

We encourage the new Department for Education, Children and Young People, which has installed a specific ‘Commissioning’ section in the Services for Children and Families portfolio, to address the issues we identify.

3.2.1 Funding agreements

The new Department's Secretary, Timothy Bullard, told us that the previous department had a 'commissioning framework'.²⁷ In a statement to our Inquiry, former Secretary Pervan said the Department procured services as follows:

Funding agreements are time-limited and Departmental processes that consider renewal of agreements provide a risk management control for service need, demand and capacity, and for financial, service performance and value for money considerations. This process requires a robust and defensible business case that includes outcome considerations of what providers do, how well did they do it, and if anyone is better off. The Departmental Procurement Review Committee is the governance structure that approves business cases for renewal. Through the commissioning process, Children, Youth and Families can continuously improve services and ensure they meet the contemporary needs of Child Safety Service as Service Users and children, young people and families.²⁸

We received no other details about this approach.

The funding agreement template provided to us appears to be outdated.²⁹ It is a generic template to purchase any number of different human services and does not have standard inclusions that are specific to out of home care providers. It only includes generalist statements under the heading 'Service Provider's Obligations'.³⁰

The funding agreement template has space to include individualised 'Key Performance Indicators' and 'Service Specialist Standards' but does not specify any standard indicators or standards that all providers might need to show.³¹ The template refers generically to service providers supplying 'evidence of continuous quality improvement against recognised international, national or state standards relevant to the services being funded through this Agreement'.³² The national out of home care standards and Child Safe Standards were not specifically mentioned.

3.2.2 Compliance with standards, a therapeutic approach and preventing child sexual abuse

The two key sets of standards that apply to the safety of children in care are the national out of home care standards and the National Child Safe Standards (now adopted as the Child and Youth Safe Standards by Tasmania in the *Child and Youth Safe Organisations Act 2023*—'Child and Youth Safe Organisations Act'—therefore generally referred to in this report as the 'Child and Youth Safe Standards').³³

It has been more than a decade since the then Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs released the national out of home care standards in 2011 as a priority of the *National Framework for Protecting Australia's Children 2009–2020*.³⁴ Tasmania committed to the national out of home care standards under the *National Framework for Protecting Australia's Children 2009–2020 First*

Action Plan.³⁵ The Tasmanian Government is already required to report on a number of measures derived from the national out of home care standards to the Australian Institute of Health and Welfare each year for its Safety in Care reports.³⁶

We understand the Department has not adopted the national out of home care standards for out of home care providers. Instead, the Department engaged in a process to develop Tasmanian standards for out of home care, which Secretary Pervan said had ‘evolved ... too slowly’.³⁷ After two lengthy, detailed consultation processes between 2018 and 2021, the Department released the *Tasmanian Out of Home Care Standards* on 17 August 2022.³⁸ In the end, the *Tasmanian Out of Home Care Standards* aligned with the six domains of wellbeing in the existing *Tasmanian Child and Youth Wellbeing Framework*.³⁹ As indicated above, no standards were included in the contract templates we reviewed.

We consider that out of home care providers should be made to comply with the national out of home care standards and the Child and Youth Safe Standards at a minimum. As we discuss in Sections 3.2.3 and 4.5, these standards should also form a basis for an outcomes and performance reporting framework for children in care, with which the Department can evaluate the out of home care system and the wellbeing of children in care (refer to Recommendation 9.9). As we outline in Section 7, there is also a need for statewide expectations for carer assessment and registration.

In reforming Tasmania’s out of home care sector, the Department has an opportunity to embed a shared understanding of trauma and the impact it has on children’s learning, behaviour, relationships and feelings. In Section 6.3, we recommend that the Department leads the sector by identifying the components of a trauma-informed therapeutic model of care for the out of home care system (refer to Recommendation 9.18). The Department should require non-government out of home care providers to provide trauma-informed therapeutic care for children in care and report on how it is provided.

The Department should also require non-government providers to implement preventative measures for children in their care to reduce their risk of engaging in, or being subject to, harmful sexual behaviours (refer to Recommendation 9.28) or being sexually exploited (Recommendation 9.29). Providers should report to the Department on their delivery of these preventative measures. We explore the rationale for such specific interventions in Section 10, along with several examples of prevention initiatives that have been reported to be effective.

3.2.3 Monitoring compliance

A non-government out of home care provider told us that the Department has requested regular financial acquittals and statistical reports from providers but has not conducted regular audits or reviews.⁴⁰

Ms Enkelmann, a former departmental employee, reported that the Department has a long history of being under-resourced to properly oversee and manage contracted services, referring to instances of providers not having contracts for Special Care Packages ‘because they would not be monitored anyway’.⁴¹

Claire Lovell, Executive Director, Services for Children and Families, told us in June 2022 that there was one person in Children, Youth and Families who was responsible for engaging and contracting with non-government out of home care providers, the Manager of Strategic Commissioning.⁴² She stated that this role was ‘very busy’ undertaking commissioning work for multiple areas in addition to the Child Safety Service and out of home care—custodial services, youth justice and new strategic project work.⁴³ The Child Advocate said the Department had repeatedly requested resourcing for a team of staff to effectively coordinate outsourcing and strategic commissioning without success.⁴⁴

When asked how oversight and quality assurance of non-government providers was achieved given the limited resource of one role for commissioning, Ms Lovell explained that this responsibility was diffused across positions in the division. She gave the examples of Child Safety Officers making observations about a child’s care and monthly reports from the non-government providers being useful forms of feedback.⁴⁵

Encouragingly, after assuming responsibility for out of home care, Secretary Bullard agreed that one position across several work areas was inadequate and told us that he would be ‘bolstering’ the Strategic Commissioning function.⁴⁶

3.2.4 New funding agreements

Strategic and effective contract management is essential in a system that outsources out of home care services. The Department should develop funding agreements that are specific to out of home care providers, with standard inclusions and unambiguous language. As well as reporting on agreed outcomes for children in care, the funding agreements must cover compliance with the national out of home care standards, the Child and Youth Safe Standards and reporting on trauma-informed and preventative care.

The Department should monitor reporting and compliance with funding agreements and ideally, provide government-developed best practice policies and resources to guide providers. Similarly, increased reporting requirements will come at a cost to non-government providers, and the Department should fund providers to cover these expenses.

The Department should require non-government providers to report on the outcomes and performance reporting framework to the Department and the Quality and Risk Committee (refer to Recommendation 9.5). The Department should use the outcomes and performance reporting framework for its periodic auditing of non-government providers (refer to Recommendations 9.3 and 9.9).

The Department should also require non-government providers to comply with the other relevant recommendations we outline in this report, including having registered carers and staff and carer compliance with minimum professional development obligations.

Recommendation 9.3

1. The Department for Education, Children and Young People should develop new funding agreements with non-government out of home care providers that set quality and accountability requirements, including:
 - a. compliance with the National Standards for Out-of-Home Care
 - b. compliance with the Child and Youth Safe Standards
 - c. provision of trauma-informed, therapeutic models of care (Recommendation 9.18)
 - d. adoption of preventive measures for harmful sexual behaviours and child sexual exploitation
 - e. only using carers who are registered on the Carer Register (Recommendation 9.20)
 - f. governance and organisational structures to support monitoring and responding to child sexual abuse including grooming, harmful sexual behaviours and child sexual exploitation
 - g. sharing relevant information about carers and children in their care
 - h. quarterly reporting to the Department on these requirements
 - i. periodic reporting of data against the outcomes framework (Recommendation 9.9).
2. All funding agreements between the Department and non-government out of home care providers should require the Department to give providers:
 - a. relevant information about carers and children in their care
 - b. information about the provider's performance against the data outcomes framework and compliance with standards.
3. The Department should monitor and audit non-government out of home care providers' compliance with contracts.
4. The Tasmanian Government should resource non-government out of home care providers appropriately.

4 Establishing the pillars of reform

The Secretary—and hence their Department—is ultimately responsible for children in out of home care.⁴⁷ To discharge this heavy responsibility, the Department needs strong systems in place to understand what is happening for children in care and how the out of home care system needs to operate to best protect them.

In this section, we consider the foundational pillars required to support the Department to operate with confidence and to make complex decisions for the safety of children in out of home care. These foundational pillars should include:

- adequate funding (discussed above)
- expert and active executive leadership
- fit-for-purpose governance structures and processes
- a strategic plan for the out of home care system
- clear, accessible policies and procedures that set standards for ensuring the safety of children in care
- continuous improvement processes
- a workforce strategy for recruiting and retaining staff and carers, ensuring they are well equipped and supported to safeguard children in care
- establishing an Aboriginal policy leadership role in the Department.

These foundations will support an informed executive leadership to oversee the safety and wellbeing of children in out of home care, including processes to identify risks to children and to address incidents of abuse at the earliest opportunity.

4.1 Expert and active leadership

The Department should ensure leaders have the knowledge, skills, aptitude and core capability requirements to effectively manage people and to lead a child safe organisation. Leadership can ensure child safeguarding is valued and practised throughout the out of home care system through good governance, strategic planning, workforce development and clear policies and procedures, as well as cultivating an organisational culture that is safe, innovative and accountable.⁴⁸

4.1.1 Addressing organisational culture

The National Royal Commission found that institutions with a ‘closed’ organisational culture and that resist change can make child sexual abuse more likely to occur and less likely to be dealt with properly when disclosed.⁴⁹ Leaders should instil a culture

that ‘inhibits the perpetration of child sexual abuse, speeds the detection of abuse, and enhances the response to abuse’.⁵⁰ Professor Donald Palmer, an organisational misconduct researcher, stated that leaders ‘telegraph cultural content’ in several ways—by the people they hire and fire; the behaviour they reward and punish; the matters they focus on; the way they respond to crises; and the attitudes and behaviours they display.⁵¹

Several people who have worked across the Department and the non-government sector described the Department’s culture as ‘insular’.⁵² For example, Ms Brown stated that the Department responds to external criticism by becoming defensive and developing an ‘us against them’ attitude so the service is resistant to change, particularly when that change is proposed by those external to the Department.⁵³ As a result, she said the Department struggles to partner with non-government providers, instead adopting a ‘command-and-control’ model of relationship. Similarly, Andrea Sturges, another former departmental employee who now works in the non-government sector, observed ‘the culture internally within Child Safety Services is very reactive and insular’.⁵⁴

Ms Sturges further commented that the out of home care system is ‘very adversarial’.⁵⁵ She stated that this is reflected at the operational level by Child Safety Officers often not consulting the broader care team, which affects the quality of their decisions.⁵⁶ Ms Sturges reported that even some senior departmental staff seemed resistant at times to her attempts to raise concerns about the wellbeing of children in care.⁵⁷

Ms Lovell spoke of a culture of hostility and conflict between stakeholders and the Child Safety Service, creating a barrier to well-functioning care teams. She said Child Safety Officers have had to put in extra effort to overcome this hostility.⁵⁸

We acknowledge that working within the heavily criticised field of child protection can give rise to a defensive culture. For example, the Commissioner for Children and Young People said:

... if departments are constantly receiving negative scrutiny through the media or through independent oversight bodies, it creates a culture of defensiveness, and I think I have experienced the culture of defensiveness ...⁵⁹

A department survey of staff from 2020 confirmed that staff also perceived cultural issues within the Department. Only 26 per cent of respondents thought that change was well managed within the Department, 55 per cent agreed that senior management modelled the values of the organisation and 45 per cent felt confident they would be protected from reprisals if they spoke out.⁶⁰ Fear of reprisal and a belief that an organisation may not respond could discourage staff from raising concerns about how child sexual abuse is being handled.

Secretary Pervan acknowledged that the Department had cultural problems.⁶¹ At the time of our hearings, when responsibility for the statutory child protection and out of home care systems was about to move from the former Department of Communities to the new Department for Education, Children and Young People, Secretary Pervan expressed hope that the move would help improve the culture in the Child Safety Service:

... they're moving to a new agency where a lot of those things are really well understood, and the safeguarding function is already well ahead in its thinking about how you move that culture.⁶²

We, too, hope for a new culture in the Child Safety Service and consider this as, ultimately, the responsibility of the Department's executive leadership. Cultural change should form part of their key performance measures.

4.1.2 Leadership roles in out of home care

As mentioned, in October 2022, responsibility for the statutory child protection and out of home care systems moved to the newly created Department for Education, Children and Young People. Since this restructure, responsibility for the Strong Families, Safe Kids Advice and Referral Line ('Advice and Referral Line'), the Child Safety Service and out of home care services are held by the Executive Director, Services for Children and Families (currently Ms Lovell).⁶³ The youth justice service area is the responsibility of the newly created Executive Director for Services for Youth Justice. Originally, these two Executive Directors reported directly to the Secretary, while responsibility for education was divided between two Deputy Secretaries, who reported to the Secretary.⁶⁴

Under a June 2023 organisational restructure, the Executive Director, Services for Children and Families, now reports to a Deputy Secretary for 'Keeping Children Safe'.⁶⁵ This role reports directly to the Secretary, while an Associate Secretary leads the education and youth justice portfolios.

The Deputy Secretary for Keeping Children Safe is responsible for, among other things, Services for Children and Families and the Office of Safeguarding Children and Young People. Services for Children and Families includes out of home care, the Child Safety Service, the Advice and Referral Line and family support services.

4.1.3 Strengthening leadership

Child protection, including out of home care, has unique and interrelated features that require the Department to have a high level of expertise and an active and engaged executive leadership, including:

- responsibility for the most vulnerable cohorts of children in the State who, along with their families of origin, exhibit challenging and complex behaviours

- being statutory guardian of children in out of home care, with a responsibility to be a ‘good parent’
- carrying a high degree of risk for the safety and wellbeing of children in out of home care.

Although only a comparatively small percentage of Tasmanian children are in out of home care, other service divisions within the Department, while having responsibility for more children, do not carry this level of responsibility and risk.

More generally, the Secretary faces great challenges in managing what have been two large organisations with very different cultures, challenges and problems. We foresee risks for the quality of out of home care linked to the Department’s relatively recent reconfiguration into a larger department, due to the new Department’s substantial size and scope.

We recognise that some economies of scale can be achieved by child protection and out of home care being subsumed within a larger department. However, wherever responsibility for out of home care lies—in a separate department or one joined with education and other children’s services—leadership must be resourced in a way that acknowledges the level of responsibility and risk.

Catherine Taylor, former Chief Executive of the Department for Child Protection in South Australia, told us about the challenges associated with child protection and out of home care being included in a ‘mega-department’ such as the Department for Education, Children and Young People.⁶⁶ She explained that when she joined the South Australian department it had recently been separated out from a much bigger department, which included education and child protection services, following recommendations made by the 2016 South Australian Child Protection Systems Royal Commission.⁶⁷ A key rationale for this separation was the belief that child protection needed a ‘dedicated focus’ and should be ‘led by experience in child protection’.⁶⁸

We consider this dedicated focus can be achieved in a larger department provided there is enough executive presence to set an operational and strategic direction and interpret advice with expertise. Based on her experience in South Australia and Queensland child protection and community services, Ms Taylor said that in any child protection service, expertise needs to be ‘reflected across as much of the Executive leadership as possible’.⁶⁹ Importantly, she said key decision-makers who know the business of child protection and out of home care can advocate within a larger department to retain the required focus on the most vulnerable children.⁷⁰ She highlighted that all elements of the new Department (such as work health and safety, finance and human resources) must be informed by child protection expertise, so the services they deliver to child protection are appropriate.⁷¹

Considering this evidence, we welcome the addition of an Associate Secretary with responsibility for the education portfolio. This will allow the Secretary to focus on child protection, including out of home care, given the strategic, operational and reform responsibilities within the service area and the level of risk associated with the portfolio. We are also pleased that since the June 2023 restructure, there is a Deputy Secretary role to assist the Secretary. We recommend that a prerequisite for the key role of Deputy Secretary for Keeping Children Safe is knowledge and experience in child protection and out of home care.

We are concerned that the Deputy Secretary for Keeping Children Safe has a large task, including responsibility for both Services for Children and Families and the Office of Safeguarding Children and Young People. The Office of Safeguarding Children and Young People was a key reform in response to the Independent Inquiry into the Tasmanian Department of Education's Responses to Child Sexual Abuse ('Independent Education Inquiry').⁷² We discuss the role of the Office of Safeguarding Children and Young People in Chapter 6. In short, we recommend in that chapter that the office focuses on prevention, risk identification, policy development and related workforce development for safeguarding children in the education context. We consider that the safeguarding needs of children in education are distinct from the safeguarding needs of children in out of home care. We question whether the same role holder should be responsible for both. We note the view expressed by Kathy Baker, Deputy Secretary, People and Culture in the former Department of Communities, about the then Deputy Secretary, Children, Youth and Families role, who said 'the volume of work that the Deputy Secretary ... was undertaking at the time was significant. I consider the load on that role to be unsustainable'.⁷³

We also note with some concern the scope of responsibility for the Executive Director for Services for Children and Families, which we understand includes the strategic, operational and critical incident leadership of the Child Safety Service, including commissioned non-government child abuse prevention, family support, child protection and out of home care. Evidence we heard indicated that even in the previous, smaller Department, out of home care reforms became overshadowed by the larger child protection reform agenda.⁷⁴

We propose a significant out of home care reform agenda in this chapter that will need high-level executive support. Ensuring there is executive leadership specifically for out of home care, which we recommend below, will protect this reform agenda and ensure children in out of home care get the support they need. Funding this level of executive support will prove the Government's commitment to child safety in out of home care.

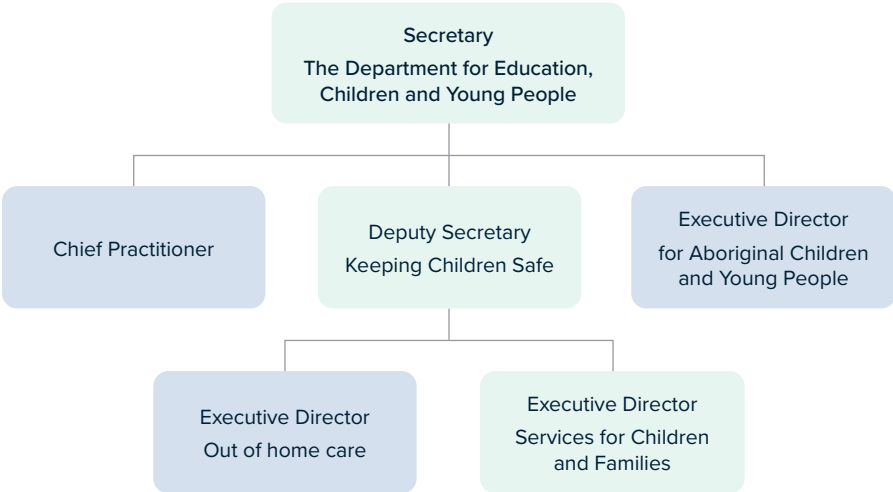
The executive position should be responsible for out of home care policy and operations.

In addition to the executive role for out of home care, we recommend that the Department establishes two more roles in its executive—a Chief Practitioner to oversee the clinical policy and practice for out of home care, the Child Safety Service and youth justice (refer to Recommendation 9.17), and an Executive Director for Aboriginal Children and Young People (refer to Recommendation 9.7). We describe the location of these positions in the organisational structure in picture form in Figure 9.1

Finally, we consider it fundamental that centralised functions within the new Department, such as human resources, procurement and staff learning and development, reflect the different needs of the Child Safety Service and out of home care. This principle is reflected in recommendations we make in other sections of this chapter.

It is self-evident that relevant executive roles should require knowledge and understanding in child protection and out of home care, as well as experience in providing strategic direction and leadership. As already foreshadowed by the Premier, key performance measures should be built into these Head of Agency and leadership roles and include a specific focus on preventing sexual abuse in out of home care.⁷⁵

Figure 9.1 New executive positions (shown in blue) in relation to relevant existing Department for Education, Children and Young People organisational structures.



Recommendation 9.4

1. The Tasmanian Government should fund and restructure the Department for Education, Children and Young People to ensure (in addition to the current roles of Deputy Secretary for Keeping Children Safe, and the Executive Director for Youth Justice):
 - a. there is separate executive-level responsibility for out of home care services
 - b. there is separate executive-level responsibility for the combined areas of Child Safety Services, the Strong Families, Safe Kids Advice and Referral Line and family support services
 - c. the classification level of these executive roles reflects the level of risk and responsibility carried by the positions
 - d. the holders of these executive roles have knowledge and understanding in the area of child protection or out of home care and experience in providing strategic direction and leadership
 - e. executive responsibility for child safeguarding in the education context is not combined with responsibility for child safeguarding in the children and family services context
 - f. the role of Executive Director for Aboriginal Children and Young People is established and supported by an Office of Aboriginal Policy and Practice (Recommendation 9.7)
 - g. the role of the Chief Practitioner is established and supported by an Office of the Chief Practitioner (Recommendation 9.17)
 - h. expertise among members of the Department's executive is evenly balanced across the areas of education, Child Safety Services, out of home care, and youth justice
 - i. the relevant specialist for out of home care and youth justice in the executive leads policy and practice development for those areas
 - j. relevant centralised functions within the Department, such as human resources, procurement, and staff learning and development, address the distinct needs of schools, Child Safety Services, out of home care and youth detention.

2. The Tasmanian Government should ensure that:
 - a. the Secretary of the Department demonstrates active efforts to inform themselves about child protection and out of home care through individual professional development
 - b. the Deputy Secretary for Keeping Children Safe has knowledge and understanding of the area of child protection or out of home care and experience in providing strategic direction and leadership
 - c. the Secretary and Deputy Secretary, and the holders of the new executive roles, have key performance measures that include culture change in Child Safety Services and out of home care
 - d. the Secretary and Deputy Secretary, and the holder of the new executive role responsible for out of home care, have key performance measures that include preventing sexual abuse in out of home care
 - e. the Department has appropriate processes in place to ensure leaders have the knowledge, skills, aptitude and core capability requirements to effectively manage people and to lead a child safe organisation.

4.2 Governance

The National Royal Commission defined governance in the following way:

Governance encompasses the systems, structures and policies that control the way an institution operates, and the mechanism by which the institution, and its people, can be held to account. Governance strongly influences an institution's practices and decision-making processes. It is embedded in the good behaviour and the good judgment of those responsible for running an institution.⁷⁶

In talking about out of home care, we use the term 'governance' to describe systems that assist leadership to understand what is happening for children in care and that keep leadership accountable for addressing risks to these children. Good governance also requires structures and systems that provide clarity and direction and enable monitoring and evaluation of progress towards clear goals.⁷⁷ In the out of home care context, it is essential that executive leadership understands the experiences of children in care, including the quality of care they are receiving and any risks to children, including any risks of child sexual abuse. This involves monitoring trends and patterns in the out of home care sector, including through reviews of the handling of care concerns, serious events, harmful sexual behaviours or child deaths, and systemic issues.

Dr Kim Backhouse, Chief Executive Officer, Foster and Kinship Carers Association of Tasmania, called for every allegation of child sexual abuse in care to be reported to an agency’s board of directors (or equivalent) because:

At the end of the day, this is a contingent liability for the Board of directors, who have a duty of care to the organisation. If the agency has vulnerable children in their care and these kinds of allegations are being made within the organisation, then the Board needs to know about them.⁷⁸

4.2.1 Challenges in monitoring out of home care

We struggled to identify a clear articulation of the out of home care sector, let alone trends and patterns.

In her first monitoring report in 2019, the Commissioner for Children and Young People, Leanne McLean, noted that the Department could not answer many of her questions about the welfare of children in care. She stated that for the Secretary to exercise the responsibility of guardian, the Department ‘needs to have a base level of knowledge about the wellbeing of each child and young person in [out of home care]’ and the data systems in place to support reporting and oversight.⁷⁹ This had not improved by the Commissioner’s second report in 2023, with key information about children in care still difficult to find.⁸⁰

In a similar vein, we found it difficult to obtain a definitive list of out of home care providers from the Department. The Department’s first list omitted several providers published in the Commissioner for Children and Young People’s monitoring report and which were supplied in a second list provided by the Department.⁸¹

Through our inquiries, we identified mechanisms that may have monitored the quality and safety aspects of out of home care, including:

- the Care Concerns Monitoring Group, which included the Commissioner for Children and Young People, and was set up to monitor the response to concerns about the care of children in out of home care⁸²
- the Serious Events Review Committee, which comprised representatives internal and external to the Department, and oversaw the reports of the Serious Events Review Team.⁸³ The Serious Events Review Team investigated when a child or young person known to the Child Safety Service had experienced a ‘serious event, such as death, serious injury or “near miss”’.⁸⁴

These groups appear to have been disbanded or, at least, are not ongoing.⁸⁵ We are unclear as to whether the Care Concerns Monitoring Group ever met.⁸⁶ We discuss these groups in Section 11.

4.2.2 Departmental oversight of out of home care

Since establishing our Commission of Inquiry, the Department has convened several committees to oversee the Child Safety Service and out of home care.⁸⁷

First convened in July 2021, the Practice Performance and Governance Committee meets monthly and was described as leading continuous quality improvement of professional practice for the Directorate of Children and Family Services. It is chaired by the Principal Practice Manager, and membership includes managerial staff across out of home care and the Child Safety Service.⁸⁸ Standing agenda items include:

- leadership, learning and culture, including practice framework and professional development planning and progress
- accessibility, flexibility and responsiveness of the Child Safety Service
- progress on new service initiatives
- risk management for emerging risks and case reviews of adverse incidents
- communication and information management.⁸⁹

The Child Safety Statewide Service Development Committee was also formed in July 2021.⁹⁰ The purpose of this committee was described as providing statewide ‘oversight and leadership of service development matters for the Child Safety Service’.⁹¹ The terms of reference outlined the committee’s focus as including:

- reviewing and designing services for children and families and related processes
- operational process and procedure review and development
- overseeing working arrangements with other agencies and stakeholders
- workforce planning and management
- continuous improvement.⁹²

We were told that a Senior Managers Operations Group Practice and the Executive Leadership Group also met regularly.⁹³ Our impression was that the Department relies on these meetings for governance. While we welcome these reporting processes, we struggled to identify the extent to which key aspects of out of home care are monitored or strategic direction set through these committees, including reviews of the handling of care concerns, serious events, harmful sexual behaviours or child deaths, as well as systemic issues. The committees would also be hindered by the lack of data and reporting systems the Commissioner for Children and Young People identified. We discuss an outcomes and performance reporting framework in Section 4.5.

4.2.3 Lessons from other jurisdictions

In other jurisdictions, the departments and agencies responsible for out of home care ensure they have a 'line of sight' into the activities of carers. In particular, we heard that other jurisdictions and agencies report all allegations of abuse of children in care to their most senior managers to prevent claims of 'plausible deniability' by those in leadership positions.⁹⁴

Ms Taylor, former Chief Executive of South Australia's Department of Child Protection, acknowledged it was not practical for every issue to be escalated to the Chief Executive or the relevant minister. Instead, she provided deidentified information about care concerns to her minister each month. In her view, however, good governance includes clear guidelines about what information should be escalated to whom and in what circumstances.⁹⁵ South Australia's Department for Child Protection also provides details of all serious sexual abuse in care concerns to the Guardian for Children and Young People in Out-of-Home Care.⁹⁶

Dr Robyn Miller, Chief Executive Officer, MacKillop Family Services, and former Chief Practitioner for the Department of Human Services in Victoria, told us that her organisation had established a Residential Care Governance Group, which 'greatly improved oversight over residential care and has led to a targeted and data driven focus on issues' and 'enabled higher level planning and commitment to continuous improvement'.⁹⁷ She said similar monitoring could be implemented in Tasmania but requires the analysis of data such as 'Work Health and Safety, Stability of staff in homes, Incident reports, Work Cover'.⁹⁸

4.2.4 Quality improvement and safety

Purposeful systems and structures to monitor and improve safety and to drive continuous improvement are an essential aspect of good governance. Ms Taylor emphasised the need to have roles in the Department that can oversee various quality assurance and continuous improvement approaches, such as 'deep dive[s]' into files to get real data to inform child protection policy and to drive better practice.⁹⁹

We were unclear, based on the evidence we received, as to whether such a function exists.¹⁰⁰

Secretary Pervan referred to a continuous improvement plan for safeguarding children:

The Department has had a broader focus on Safeguarding Children, with a Continuous Improvement Plan being developed with specific actions. Some actions have been completed, and others are being progressed or paused due to the transition. The Continuous Improvement Plan included training with Child Wise for managers and directors. Professional learning for employees has now been put on hold, pending the transition [to the new Department].¹⁰¹

However, we did not receive a copy of this plan during our Inquiry, nor were its contents or timeframes described, beyond referring to the Child Wise training.¹⁰² We could not locate a current quality and safety framework or quality improvement plan that applied specifically to the Department.

The Department's Practice Manual has a *Transparency and Accountability* policy and a *Service Review and Continuous Improvement* policy, both of which were created in 2015. These policies outline the Department's endorsement, at that time, for measuring performance and improving accountability and performance.¹⁰³ As with many of the Department's policy documents, these policies have not been reviewed and may not be actively followed in the present, given neither were significantly mentioned in evidence before us.¹⁰⁴

Secretary Pervan referred to an intention to adopt the 'Signs of Safety Quality Assurance System'.¹⁰⁵ While he provided information about the Signs of Safety approach to child protection (a series of assessment and safety planning tools and approaches used to help determine whether a child living with their family of origin should be removed or can safely remain at home), we did not receive any information during our Inquiry about how it is being used as part of the quality assurance system, and we could not locate such material on the Department's intranet.¹⁰⁶ Its relevance to out of home care was not clear to us.

To the extent the continuous improvement plan for safeguarding children, *Transparency and Accountability* policy and *Service Review and Continuous Improvement* policy were driving action within the Department, it was not clear what governance structures there were for monitoring and reviewing this information to drive strategy development and continuous improvement.

We consider the Department could learn from the jurisdictions we discussed above and establish a clear governance structure for monitoring key aspects of out of home care. It should ensure it has a committee (whether already existing or newly established) that monitors the system performance of out of home care, oversees children's safety and wellbeing in out of home care, including child sexual abuse, and monitors progress on implementing the Child and Youth Safe Standards and the national out of home care standards. In other words, it should have the functions of a traditional quality and risk committee. In Section 4.5, we discuss developing an out of home care outcomes and performance reporting framework, which would help this committee monitor the performance of the out of home care system, including case management of children in care.

Given the level of responsibility and risk associated with children in out of home care and the Secretary's role as statutory guardian, we consider the Secretary should chair this committee.

The Department may elect to include relevant external parties, particularly given that, in the future, all providers of out of home care will be non-government organisations.

The functions of the Quality and Risk Committee would complement the oversight and external accountability role of the Commission for Children and Young People and provide greater operational support within the Department. We envisage the committee would also monitor quality and risk issues in the Youth Justice and the Child Safety Service directorates.

Recommendation 9.5

1. The Department for Education, Children and Young People should establish a Quality and Risk Committee for Child Safety Services, out of home care, and youth justice.
2. The Secretary of the Department should chair the committee.
3. The functions of the committee should include monitoring:
 - a. the system performance of the out of home care sector
 - b. the performance against the outcomes and reporting framework (Recommendation 9.9)
 - c. children’s safety and wellbeing in out of home care, including from child sexual abuse
 - d. progress on implementing the Child and Youth Safe Standards and the National Standards for Out-of-Home care
 - e. practices in youth detention, including in relation to searches, isolation and the use of force (Recommendations 12.31, 12.32 and 12.33).
4. The committee should report routinely to the Commission for Children and Young People.

4.2.5 Giving children a voice

Governance structures for out of home care should promote the voices of children in care to ensure their views are being heard. Professor Palmer who researches organisational misconduct, stated that children should be explicitly involved in designing child safety measures and have the same status, in terms of rights and obligations, as adults, particularly the right to be believed.¹⁰⁷

Children’s participation and empowerment will allow adult decision-makers, including the executive, to better understand how children in care experience their lives, and how they can better protect children from sexual abuse. Associate Professor Tim Moore, Deputy Director, Institute of Child Protection Studies at the Australian Catholic University, observed:

Children and young people want to play a part in their own protection and, in building alliances with adults to develop strategies to meet their safety needs they can build confidence, awareness and an ability to turn to adults if they are being harmed. These ‘participatory’ strategies need to empower individual children and young people through child-friendly and proactive means as well as through collective activities such as youth advisory groups.¹⁰⁸

The Department must listen to children. Standard 2 of the Child and Youth Safe Standards requires that ‘Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously’.¹⁰⁹ In addition, Standard 2 of the national out of home care standards requires ‘children and young people participate in decisions that have an impact on their lives’.¹¹⁰

At the individual level, Part 1A of the *Children, Young Persons and Their Families Act 1997* (‘Children, Young Persons and Their Families Act’) requires certain principles to be followed when dealing with children, many of which relate to children’s rights to participate and be heard:

- treating a child ‘with respect’ including ‘as far as practicable, the informed participation of the child’¹¹¹
- taking the views of the child into account when determining the best interests of a child, ‘having regard to the maturity and understanding of the child’¹¹²
- the child should be able to participate in any decisions that are made under the Act.¹¹³

It is essential the Department continues to work to make children’s participation in decisions that affect them ‘practice as usual’ in its interactions with children in out of home care. In this section, we discuss children and young people’s participation in systemic processes or decision making in out of home care. Children’s participation in individual decision-making processes such as their care placement, care plans and case management is a guiding principle in our discussion of these matters below. Also, child-focused frontline practice needs to be reinforced through governance and monitoring that demonstrates the importance the Department places on children’s voices in both the decisions that affect them directly as individuals and in the systems and governance of the Department.

In Chapter 19, we further discuss how children can be empowered by providing opportunities for them to participate in decisions that affect them, and in the design or review of systems that relate to them.

A key responsibility of the Child Advocate, whose role in the Department we discuss in detail later in this chapter, is to increase children’s participation in decision making in out of home care, at the individual and systemic levels.¹¹⁴

The Child Advocate told us: ‘systems working with children have a way to go to effectively embed the principle of child participation in practice and uphold children’s rights to participate’.¹¹⁵ She said she convened a time-limited youth consultation forum of children in care to get their input into several systemic improvements. She also developed an online questionnaire for children in care, called Viewpoint, which unfortunately has not been implemented.¹¹⁶

We encourage the Department to build on the Child Advocate’s previous efforts to empower children in care, so their voices are routinely reflected in the Department’s decisions. The Department needs to build child feedback and consultation into its systems and processes, including its quality assurance and improvement system. It should develop an empowerment and participation strategy for children and young people in out of home care, keeping in mind best practice principles for children’s participation in organisations.¹¹⁷ This should include implementing the Viewpoint online questionnaire, or equivalent, without delay.¹¹⁸ It should also include establishing a permanent youth advisory group to provide continual input into departmental improvements.

Recommendation 9.6

1. The Department for Education, Children and Young People should, in consultation with the Commission for Children and Young People (Recommendation 18.6), develop an empowerment and participation strategy for children and young people in out of home care. This strategy should have regard to best practice principles for children’s participation in organisations at the individual and systemic levels.
2. The empowerment and participation strategy should include:
 - a. establishing a permanent out of home care advisory group to be involved in developing the out of home care strategic plan (Recommendation 9.8) and have ongoing input into the out of home care system
 - b. building engagement with children into the Department’s quality assurance and continuous improvement activities under the strategic plan (Recommendation 9.8)
 - c. implementing the Viewpoint online questionnaire without delay
 - d. regular monitoring and evaluation of the effectiveness of the empowerment and participation strategy.

3. The out of home care permanent advisory group should:
 - a. include children, young people and young adults up to the age of 25 years with current or previous experience of out of home care in Tasmania, including Aboriginal people and people with disability
 - b. have clear terms of reference developed in consultation with children, young people and young adults with experience of out of home care
 - c. enable its members to participate in a safe and meaningful way and express their views on measures to empower children and young people in out of home care
 - d. meet regularly, be chaired by a person independent of the Department and be attended by a senior departmental leader
 - e. be adequately funded and resourced.

4.2.6 Aboriginal policy leadership

Aboriginal leadership in the Department is another key pillar in improving the quality of out of home care.

The organisational structure of the new Department does not include an area or role whose specific focus is the safety of Aboriginal children in the child protection, out of home care or youth justice systems. In our view, such a role is essential.

In Section 5, we discuss the growing over-representation of Aboriginal children in out of home care in Tasmania, which places them at increased risk of sexual abuse in this system. We also describe the Government's efforts to address over-representation. Significant reforms are required in Tasmania to reduce the number of Aboriginal children in out of home care and to protect Aboriginal children in care from sexual abuse. Effectively implementing the reforms we recommend in Section 5 will require carefully building relationships and partnerships with Aboriginal communities and establishing recognised Aboriginal organisations.

The Office of Aboriginal Affairs in the Department of Premier and Cabinet oversees and coordinates the Government's 'significant Aboriginal Affairs agenda', including Closing the Gap.¹¹⁹ While this presumably includes efforts to achieve Target 12 of the *National Agreement on Closing the Gap*—to reduce the over-representation of Aboriginal and Torres Strait Islander children in out of home care by 45 per cent by 2031¹²⁰—we consider that the significant work required to achieve this goal in Tasmania should be led by the department with portfolio responsibility for the child safety and out of home care systems.

In South Australia, the Department for Child Protection includes an Aboriginal Practice Directorate whose role is to ensure the department's practice and services are culturally safe and respond to the needs of Aboriginal children and young people, and their families and communities.¹²¹ The Director of Aboriginal Practice reports to the Deputy Chief Executive and is jointly responsible, with the Deputy Chief Executive, for implementing the department's annual Aboriginal action plans to improve child protection outcomes for Aboriginal children and families.¹²² As well as establishing the Aboriginal Practice Directorate, the department has appointed 10 'Principal Aboriginal Consultants' and an 'Aboriginal Lead Practitioner'.¹²³

We recommend establishing an Office of Aboriginal Policy and Practice in the Department for Education, Children and Young People. This office should be headed by an Executive Director for Aboriginal Children and Young People, who reports directly to the Secretary. They should work closely with the Office of Aboriginal Affairs in the Department of Premier and Cabinet. The Executive Director for Aboriginal Children and Young People should be an identified position.

The Executive Director for Aboriginal Children and Young People should be responsible for:

- overseeing and reporting on the implementation of Recommendation 9.15 (our recommendation for implementing the Aboriginal and Torres Strait Islander Child Placement Principle)
- facilitating departmental engagement and building partnerships with Aboriginal communities
- promoting and facilitating the approval of recognised Aboriginal organisations and their involvement in child safety decision making
- ensuring Aboriginal culture, views and interests are represented in the Department's activities
- promoting cultural safety for Aboriginal staff and Aboriginal children and families who encounter the Department
- increasing recruitment of Aboriginal staff in the Department
- implementing policies and procedures to ensure Aboriginal children in care are connected to culture, including through appropriate cultural support plans
- participating in the Quality and Risk Committee's monitoring of metrics concerning Aboriginal children in out of home care.

While this recommendation is driven specifically by our concern for the safety of Aboriginal children in out of home care and their exposure to the risks of sexual abuse while in care, it may also be appropriate for the role of Executive Director for Aboriginal Children and Young People to include responsibilities for Aboriginal children in youth

detention and in educational settings. As discussed in Chapter 10, Aboriginal children are grossly over-represented in youth detention in Tasmania and there is a need for specialised responses to Aboriginal children in custodial settings. The Executive Director for Aboriginal Children and Young People could also oversee the implementation of these responses. There may be further benefits for this role to have a holistic focus on Aboriginal children and young people's engagement with services across the Department for Education, Children and Young People.

We are mindful of potential overlap with existing roles. In particular, the Office of Safeguarding Children and Young People is responsible for implementing the recommendations of the Independent Education Inquiry.¹²⁴ In Chapter 6, we recommend that this office restrict its focus to schools; a significant task in itself. However, consistent with the principle of self-determination, Aboriginal communities should lead Aboriginal strategy and reform.

In our view, the Department needs a position whose focus is the safety and wellbeing of Aboriginal children in out of home care and that there would be benefit in including youth justice and education in this role. The growing over-representation of Aboriginal children in out of home care and the serious risks this poses to those children requires urgent, dedicated and sustained attention.

Recommendation 9.7

The Department for Education, Children and Young People should appoint an Executive Director for Aboriginal Children and Young People for the whole of the Department. The office holder should:

- a. report directly to the Secretary
- b. be supported by a sufficiently resourced Office of Aboriginal Policy and Practice
- c. oversee and report on the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (Recommendation 9.15)
- d. facilitate departmental engagement and build partnerships with Aboriginal communities
- e. promote and help establish recognised Aboriginal organisations (Recommendation 9.15)
- f. ensure Aboriginal culture, views and interests are represented in all departmental activities

- g. promote cultural safety for Aboriginal staff and Aboriginal children and families who come into contact with the Department
- h. increase recruitment of Aboriginal staff in the Department
- i. participate in the Quality and Risk Committee at least every six months in discussions about the number of Aboriginal children in out of home care, the proportion of Aboriginal children placed with Aboriginal carers, the proportion of Aboriginal children in out of home care with a cultural support plan, reunification rates for Aboriginal children and other key performance indicators to be agreed with the Quality and Risk Committee.

4.3 Strategic planning for out of home care

A key pillar of the out of home care system is having a strategic direction for out of home care, including a goal of increasing the safety and wellbeing of children. The Department does not have a strategic plan in place for out of home care.

4.3.1 The state of strategic planning

Since 2007, there have been three main strategic frameworks relevant to out of home care:

- 2007—*Out of Home Care Strategic Framework* (Department of Health and Human Services)¹²⁵
- 2014—*Out of Home Care Reform in Tasmania*, which outlined the Government’s reform agenda for providing out of home care services¹²⁶
- 2017—*Strategic Plan for Out of Home Care in Tasmania* (Department of Health and Human Services), which expired in 2019.¹²⁷

These strategic plans were responses to previous reviews and inquiries, but none were fully implemented. They included reforms that, if implemented, would likely have made a significant difference to the safety of children in care.

We examined the most recent *Strong Families Safe Kids: Next Steps Action Plan 2021–2023* to see what strategic direction it might provide specifically for out of home care.¹²⁸ We understand that the Department had previously directed considerable focus and resources to the original Strong Families, Safe Kids redesign, which had taken precedence over out of home care strategic reform.¹²⁹

The 2021–2023 action plan has a list of priorities for out of home care that appear reasonable, such as improving data collection and developing an out of home care therapeutic framework and standards. However, these priorities are not coordinated under a strategic framework nor directed towards a strategic goal.

The Government described many of the actions under the plan as dependent on the review of the Children, Young Persons and Their Families Act (which is in progress), the passing of the Child and Youth Safe Organisations Act, developing a Carer Register and adopting out of home care standards for Tasmania. The out of home care standards have since been released and the Child and Youth Safe Organisations Act has been passed. The Department was not expecting to complete other actions until 2024.¹³⁰

4.3.2 The need for a strategic plan for out of home care

We consider that out of home care is not prioritised enough in the current child protection reform agenda. Steps need to be taken to ensure the Department can continue to manage the Strong Families, Safe Kids redesign, as well as to develop and maintain a strategic plan for out of home care and good governance.

Our review of previous strategic plans and policy documents revealed a time when the Department had established systems of governance, quality improvement and oversight. However, over time, the Department lost its focus on embedding these important systems and they are no longer supported.

We recommend that the Department develops a strategic plan for out of home care by July 2024. The strategic plan needs to promote a range of goals and objectives essential to ensuring the safety and wellbeing of children in care. As set out in the recommendations below, these should include goals and objectives discussed in detail elsewhere in this chapter, including:

- completing the transition of out of home care services to the non-government sector (refer to Recommendation 9.2)
- developing and implementing an Aboriginal out of home care model in Tasmania (refer to Recommendation 9.15)
- a process for ongoing carer registration and monitoring (refer to Recommendation 9.20)
- adopting the national out of home care standards and the Child and Youth Safe Standards, and developing an outcomes and performance reporting framework for out of home care (refer to Recommendation 9.3 and Recommendation 9.9)
- a therapeutic model for out of home care (refer to Recommendation 9.18)
- a workforce capacity-building strategy (refer to Recommendation 9.10)
- a comprehensive series of up-to-date policies and procedures (refer to Recommendation 9.8).

Recommendation 9.8

1. The Department for Education, Children and Young People should develop a strategic plan for the out of home care system. The plan should include:
 - a. a vision for future models of out of home care in Tasmania
 - b. the transition plan and commissioning strategy for outsourcing the provision of out of home care to the non-government sector (Recommendation 9.2)
 - c. the empowerment and participation strategy for children and young people in out of home care (Recommendation 9.6)
 - d. implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (Recommendation 9.15)
 - e. a commitment to trauma-informed, therapeutic models of care (Recommendation 9.18)
 - f. a commitment to the National Standards for Out-of-Home Care and the Child and Youth Safe Standards
 - g. a workforce capacity building strategy (Recommendation 9.10)
 - h. developing a carer recruitment, support and retention strategy, in consultation with the non-government sector
 - i. a process for ongoing carer accreditation, registration and monitoring (Recommendation 9.20)
 - j. establishing the outcomes and performance reporting framework (Recommendation 9.9)
 - k. building quality assurance and improvement into all activities
 - l. an updated framework of policies for the safety and wellbeing of children in care, including updating key policies relating to
 - i. complaints handling
 - ii. harmful sexual behaviours
 - iii. mandatory education for staff in child sexual abuse
 - iv. care concern and critical incident reporting and management
 - v. child sexual exploitation
 - vi. how decisions can be appealed and reviewed

- vii. professional conduct
 - viii. implementing the Child and Youth Safe Standards.
2. All policy documents should be published on the Department's website.
 3. Each element of the strategic plan for the out of home care system should have a timeframe attached, with staggered implementation, and the plan should be fully implemented within five years.
 4. The Secretary's key performance indicators should require the implementation of the strategic plan for the out of home care system within allocated timeframes.

4.4 Clear policies and procedures

Clear policies and procedures are another key pillar of a well-functioning out of home care system. The National Royal Commission found that children are at increased risk of being sexually abused when the organisation responsible for their care lacks a clear commitment and statement of intent that is reinforced through policies and procedures that promote child welfare and safety.¹³¹ Consequently, the Child Safe Principles, now embedded in the Child and Youth Safe Organisations Act, recognise the importance of organisational policies and procedures in keeping children safe.¹³²

Our review of the Department's policy documents most relevant to out of home care identified several areas for improvement, which we discuss below. It is especially difficult for frontline staff, children in care and stakeholders engaged with the Department when policies are inaccessible, out of date or inconsistent, or do not address key areas of providing out of home care.

4.4.1 Lack of accessibility

We reviewed 46 of the Department's policy documents, which included protocols, guidelines, practice directions, fact sheets and flow charts.¹³³ Overall, we observed that, while most policy documents were available to departmental staff on the Department's intranet, most were not publicly available on the Department's website, nor did foster and kinship carers have access to them.¹³⁴

Similarly, children interviewed for our commissioned research into children's perceptions of safety often reported that they were not aware of their rights, what was expected of the adults who were responsible for their care or what safeguards were in place to ensure they were being protected from harm. They were more likely to identify people outside of the system to whom they would turn if they had concerns or had been harmed, indicating that they were unaware of the mechanisms through which they could disclose abuse or seek help.¹³⁵

The inaccessibility of policy documents in Tasmania is not in keeping with the practices of other Australian child protection jurisdictions. For example, full practice manuals are freely accessible on the Queensland, South Australian, Australian Capital Territory and Victorian departments' websites.¹³⁶

The Child Advocate told us that having policies and procedures publicly available online 'will go a long way in helping to demystify the service and considerably help people to navigate it'.¹³⁷ It would also provide greater understanding, accountability and oversight of the Department's actions.

4.4.2 Out of date and incomplete policies

Many policy documents on the Department's intranet are out of date, incomplete or missing. Consequently, even staff who had access to the online Practice Manual may not have located what they needed.

We heard that the Department prefers a more reflective approach to child safety practice that relies less on procedures and is guided more by principles.¹³⁸ While this approach may guide the decision making of Child Safety Officers, there are circumstances for which staff need specific policies and procedures to provide clear guidance and support best practice and ethical conduct in their work with children in out of home care. Where a principle-based approach is best practice, those principles and how they can be enacted should be outlined in policies and practice guidance.

Secretary Pervan acknowledged that key policies, such as those relating to care concerns for children in care, were out of date and confusing.¹³⁹ The Child Advocate said that the Department's leadership acknowledged there is 'ambiguity and conflict within procedural advice guiding practice' and indicated that progress on addressing this was interrupted by the redesign of the Department in 2021.¹⁴⁰

Of the 46 policy documents we reviewed, 10 were current (updated within the past two years) and another three had been updated since the National Royal Commission released its recommendations in 2017.¹⁴¹ Unfortunately, most policy documents we reviewed (the remaining 33) were undated or out of date.¹⁴² Many referred to structures and positions that no longer exist or contained links that no longer work.¹⁴³

4.4.3 Absent policies

Our review identified that the Department does not have a policy position in several key areas relevant to the safety of children in care. We list these key areas here, and explore each issue in more detail in later sections:

- harmful sexual behaviours (refer to Section 10.1)
- mandatory education for staff about child sexual abuse (refer to Section 4.6)

- how decisions can be reviewed or appealed by carers (refer to Section 12.4)
- professional conduct (refer to Section 6.4)¹⁴⁴
- child sexual exploitation (refer to Section 10.2)
- how the Child and Youth Safe Standards are implemented in the Department.

We also identified a lack of clear policy guidance on quality improvement and safety, and on the reporting framework. We discuss these in the following section.

The absence of policies relevant to these issues places children in care at greater risk of sexual abuse.

4.4.4 Our observations

Overall, the Department’s policy framework appears to have been neglected. The Department has reviewed some policies and procedures, but the progress of these reviews has been slow and, in some cases, may have been prompted by announcing our Commission of Inquiry.

Policies should be updated where they are out of date or no longer relevant, and developed where they do not exist. The Department’s policies should be publicly accessible and become the reference for service quality benchmarks against which the Department should report to the Government to improve the Department’s accountability and transparency. Publicly available policies and procedures will also enable those involved in the out of home care sector—children and young people, families of origin, carers, non-government providers and oversight bodies—to understand their rights and responsibilities, and what to expect from out of home care.

Above, we recommend that the Department’s out of home care strategy includes key policies and that these are published on the Department’s website.

The Tasmanian Government should enhance its financial and human resources investment in the Department to ensure appropriate policies and procedures can be put in place to protect children in out of home care.

4.5 Outcomes and performance reporting

A quality out of home care system needs strong quality assurance processes and monitoring against key performance measures. In Section 4.2, we recommend a Quality and Risk Committee. In this section, we discuss the need for outcomes and performance reporting.

The National Royal Commission found that the capacity to report on key performance indicators is important for protecting children from sexual abuse.¹⁴⁵ We are concerned about the Department’s capacity to do this.

The Department's annual report contains very little information about children in care, their wellbeing or the quality of care they receive.¹⁴⁶ On the Department's website, the 'Services for children youth and families data' ('data dashboard') contains slightly more information than the annual report, reporting seven indicators on a monthly basis: the number of contacts received by the Advice and Referral Line and how many the Line resolved; the number of notifications to the Advice and Referral Line referred to the Child Safety Service for investigation; the 'average daily cases pending child safety assessment' (defined as 'the average number [of] cases referred for a child safety assessment which had not been allocated a case worker within priority timeframes'); the number of children in out of home care; the number of children restored to families; and the number of children transferred to third-party guardianship.¹⁴⁷

Importantly, neither the Department's annual reports nor the data dashboard have information about performance measures that relate to the quality of care being provided, such as numbers and types of care concerns or complaints, or the number of children who have a current care plan.

In contrast to this level of reporting, the Department of Child Safety, Seniors and Disability Services in Queensland reports quarterly on multiple measures about its performance in out of home care, including allegations of harm for children in care.¹⁴⁸ The department also reports on, among other things, average Child Safety Officer caseloads, living arrangements of children on a child protection order by Aboriginal status and age, the percentage of Aboriginal children who have a cultural support plan, and the number of foster and kinship carer families by Aboriginal status.¹⁴⁹

Leanne McLean, the Commissioner for Children and Young People, raised similar concerns as we do about the Department's data. In her first monitoring report on out of home care in 2019, Commissioner McLean noted that the Department's quarterly reports to her were incomplete and advocated the need for improved data collection and reporting.¹⁵⁰ In her second report in 2023, she commented that she was determined to 'increase the transparency of the Tasmanian Out-of-Home Care system' by publishing the 'best available data'. However, she had been hampered in her reporting by 'lengthy delays' from the Department in releasing information to her, including previously unpublished data.¹⁵¹

We note that a previous departmental framework for monitoring the outcomes for out of home care (developed in 2018) did not progress because it was 'dependent on new data capture capability'.¹⁵² Improved data capture capabilities are necessary for the Department and external parties to properly monitor the wellbeing of children in care.

The Department should focus on monitoring outcomes for children in care that are relevant to increased risk and protection. To do so, the Department should develop a reporting framework that describes the safety and wellbeing of children in care (including all providers) as a key goal in its strategic plan (refer to Recommendation 9.8).

The national out of home care standards provide a starting point for this outcomes and performance reporting framework. They list 13 standards directed at improving the outcomes and experiences of children in care, including ensuring they are safe.¹⁵³ The standards correspond with many of the factors that protect children from sexual abuse in care, such as stable placements and safe connections with adults. Each standard has multiple reportable measures. Tasmania has been a signatory to these standards since their release in 2011. The Child and Youth Safe Standards should also be incorporated into the outcomes and performance reporting framework, which will become a requirement of funding agreements with non-government providers. We discuss funding agreements in Section 3.2.

Within the outcomes and performance reporting framework, the Department should require non-government out of home care providers to report any allegations or concerns about actual or risks of sexual abuse of a child in care, including grooming. The Department should record information about each instance, including the following:

- the source of risk or concern—for example, harmful sexual behaviours from another child, child sexual exploitation by an adult outside the care system, or child sexual abuse or related conduct by an adult within the care system
- the type of concern—for example, if actual abuse is alleged, exposure to situational risk or grooming behaviours
- the location of concern—in out of home care (including which type), in another institution, in the family or in the community
- action taken and outcomes.

To properly monitor the welfare of children in care, the Department should ensure providers report against a broad definition of sexual abuse including all forms, sources and signs of sexual abuse and precursor activities such as grooming, boundary breaches or absences from placement.

In establishing an outcomes and performance reporting framework, the Department should also develop the data capability to enable reporting against the framework, and routinely report against the framework.

Recommendation 9.9

The Department for Education, Children and Young People should:

- a. establish an outcomes and performance reporting framework against which it can measure the performance of the out of home care sector, including in relation to child safety
- b. develop the data capability to enable reporting against the framework
- c. routinely report against the framework.

4.6 A workforce strategy

Another key pillar of a quality out of home care system is a skilled and supported workforce.

4.6.1 A shortage of staff

The Department does not have enough staff to undertake its core functions. Ms Lovell advised that as of 19 July 2022, there were 42 per cent of Child Safety Officer positions vacant in the North, 70 per cent in the North West and 37 per cent in the South.¹⁵⁴

Ms Lovell said these positions were vacant for several reasons, including planned and unplanned leave and that some roles were ‘under recruitment’.¹⁵⁵ She said that COVID-related leave had exacerbated the vacancy situation, particularly in the North of the State, leaving many children without a Child Safety Officer.¹⁵⁶

Ms Lovell acknowledged that the Department is ‘experiencing a challenge’ in filling the roles, a problem that has ‘persisted for some time’ despite employing various strategies to attract staff. She thought perhaps Tasmania’s limited labour market with high competition for recruitment of skilled staff might be contributing to the problem.¹⁵⁷ As indicated above, the Child Advocate told us that the Department more broadly has only recently released human resources support to the Child Safety Service to improve recruitment and retention.¹⁵⁸

Ms Lovell told us that ‘inadequate workforce planning’ had also led to a structure with many senior positions and frontline staff being promoted quickly into more senior roles, increasing turnover in Child Safety Officer positions. This means that frontline positions are generally held by less experienced staff.¹⁵⁹

High staff turnover affects the safety of children. We heard that ‘many (if not all) children in the out of home care system in Tasmania will have multiple [Child Safety Officers] over the course of their time in care’.¹⁶⁰ A child in care will likely find it increasingly difficult to establish a trusting relationship with each new Child Safety Officer, thus removing a protective factor for that child.¹⁶¹ Indeed, several children in care interviewed for our

commissioned research said they did not have a case worker or didn't know who they were, and often could not identify someone in 'the system' who could support them if they had safety concerns.¹⁶²

We acknowledge that recruiting and retaining suitably skilled staff in child protection and out of home care is universally challenging for child protection services, and that the Department is undertaking planning for this.¹⁶³ A further challenge, as expressed by one out of home care provider, is that 'recruiting more case managers is unlikely to improve the situation unless there is also action to address the reasons for staff leaving and to improve staff retention'.¹⁶⁴

4.6.2 Staff wellbeing

We heard that many staff in the Child Safety Service feel they have been traumatised.¹⁶⁵ Reflecting on the work she undertook with the Department, Ms Enkelmann said:

I listened with great sadness to the harm experienced by children and young people in [out of home care], but also by carers and workers. People who wanted to care for these children sometimes ended up harmed themselves through burn out, vicarious trauma and overwhelming stress. There are too many good people – capable, hardworking and intelligent workers and carers – who have been harmed by the system in which they work or give their time. This harm continues. While I was prepared for frustration and anger by carers and workers, I was not prepared for the extent of trauma and harm inflicted by a system meant to prevent it.¹⁶⁶

In addition to the impact on staff from the nature of the work they do, other pressures on the Child Safety Service have likely contributed to some staff members' experiences of trauma or compounded its effects, including the following:

- Departmental systems and structures do not always support staff and in some cases cause them harm.¹⁶⁷ One systemic issue that appeared to be causing harm was the unrealistic caseloads that frontline staff have to manage.¹⁶⁸
- Staff had not been consulted about strategic decisions, which creates chaos and instability.¹⁶⁹ As a result, some staff feel disempowered to advocate on behalf of the children in their care.¹⁷⁰ As the Child Advocate stated 'children will be heard when staff are heard'.¹⁷¹
- Constant change and reprioritisation due to partial reform and 'leadership churn' has caused stress.¹⁷²
- Some staff have experienced harassment, including death threats, and feelings of being disrespected by other professions.¹⁷³

In her July–December 2021 biannual report to the Secretary, the Child Advocate drew on trauma theory to suggest that the Department is ‘highly dysregulated’ because it is a traumatised system.¹⁷⁴ The Child Advocate asked the question: ‘How do we [the Department] achieve stability for children, when the system itself is so unstable?’¹⁷⁵

The Community and Public Sector Union representing Child Safety Officers submitted to us that staff were leaving because of poor pay and unsustainable working conditions.¹⁷⁶ They reported one anonymous Child Safety Officer as saying:

We keep coming to work every day because we want the best for the kids but our own system works against us. We aren’t supported, we aren’t resourced, and we don’t have the processes we need to do good jobs. We are abused for the work we do, by other services as much as by clients, but we are powerless to improve the system. We aren’t heard or listened to either.¹⁷⁷

The union also said it ‘holds a growing concern that there is an increasing fear among workers about raising concerns’.¹⁷⁸

A former senior employee, Jack Davenport, described the Department’s response to the mental health problems experienced by his colleagues due to vicarious trauma and workload pressures as, at best, ‘passive and generally unresponsive’.¹⁷⁹ The union reported that Child Safety Officers would like ‘trauma safe workplaces; improved debriefing and leave after major incidents, better mental health support’.¹⁸⁰

Secretary Pervan told us that staff in the Department do not access their employee assistance service as much as needed, which is possibly the result of a culture of ‘stoicism’, whereby seeking help is viewed as not being able to do the job.¹⁸¹ Secretary Pervan also said ‘a lot more work needs to be done around ... supporting the workforce’s wellbeing, not just their professional capacity’.¹⁸² He spoke highly of the Department’s workplace health and safety team, who he said provide support to frontline workers, particularly when they take stress leave.¹⁸³ The main measure Secretary Pervan proposed to address stoicism was employing wellbeing officers who can ‘chip away at that culture’ over time.¹⁸⁴ He also referred to the role of Practice Managers to monitor staff wellbeing.¹⁸⁵

There are staff in the Department who experience work stress as well as direct and vicarious trauma; therefore, trauma is likely embedded in the culture of the organisation. We are concerned about the impact of staff wellbeing on decisions they make, how they relate to stakeholders and how they respond to risk, which in turn may affect their ability to ensure children in care are safe. It appears that the current measures to address wellbeing in the Department, while possibly useful, are not addressing wellbeing effectively at the individual or the system level.

4.6.3 A workforce strategy

While we acknowledge the Department's recent efforts to improve workforce planning, the Department needs to develop a workforce strategy for now and into the future to recruit and retain staff who case manage children in care. This workforce strategy should form part of its out of home care strategic plan as outlined in Recommendation 9.8. The workforce strategy should identify the reasons skilled staff choose not to work for the Department or choose to leave prematurely and address these reasons in a meaningful way to improve the Department's reputation as an employer of choice.

In developing the workforce strategy, the Government may wish to consider approaches adopted by other jurisdictions to attract and retain a specialist workforce in similar areas. It should work with its national counterparts to leverage national incentives to increase staffing levels, such as immigration policies and subsidised tertiary education fees.¹⁸⁶

Staff in the child and family welfare and out of home care sector move between the Department and other departments or non-government organisations. The Department's workforce strategy should take a whole of sector approach to generating long-term solutions to meeting the workforce needs of Tasmania's child and family welfare sector, while paying particular attention to the structural and systemic issues contributing to the view of the Department as an employer of choice.

If it is to improve the safety of children in care, the Department should include actions in its workforce strategy that explicitly address the wellbeing of the workforce. The measures the Department puts in place should be proportionate to what staff require to maintain their wellbeing and mitigate the risk of vicarious trauma.¹⁸⁷

Recommendation 9.10

The Department for Education, Children and Young People should develop a workforce strategy for the child and family welfare sector to pursue the following objectives:

- a. an increase in staff numbers and retention
- b. workplace conditions that make the sector a more attractive employer, particularly in the Department
- c. a reduction in unplanned staff vacancies, particularly in the Department
- d. promoting staff wellbeing, at the individual and system levels, including by addressing the causes and effects of trauma and vicarious trauma
- e. a workforce equipped with the knowledge and skills to respond effectively to the needs of children and families.

4.6.4 Child Safety Service staff minimum professional development

Ongoing professional development across out of home care services is critical to supporting quality of care for, and safeguarding of, children in care.¹⁸⁸

At the time of writing, the mandatory professional development requirements for departmental staff are limited to inducting a staff member into a role. During their induction period, Child Safety Officers complete 12 education modules within a specified timeframe. Most of these modules cover basic child protection practice, but there are no modules specific to identifying and responding to child sexual abuse.¹⁸⁹ The Department ‘encourages’, but does not require, that staff refresh their skills and knowledge of these core topics periodically.¹⁹⁰

The Department makes an extensive range of educational modules available to staff on an optional basis. These include modules on child sexual abuse and trauma-informed care, such as those on ‘Working with Children with Sexualised Behaviours’, ‘Responding to Child Sexual Exploitation’ and ‘Introduction to Keeping Children Safe – how to engage with Tasmania Police when responding to allegations of child sexual abuse’.¹⁹¹

This range of educational modules provides a solid basis for professional development, assuming that the quality of these modules is high. Such education should assist staff to act in ways that help protect children in care. However, many of these modules should be mandatory for all staff. Also, staff should be expected to engage in a minimum number of professional development hours or activities per year.

4.6.5 Carer development

Capable and skilled carers can decrease the risk of sexual abuse and improve the response when it does occur.

All foster carers (but not kinship or paid residential carers) undertake the ‘Shared Stories Shared Lives’ educational module.¹⁹² However, we were told there was no central record of the further education or professional development of carers.¹⁹³

The Foster and Kinship Care Association of Tasmania is funded to provide professional development modules to carers from all agencies, but each out of home care provider also organises education for its own carers.¹⁹⁴ Dr Backhouse, from the Foster and Kinship Carers Association, told us that this approach to ongoing education for carers is not coordinated and results in unnecessary duplication.¹⁹⁵

Some non-government out of home care providers spend a considerable amount each year on training their carers.¹⁹⁶ Former departmental employees told us that carers who are managed directly by the Department however, may not receive the level and breadth of ongoing education that non-government out of home care providers require of the carers they support.¹⁹⁷ These carers can only access the Foster and Kinship Carers Association sessions on an elective basis.¹⁹⁸ As a result, many carers may not engage in ongoing education.

Dr Backhouse expressed particular concern about this lack of ongoing education available to Department foster carers, who she said tended to be older carers who had been caring for children for a long time.¹⁹⁹

Children interviewed for our commissioned research were often sceptical about their carers' knowledge and skills, particularly in relation to understanding and managing their trauma. The consequences of this were significant for some, who reported that their carers used disciplinary practices that caused them harm and could not give them the care and empathy they needed; this often resulted in placement breakdown.²⁰⁰

We consider that all carers should be required to attend a minimum level of professional development.

4.6.6 Understanding child sexual abuse and trauma

All staff and carers in the out of home care system need to understand child sexual abuse and respond appropriately if it does occur.²⁰¹

We were told that specific knowledge of child sexual abuse, or experience working with children who have been sexually abused, were not requirements for the role of a Child Safety Officer. Neither was it mandatory to gain knowledge on the topic.²⁰²

During her time in the Victorian Department of Human Services, Dr Miller observed that Child Safety Officers often made mistakes when assessing the risk of sexual abuse because they lacked knowledge about the dynamics of sexual offending and how to gather information or evidence in relation to allegations.²⁰³ Former employees said they had observed Child Safety Officers face similar difficulties in the Tasmanian Department.²⁰⁴

Dr Miller identified the need to specifically educate out of home care workers about sexual abuse for children in care, which she included as a key component of MacKillop Family Services' 'Power to Kids' program.²⁰⁵ She said, as a result of that program, which sought to upskill workers to have 'brave conversations' with children in their care about sexual risks, workers could identify and intervene when they detect a sexual risk.²⁰⁶ Dr Miller told us that consequently, there have been fewer incidences of harmful sexual behaviours, child sexual exploitation and dating violence in MacKillop's residential care homes.²⁰⁷

For Tasmanian carers, the *Foster and Kinship Carers Handbook* has a short section on responding to children who disclose sexual abuse.²⁰⁸ However, Ms Enkelmann told us that there was no specific education routinely provided to carers on how to respond to disclosures of sexual abuse by children in their care.²⁰⁹ Dr Backhouse suggested that carers would benefit from more information about how to support children who disclose sexual abuse.²¹⁰

Understanding trauma is also essential to protecting children in care from sexual abuse and effectively responding when abuse happens. Other jurisdictions have adopted trauma-informed care models. For example, the Sanctuary Model is applied in MacKillop Family Services' residential care homes across Victoria and New South Wales. This model involves educating staff at all levels across the organisation in trauma and trauma-informed practice.²¹¹ We are aware of other models of this nature; for example, some Australian out of home care providers such as Life Without Barriers use the 'Children and Residential Experiences' model developed by Martha and Jack Holden of Cornell University.²¹²

While the Department offers several (mostly) elective professional development modules about trauma and trauma-informed therapeutic care, the Department's approach to trauma-informed care is not consistent.²¹³ We heard from Mary Dickins, a foster carer, that the Department's standard 'Shared Stories Shared Lives' sessions do not adequately prepare foster carers for the challenges of parenting a traumatised child, and that more guidance and support is needed.²¹⁴

4.6.7 Knowledge and skill development

All departmental staff, non-government staff and volunteers in out of home care services, and residential, foster and kinship carers, should receive mandatory education specifically about child sexual abuse. Moreover, because child sexual abuse often co-occurs with other forms of child maltreatment, this education should cover identifying and responding to child sexual abuse, including grooming, harmful sexual behaviours and child sexual exploitation. Carers should also have mandatory professional development on trauma and trauma-informed care. They should keep their knowledge current through regular, mandatory refresher sessions or continuing professional development.²¹⁵ Ensuring such education is mandatory signals to staff, carers and children in care that the Department values the welfare of children in care and will not tolerate sexual abuse in any form.²¹⁶

In our view, the Department in its role of overseeing the out of home care system, should determine the core knowledge and skills required for staff in non-government organisations providing carer assessment and support, as well as for residential, foster and kinship carers. It should also ensure non-government out of home care staff and carers have access to professional development in core knowledge and skills, recognising existing high-quality training available in Tasmania and developing or funding new training where required.

The Department will need to consider any systemic barriers to carers taking part in knowledge and skills development and consider options such as online modules, assistance with literacy difficulties or providing onsite childcare to support their participation. This will ensure a consistent high level of care is provided to

children in out of home care and reduce duplication of sessions offered between providers with associated cost efficiencies.²¹⁷

Professional development should also include the components of a trauma-informed therapeutic model of care for out of home care (refer to Recommendation 9.18). When establishing the Carer Register (refer to Recommendation 9.20), the Department should mandate that carers are trained in these key areas before gaining registration. The Department should ensure carers' skills and knowledge are refreshed periodically to maintain their registration. Professional development and registration processes for kinship carers should consider the different (and usually unplanned) pathway into caring for kinship carers.

The Department's overall aim should be to ensure mandatory education is delivered to as many people in the sector as possible in the most cost-effective way. Given the remote locations of some carers and staff, attention will need to be given to making professional development accessible. The Department may find it more cost-efficient to centralise some aspects of professional development across all its child-facing service areas but should ensure professional development is tailored to the specific contexts of each of the service areas.

Also, there will be core knowledge, such as in the areas of child sexual abuse and trauma, required for Child Safety Officers, residential carers and foster and kinship carers. However, the depth of knowledge and skills expected for each group will differ. Some staff and carers will need more advanced skills and knowledge than others. Therefore, it would be useful to include basic and advanced level modules, with all residential care staff, foster and kinships carers and volunteers completing at least basic education modules, with regular refresher or continuous professional development sessions. Consistent with the demands of their roles, Child Safety Officers will require a more advanced level of induction, continuous upskilling and professional development.

As discussed in Section 6.4, the Department should develop professional conduct policies that outline standards of behaviour for staff, volunteers and carers when interacting with and caring for children in care (refer to Recommendation 9.19). These policies should be specific to the nature and context of their role in caring for children. The Department should mandate regular professional development relevant to the professional conduct policy to reduce 'ethical drift' away from appropriate behaviour. The *Foster and Kinship Carers Handbook* will need updating to reflect the professional conduct policy and support carers to respond appropriately to the risk of sexual abuse in out of home care.

Recommendation 9.11

1. The Department for Education, Children and Young People should establish mandatory core knowledge requirements for Child Safety Officers, which include an understanding of:
 - a. child sexual abuse, including grooming, harmful sexual behaviours and child sexual exploitation
 - b. the effects of trauma, trauma-informed care and therapeutic responses to trauma
 - c. ethical and professional conduct.
2. The Department should ensure Child Safety Officers attain this knowledge during their induction period.
3. The Department should provide regular refresher training and continuous professional development opportunities to enable Child Safety Officers to continue to advance their knowledge and skills (advanced professional development).
4. In its role of overseeing the out of home care system, the Department should:
 - a. determine the core knowledge and skills required for staff in non-government organisations providing carer assessment and support, and for residential, foster and kinship carers
 - b. ensure non-government out of home care staff and carers have access to professional development in core knowledge and skills, recognising existing high-quality training available in Tasmania and developing or funding new training where required.

Recommendation 9.12

1. The Department for Education, Children and Young People should ensure the *Foster and Kinship Carers Handbook* is updated to include:
 - a. information applicable to all carer types
 - b. more information on child sexual abuse, including harmful sexual behaviours and child sexual exploitation
 - c. mandatory reporting requirements for carers
 - d. the professional conduct policy for foster and kinship carers.

2. The Department should:
 - a. make the Handbook available publicly on its website
 - b. ensure the Handbook is regularly updated in line with any relevant changes to policy.

4.6.8 Learning organisation

Dr Miller emphasised the importance of a 'learning culture' for teams to function effectively in out of home care:

Well-functioning and cohesive teams can be established and maintained through regular high quality supervision, reflective practice, a clear leadership presence in the residential care that supports / reinforces expectations and maintain an environment that acknowledges successes and learns from mistakes and critical incidents.²¹⁸

Caroline Brown, a veteran of child protection across several jurisdictions, told us that the Department would make better, more consistent decisions (and likely attract less criticism) if it adopted an 'open approach to learning and critical thinking, analysis [and] reflective practice'.²¹⁹ Mr Davenport similarly stated that in addition to developing and delivering professional development for staff, the out of home care system in Tasmania needs to become 'a learning culture' that is 'open and reflective'.²²⁰

Ms Taylor, from South Australia's Department of Child Protection, told us how her department has dedicated roles that integrate new lessons into strategy, reform, quality and practice, which all staff are told about during monthly professional development sessions.²²¹ Her department's lead practitioner has developed practice guidance papers based on emerging evidence or lessons from critical incident reviews.²²²

The Tasmanian Department should implement purposeful mechanisms and processes to support and encourage a learning culture internally. We have recommended an Office of the Chief Practitioner (refer to Recommendation 9.17) and a Quality and Risk Committee (refer to Recommendation 9.5) as two ways to support and encourage a learning culture internally. Other mechanisms may include practice reviews and the implementation of reflective practice in individual or group supervision (refer to Section 6.2).

A learning culture is also supported through external learning partnerships.

As one of the smallest Australian child protection jurisdictions, the Tasmanian Department may not have enough scale to always undertake its own research, which would require specialist research knowledge and skills. The Department could look to child protection agencies in other jurisdictions that have developed learning partnerships to reflect on strengths and limitations in their practice and to support the development of best practice policy and practice guidance.

In the South Australian context, for instance, the Department for Child Protection has developed strategic partnerships with universities.²²³ Ms Taylor also told us how important it was for the Department to ‘use the knowledge and skills from other jurisdictions’ and that ‘[t]here is a great strength in the child protection network nationally’.²²⁴ The University of South Australia had also partnered with the Western Australian Department of Communities and the Australian Centre for Child Protection to develop a framework around harmful sexual behaviours among children and young people, and to provide workforce development in trauma and harmful sexual behaviours.²²⁵ This type of partnering was a cost-efficient approach for a small jurisdiction.

A learning organisation also takes a continuous approach to professional development to support the workforce to advance their knowledge and skills and keep up to date with evolving evidence over the life of their careers. Micro-credentialling, which certifies the learning of a defined set of skills, knowledge and attributes through short courses, is growing quickly in higher education as a way for people to ‘rapidly upskill and encourage lifelong learning’.²²⁶ Such an approach incentivises learning, and staff feel valued by the investment in their ongoing development. In partnering with a centre of learning in the field of child protection and out of home care, the Department should take the opportunity to develop a micro-credentialling pathway to incentivise staff to stay in the child and family welfare sector as a vocation and ensure they have up-to-date evidence-based knowledge and skills.²²⁷

The Department should prioritise the development of links with other jurisdictions and child protection and out of home care research specialists to ensure departmental staff are aware of, and able to implement, contemporary, evidence-based approaches to keeping children safe in care.

Recommendation 9.13

The Department for Education, Children and Young People should ensure staff have access to the latest out of home care practice knowledge by becoming a learning organisation, including by:

- a. implementing purposeful means for critical reflection and internal review
- b. establishing strategic partnerships with specialist out of home care, child maltreatment and child protection researchers
- c. engaging in cross-jurisdictional partnerships where there are opportunities for shared learning
- d. developing opportunities for formal recognition of ongoing learning for staff through these partnerships, such as via micro-credentialling pathways.

5 Keeping Aboriginal children safe and connected to culture

The over-representation of Aboriginal children in out of home care exposes them to the risks of experiencing sexual abuse in care at a substantially higher rate than non-Aboriginal children.

There are several other factors that place Aboriginal children at increased risk of sexual abuse in Tasmanian out of home care. These include the limited involvement of Aboriginal communities and organisations in decision making about Aboriginal children in care, inappropriate out of home care placements for Aboriginal children, and a lack of cultural support and connection for Aboriginal children in care.

As indicated above, the 2020 *National Agreement on Closing the Gap* ('Closing the Gap') aims to reduce the rate of over-representation of Aboriginal children in out of home care by 45 per cent by 2031 (Target 12).²²⁸ The *Aboriginal and Torres Strait Islander First Action Plan 2023-2026* and *Closing the Gap* identify the Aboriginal and Torres Strait Islander Child Placement Principle ('Placement Principle') as a key indicator for measuring progress towards achieving Target 12.²²⁹ Despite its name suggesting that it focuses solely on the 'placement' of Aboriginal children, the Placement Principle has five elements:

- prevention
- partnership
- placement
- participation
- connection.²³⁰

Full implementation of the Placement Principle is critical to reducing Aboriginal over-representation in Tasmanian out of home care, improving responses to Aboriginal children in care and protecting them against the risk of child sexual abuse.

This section:

- explains our approach to the question of Aboriginal status in Tasmania
- briefly describes the drivers of Aboriginal over-representation in Tasmanian out of home care
- examines the Tasmanian Government's recent efforts to address over-representation in out of home care and the extent to which it has embedded the Placement Principle in legislation, policy and practice
- makes recommendations for fully implementing the Placement Principle in Tasmania.

5.1 Identifying Aboriginality

Not all Aboriginal children who come into care have their Aboriginal status identified, as was the case for Hudson (a pseudonym) in the case example in Chapter 8.²³¹ Not only did Hudson's carer tell us Hudson experienced sexual abuse while in care, but they also said Hudson was denied the opportunity to get involved in community and for cultural support that may have assisted their healing.

In almost every meeting we had with Aboriginal communities, participants raised concerns about how Aboriginal status is determined in Tasmania and who is responsible for determining it. This issue was also raised by Heather Sculthorpe, Chief Executive Officer, Tasmanian Aboriginal Centre, in her evidence.²³² We heard differing views about this issue, many of which were also reflected in the 2021 *Pathway to Truth-Telling and Treaty* report.²³³ We agree that it must be for Aboriginal people to decide who is and who is not Aboriginal in Tasmania. It is beyond the scope of our Inquiry to make recommendations on this issue. However, it is within our terms of reference to address the increased risk of sexual abuse that Aboriginal children face in Tasmanian out of home care due to their over-representation in that system. To address this risk, the out of home care system must ensure Aboriginal children stay connected to their Aboriginal community and culture. Therefore, it is important to make two points.

First, in this section we refer to 'Aboriginal children in out of home care in Tasmania', rather than 'Tasmanian Aboriginal children in out of home care'. We have adopted this terminology because our recommendations are aimed at ensuring all Aboriginal children in out of home care in Tasmania, not only those recognised as having Tasmanian Aboriginal ancestry, are responded to in keeping with the Placement Principle and receive the benefit of services that Aboriginal organisations provide.

Second, it is crucial that the Aboriginal status of children in contact with the Child Safety Service be sensitively ascertained and accurately recorded as early as possible. Services for Children and Families staff are required to determine a client's Aboriginal status every time the client 'commence[s] an involvement with' the service.²³⁴ Until recently, it seems that Aboriginal status has not always been consistently identified or accurately recorded.²³⁵ However, in his statement, Secretary Pervan indicated that the Department was '[i]mproving collection and completion of Aboriginal status for children at the Advice and Referral Line and Child Safety Service'.²³⁶ The Commissioner for Children and Young People confirmed that the Department had advanced significantly in this regard. In the time between her first and second monitoring reports on out of home care in Tasmania in 2019 and 2023, the proportion of children in care with an 'unknown' Aboriginal or Torres Strait Islander status had fallen from 30 per cent to 1 per cent.²³⁷

5.2 Drivers of Aboriginal over-representation in out of home care

The rate of over-representation of Aboriginal children in Tasmanian out of home care has steadily increased since 2017.²³⁸ This is an alarming trend that is not unique to Tasmania.

The 2022 *Family Matters* report identifies structural factors and service inadequacies that contribute to Aboriginal families encountering child protection systems and Aboriginal children entering out of home care at high rates.²³⁹ These include:

- systemic racism in the child protection and other service systems²⁴⁰
- individual and collective experiences of trauma (including intergenerational trauma) resulting from colonisation²⁴¹
- poverty and socioeconomic disadvantage stemming from colonisation²⁴²
- exposure to family violence²⁴³
- parental drug and alcohol misuse²⁴⁴
- mental health issues, including risks to children’s mental health resulting from involvement with the child protection and out of home care systems²⁴⁵
- poor access to safe, affordable and quality housing²⁴⁶
- inadequate government investment in Aboriginal-led and culturally appropriate family support services.²⁴⁷

We heard evidence indicating that many of these factors are present in Tasmania.²⁴⁸ In particular, we heard that systemic or institutional racism is a problem in the child safety system. According to Ms Sculthorpe:

... every level of the child safety system has reinforced stereotypes about Aboriginal families, especially those families with previous experience of the child welfare and child protection systems ... In some cases the community nature of child rearing has been misinterpreted as parental neglect of children ... There has been a failure of child welfare authorities to recognise the strengths of Aboriginal family and community rather than concentrating solely on deficits.²⁴⁹

Several participants at our consultations with Aboriginal communities referred to the racism Aboriginal people continue to experience at the hands of government systems.²⁵⁰ In relation to the child safety system, one community member said:

I want to know why they look at Aboriginal people so harshly, why they judge us differently to everyone else. We’re probably the most caring people in the world.²⁵¹

Some participants referred to their lack of trust in the child protection and out of home care systems, indicating that Aboriginal children were removed from their families far too readily.²⁵²

Elders told us about the ongoing effects of intergenerational trauma on Aboriginal communities, including its adverse effects on the parenting skills of Aboriginal people, and the lack of support to address such trauma.²⁵³ One participant told us:

The internal and external bruises that come from being in foster care last for generations.²⁵⁴

The 1997 *Bringing Them Home* report highlighted the intergenerational effects of child removal and the ‘direct association’ between being removed as a child and later having a child removed.²⁵⁵ More recently, research published in 2017 about the intergenerational links in the child protection system in New South Wales found that 60 per cent of Aboriginal children and young people in out of home care in 2014–15 had a parent who was known to the child protection system compared with 43 per cent of non-Aboriginal children and young people who were in out of home care in 2014–15.²⁵⁶

Participants in our community consultations also referred to the lack of safe and affordable housing for Aboriginal families and the absence of culturally safe support services—in particular, mental health and drug and alcohol services and support for family violence.²⁵⁷ Several participants identified the need for improved mental health services for Aboriginal people, particularly children.²⁵⁸

All these factors are complex and interrelated. For the purposes of our Inquiry, they can be usefully considered through the lens of the Placement Principle.

5.3 Tasmania’s efforts to implement the Placement Principle

In 2017, the National Royal Commission recommended that state and territory governments develop and execute plans to fully implement the Placement Principle.²⁵⁹ The Tasmanian Government accepted this recommendation in principle.²⁶⁰

SNAICC - National Voice for Our Children ('SNAICC') undertakes an annual review of the progress of states and territories in implementing the Placement Principle. In its most recent review of Tasmania’s progress, completed in 2021, SNAICC found limited implementation of the Placement Principle in Tasmania:

Limited mechanisms to ensure Aboriginal participation in policy reform, decision-making, system and service design, or delivery has resulted in a child safety system that does not always meet the needs of Aboriginal children, their families, and communities.²⁶¹

The *Family Matters Report 2022* identified that Tasmania spends only 0.79 per cent of its total child protection expenditure on Aboriginal community organisations, by far the lowest of all Australian states.²⁶² Since then, the Government has made other commitments to fully implement the Placement Principle.²⁶³ Most recently, the Tasmanian Government became a signatory to the *Aboriginal and Torres Strait Islander First Action*

Plan 2023-2026 under Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031, which was released on 31 January 2023.²⁶⁴ 'Action 5-Active Efforts' commits the Government to:

... implementing all 5 elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP), and improving the accountability of all governments and sectors in reducing the over-representation of Aboriginal and Torres Strait Islander children and young people in child protection systems.²⁶⁵

5.3.1 Prevention

According to the 'prevention' element of the Placement Principle, each Aboriginal child 'has the right to be brought up within their own family and community'.²⁶⁶ This requires that Aboriginal families have equal access to high-quality and culturally safe social supports, including targeted and intensive supports to address issues in family functioning and parental issues such as trauma, mental ill-health and family violence, as well as adequate housing.²⁶⁷ It also requires governments to address institutional racism in child protection systems and other structural drivers of Aboriginal over-representation in out of home care.²⁶⁸

It is beyond the scope of our Inquiry to undertake a comprehensive assessment of prevention and early intervention services available to Aboriginal families that contribute to preventing or limiting the entry of Aboriginal children into out of home care.

However, we note that the Tasmanian Government funds the Tasmanian Aboriginal Centre to provide intensive family engagement services to Aboriginal families whose children are at risk of being removed. Funding for this program is allocated on a per-family basis, described as a 'best practice funding model' that recognises the high level of support required for some families.²⁶⁹ Packages enable the Tasmanian Aboriginal Centre to develop tailored plans that focus on the physical, mental, social and cultural health and wellbeing of the entire family.²⁷⁰ An evaluation of the Intensive Family Engagement Services program, undertaken in 2019, showed that almost 70 per cent of families that completed the program continued to care for their children.²⁷¹ This is a positive prevention measure.

SNAICC has suggested that the funding for family support and intensive family support in Tasmania be increased as a proportion of spending on child protection services.²⁷² Also, the Tasmanian Aboriginal Centre's services are limited to Aboriginal children and families with Tasmanian Aboriginal ancestry as recognised by the centre.

We also note that, since 2020, three Aboriginal Liaison Officers have been appointed to the Department's Advice and Referral Line. These positions are located within Aboriginal organisations in each Tasmanian region. The Aboriginal Liaison Officer's role is to provide culturally focused advice and assistance to Aboriginal families. This may include referring families to Intensive Family Engagement Services, youth support or

other Aboriginal support services.²⁷³ The appointment of Aboriginal Liaison Officers is a positive prevention initiative. However, a Tasmanian Auditor-General report published in June 2022 found that the Aboriginal Liaison Officer roles ‘have wide coverage and limited capacity and are not resourced to deliver fully all aspects of their role’.²⁷⁴

The 2021 *Family Matters* report recommended that states and territories increase investment in universal and targeted early intervention and prevention services for Aboriginal families, including family support and reunification services, at a rate equivalent to the representation of Aboriginal children in child protection.²⁷⁵

While Secretary Pervan indicated that the Department delivers education and resourcing to staff ‘to develop cultural competency and culturally safe practice’, we understand it is not mandatory.²⁷⁶

The Tasmanian Government has committed to establishing ‘a range of initiatives to directly address and eliminate racism within and across the State Service’ as part of implementing Closing the Gap.²⁷⁷ This should include measures to address institutional racism in the Child Safety Service that may be contributing to the over-representation of Aboriginal children in the out of home care system.

5.3.2 Partnership

The ‘partnership’ element of the Placement Principle focuses on self-determination—the right of Aboriginal communities to exercise autonomy in their own affairs.²⁷⁸ Self-determination involves more than consultation and participation; it requires that decision-making authority is transferred from governments to Aboriginal communities.²⁷⁹

In relation to the child safety and out of home care systems, the transfer of decision-making authority from government to Aboriginal organisations could take different forms. For example, Aboriginal organisations could be authorised or delegated to:

- case manage Aboriginal children on care and protection orders
- assume the role of statutory guardian of Aboriginal children who would otherwise be under the guardianship of the Secretary
- undertake investigations where a notification is made about an Aboriginal child, and be primarily responsible for decisions about that child
- receive notifications about Aboriginal children.

In 2014, the Tasmanian Aboriginal Centre published *luwutina mana-mapali krakani waranta – Keeping Our Children With Us*. In preparing the report, the centre undertook extensive consultation with Aboriginal people and made 10 recommendations to improve the Tasmanian child protection system for Aboriginal children. The first, and principal, recommendation was:

That the Tasmanian Government accept the wish of the Aboriginal community in Tasmania for the transfer of jurisdiction over child welfare and child protection to the Aboriginal community.²⁸⁰

This recommendation would appear to involve a complete transfer of all child safety decision-making authority and powers under the Children, Young Persons and Their Families Act, including the powers exercised by the Children’s Court in relation to making care and protection orders. The report did not specify how equivalent decisions would be made after such a transfer of jurisdiction—for example, where a child needed to be removed from their family, but the family did not agree with this decision. However, the report recommended that the Act be amended to enable Aboriginal people ‘to opt to have their matters dealt with under Aboriginal jurisdiction rather than under the Tasmanian legislation’, suggesting that Aboriginal jurisdiction would not be exercised under the Act.²⁸¹

Such a transfer of jurisdiction would enable full self-determination for Aboriginal communities for decisions about the care and protection of Aboriginal children. No Australian jurisdiction has yet effected such a large-scale transfer of authority to Aboriginal communities.

However, two jurisdictions—Victoria and Queensland—have taken ‘essential first steps’ towards implementing legislative, policy and practice changes to authorise Aboriginal organisations to make certain child protection decisions about Aboriginal children.²⁸²

In Victoria, the legislative framework allows the principal officer of an Aboriginal agency to ‘perform specified functions and exercise specified powers conferred on the Secretary ... in relation to a protection order’ in respect of an Aboriginal child, or a non-Aboriginal child who is a sibling of an Aboriginal child subject to a relevant authorisation.²⁸³ The Victorian Government has also made significant investment to transfer case management of Aboriginal children in out of home care from the Department of Families, Fairness and Housing and non-Aboriginal service providers to Aboriginal community-controlled organisations.²⁸⁴ As an example of this model, Professor Muriel Bamblett, Chief Executive Officer, Victorian Aboriginal Child Care Agency, told us that she has statutory guardianship of just over 100 Aboriginal children on certain child protection orders, and her organisation provides a number of forms of case management and support for those children.²⁸⁵ She reported achieving a higher rate of reunification of Aboriginal children with their families—between 22 and 25 per cent—compared with the Victorian Department’s reunification rate of between 12 and 15 per cent for Aboriginal children.²⁸⁶ The Victorian Aboriginal Child Care Agency is involved in the next step—a trial of Aboriginal-led child protection investigations.²⁸⁷

In Queensland, the *Child Protection Act 1999* (Qld) (‘Queensland Child Protection Act’) was similarly amended in 2017–18 to establish a framework for delegating the functions or powers of the Chief Executive of the Department of Children, Youth

Justice and Multicultural Affairs in relation to an Aboriginal child who needs protection or is likely to need protection.²⁸⁸ These functions or powers may be delegated to an Aboriginal person who is the Chief Executive Officer of an ‘appropriate Aboriginal or Torres Strait Islander entity’, and who is ‘suitable’ and ‘appropriately qualified’ to perform the delegated function or exercise the delegated power in relation to the child.²⁸⁹

In 2021–22, the Queensland Government partnered with two Aboriginal community-controlled organisations and the Queensland Aboriginal and Torres Strait Islander Child Protection Peak to implement delegated authority for 40 children.²⁹⁰

In Tasmania, section 10G of the Children, Young Persons and Their Families Act provides that Aboriginal families, kinship groups, communities and organisations ‘have a major, self-determining role in promoting the wellbeing of Aboriginal children’ and that a kinship group, Aboriginal community or Aboriginal organisation nominated by the child’s family should ‘be allowed to contribute to the making of a decision under this Act in relation to the child’.²⁹¹ Similarly, the Child Safety Service practice advice states that the Aboriginal community ‘must have a say about Aboriginal children’.²⁹²

Despite these legislative and policy requirements, we heard that the Department’s involvement of Aboriginal organisations in decision making about Aboriginal children was inconsistent. Ms Sculthorpe told us that the Department has:

- not always been willing to work with the Tasmanian Aboriginal Centre to identify placement options for Aboriginal children
- allowed non-Aboriginal non-government organisations to provide services to Aboriginal children in out of home care without consultation with the Aboriginal community
- on occasion failed to notify the Tasmanian Aboriginal Centre when Aboriginal children in out of home care have been moved to different placements, with some children ‘lost to the community’ for a period
- ignored warnings from Tasmanian Aboriginal Centre staff of suspected sexual abuse or neglect by foster carers and, where those suspicions had been confirmed, failed to explain departmental decision-making processes.²⁹³

Aboriginal community members told us that partnerships between the Department and Aboriginal organisations can work well, but they depend on the personalities of the people involved.²⁹⁴ They told us that the Child Safety Service does not listen enough to Aboriginal families, particularly in relation to culture, and does not understand the ways in which Aboriginal communities raise their children.²⁹⁵

Participants told us that self-determination in the child safety system was critical: ‘We need our own Aboriginal people involved with a system to handle our Aboriginal children’.²⁹⁶

The notions of ‘promoting wellbeing’, ‘being allowed to contribute’ and ‘having a say’ are inadequate expressions of Aboriginal self-determination in decisions about the care and protection of Aboriginal children. Structures should be in place to support Aboriginal self-determination in child safety decision making as committed to under the *Aboriginal and Torres Strait Islander First Action Plan 2023-2026*.²⁹⁷

As part of its implementation plan to reduce the over-representation of Aboriginal children in out of home care, the Government has committed to work with Aboriginal community-controlled organisations:

- to build their capacity to take on increased roles and responsibilities in the care and protection of Aboriginal children and to promote Aboriginal self-determination
- in relation to all planning and decision making for Aboriginal children in the child protection system
- to develop Aboriginal programs to deliver services to support Aboriginal children in the child protection system.²⁹⁸

Secretary Pervan indicated that the Tasmanian Government is making \$5.3 million in funding available through the Closing the Gap Capacity Building Funding Program, which aims to build the capacity of Aboriginal organisations to co-design and deliver programs and services for Aboriginal people.²⁹⁹

These commitments are positive because they broadly focus on increasing Aboriginal self-determination for child safety. However, they lack detail, timeframes and allocated funding (apart from funding for capacity building). We did not see any specific evidence of progress on these actions.

The ad hoc approach to involving Aboriginal organisations in child safety decision making does not serve the interests of Aboriginal children in, or at risk of entering, the out of home care system. Self-determination requires that Aboriginal organisations be empowered to make decisions about the care and protection of Aboriginal children. There are different ways to achieve this.

Experience from jurisdictions where the transfer of decision-making authority has begun needs to be carefully considered. These processes require significant, long-term government investment, partnership and support.

In considering examples from other jurisdictions, we were also mindful of:

- the need to design an appropriate model or models for Tasmanian contexts
- the possibility of developing different models for different Aboriginal communities depending on the size, capacity and desire of specific Aboriginal organisations or groups to take on specific roles (refer to discussion under ‘Participation’)

- the need to ensure Aboriginal communities and organisations are fully resourced and their workforces fully supported to take on decision-making authority, in whatever form it is transferred
- the need for Aboriginal communities and organisations to be invested in and supported to enable them to perform functions transferred to them.

5.3.3 Placement

The ‘placement’ element of the Placement Principle requires that Aboriginal children who are removed from their families be placed according to the following hierarchy:

- Aboriginal relatives or extended family members, or other relatives or extended family members
- Aboriginal members of the child’s community
- Aboriginal family-based carers.³⁰⁰

If none of these options is available, as a last resort the child may be placed with a non-Aboriginal carer or in a residential setting.³⁰¹ If the child is not placed with their extended Aboriginal family, the placement must be geographically close to the child’s family.³⁰²

Best practice requires child safety decision-makers to:

- exhaust all possible options at one level of the hierarchy before considering a lower-level placement
- consult with the child’s family and community representatives to ensure all possible higher-level placement options have been considered.³⁰³

Section 10G of the Children, Young Persons and Their Families Act prioritises placement of an Aboriginal child, as far as practicable, with ‘a member of the child’s family’.³⁰⁴ If this is not possible, then the child should be placed with an Aboriginal person in the child’s community ‘in accordance with local community practice’ or with another Aboriginal person.³⁰⁵ Last, is placement with a non-Aboriginal person who ‘in the Secretary’s opinion, is sensitive to the child’s needs and capable of promoting the child’s ongoing affiliation with the culture of the child’s community and, if possible, the child’s ongoing contact with his or her family’.³⁰⁶

The Act provides that, ‘[a]s far as is practicable, an Aboriginal child removed from his or her family and community, should be placed in close proximity to them’.³⁰⁷

In referring to ‘a member of the child’s family’, which includes extended family (which, in turn, is broadly defined), the Act does not privilege Aboriginal members of the family over non-Aboriginal family members.³⁰⁸

Despite statutory requirements, Aboriginal children are placed with Aboriginal carers at a very low rate in Tasmania. According to the Australian Institute of Health and Welfare, of Aboriginal children in out of home care in Tasmania on 30 June 2021:

- 10.7 per cent were living with Aboriginal relatives or kin—this is by far the lowest rate in Australia
- 5 per cent were living with an Aboriginal caregiver who is not a relative or kin
- 32.3 per cent were living with non-Aboriginal relatives or kin
- most (52.1 per cent) were living with non-Aboriginal carers who are not relatives or kin, in residential care or in another arrangement.³⁰⁹

This data is subject to the following caveats:

- The high number of carers whose Aboriginal status is unknown in Tasmania may affect the identification of children placed with Aboriginal caregivers.
- The data excludes children not under care and protection orders who are placed with relatives where a financial payment was offered but declined by the carer.³¹⁰

Secretary Pervan told us that the Department was working to improve the ‘collection and completion of Aboriginal status of carers’.³¹¹ We emphasise that identifying a carer’s Aboriginal status is important to support the placement of Aboriginal children with Aboriginal carers.

Tasmania has been criticised for an absence of programs aimed at identifying, recruiting and supporting Aboriginal kinship carers.³¹² According to SNAICC, without progress to prioritise placement with kin or other Aboriginal carers, the number and rate of children placed in out of home care in Tasmania in keeping with the Placement Principle is likely to remain the lowest in Australia.³¹³

Participants in our consultations with Aboriginal communities told us that Aboriginal carers want to look after Aboriginal children, but they did not always receive the support they needed to do so.³¹⁴ Many participants referred to the need for a safe place, run by Aboriginal people, for Aboriginal children who cannot remain at home:

A place where the families and children can be, a safe place, and there you work with the parents, without the welfare coming and saying they are taking the children.³¹⁵

There were different views about the preferred features of such a place. Suggestions included the following:

- it should be on Country, for cultural connection and safety³¹⁶
- it should be staffed by Aboriginal carers³¹⁷

- Elders should play a key role in supporting young people there³¹⁸
- it should focus on healing and include in-house services such as a nurse and a visiting general practitioner³¹⁹
- families should be able to visit their children there, and staff should be able to work with the parents and families to reconnect them with their children and culture³²⁰
- it could be a place where Aboriginal children return when they need assistance again or to reconnect with culture³²¹
- their design should be flexible because what works in one part of Tasmania might not work in another and should be able to accept all Aboriginal children.³²²

Following an investigation in 2020 into Tasmanian children taking part in the Many Colours One Direction program in the Northern Territory, the Tasmanian Government commissioned an expert panel to provide advice on setting up a Tasmanian-based residential program for children in out of home care with highly complex needs.

The expert panel observed the following:

- effective therapeutic supports within out of home care placements are ‘essential to ensuring sustainability of placements’
- maintaining connections with family and kin, where possible, is a primary influencer of stability in an out of home care placement, and ‘more could be done’ in the Tasmanian system to prioritise the importance of relationships to promote placement stability
- additional placement options and new programs that support cultural connection and the concept of being ‘On Country’ should be introduced to enhance offerings in the out of home care system.³²³

The expert panel recommended that the Tasmanian Government funds new therapeutic programs that incorporate the positive elements of the Many Colours One Direction program, including individualised assessment, care arrangements, education and prosocial activities.³²⁴ Such programs should:

- enable cultural connection
- include respite and mentoring
- include short to medium-term residential placement options
- embed flexible education models linked to the Australian Curriculum and vocational pathways for young people for whom mainstream educational settings are not productive

- be delivered by multiple entities and in a range of locations to avoid the stigmatisation of children and young people who access the program, as well as their families and communities and the organisation and the people who deliver them.³²⁵

While the expert panel did not recommend setting up such a program specifically for Aboriginal children, it recommended that the Government invests in ‘genuine partnerships with the Aboriginal community’ to support self-determination and build capacity towards Aboriginal organisations providing out of home care.³²⁶ The Tasmanian Government accepted the recommendations of the expert panel, and Secretary Bullard advised us that the panel is considering proposals that have been submitted for a ‘Wellbeing, Care and Recovery Placement Program’.³²⁷

We see considerable benefit in developing local, Aboriginal-led, trauma-informed residential programs for Aboriginal children in out of home care for whom an appropriate family-based placement with an Aboriginal carer cannot be found. Such programs must be designed in partnership with local Aboriginal communities and young people and be embedded in culture. They should ideally be on Country and incorporate culturally safe mental health, drug and alcohol and general health supports, as well as cultural, mentoring and education programs. They must be run by child-safe organisations. They should not be seen as a substitute for strategies and support to increase recruitment and retention of Aboriginal kinship and foster carers.

5.3.4 Participation

Aboriginal children, parents and family members must be able to participate in all child protection decisions affecting them, including placement decisions.³²⁸ According to the national 2021 *Family Matters* report, this requires practices such as Aboriginal family-led decision making and ‘respect and acknowledgment of cultural authority and traditional child-rearing practices’.³²⁹

The ‘participation’ element is reflected in Standard 3 of the national out of home care standards, which requires that Aboriginal communities ‘participate in decisions concerning the care and placement of their children and young people’.³³⁰

Queensland and Western Australia have statutory frameworks for Aboriginal children and families taking part in child safety decision-making processes. The Queensland Child Protection Act has a framework for an ‘independent Aboriginal or Torres Strait Islander entity’ (‘independent person’) to be involved in decision making about an Aboriginal child.³³¹ The independent person’s role may also include:

- supporting the child and family during meetings with the Child Safety Service
- helping the family to share cultural information relevant to decision making for the child

- providing contextual information about Aboriginal tradition, the family group and their community
- supporting the child's and family's input
- helping the Child Safety Service understand this information.³³²

In Western Australia, amendments to the *Children and Community Services Act 2004* (WA) (made in 2021 but yet to begin operation) require the Chief Executive Officer of the Department of Communities to consult with Aboriginal family and community members before making a placement arrangement for an Aboriginal child.³³³ This approach is being piloted in two locations in Western Australia.³³⁴ In Tasmania, the *Children, Young Persons and Their Families Act* has a statutory framework for family group conferencing.³³⁵ Where a family group conference is convened for an Aboriginal child, the Act requires the facilitator of the conference to consult with an appropriate 'recognised Aboriginal organisation' about who should be invited to attend the conference.³³⁶ While the facilitator may invite a person nominated by a recognised Aboriginal organisation to the conference, there is no obligation to do so.³³⁷

According to SNAICC this legislative framework falls short of the necessary criteria to effectively implement the 'participation' element of the Placement Principle, particularly given there is no framework for Aboriginal family-led decision making in Tasmania.

We note that departmental practice advice for care teams and care planning states that, if a child identifies as Aboriginal, it is important that 'a representative from their culture and community' is included in the care team, but the Department cannot say how often this occurs due to data system limitations.³³⁸

Secretary Bullard advised us of the new 'Child Safe and Supported Policy Partnership Working Group', formed in January 2022 and involving the Tasmanian Aboriginal Centre and Services for Children and Families.³³⁹ Secretary Bullard said:

The aim of the working group is to give Aboriginal families and communities the opportunity and empowerment to lead in a culturally appropriate manner and to make decisions in relation to their particular circumstances.³⁴⁰

We welcome any progress that the Tasmanian Government is making to improve its implementation of the Placement Principle. We encourage the Government to honour its commitments under the *Safe and Supported Aboriginal Action Plan* to improve the safety of Aboriginal children in care.

Aboriginal organisations and communities may have divergent views and we therefore encourage the Government to engage with as many Aboriginal organisations and communities as possible to deliver on its commitment.

The existing framework for the participation of recognised Aboriginal organisations appears unused. The Children, Young Persons and Their Families Act enables the Minister to declare an organisation to be a recognised Aboriginal organisation after ‘consulting with the Aboriginal community or a section of the Aboriginal community’.³⁴¹ The Act does not specify criteria that an organisation must meet to be declared a recognised Aboriginal organisation. We could not identify any organisations that have been declared as Aboriginal organisations under the Act.³⁴²

Once recognised, Aboriginal organisations will need more resourcing so they can participate in decision making for Aboriginal children consistent with the participation element of the Placement Principle.

In terms of Aboriginal children taking part, the Act requires that children be given the opportunity to express their views about out of home care decisions that will affect them, and that those views be considered, recognising the child’s maturity and understanding.³⁴³

In Tasmania, the Child Advocate acts on behalf of children and young people in care (note that, in Recommendation 9.33, we recommend changes to the role of the Child Advocate to provide it with greater independence). There is no role dedicated solely to advocating for Aboriginal children and young people in out of home care in Tasmania.

Other jurisdictions have offices dedicated to protecting the interests of Aboriginal children. For example, Richard Weston, New South Wales Deputy Children’s Guardian for Aboriginal Children and Young People, said that one of the objectives of his role is to ensure a ‘high standard of practice is met for Aboriginal children and young people in care’ by out of home care providers.³⁴⁴ Victoria and South Australia each have a Commissioner for Aboriginal Children and Young People. In May 2020, Queensland appointed Natalie Lewis, a descendant of the Gamilaraay Nation, as a Commissioner for the Queensland Family and Child Commission to support the Principal Commissioner ‘with a strong and renewed focus on the systemic and structural issues disproportionately affecting Aboriginal and Torres Strait Islander children’ in Queensland.³⁴⁵ Legislation to establish an Aboriginal and Torres Strait Islander Children and Young People Commissioner in the Australian Capital Territory was passed on 29 November 2022.³⁴⁶

The 2021 *Family Matters* report recommended that an Aboriginal children’s commissioner be established in every state and territory, with legislated powers and functions to pursue better services for all Aboriginal children within their jurisdiction.³⁴⁷ At the national level, the *Safe and Supported Action Plan* has committed the Commonwealth to establishing a National Advocate for Aboriginal and Torres Strait Islander Children.³⁴⁸

The 2014 *luwutina mana-mapali krakani waranta* report recommended that the Tasmanian Government investigate setting up an Aboriginal children's commissioner based on the Victorian model, to oversee the implementation of child welfare and child protection services for Aboriginal children.³⁴⁹

In our view, establishing an independent Tasmanian Commissioner for Aboriginal Children and Young People, with legislated powers and functions to monitor the experiences of Aboriginal children in out of home care and youth detention, and to promote the safety and wellbeing of Aboriginal children more broadly, would provide an effective way to promote the voices of Aboriginal children. The Commissioner for Aboriginal Children and Young People should work in partnership with the Commissioner for Children and Young People as part of a new Tasmanian Commission for Children and Young People, which has broader oversight functions than those of the current Commissioner for Children and Young People (refer to Chapter 18 for a discussion of the new Commission and to Section 12.6 of this chapter for a discussion of the new Commission's recommended oversight functions for out of home care).

The Western Australian or Queensland models for ensuring Aboriginal children, parents and family members participate in placement decisions may work well in Tasmania. Both models allow Aboriginal community organisations to play a role in facilitating participation and have the benefit of enabling existing Aboriginal community organisations or groups with local cultural knowledge of children and families within specific regions or areas to participate in child safety decision making for Aboriginal children in their communities. These organisations do not have to be direct service providers. The focus should be on receiving input from local Aboriginal communities. Given that the Act already includes the notion of 'recognised Aboriginal organisations', we recommend that this mechanism be used to implement the Western Australian model in Tasmania.³⁵⁰

In our view, there should be a legislative framework for recognised Aboriginal organisations to participate in child safety decision making, as in Western Australia. In particular, the Secretary should be required to consult a recognised Aboriginal organisation, nominated by an Aboriginal child (or sometimes their family of origin), before making any significant child safety decision for the child. At a minimum, consultation should occur before a decision is made to remove an Aboriginal child, and before any decision about placement. This should limit the number of Aboriginal children removed from their families of origin and allow more Aboriginal children to be placed with Aboriginal carers in keeping with the Placement Principle. Connection with family, community and culture are critical protective factors to protect Aboriginal children from child sexual abuse.

The Office of Aboriginal Policy and Practice (refer to Recommendation 9.7) should help establish recognised Aboriginal organisations, including promoting their role, encouraging organisations to apply for approval, and building their capacity to participate in child safety decision making.

Establishing recognised Aboriginal organisations in different regions of Tasmania could also provide a way to support the future delegation or transfer of child safety functions and powers in respect of Aboriginal children (referred to above under ‘Partnership’).

5.3.5 Connection

The ‘connection’ element of the Placement Principle is concerned with ensuring Aboriginal children in out of home care—particularly those placed with non-Aboriginal carers—are supported to stay connected to their family, community, culture and Country.³⁵¹

Connection to culture plays an important role in protecting Aboriginal children in out of home care against sexual abuse.³⁵² The National Royal Commission found that the disconnection from culture that can occur when an Aboriginal child is placed with a non-Aboriginal family is a factor that increases the risk that victim-survivors of child sexual abuse in out of home care will be unable to disclose that abuse.³⁵³

The ‘connection’ element requires cultural support plans to be developed, resourced, implemented and regularly reviewed for every Aboriginal child in out of home care.³⁵⁴ This is consistent with Standard 10 of the national out of home care standards, which requires that children in care be supported to develop their identity through contact with their families, friends, culture, spiritual sources and communities.³⁵⁵ It also aligns with Standard 4, which requires that each child in care has an individualised plan that details their health, education and other needs.³⁵⁶

The ‘connection’ element also requires a focus on family reunification, with reunification planning starting early and measures put in place to support reunification where it is possible.³⁵⁷

We heard from many Aboriginal community members about the loss of cultural connection experienced by Aboriginal children who are taken into care. One Aboriginal Elder said that the worst thing about Aboriginal children being sent to live with non-Aboriginal people was that they were no longer connected with their parents and culture.³⁵⁸

As outlined above, cultural support plans are an important means for maintaining an Aboriginal child’s connection to culture while in out of home care. A cultural support plan is an integral part of their overall care plan and ‘gives the child the opportunity to build a nurturing network around them and, in this way, develop their identity and sense of belonging’.³⁵⁹

According to the New South Wales Deputy Children’s Guardian for Aboriginal Children and Young People:

If a child is removed from their family and placed into out of home care, there should be a good cultural plan that keeps them connected to who they are, who their mob is, and that honours, respects and strengthens their identity as Aboriginal children and young people.³⁶⁰

We could not find out the proportion of Aboriginal children in Tasmanian out of home care with a cultural support plan. Nor could we locate any Child Safety Service policies or practice advice on preparing cultural support plans for Aboriginal children in out of home care. Unlike in other jurisdictions such as Victoria, Tasmanian legislation does not require a cultural support plan to be prepared for Aboriginal children under the guardianship of the Secretary.³⁶¹

In 2019, the Tasmanian Commissioner for Children and Young People found that Aboriginal cultural planning was not being consistently conducted for Aboriginal children in out of home care.³⁶²

The Commissioner for Children and Young People reported that:

- Where cultural support plans had been prepared, they were often developed ‘without ascertaining adequate knowledge of the child’s cultural identity and community connections or their views’.³⁶³
- Some non-government out of home care providers appeared unsure about their responsibilities for developing cultural support plans for Aboriginal children, and most did not have the internal resources to undertake cultural planning.³⁶⁴

Standard 6 of the *Tasmanian Out of Home Care Standards*, released in June 2022, requires that out of home care providers support Aboriginal children to maintain connection to their family, community and culture in keeping with the Placement Principle, while Standard 7 requires providers to meet the cultural needs of Aboriginal children by implementing ‘culturally safe’ strategies.³⁶⁵

Meaningful cultural support planning is not a straightforward exercise. It should be led by those with cultural knowledge and expertise. It should be guided by and involve the child, family members, kin, Elders or others with cultural authority for the child, and Aboriginal organisations.³⁶⁶ Those organisations should be supported and resourced to participate in developing and implementing cultural support plans.

Carers, Child Safety Officers and other people who are important in the child’s life should also participate in developing cultural support plans.³⁶⁷ Once a cultural support plan is developed for an Aboriginal child, it should be reviewed regularly to ensure the child’s cultural connections are being maintained and their cultural needs are being met.³⁶⁸

Expectations for non-government out of home care providers should be clarified for developing and implementing cultural support plans for Aboriginal children. Although it is not appropriate for such providers to lead cultural planning processes, they should be expected to support and help develop and implement plans to ensure Aboriginal children in their placements are connected to community and culture. Clearly, this is particularly important when children have been placed with non-Aboriginal carers, noting that this should be a last resort under the Placement Principle.

5.4 Strengthening implementation of the Placement Principle

The Tasmanian Government has committed to implementing the Placement Principle, but we saw little evidence of implementation activity occurring before or during our Inquiry. The inadequacy of these efforts means Aboriginal children in Tasmanian out of home care have been at increased risk of sexual abuse.

We recommend that the Government fully implements all elements of the Placement Principle. This will require many measures to be undertaken to address the various elements of the Placement Principle. Implementing all these measures should help keep Aboriginal children and young people safe from sexual abuse in out of home care. These measures need to be implemented to ensure the system works in the interests of Aboriginal children.

More generally, the Government should adopt and report on measures to reduce institutional racism and support decolonising practices in the Department to reduce the over-representation of Aboriginal children in out of home care. Through ongoing evaluation, the Department should monitor the sense of cultural safety experienced by Aboriginal staff, Aboriginal carers and Aboriginal children in care—as with all evaluation, the results should be reported publicly.

This recommendation complements many of the other recommendations in this chapter and report, by establishing:

- an Office of Aboriginal Policy and Practice in the Department, with an Executive Director for Aboriginal Children and Young People who is responsible for overseeing the implementation of our recommendations for Aboriginal children in out of home care (refer to Recommendation 9.7)
- a Quality and Risk Committee to receive reports from the Executive Director for Aboriginal Children and Young People (refer to Recommendation 9.5).

Recommendation 9.14

The Tasmanian Government should appoint a Commissioner for Aboriginal Children and Young People with statutory powers and functions to monitor the experiences of Aboriginal children in out of home care and youth detention.

Recommendation 9.15

The Tasmanian Government should fully implement all elements of the Aboriginal and Torres Strait Islander Child Placement Principle by:

- a. increasing investment in Aboriginal-led targeted early intervention and prevention services for Aboriginal families, including family support and reunification services, to a rate equivalent to the representation of Aboriginal children in the Tasmanian child safety system
- b. adopting and reporting on measures to reduce institutional racism and supporting decolonising practices in the Department for Education, Children and Young People to reduce the over-representation of Aboriginal children in out of home care
- c. ensuring that the Aboriginal status of all Aboriginal children in contact with Child Safety Services is accurately identified and recorded at the earliest opportunity, and appropriately shared with non-government out of home care providers and carers
- d. introducing legislation to amend the *Children, Young Persons and Their Families Act 1997* to
 - i. require decision makers to consult with a relevant recognised Aboriginal organisation in relation to any decision likely to have a significant impact on an Aboriginal child—in particular, decisions about whether to remove a child from their family and where a child should live
 - ii. require the involvement of a relevant recognised Aboriginal organisation nominated by an Aboriginal child, or their advocate, in family group conferences, case planning and cultural support planning in respect of the child
 - iii. create a statutory framework and plan co-designed with Aboriginal communities for transferring child safety decision-making authority for Aboriginal children to recognised Aboriginal organisations

- e. partnering with Aboriginal communities to
 - i. promote and support establishing recognised Aboriginal organisations with local knowledge of Aboriginal children, families and communities, to facilitate the participation of Aboriginal children and families in child safety and out of home care decision-making processes
 - ii. develop a model or models for the transfer of child safety decision-making authority to recognised Aboriginal organisations
 - iii. invest in recognised Aboriginal organisations' capacity to ensure they are fully resourced, and their workforces fully equipped and supported, to participate in child safety and out of home care decision-making processes for Aboriginal children, including involvement in cultural support planning, and to manage any transfer of decision-making authority for Aboriginal children
- f. designing and establishing, in partnership with Aboriginal communities, fully resourced, Aboriginal-led, therapeutic residential programs for Aboriginal children who have been removed from their families and for whom an appropriate placement with an Aboriginal carer cannot be found
- g. implementing systems to ensure every Aboriginal child in out of home care has a meaningful cultural support plan prepared by or with the involvement of a recognised Aboriginal organisation or an Aboriginal person with relevant cultural knowledge, and regularly reviewing cultural support plans to ensure cultural connections for Aboriginal children are being maintained
- h. ensuring non-government out of home care providers comply with the 'placement' and 'connection' elements of the Placement Principle
- i. ensuring the Aboriginal status of carers is identified and accurately recorded
- j. providing mandatory professional development to Child Safety Services staff to ensure all interactions with and responses to Aboriginal children, families and organisations are culturally safe.

6 Supporting quality care

In Section 3, we recommend that, as part of the process of outsourcing out of home care services, the Department should remain responsible for strategic leadership and ensuring the quality of care that children in out of home care receive. In this section, we consider ways to support the quality of care Child Safety Service staff provide.

A significant proportion of departmental Child Safety Officers are involved in providing case management for the just over 1,000 children in care, under delegation from the Secretary. In this section, we recommend changes to the structures and practices of the Child Safety Service that will enhance the capacity of departmental staff to have ‘eyes on’ children in care which, in turn, will enable them to identify and respond to risks of child sexual abuse at the earliest possible opportunity. It will also increase opportunities for children in care to develop trusted relationships with adults, which is a protective factor in preventing child sexual abuse.³⁶⁹ The purpose of our recommendations in this section are to ensure:

- all children in care have an allocated case manager who can be proactive and responsive to children’s safety needs
- practice expertise is embedded at all levels of the Child Safety Service, ensuring accessible clinical supervision and reflective practice for Child Safety Officers
- trauma-informed therapeutic models of care are adopted for out of home care, which includes guidance on how departmental staff engage with children and families
- all Child Safety Service staff, carers and volunteers practise and understand standards of ethical conduct.

6.1 Case management

In Tasmania, Child Safety Officers are responsible for case management tasks for children in care, such as:

- establishing and facilitating a care team around the child
- coordinating the development and delivery of the child’s care plan
- advocating for the child to access services to meet their needs
- identifying and supporting efforts to ensure the child is loved and safe
- maintaining a connection with the child to understand their views
- monitoring and responding to children’s safety.³⁷⁰

The National Royal Commission found that when child protection staff have large caseloads, the risk of sexual abuse to children in care increases.³⁷¹ We heard that Child Safety Officers in Tasmania carry high caseloads, which diminishes their capacity to care for individual children; in particular, their ability to visit children regularly, attend to the child’s case management needs and develop a relationship with each child.³⁷²

In her second monitoring report, the Commissioner for Children and Young People said that during the 2020–21 financial year, only 56.2 per cent of visits to children in care by their Child Safety Officer were conducted within the required timeframes.³⁷³ The Community and Public Sector Union reported the comments of one Child Safety Officer: ‘without workers to know and support these children there is no one to hear their voices and action what they need’.³⁷⁴ As Faye (a pseudonym) told us (refer to Chapter 8), if a Child Safety Officer had visited more often, she may have disclosed the alleged abuse earlier.³⁷⁵

While Claire Lovell, the Executive Director of Children and Family Services, stated that the average caseload for a Child Safety Officer should be 15 children, we heard that some officers had carried caseloads of 50 children.³⁷⁶ The Community and Public Sector Union reported an anonymous Child Safety Officer as saying a fair caseload was between six and eight for newer staff, no more than 10 for more experienced staff and a caseload of ‘15 [plus] is not realistic when they want us to do everything’.³⁷⁷

Some children do not have case workers at all. One child in care interviewed for our commissioned research said:

I didn’t even know my case worker back then ... I don’t have one now. I’m on an order but I don’t have one. Child protection have not assigned me a case worker, I haven’t got one, but I’ve got someone who’s higher up trying to fill those shoes but you’re not doing the same job because you’re not seeing me.³⁷⁸

Ms Lovell told us that, as of 19 July 2022, 107 children in care did not have a Child Safety Officer directly allocated to them, which equated to approximately 10 per cent of children in care.³⁷⁹ She said that these 107 children have been allocated to a team, members of which were collectively responsible for them. She acknowledged that these children will not receive the same level of support as children with an allocated Child Safety Officer.³⁸⁰

On 18 October 2022, during our Commission of Inquiry, the Leader of the Opposition made claims in the Tasmanian Parliament that the Department had removed active case management from all children in care on 18-year guardianship orders (children who will be in care until they turn 18). The Government did not respond directly to this claim.³⁸¹ On 27 October 2022, a teenager under an 18-year order, who had been in care for seven years, told us her Child Safety Officer had informed her on 29 September 2022 that:

... about 300 children and young people were going to be removed from their [Child Safety Officers] and were going to be moved to two teams. Meaning me and all the other children on 18 Year Orders would have no worker of our own.³⁸²

This young person expressed concern about the ‘mental trauma’ this decision could cause, describing the support a Child Safety Officer can provide: ‘While I am loved and safe, what about other children and young people that need someone looking out for them’.³⁸³

On 19 December 2022, the Commissioner for Children and Young People announced that she was conducting an ‘own motion’ investigation into the Department’s new ‘case management model’, requesting submissions by 24 February 2023.³⁸⁴

In our view, it is essential that the Department ensures all children in care have a case manager. Also, current caseloads are unsustainable and potentially unsafe. We suggest the Government follows the example of other jurisdictions, such as Western Australia, by setting a maximum caseload for Child Safety Officers. This would allow them more time to invest in each child in care and improve child safeguarding.³⁸⁵ We recommend key case management figures and activities are reported regularly, as they are in Queensland.³⁸⁶

Developing a workforce strategy (refer Recommendation 9.10) should help ensure there are enough Child Safety Officer positions for officers to safely meet their case management responsibilities for children in care.

Recommendation 9.16

1. The Department for Education, Children and Young People should:
 - a. ensure all children in care, including those on guardianship orders until age 18, have a case manager
 - b. set a maximum case load for Child Safety Officers.
2. The Department should report quarterly to the Quality and Risk Committee on the:
 - a. number of children without an individual case manager
 - b. average case load for Child Safety Officers
 - c. average frequency of case manager visits children received, and the longest and shortest time periods between visits
 - d. the number of children with a care team and Aboriginal representatives on the care team (where appropriate)
 - e. average frequency of care team meetings
 - f. percentage of children with a current care plan.
3. The Department should ensure these figures are published quarterly on its website.

6.2 Clinical supervision

The National Royal Commission found that a lack of clinical supervision for child protection workers increases the risk of child sexual abuse in institutional contexts.³⁸⁷ Many child protection and out of home care systems use clinical practice supervision to support their frontline staff to make better clinical decisions, stay longer in the role and manage their vicarious trauma.

Dr Miller, from MacKillop Family Services, described the benefits of embedding clinical supervisors in the Victorian department's child protection teams.³⁸⁸ Locating practice leadership close to the frontline of care modelled good practice for less experienced Child Safety Officers, who could get advice and support in real time.³⁸⁹

Secretary Pervan told us that the Department had made some moves towards improving clinical supervision by separating clinical practice from operational management and employing Practice Managers whose 'entire role' is to provide clinical supervision.³⁹⁰ We understand that although they do not have designated caseloads, Practice Managers are required to pick up unallocated cases due to high rates of Child Safety Officer absence, which must detract from their ability to fulfil their substantive roles.³⁹¹

We were also told of additional roles of Clinical Practice Consultants and Educators that support clinical practice.³⁹² However, we are unclear how many roles exist and where these positions sit within the structure of the Department. These positions could play a vital role in supporting good clinical decision making, particularly if they are in the Child Safety Service centres around the State for easy access by staff.

Regular clinical supervision can be deprioritised when workload pressures are high. It is important, therefore, that the Department ensures adequate funding and staffing is provided to allow time and capacity for appropriate supervision.³⁹³

In a small jurisdiction such as Tasmania, it may be difficult to attract practitioners with the experience and aptitude to effectively perform supervisory roles. We are concerned that some Practice Managers may have been fast-tracked to supervisory positions without the necessary experience.³⁹⁴ Clinical supervisors must have enough experience in child protection to offer evidence-based advice on complex cases. Until enough experience is gained, the Department should ensure it funds virtual clinical supervision from other locations, including interstate, or consider using group supervision as a resource-effective approach.

Deborah Brewer, who managed the Department's Quality Improvement and Workforce Development team from 2017 to 2019, told us that when she worked in the Department, 'practice advisors' for the various regions were in one office in Hobart and were not present on the frontline.³⁹⁵ In the three years since that observation was made, we hope that supervisors have been moved to regional offices. In any event, we recommend that clinical practice supervisors be co-located with Child Safety Officer teams.

Dr Miller and Ms Taylor also described the importance of having a Chief or Lead Practitioner in their respective departments. In South Australia and Victoria, the Chief Practitioner leads the clinical practice of child protection and out of home care through developing materials and resources, translating research into practice, overseeing clinical supervision for practitioners and consulting on difficult and complex cases.³⁹⁶

The Department does not have such a role formally in place currently, but it is our view that the Child Advocate is performing many functions of a Chief Practitioner alongside her advocacy duties.³⁹⁷ However, as only one person, the Child Advocate does not have capacity to fully enact the role of Chief Practitioner as it is needed in the Department.

In our view, the role internal to the Department should have clarity—that of Chief Practitioner. Below, we recommend a new Child Advocate functioning as an external advocate for children (refer to Recommendation 9.33).

The Chief Practitioner should focus on developing the clinical capacity of practitioners, keeping the Department’s practice up to date, developing trauma-informed out of home care and managing clinical supervision arrangements for practitioners. The Chief Practitioner should also be responsible for quality assurance measures, including conducting file audits and receiving care concerns (which we discuss in Section 11) and working closely with the Quality and Risk Committee to monitor data to identify systemic strengths and weaknesses within practice across the Child Safety Service and out of home care.

The Office of the Chief Practitioner should have a close working relationship with the Department’s Learning and Development team, ensuring workforce development of the Child Safety Service and out of home care is designed and delivered to support the workforce to deliver best practice. To enhance knowledge and practice across the sector, the Office of the Chief Practitioner may also support the Department’s strategic partnerships and collaboration, including with research and teaching institutions and non-government service delivery partners.

The Office of the Chief Practitioner will need dedicated support staff and would likely supervise the Practice Managers and Clinical Practice Consultants and Educators.

The Chief Practitioner should also lead the Harmful Sexual Behaviours Support Unit, which we discuss in Section 10.1.

6.3 Trauma-informed, therapeutic models of care

A history of trauma increases a child’s vulnerability to being sexually abused in care and/or engaging in harmful sexual behaviours.³⁹⁸ Addressing trauma will reduce a child’s risk of sexual abuse in care.

Dr Miller told us that the out of home care system must be trauma-informed at its core: '[It] has to be designed on an assumption that children have experienced trauma' when they enter care.³⁹⁹ Such a system should provide direct specialist therapy services for children to address their abuse and trauma symptoms (such as with a specialised counsellor) and day-to-day care that is informed by an understanding that children in care are often traumatised.⁴⁰⁰ We discuss specialist trauma therapy in Section 8.2.

Julian Watchorn, the Clinical Psychologist from the Foster and Kinship Carers Association of Tasmania, considered that children should be screened for trauma symptoms as soon as they come into care to understand their specific trauma triggers and to assess their specific trauma therapy needs.⁴⁰¹ One child in care interviewed for our commissioned research talked about how each child has unique needs:

Being kind and always making sure they take into consideration [the child's] feelings, and things, so that the young person feels like they can trust them. Well, I think the people that are carers, or are looking after the children, need to be very understanding and have to know that not every child is going to be the same, or even sometimes not similar whatsoever. It's very important that they are open to different [behaviour] ... There's going to be challenges that they might have never experienced before, and they need to know how to deal with those instead of having a more violent or worse reaction.⁴⁰²

Dr Watchorn told us that without assistance, adults can find it difficult to recognise symptoms of trauma in children, but when they understand a child's trauma history and symptoms, they can respond therapeutically.⁴⁰³ Another child in care interviewed for our commissioned research said that carers struggled to understand their trauma responses:

Those next carers, there was a couple, they couldn't deal with me and [my sister's] emotional trauma. It sort of triggered them, so they had to move on, and we moved to somewhere that was two hours away from [where we went to school and had friends] and so I was at that point where I was like, 'I'm not standing for change anymore. I'm not standing for people just kind of pushing me around'.⁴⁰⁴

Experienced carer Mary Dickins told us that the carer screening and education sessions 'Shared Stories Shared Lives' is a 'good start' for educating carers about out of home care and why children are removed, but doesn't go far enough to prepare carers for the presentations of trauma and the task of therapeutically parenting a traumatised child.⁴⁰⁵ She said skill development and support in 'therapeutic parenting and trauma-informed parenting are integral to being a better parent to [children in care]'.⁴⁰⁶ We discuss the need for carer education in Section 4.6.

Some non-government out of home care providers who operate in Tasmania, such as Life Without Barriers, use a specific trauma-informed therapeutic model of care in their services. This does not appear to be the case for all providers.⁴⁰⁷ The Commissioner

for Children and Young People reported that only one non-government out of home care provider was funded to provide 'Therapeutic Residential Care' and the remainder provided 'other residential care'. We detail the types of care provided by various agencies in Chapter 7.⁴⁰⁸

Other jurisdictions have implemented agency-wide, trauma-informed approaches to ensure all children in care receive a trauma-informed therapeutic response, regardless of which care setting they live in. For instance, the Victorian Aboriginal Child Care Agency has embedded a trauma-informed therapeutic approach called Cultural Therapeutic Ways across the agency.⁴⁰⁹ Although culturally specific to working with Aboriginal families, a core principle of this approach is an understanding of trauma that translates to all care settings.⁴¹⁰

Similarly, MacKillop Family Services implements a trauma-informed framework called the Sanctuary Model across the organisation.⁴¹¹ Every staff member at MacKillop Family Services has been trained in the model, which has measurably improved communication and morale among staff, reduced incidents of violence from children to staff by 41 per cent and reduced staff turnover for several years.⁴¹² Staff have also been trained in an evidence-based 'Therapeutic Crisis Intervention' model.⁴¹³

The South Australian Department for Child Protection has adopted the Sanctuary Model in its residential care settings.⁴¹⁴ Dr Miller thought that such a model could also be implemented in Tasmania, but she cautioned that to do this well, would require leadership and more resourcing from the Department.⁴¹⁵

While the Department has taken some steps to delivering more trauma-informed, therapeutic care, the results are not yet consistent or comprehensive. Tasmanian children in care are not guaranteed to receive a trauma-informed service.

To reduce the risk of sexual abuse in care, the Department should assess children coming into care for trauma, and fund enough therapeutic support for those who need it. This assessment should be done through the holistic assessment we recommend in Section 8 (Recommendation 9.23). Also, the Department should adopt a whole of organisation, evidence-based approach to trauma-informed care for all children living in the out of home care system, regardless of setting.

The Department should lead the sector by identifying the key components of a trauma-informed, therapeutic model of care for out of home care. The Department should require non-government out of home care providers to deliver services that align with these key components of a trauma-informed therapeutic model of care and report on how it is provided. This work should be led by the Chief Practitioner.

Recommendation 9.17

1. The Department for Education, Children and Young People should appoint a Chief Practitioner to lead clinical practice and quality assurance across Child Safety Services, the Strong Families, Safe Kids Advice and Referral Line, and out of home care.
2. The Chief Practitioner should lead an Office of the Chief Practitioner, manage a team of clinical practice experts across Child Safety Services and report to the Secretary.
3. The Chief Practitioner should be responsible for:
 - a. developing the clinical capacity of practitioners through professional development and supervision
 - b. informing clinical policies, procedures and practice directions to ensure they reflect best practice in child protection and trauma-informed care
 - c. receiving, triaging, recording, monitoring and coordinating responses to complaints about Child Safety Services and out of home care (Recommendation 9.31) and concerns about the safety and wellbeing of children in care (Recommendation 9.32)
 - d. supporting best practice responses to children in out of home care experiencing or at risk of child sexual exploitation
 - e. conducting file reviews and audits to inform an understanding of current clinical practice and identify areas for reform.
4. The Chief Practitioner should:
 - a. work closely with the Quality and Risk Committee to monitor data to identify systemic strengths and weaknesses within practice across Child Safety Services and out of home care
 - b. have a close working relationship with the Department's Learning and Development team, ensuring that workforce development of Child Safety Services and out of home care is designed and delivered to support best practice service provision
 - c. support the Department's strategic partnerships and collaboration where appropriate, including with research and teaching institutions and non-government service delivery partners to enhance knowledge and practice across the sector (Recommendation 9.13).

5. The Department should ensure clinical practice experts are located in all regional offices of Child Safety Services across the state.
6. The Chief Practitioner should lead the Harmful Sexual Behaviours Support Unit (Recommendation 9.28).

Recommendation 9.18

1. The Department for Education, Children and Young People should require out of home care to be trauma-informed and therapeutic and identify the key components of trauma-informed, therapeutic models of care.
2. The Department should require non-government out of home care providers to deliver services that align with these key components of trauma-informed, therapeutic models of care, noting some providers have already adopted such models of care.
3. The Department should ensure children are assessed for trauma symptoms when entering care through the holistic assessment (Recommendation 9.23) and, where needed, receive appropriate therapy and intervention for their trauma.

6.4 Professional conduct policy

Research for the National Royal Commission found an increased risk of institutional child sexual abuse when expectations of conduct between children and staff are not made clear or are not consistently enforced.⁴¹⁶ The National Royal Commission recommended that a code of conduct have the following characteristics:

- applies to all staff and volunteers, including senior leaders and board members
- clearly describes acceptable and unacceptable behaviour of employees and volunteers towards children (for example, by illustrating behaviours with relevant examples)
- is communicated effectively to all staff
- requires signed acknowledgment by all staff and volunteers
- is published and is accessible to everyone in the institution (including children and families) and communicated throughout the institution using a range of modes and mechanisms

- if breached, requires a prompt response and includes clearly documented response mechanisms, on a continuum from remedial education and counselling through to suspension, termination and official reports.⁴¹⁷

A number of people familiar with the out of home care sector told us that they believe child protection staff, carers and support workers need a robust and transparent code of conduct that clearly outlines standards and expected behaviour when interacting with and caring for children in care.⁴¹⁸

Before 2023, the only policy relevant to conduct we could identify was the Department's *Code of Conduct for Approved Carers*, which covered topics such as the expected set up of physical facilities, confidentiality and providing timely medical attention for children in care. We could not find any policy that addressed appropriate conduct for protecting children from sexual abuse, such as grooming behaviour.⁴¹⁹ In February 2023, Services for Children and Families added an interim *Child Safe Code of Conduct* ('Interim Code') onto the Practice Manual intranet site that applies to 'all adults in Child Safety [Services]', including staff and volunteers.⁴²⁰ It is described as:

... an interim Child Safe Code of Conduct until a decision is made regarding the development of a broader Code for the Department as part of the National Child Safe Standards and Child and Youth Safe Organisations Framework for Tasmania.⁴²¹

The Interim Code has many of the characteristics recommended by the National Royal Commission; for example, it applies to all staff and volunteers, clearly describes positive and unacceptable behaviours, including grooming, and requires signed acknowledgment. We recommend the Department builds on the Interim Code to develop and implement a professional conduct policy that has a specific code of conduct for all employees and volunteers in out of home care, and that includes all the core components described by the National Royal Commission above.

The professional conduct policy may differentiate between general principles and those specific to particular roles, such as carers or professional staff. The policy should contain important common information for all roles, including what constitutes a boundary violation, grooming behaviour and conflicts of interest.

We recognise, however, that the professional boundary expectations of a case manager will be different from that of a foster or kinship carer who is acting as the child's parent and may have cared for a child from infancy. There is a need in developing conduct policies to differentiate the expectations for different roles, and particularly for carers to be aware of a child's safety *and wellbeing* needs, including the need for nurturing and affection.

The professional conduct policy should address the challenges of maintaining professional boundaries in small communities, such as those in Tasmania, because of the presence of dual roles and inherent conflicts of interest. For example, a Child Safety Officer may need to investigate a family that attends the same school as their children, and the officer may use information they are privy to through social contacts as part of their assessment, in preference to proper procedures. In a larger jurisdiction, there are enough staff for another Child Safety Officer to step in so that roles and relationships remain more defined. ‘Suspension 3’ in Chapter 8, is an example of how professional boundary breaches can occur in child protection.

In the professional conduct policy, the Department should adopt a low tolerance approach to breaches. In relation to staff, the policy should spell out a process for reporting and responding to breaches. The professional conduct policy should direct that violating the code is grounds for disciplinary processes under Employment Direction No. 5—Breach of Code of Conduct (refer to Chapter 20) and will be managed by the Child-Related Incident Management Directorate (refer to Recommendation 6.6). In relation to carers, the policy should direct a breach to be reported to the Department for triaging by the Chief Practitioner in line with the new policy to guide responses to concerns about the safety and wellbeing of children in care (refer to Recommendation 9.32).

The National Royal Commission also recommended that education for institutional staff on problematic behaviours and boundary violations would prevent and identify grooming because it ‘not only provides a basis for staff to recognise problematic behaviour but also potential offenders will know their behaviour is subject to scrutiny’.⁴²² We recommend mandatory, ongoing education on the professional conduct policy for all adults involved in out of home care.

Recommendation 9.19

1. The Department for Education, Children and Young People, in developing a professional conduct policy (Recommendation 20.2), should ensure:
 - a. there is a separate professional conduct policy for staff who have contact with children and young people in Child Safety Services and out of home care
 - b. the professional conduct policy for Child Safety Services and out of home care, in addition to the matters set out in Recommendation 20.2, specifies expectations outlined in other relevant policies and procedures, including the policy on concerns about child safety and wellbeing and the duty of care owed by staff members
 - c. the professional conduct policy for Child Safety Services and out of home care articulates expected standards of behaviour for volunteers, contractors and sub-contractors, and carers

- d. the Department uses appropriate mechanisms to ensure compliance by volunteers, contractors and sub-contractors, and carers with the professional conduct policy for Child Safety Services and out of home care.
2. The Department should develop guidance material and information sessions for children in care about the expected behaviour of carers, staff, volunteers and adults in their lives.

6.5 Record keeping and risk assessments

The National Royal Commission found that accurate record keeping within institutions is an important systemic and structural component of protecting children from sexual abuse.⁴²³

6.5.1 The current system

The Department uses two database systems to record child safety information—the Child Protection Information System and the Children’s Advice and Referral Digital Interface. Since 2008, the Child Safety Service has used the Child Protection Information System to record its activities in relation to children assessed as being at risk and in need of protection, as well as for those children in out of home care.⁴²⁴ Advice and Referral Line staff also use the Children’s Advice and Referral Digital Interface to record ‘conversations’ they have with callers, which may or may not progress to a referral to the Child Safety Service for more attention.⁴²⁵ If the matter is referred to the Child Safety Service, the record of the conversation is transferred to the Child Protection Information System.⁴²⁶

Ms Lovell told us that as well as recording information about each child in care in the Child Protection Information System, the Department uses this system to record information about foster and kinship carers (or ‘care households’), including notes made by Child Safety Officers on activities in care households.⁴²⁷ The Department can also record the details of alleged child sexual abusers on the system, referred to in the database as ‘Persons Believed Responsible’.

6.5.2 Persons Believed Responsible

The Department shares information about Persons Believed Responsible with the Registrar of the Registration to Work with Vulnerable People Scheme every day.⁴²⁸ To improve data collection, the Department decided in 2021 to direct staff to record the alleged Person Believed Responsible on the system as soon as an allegation of harm was received, rather than waiting until the allegation was investigated or substantiated.⁴²⁹

A Person Believed Responsible can only be recorded on the Child Protection Information System and not on the Children’s Advice and Referral Digital Interface.⁴³⁰ Therefore, if the Advice and Referral Line does not refer a matter to the Child Safety Service for action, the alleged abuser is not recorded as a Person Believed Responsible and the Registrar of the Registration to Work with Vulnerable People Scheme will not be automatically advised of the allegation. We were also told that if the information was recorded against a Person Believed Responsible on the Child Protection Information System, it was slow and laborious to search for later.⁴³¹ Both these issues limit the Department’s ability to track patterns of behaviour and multiple allegations against a particular person.

6.5.3 Limitations to access

Not all departmental staff can fully access one or both data systems. For instance, while the Child Advocate can read files on the Child Protection Information System, she cannot add to a client’s file if she undertakes activities in relation to that child. Instead, she relies on handwritten notes in paper files and an email folder on her computer. She stated that plans to scan these handwritten notes into ‘the system’ had been repeatedly delayed.⁴³²

When asked about the ability of Child Safety Service managers to access information on the Department’s databases about allegations of child sexual abuse, Ms Lovell responded that managers could access both data systems, but that they would need to run two searches—one in the Children’s Advice and Referral Digital Interface and one in the Child Protection Information System.⁴³³ This double-handling may increase the risk that relevant information is missed.

We heard from a current Child Safety Service staff member that while Advice and Referral Line staff (employed by the Department) have access to both databases, Child Safety Officers do not have access to the Children’s Advice and Referral Digital Interface. We also heard about challenges with Advice and Referral Line staff employed by non-government organisations accessing the Child Protection Information System. This leads to a risk of information that is recorded in only one of the two systems being missed when it could be relevant to a risk assessment for a child in care.⁴³⁴

6.5.4 Recording risk assessments

As discussed in Chapter 8, we reviewed 22 case files of children in the Department’s care who were at risk of sexual abuse or were displaying harmful sexual behaviours. We observed that frequently, the ‘risk assessment’ section of the notification record was not updated with new information to support the risk assessment—often the information appeared to have been cut and pasted from previous notification records. In one instance, the risk assessment content referred to the child being seven years of age and living with her parents, when she was in fact 17 and living in residential care. The risk assessment had not been updated from the time she was taken into care.

Accurate recording of information on assessing and managing the risk of sexual abuse for a child in care is vital. Outdated, inaccurate or insufficient information will not support the standard of risk assessment that children in out of home care deserve. The Department must address this practice urgently. The regular audits we recommend as part of the quality assurance and continuous improvement process (discussed in Section 4.2.4) should help improve record keeping.

7 Ensuring quality carers

The National Royal Commission recommended setting up a Carer Register for out of home care.⁴³⁵ Carers and their households are the backbone of the out of home care system in any jurisdiction. There are many carers who provide excellent care to children under the guardianship of the Department. We also know that some carers, or those close to them, take advantage of the vulnerability of children in their care by sexually abusing them.

Carers can provide the stability and connection of a family environment for children who cannot live with their family of origin. Over time, a skilled, well-supported carer can help a child trust again, rendering them less vulnerable to being exploited and more likely to disclose if they are being sexually abused.⁴³⁶ In Section 4.6, we recommend increased support and professional development for carers. In this section, we recommend all types of carers be registered with the Department, with minimum requirements for registration, and the capacity for deregistration.

7.1 Children’s experiences of carers

Several children in care interviewed for our commissioned research reported positive, warm experiences in family-based (foster and kinship) care—for example, ‘I felt safe all of the times, because me and my brother had wonderful carers’.⁴³⁷

Other children spoke of abuse at the hands of their carers or while under their care:

Since I was like, what was I, 8 or 9 years old? I’ve been sexually, mentally and physically abused while in care, by multiple people including, like, youth and other adults.⁴³⁸

7.2 Carer screening

To become a foster carer in Tasmania, a person must complete a three-stage process whereby they: (1) participate in some basic education and screening sessions with other potential carers, called ‘Shared Stories Shared Lives’, (2) are subject to screening checks and (3) undertake assessment interviews.⁴³⁹

For foster carers, these checks happen before a child is placed in their care. However, we heard that kinship care arrangements were (necessarily) often organised at short notice with limited time for an assessment before initial placement—therefore, much of the assessment was instead completed after the child was placed in their kin’s care.⁴⁴⁰

In foster and kinship care arrangements, all members of a carer’s household over the age of 16 must hold Registration to Work with Vulnerable People.⁴⁴¹ Ms Lovell advised that carers are supposed to notify the Department if there are changes to their household makeup, to ensure any new household members over 16 years of age are also screened.⁴⁴²

7.3 Problems with carer records, assessment and review

Kim Backhouse from the Foster and Kinship Carers Association of Tasmania, expressed concern that there is ‘no robust selection criteria that all new carers must meet’ and that different non-government providers apply their own criteria.⁴⁴³

At the time of writing, any information that the Department holds about carers is recorded on the Child Protection Information System and the Children’s Advice and Referral Digital Interface.⁴⁴⁴ We discuss difficulties with these data systems in Sections 4.2.1 and 6.5.

In August 2022, we were advised that the Department had paused carer recruitment (‘temporarily’) to give itself time to ensure all existing carers had their Registration to Work with Vulnerable People.⁴⁴⁵ We were concerned that the Department had such little oversight of carers’ Registration to Work with Vulnerable People status.

We understand that it is departmental policy to review foster carers annually.⁴⁴⁶ We also heard from the Department that the temporary pause in carer recruitment had enabled regional out of home care teams to ‘continue improving the rate of up-to-date household reviews’, from which we infer that such reviews were not previously up to date.⁴⁴⁷

Former departmental employee Sonya Enkelmann expressed concern that such reviews did not always occur.⁴⁴⁸ Dr Backhouse was also concerned about the oversight of carers in remote areas of Tasmania because she was not confident that the Department, nor non-government out of home providers, were visiting those carers regularly.⁴⁴⁹

Andrea Sturges, who works in the non-government sector, said staff at Kennerley Children's Services visit their carers at least once a month for informal monitoring, as well as conducting annual reviews for quality of care and carers support plans.⁴⁵⁰ Life Without Barriers formally reviews its carers each year.⁴⁵¹

Beyond the basic screening checks described above, the Department should develop robust selection criteria that all carers must meet to be accepted and registered as carers. Moreover, the Department should ensure all out of home care providers visit carers regularly and review them at least annually.

7.4 Calls for a Carer Register

Many in the out of home care sector, including the Foster and Kinship Carers Association of Tasmania, support establishing a Carer Register.⁴⁵² The Association's 2018 survey of carers found that most also supported registration for carers, as well as mandatory training requirements for registration.⁴⁵³

Dr Backhouse suggested that a mandatory annual training schedule linked to ongoing registration would improve the consistency of care provided to children in out of home care.⁴⁵⁴ She stated that while there are many carers who would like to receive more education and skill development, there is also a cohort of carers who do not.⁴⁵⁵

Dr Backhouse also highlighted a need for a formal deregistration process in cases where a child sexual abuse allegation against a carer was substantiated.⁴⁵⁶ She recalled some type of internal process within the Department whereby a decision was made to no longer place children with that carer.⁴⁵⁷ However, without a formal process, the carer has no right of appeal and they may be able to work in a care capacity elsewhere (including through a non-government out of home care provider), potentially posing a risk to children.⁴⁵⁸ Dr Backhouse said that, in lieu of a formal registration/deregistration system, non-government providers also occasionally communicate between themselves to 'black ban' carers, which she pointed out was not a fair nor robust method.⁴⁵⁹

7.5 Kinship carers

Kinship carers look after children from their own extended family or community when the child's family of origin cannot. In Tasmania, 41.7 per cent of children under the guardianship of the Secretary live with a member of their family or community in a formal kinship care arrangement.⁴⁶⁰

We heard that kinship care is the Department's first choice if a child cannot live safely with their parents.⁴⁶¹

While the National Royal Commission identified many benefits for children in care living with kin, they also identified some added risks of sexual abuse associated with this form of care, including:

- child protection authorities applying less rigorous screening and assessment processes to kinship carers in comparison with foster carers
- family loyalties and complex family dynamics interfering with keeping a child safe
- lower levels of monitoring, knowledge and skill development, and support for kinship carers, even though the needs of a child in a kinship care placement are likely to be equivalent to that of a child in foster care
- kinship carers facing added challenges caring for a child because they are often older (many are grandparents), financially disadvantaged and have poorer health.⁴⁶²

To address these specific risks, the National Royal Commission recommended that kinship carers receive the same education, skill development and support as foster carers, which we also recommend (refer to Recommendation 9.11). Registering kinship carers will provide a way to monitor their training and development history. The National Royal Commission also recommended a tailored approach for assessing the suitability of kinship carers.

As described briefly above, the assessment process for kinship carers does not differ substantially from the process used for foster carers. The Department should adopt a kinship care assessment approach that is informed by evidence and should consider models successfully used in other jurisdictions, which take into account that the kinship carer is being assessed to care for a child with whom they often already have a relationship.⁴⁶³

We recommend that kinship carers become registered carers as soon as possible after they take a child into their home. We recognise that many kinship carers will not be able to complete the mandatory education sessions for carer registration immediately. Therefore, we recommend initial conditional registration of kinship carers to allow them time to be supported to complete this training.

We expect the Department to provide the supports necessary for kinship carers to effectively care for the children placed with them. Kinship carers should not be disadvantaged due to issues of literacy, culture or geographical distance, and we expect the Department to sensitively assist carers to receive the support and knowledge they need to protect children in their care. In some exceptional cases, a kinship carer may have a valid reason to not participate in minimum training; therefore, kinship carers should be able to request an exemption.

7.6 Respite carers

Respite carers are essentially foster carers who will care for a child for short periods to allow the child's kinship or foster carers a break from the caring role. Foster carer Robyn Shoobridge told us that insufficient respite care meant she could not continue in her primary caring role for a child with high needs, leading to a placement breakdown and that child being cared for in a residential setting at the age of six.⁴⁶⁴

While respite care is clearly a vital part of the out of home care system, we heard of children being sexually abused in respite care.⁴⁶⁵ Therefore, we recommend that registration requirements also be applied to respite carers.

7.7 Third-party guardianship

Courts make third-party guardianship orders under the Children, Young Persons and Their Families Act. This occurs on application from the Secretary of the Department, who proposes a person to become the child's independent guardian.⁴⁶⁶ If an order is made to that effect, that person then assumes the same guardianship rights and responsibilities for the child 'as a natural parent of the child would have'.⁴⁶⁷

The Commissioner for Children and Young People reported that, as of 30 June 2018, 223 (or 17.5 per cent) of the children in out of home care in Tasmania were living in a third-party guardianship arrangement—a much higher rate than the Australian average of 1.4 per cent.⁴⁶⁸ Secretary Pervan suggested that these figures had remained stable at 30 April 2022.⁴⁶⁹

Dr Backhouse told us that foster and kinship carers often ask to become third-party guardians for children already in their care to improve stability for those children.⁴⁷⁰ This is referred to as a 'transfer of guardianship'. We heard it can take a long time for a transfer of guardianship to be progressed, if it happens at all.⁴⁷¹ The Department has not published criteria relevant to transfers of guardianship, making it difficult for carers to know if they meet the requirements.⁴⁷² This lack of transparency also makes external oversight and accountability of third-party guardians almost impossible.

The Department's position on its responsibilities for children in the care of third-party guardians is unclear. On one hand, the Department includes these children in its data dashboard of the numbers of children in care, and the Child Advocate included them in her mailout to all children in care in early 2020.⁴⁷³ On the other hand, the national definition of 'out of home care' specifically excludes those children cared for by third-party guardians. We were also told that if the Advice and Referral Line was contacted about such children, they would respond in the same way as for a child who is not under the guardianship of the Secretary, so that 'children on third-party guardianship orders are not confused with children "in the care of the Secretary"'.⁴⁷⁴

Even if the day-to-day care of a child is provided by a third-party guardian, the Department has taken the significant step of removing that child from their family of origin and placing them permanently with another family. The Department should therefore assume some responsibility for ensuring these children are receiving safe, quality care.

We recommend that the same process for assessing, registering and monitoring all other carers applies to third-party guardians. Furthermore, if concerns are raised about the care of a child under third-party guardianship, this should be assessed through the same process as a concern about the wellbeing and safety of a child in care (refer to Section 11), not the standard Advice and Referral Line process. Supports should then be provided where appropriate, to prevent the placement from breakdown. Decisive action should be taken to protect all children, including those under third-party guardianship, from abuse in care.

7.8 Our observations

The Department has committed to setting up a Carer Register but has not done so to date.⁴⁷⁵ We recommend that such a register sets minimum standards for screening, assessing and overseeing carers, and that all carers—foster, kinship, respite, paid residential and third-party guardians—are assessed for and meet the ongoing requirements of registration. For kinship carers, there should be conditional registration and the assessment process should be tailored to their individual context.

Once a Carer Register is established, children should only be placed with a registered carer. Carers should be required to satisfy annual reviews to maintain their status as a registered carer, and there should be criteria and processes in place for carer deregistration (which would include a breach of the professional conduct policy—refer to Section 6.4).

The Carer Register should be designed and managed in a way that makes it easy to update and allows for accurate and comprehensive information sharing across the Department's relevant data systems and the Registration to Work with Vulnerable People database. The processes and systems the Department puts in place for adding relief teachers to or removing them from the Fixed Term and Relief Employment Register, discussed in Chapter 6, could be applied to maintaining a Carer Register and deregistering carers.⁴⁷⁶

Recommendation 9.20

1. The Department for Education, Children and Young People should establish and maintain a Carer Register of all types of carers in the out of home care setting to ensure all third-party guardians, and foster, respite, kinship, and salaried residential carers can provide quality care to children and act protectively.
2. The Department should:
 - a. set minimum requirements for registration as a carer
 - b. record allegations of concern about a carer or members of their household
 - c. set out a process for de-registering carers
 - d. enable easy information sharing between the Carer Register, the Registration to Work with Vulnerable People Scheme and the Reportable Conduct Scheme.
3. The minimum requirements for carer registration should include:
 - a. current Registration to Work with Vulnerable People and satisfactory National Police Checks
 - b. best practice and tailored approaches to foster, kinship and residential carer screening and assessment
 - c. mandatory knowledge and skill requirements for carers, including
 - i. understanding child sexual abuse, including grooming, harmful sexual behaviours and child sexual exploitation
 - ii. understanding the effects of trauma, trauma-informed care and therapeutic responses to trauma
 - iii. understanding the professional conduct policy and ethical behaviour
 - d. requiring other relevant adults who routinely spend time in the carer household to hold Registration to Work with Vulnerable People and to have been subject to carer assessment
 - e. satisfactory annual carer reviews conducted by non-government providers and reported to the Carer Register.
4. The Department should provide for kinship carers to be provisionally registered for 12 months after assuming care of a child. During this time kinship carers should be required to complete their mandatory training requirements or apply for an exemption in exceptional circumstances.

5. Non-government out of home care providers should support kinship carers to access and complete the mandatory training required for full registration as a carer. The mandatory training should contain measures to overcome literacy difficulties, cultural difference or geographical remoteness.
6. The Department should only place children with a carer who is registered or provisionally registered on the Carer Register.
7. The Department should establish a mechanism for reviewing decisions about the registration or deregistration of carers.
8. The Tasmanian Government should adequately resource the Department to establish and maintain the Carer Register.

Recommendation 9.21

To improve placement stability and the oversight of the care of children by third-party guardians, the Department for Education, Children and Young People should:

- a. make publicly available the criteria and process for a carer to become a third-party guardian
- b. sufficiently resource the team responsible for third-party guardianship applications to ensure appropriate assessments and timely processing
- c. require third-party guardians to be registered on the Carer Register to maintain their guardianship
- d. ensure third-party guardians receive the same level of support in their caring role as received by foster or kinship carers
- e. ensure children in third-party guardianship arrangements continue to have their safety and wellbeing supported and monitored (for example, through independent community visitors (Recommendation 9.34)).

8 Meeting children's needs

If a child's needs are well met in out of home care, their trauma and their vulnerability to sexual abuse are reduced. Not meeting a child's needs can increase a child's sense of isolation and disconnection that can increase their vulnerability to child sexual abuse.

In this section, we make recommendations that will assist the Department to better meet the needs of children in out of home care. Specifically, we recommend that the Department ensures:

- all children's individual needs are met, and children's views inform their assessments, placements and care planning
- all children entering care receive a thorough, multidisciplinary assessment
- all children are in suitable and stable out of home care placements to reduce placement breakdown and the associated increased risk of child sexual abuse
- Child Safety Officers have regular and ongoing contact with all children in out of home care
- each child has a comprehensive care plan to which they have contributed and that is tailored to their individual needs
- all children in care receive specialised, tailored supports for their individual needs.

8.1 Meeting individual needs

Standard 5 of the national out of home care standards requires that 'children and young people have their physical, developmental, psychosocial and mental health needs assessed and attended to in a timely way'.⁴⁷⁷ All children's specific needs should be addressed, including attachment difficulties, disengagement from education and gender-specific needs.

Meeting the individual needs of children is particularly important for children who identify with diverse groups or have diverse needs, such as Aboriginal children, children from other culturally diverse backgrounds, children with disability, children with mental illness and children who identify as LGBTQIA+.

Children's participation in their care is vital to ensuring their needs are met. The Child Advocate explained that she gets involved in individual advocacy to help adults to:

... understand what children who don't have a voice are trying to say, or alternatively, I am challenging adults about why they are not listening to children who are clearly expressing themselves.⁴⁷⁸

In Section 4.2.5, we emphasise the importance of empowering children in the out of home care system in relation to their individual care and at the system level. In that section, we recommend that the Department develops an empowerment and participation strategy for children and young people in out of home care. In relation to their individual empowerment, the strategy should adopt a principle that children's views inform their assessments, placements and care planning.

Recommendation 9.22

1. The Department for Education, Children and Young People's out of home care processes, including assessments, placements and care planning, should be tailored to address the specific needs of individual children.
2. These processes should address the specific needs of all children, including Aboriginal children, children from other culturally diverse backgrounds, children with disability, children with mental illness and children who identify as LGBTQIA+.
3. The Department's empowerment and participation strategy for children and young people in out of home care (Recommendation 9.6) should include processes that enable children's views to inform all elements of their individual care, including their assessments, placements and care planning.

8.2 Assessment and support

In its recommendation 12.21, the National Royal Commission emphasised that:

Each state and territory government should ensure:

- a. the adequate assessment of all children with disability entering out-of-home care
- b. the availability and provision of therapeutic support
- c. support for disability-related needs
- d. the development and implementation of care plans that identify specific risk-management and safety strategies for individual children, including the identification of trusted and safe adults in the child's life.⁴⁷⁹

In this section, we focus on assessments for children in care with disability or mental health concerns.

8.2.1 Meeting a child's health needs

In her 2019 Monitoring Report, the Commissioner for Children and Young People found that the Department's ability to produce data about the health status of children in care was inadequate and that this undermined its capacity to meet their health needs:

In the [Department]'s responses to both of the Commissioner's questionnaires, the [Department] acknowledged that "a lack of data on the health attributes of children in care" hinders the [Department]'s achievement of health outcomes for children and young people in care.⁴⁸⁰

We heard evidence that the Department is not always meeting the needs of children.⁴⁸¹ Some suggested that basic assessments were not conducted when a child first came into care.⁴⁸² We heard that some children in out of home care had undiagnosed learning disabilities or hearing or vision problems that had not been noted.⁴⁸³

While there is a range of standardised tools available to screen or assess the health and wellbeing of children coming into care, clinical psychologist, Dr Julian Watchorn, gave evidence that the Department has not used these tools as a matter of course.⁴⁸⁴ He expressed a view that the main barriers to timely assessments of children when they are taken into care are resource constraints and the lack of availability of allied health specialists to conduct the assessments.⁴⁸⁵

Secretary Pervan told us that children coming into care were assessed at one of the three out of home care paediatric clinics around the State, which are funded by the Department of Health.⁴⁸⁶ Secretary Bullard told us that the assessments provided are 'holistic'.⁴⁸⁷ He further advised that the clinics referred children to the Child and Adolescent Mental Health Service and private practitioners for trauma and therapeutic interventions.⁴⁸⁸ We note, however, as we discuss below, the Child and Adolescent Mental Health Service has not routinely accepted referrals for children with trauma or who are in out of home care, and the Child Advocate and others in the out of home care system reported that private practitioners are not easily accessible.⁴⁸⁹

Foster carer Ms Shoobridge, told us that the clinic she attended did not respond in a proactive way to her foster child but adopted a 'wait and see' approach. Ms Shoobridge could not wait because of the stress of managing the child's intense needs, so she self-funded a private multidisciplinary assessment for the child. The assessment identified significant disability-related needs and the child was then determined to be eligible for supports funded via the National Disability Insurance Scheme.⁴⁹⁰

We welcome the Department's paediatric review. For the Department to meet Standard 5 of the national out of home care standards, we would like to see all children receive a holistic assessment, including access to comprehensive multidisciplinary assessment where required, whether it is provided through the Department of Health clinics or through a multidisciplinary team based in the Department for Education, Children and Young People.

8.2.2 Disability

As discussed in Chapter 7, children with known disability are overrepresented in out of home care in Tasmania and nationally. Children with disability are almost three times as likely to experience sexual abuse in institutional settings than children who do not have a disability.⁴⁹¹ These rates are even higher for female children with intellectual and behaviour-related disabilities.⁴⁹²

The disability status of nearly one-third of children in care was recorded by the Department as ‘not stated’, leading the Commissioner for Children and Young People to express concern about the ‘lack of detailed data about the care experience of children and young people with disability’.⁴⁹³ The poor recording of disability status can make it difficult for staff to consider disability when making decisions about a child’s risk of sexual abuse.

The National Royal Commission found several factors that further increase the risk of sexual abuse for children with disability in care. One risk factor was that out of home care services and supports were often not tailored to the individual needs of a child with disability.⁴⁹⁴

Child Safety Officers are responsible for accessing the National Disability Insurance Scheme on behalf of children in care. Carers therefore depend on Child Safety Officers to access this funding and for ensuring supports are in place for the children in their care. We heard that challenges arise when Child Safety Officers do not work collaboratively with carers to secure timely and appropriate supports under the scheme.⁴⁹⁵ Ms Shoobridge’s experience, described above, illustrates that some carers are having to self-fund applications to the Scheme.⁴⁹⁶

The National Disability Insurance Scheme is a complex system, and navigating it can be difficult for anyone, let alone where responsibilities are divided between an institutional guardian and a carer.⁴⁹⁷ Applying to the Scheme can also be time consuming, in a context where Child Safety Officers are already working at capacity.

Given the specialised knowledge needed to navigate the National Disability Insurance Scheme and the demand on the scheme due to the large number of children in care with disability, the Department should have internal expertise to assist Child Safety Officers with applications. Dr Watchorn told us that he believed the Department had previously considered recruiting a specialised role to support children in out of home care to access the Scheme.⁴⁹⁸

8.2.3 Trauma and mental health

The National Royal Commission found that children who have a history of trauma and mental health difficulties are more vulnerable to sexual abuse.⁴⁹⁹

Professor Helen Milroy, a child and adolescent psychiatrist, told us that trauma and mental health difficulties are inevitably intertwined.⁵⁰⁰ She explained, however, that the signs and symptoms of trauma are often missed or misunderstood, so children do not always get timely help:

The disconnection between event and impact of trauma can mean that health practitioners and other important people in children's lives fail to recognise the little signs that a child might manifest and so therapeutic intervention does not occur soon enough. Often no one intervenes until adolescence when the young person is self-harming or suicidal, using drugs, or in the juvenile justice system.⁵⁰¹

One child in care interviewed for our commissioned research said they thought their trauma was overlooked when they had mental health problems:

... they believed I was psychotic and bipolar, and they don't give a fuck about trauma they just label [you with] something and throw you in there and think they can ... I ended up going to hospital because I had suicidal thoughts because of my trauma and my pain and my stress from everything that was hitting me in August last year.⁵⁰²

Unfortunately, we heard that it can be difficult to find private and not-for-profit mental health services for children in care due to long waitlists.⁵⁰³ Tasmania has a limited number of private child and adolescent psychiatrists and very few permanent ones in the public system. We heard that while there are private psychologists in most locations around the State, they are in high demand and difficult to access.⁵⁰⁴ Many children in care cannot access the Government funded Child and Adolescent Mental Health Service when their presentation is deemed to be primarily trauma-related, even if their difficulties seem severe.⁵⁰⁵

Over the past five years, the Department has funded the Australian Childhood Foundation to provide trauma therapy support to children in care. However, only 30 children (along with their carers) are funded each year for this service.⁵⁰⁶ This means that just under 3 per cent of children in care can access trauma-specific therapy at any one time.

Dr Watchorn told us that children are not routinely assessed for trauma when they come into care.⁵⁰⁷ Ms Enkelmann expressed concerns that not treating trauma early is a false economy because, if untreated, trauma will often reappear in adolescence, when reversing the damage is much more challenging.⁵⁰⁸ Many of the children interviewed for our commissioned research said they were left to manage their trauma alone.⁵⁰⁹

Professor Brett McDermott, Statewide Speciality Director, Child and Adolescent Mental Health Service, has been leading development of a specialist service for children in out of home care who have mental health difficulties. His model is based on a Queensland program and aims to deliver trauma-informed assessment and interventions through a multidisciplinary team that has low caseloads and can work with a child over a longer period. Professor McDermott told us that a feature of the service is that clinicians will also support those caring for the child through skill development and psychoeducation.⁵¹⁰

We welcome this initiative, which may reduce the risk of sexual abuse for some children in care by addressing their mental health difficulties and trauma. Professor McDermott acknowledged that it may be difficult to recruit suitably qualified mental health clinicians for the service and that there may be limitations to the number of children the service can assist.⁵¹¹

8.2.4 Our observations

The Department needs to ensure children and young people in care have their emotional, physical, developmental, psychosocial and mental health needs (including trauma) assessed and attended to in a timely way. To help ensure this, we recommend that all children in care have access to multidisciplinary care, whether provided through the paediatric out of home care clinics or the Department.

The Department should recruit a specialised role to support children in out of home care to access the National Disability Insurance Scheme. Such a role could be the ‘go to’ within the Department for Child Safety Service staff who have questions or concerns about a child’s access to the scheme. The role could also ensure eligibility under the scheme was assessed for all children with disability in out of home care, and if deemed eligible, the role could support Child Safety Officers to maintain the currency of the child’s National Disability Insurance Scheme plan. This role should work closely with the multidisciplinary health team.

In conjunction with a new system-wide, trauma-informed therapeutic model of care (refer to Recommendation 9.18), the Department should increase funding for specialist trauma therapy services for children in care.

Given the signs and symptoms of trauma are not always obvious, we recommend routine assessment for trauma and mental health difficulties for all children coming into care. In this way, those who need professional assistance can be identified early, before their mental health worsens.

We recommend that the Department and out of home care providers report on the number of children in care who are receiving multidisciplinary health assessment, are eligible for the National Disability Insurance Scheme and are receiving specialised trauma support and counselling to the Quality and Risk Committee (refer to Recommendation 9.5).

Recommendation 9.23

1. The Tasmanian Government should ensure all children in care have access to:
 - a. a timely holistic assessment when entering care across all domains of physical health, trauma and mental health, disability and educational need
 - b. health and wellbeing assessments conducted annually, or more often where there is an identified need.
2. Multidisciplinary health teams should provide expert consultation to the care team around a child about the child's needs, and input into the child's care plan.
3. The Department for Education, Children and Young People should create a specialised role to support children in out of home care to access the National Disability Insurance Scheme.

Recommendation 9.24

1. The Tasmanian Government should increase funding for specialist trauma therapy services for children in care to ensure their needs are met.
2. The Tasmanian Government should ensure the Child and Adolescent Mental Health Service's new specialist mental health service for children in out of home care is resourced to meet demand.

8.3 Placement of children

The decision about where a child in out of home care will live is a challenge for child protection staff in any jurisdiction.

Children in out of home care benefit from a stable placement. The National Royal Commission observed that it takes time for a child to build enough trust with a carer to disclose sexual abuse, and that each time a child changes placement they suffer from loss of relationships.⁵¹² Multiple placements may also increase a child's exposure to child sexual abusers, simply because they are exposed to more people in their home environment.

Children in care told us how placement changes affect them. One young person interviewed for our commissioned research said:

Imagine if you're sitting in a wobbly chair. It feels like that, but emotionally. Like anything could just drop at any moment ... I have never had an actual home. There has never been anywhere I've felt [is] like ... [a] home, because over the last seven, eight years I've been in foster care, I've had seven, eight placements, so I've moved every year. And because I had never ... there was never a place that was mine, which resulted in me feeling not safe.⁵¹³

Another young person said:

My sister, she's good at not getting emotionally attached because it's obviously a trauma response. The fact that we've moved so much, she doesn't get attached to people, unless she's known you for a very long amount of time, she will not trust you whatsoever ... I, on the other hand, get very attached to people, very quickly. I suppose it's the opposite response as her.⁵¹⁴

The National Royal Commission made the following recommendations to improve the safety and stability of placements for children in care and to reduce their risk of sexual abuse:

- a. improved processes for 'matching' children with carers and other children in a placement, including in residential care
- b. the provision of necessary information to carers about a child, prior to and during their placement, to enable carers to properly support the child
- c. support and training for carers to deal with the different developmental needs of children as well as managing difficult situations and challenging behaviour.⁵¹⁵

We consider the first two of these strategies in turn below. We discuss support and training for carers in Section 4.6.

8.3.1 Placement matching

Out of home care providers told us that departmental staff have often invested significant time and effort into finding the right place for a child to live.⁵¹⁶ We also heard that, despite these good intentions, placement options are constrained by insufficient numbers of carers and the need to find a placement often at short notice.⁵¹⁷

Children in care told us they wanted better placement matching between the children themselves and with carers. One young person interviewed for our commissioned research said:

Group homes don't always turn out well because there's multiple different kids that have all come from different backgrounds, all have their issues. That usually doesn't match a lot of the time. So, I feel like in group home situations, maybe put kids that have had similar backgrounds, rather than just be like, 'Hey, three random kids, plop'.⁵¹⁸

At times, children are moved into residential care, simply because there is nowhere else for them to live.⁵¹⁹ Residential care carries a higher risk of child sexual abuse than family-based settings.⁵²⁰ We also heard that, at times, the Department has placed too many high-needs children with a carer who could not reasonably be expected to meet all their needs.⁵²¹

Placement matching involves understanding the child's individual needs, the needs of other children in the placement, and what each carer can provide.

A Carer Register (Recommendation 9.20) would allow the Department to identify carers with special skills or experience; however, unless more carers are recruited and retained (Recommendation 9.8) and alternative care options explored (refer to Section 8.3.3), options for placements will be limited to those available rather than those most suitable.

Other jurisdictions have structured processes to match children with the best carers. The New South Wales Department of Communities and Justice uses a Child Assessment Tool, which is designed to:

... identify the most appropriate level of care for a child, based on assessment of their behaviour, and health and development needs. The tool improves transparency and consistency of placement decisions and focuses on the needs of the child.⁵²²

The New South Wales Department then uses 'Placement Matching Panels' to decide which carers will be most suitable for any given child.⁵²³ The Queensland Department of Child Safety, Seniors and Disability Services uses a 'Foster care matching tool' to work systematically through a child's needs and the ability of the proposed carer to meet those needs.⁵²⁴

8.3.2 Information for carers

Dr Watchorn warned of an increased risk of harmful sexual behaviours occurring when carers are not given enough information about a child who comes into their care. Presumably, this is because carers are not aware of the need to take steps—such as increased supervision or declining to accept a child into their care—to mitigate the risk.⁵²⁵

The Department told us that carers receive 'detail on [the child's] previous carer history and trauma experience' before placement.⁵²⁶ However, others working in the sector disagreed that this always occurs, telling us that carers often do not get enough information about the children they are caring for, making it very difficult to meet a child's needs.⁵²⁷

We were also told that the Department has cited privacy or confidentiality to justify not sharing information with carers about children in their care.⁵²⁸ Dr Watchorn said that 'if sharing the information would reduce risk for the child, priority has to be with the interests of the child, not the confidentiality of information'.⁵²⁹

The Child Advocate stated that carers should have enough information about a child in their care ‘to provide adequate care and attuned responses for that child to recover from the effects of trauma’.⁵³⁰

When carers have specific information about the child in their care, they are better able to anticipate triggers, respond appropriately to a child’s trauma-related behaviour and manage risks.⁵³¹

8.3.3 Funding according to needs

The Department funds out of home care through payments to carers and resourcing non-government agencies to support carers and provide residential care, if required. We are concerned that the current level of funding is not enough to adequately meet the needs of children in care and hence, can disrupt the stability of their placements.

Family-based care

Although foster and kinship carers are essentially volunteers, they receive a ‘board payment’ from the Department to cover costs of caring for a child. The payment amount depends on the age and assessed needs of the child (standard, intense or complex). At time of writing, Tasmania’s ‘board payment’ was the lowest in Australia.⁵³²

Andrea Sturges, of the non-government out of home care provider Kennerley Children’s Services, told us that the payment does not cover the actual costs of caring for a child, and it can be very difficult to get an increased rate of payment once it is set.⁵³³ She also said that Department funding is not enough to cover providers’ operational costs to support carers, so providers must make up the shortfall from their own funds.⁵³⁴

Residential care

Residential care is an expensive form of out of home care and least like a family environment when compared with foster or kinship care.⁵³⁵

In 2019, the Department ‘revised’ its funding for Special Care Packages for children in residential care; this resulted in some providers receiving less funding for children in their care on the basis that some children were deemed to not require ‘non-material basics’ services.⁵³⁶ ‘Non-material basics’ services include those costs that exceed the costs of the minimum service that any child in out of home care receives. The Department told us that the revision of the payment system in 2019 was intended to improve the Department’s financial controls for Special Care Packages.⁵³⁷ The Department also said that, while the revised model has ‘resulted in a reduction to the amount received by some care providers for some children where those children did not require “non-material basics”’, it has ‘improved financial oversight and achieved consistent costing for like items’.⁵³⁸

However, one provider told us that since then, all children, including children with disability, have received the same level of funding regardless of their needs.⁵³⁹ We heard that funding continues to cover food, activities, rent and salaried staff but not extra supervision or allied health supports that might be needed for an individual child. We also heard that the Department had suggested to one provider that they cover children's supervision and health costs themselves.⁵⁴⁰ This provider could not make up the shortfall and observed that as extra supports decreased, serious incidents and workplace injuries increased. Consequently, the provider exited the 'material basics' funding program.⁵⁴¹ This example highlights the importance of funding care for a child according to their needs.

We consider it unreasonable for the Department to require a non-government provider to supplement departmental funding with their own resources to care properly and safely for children under the Secretary's guardianship. It amounts to an abdication of the Secretary's duties, obligations and liabilities under the Children, Young Persons and Their Families Act.⁵⁴² We consider these circumstances likely arose due to prolonged underfunding of out of home care by the Tasmanian Government.

Alternatives to residential care

Ms Enkelmann suggested that we consider trauma-informed models of intensive therapeutic foster care being used in other Australian jurisdictions, such as the TrACK program in Victoria.⁵⁴³

Ms Enkelmann told us that the TrACK model is an alternative model of care for children not suited to traditional foster care. Under the model, carers are highly trained, paid at a much higher rate than other carers to allow them to care for the child full-time, and receive intensive support from an out of home care worker and therapeutic specialist.⁵⁴⁴ Ms Enkelmann advised that this model was most effective when implemented proactively for a child and 'not as an option of last resort'.⁵⁴⁵

In her June 2022 report to the Secretary, the Child Advocate argued strongly for salaried family-based care.⁵⁴⁶

8.3.4 Improving the placement of children

There are several steps the Department could take to improve placements for children in out of home care. For example, we see value in the Department using a placement matching tool such as those described earlier. Even if the Department cannot find a perfect placement for a child, a tool would highlight the gaps in a carer's skill set, enabling the Department to provide that carer with tailored supports. It could also consider the child's existing relationships, such as where siblings are placed. A placement tool can also assist with decisions about placing children together in a facility. In particular, this could help avoid co-placements where children are at risk

of harmful sexual behaviours.⁵⁴⁷ In conjunction with this tool, carers must be supported by receiving information about the children in their care that can help protect them from sexual abuse.

The number, quality and stability of placements can also be improved by providing adequate funding to meet the needs of children in care. As we have seen, meeting children's needs and improving placement stability are protective factors in child sexual abuse. We agree with the Child Advocate that while salaried family-based care is more expensive than regular foster care, it would certainly be much less expensive than residential care, as well as providing the child with a safer and more therapeutic care environment and greater likelihood of developing a trusting relationship with an adult.⁵⁴⁸ For this reason, we recommend introducing a salaried or professional care model.

Recommendation 9.25

The Department for Education, Children and Young People should improve placement stability and reduce the risk of sexual abuse of children in care by:

- a. considering the views of the child or children about their out of home care placement
- b. using placement matching guidelines to aid placement decisions and support planning
- c. placing siblings together or maintaining sibling connection where safe to do so
- d. ensuring carers are aware of any history of abuse in relation to the child and the child's specific needs relevant to this
- e. introducing an intensive salaried or professional foster care model to allow children with challenging behaviours to remain in family-based care
- f. funding all placements (including kinship, foster, respite and residential care) to fully meet all the child's assessed needs to the extent these are not covered by other schemes (such as the National Disability Insurance Scheme and public health or education services).

8.4 Care plans

The National Royal Commission stated that all children in care should have an individualised care plan.⁵⁴⁹ In particular, all children with disability should have an individualised care plan that helps strengthen the child's safety. This should be based on adequate assessment of needs, incorporate 'specific risk management and safety strategies' and identify 'trusted adults in the child's life' (among other elements).⁵⁵⁰

Standard 4 of the national out of home care standards also requires that ‘each child and young person has an individualised plan that details their health, education and other needs.’⁵⁵¹

According to the Children, Youth and Families Practice Manual, the Department launched the current care teams and care planning process in December 2020.⁵⁵² The Department’s care plan template covers the six domains of the *Tasmanian Child and Youth Wellbeing Framework*: ‘being loved and safe’, ‘material basics’, ‘being healthy’, ‘learning’, ‘participating’ and ‘culture and identity’. Each domain represents an aspect of the child’s life that the care team must consider. For each domain, the care team identifies the following for the child: current goals, ‘what’s going well?’, ‘what needs to improve?’ and ‘what are we going to do?’.⁵⁵³

We understand that several policy and procedural documents guide Child Safety Officers in developing care plans. The *Care Teams and Care Planning Procedure* requires Child Safety Officers to establish a care team within six weeks of the ‘first legal order’ for a child. The care team must then meet every six weeks for the first year. The care team must develop the child’s care plan within the first two care team meetings and review the plan at least annually, as well as whenever there is a significant change in a child’s circumstances.⁵⁵⁴

Care teams should also complete an agreement that states the role of each team member in the child’s life, the objectives of the team and how the team will work together. The care team agreement should be reviewed each year along with the care plan, or more frequently if circumstances change.⁵⁵⁵

The child’s care team appears critical for developing a thorough care plan. Ms Lovell said the ideal care team has the right people in it, develops and follows a care plan that is effective and child-informed, and shares power between team members.⁵⁵⁶

In June 2022, Ms Lovell told us that some children in out of home care had a minimal care team and some children did not have a care team at all. She said that the Child Safety Service was ‘working toward’ the goal of every child having a comprehensive functioning care team but could not report on progress due to ‘data quality issues’.⁵⁵⁷

We have received vastly different figures from the Department, a non-government provider and the Commissioner for Children and Young People about how many children in care have care plans.⁵⁵⁸

We conclude that, while many children in out of home care may have an approved care plan recorded, a good proportion of those care plans will not be current, and many have not been created and implemented by a functioning care team. We infer it is unlikely that children without an allocated case worker will have an up-to-date care plan or active care team—such as children on 18-year guardianship orders.

It is not clear to us whether the care plans are structured in a way to undertake ‘specific risk management and safety strategies’, as was recommended by the National Royal Commission. If a child’s assessment indicates that they are at risk of child sexual abuse, child exploitation or harmful sexual behaviours, the care plan should include specific strategies to manage these risks.

Care plans should also be informed by the multidisciplinary health assessments we recommend above (refer to Recommendation 9.23).

Addressing risk in relation to child sexual exploitation and harmful sexual behaviours is considered in Section 10.

Recommendation 9.26

The Department for Education, Children and Young People should ensure:

- a. each child is involved in developing their care plan
- b. each child’s care plan is informed by the holistic assessment (Recommendation 9.23) and the interests and aspirations of the child
- c. care plans include strategies to address identified risks of child sexual abuse, including the risk of harmful sexual behaviours and child sexual exploitation
- d. the care team reviews any risk assessments and management plans for child sexual abuse at least every six months, or more frequently if incidents occur or circumstances change such as when a new child joins the household.

9 Children on out of home care orders involved with youth justice

In this section, we identify the specific needs of ‘crossover children’—children who are in out of home care and who are also involved with youth justice.⁵⁵⁹

We discuss the specific risks of sexual abuse for children in Ashley Youth Detention Centre at length in Chapter 10. Those risks are unacceptably high.

Children in care can be particularly vulnerable to child sexual abuse in youth detention for a number of reasons, including their over-representation, their experiences of previous trauma and because ‘many children in youth detention are disconnected from families, community and culture and may not have even limited access to an adult they trust’.⁵⁶⁰

In this section, we recommend measures to prevent the sexual abuse of crossover children by:

- actively advocating for children in care to not enter youth detention, except when absolutely necessary
- providing active case management when a child in care does enter youth detention.

9.1 Reducing over-representation

The National Royal Commission found that children in out of home care are 16 times more likely to be under ‘youth justice supervision’ than the general population.⁵⁶¹ The correlation between out of home care and youth detention is not surprising considering that children in both settings are likely to have experienced abuse and trauma.⁵⁶² Brett’s experience, described in Chapter 8, showed us how being placed in care can lead to a child entering youth detention.

The relationship between children living in out of home care and involvement in the youth justice system is well established but not straightforward.⁵⁶³ Being in care does not automatically mean a child will go on to youth detention.⁵⁶⁴ Between 2007 and 2022, only 3.3 per cent of Tasmanian children in care had ever been sent to Ashley Youth Detention Centre, with yearly rates ranging from 1.2 per cent up to 7.1 per cent.⁵⁶⁵

Conversely, many children in youth detention have been in out of home care. Between 2007 and 2022, the average percentage of young people in Ashley Youth Detention Centre who had ever been in out of home care was 27.9 per cent, with yearly percentages ranging from 18.2 per cent up to 42.6 per cent.⁵⁶⁶ These rates are similar to those in other jurisdictions.⁵⁶⁷ Also, while the total number of detainees in Ashley Youth Detention Centre steadily declined between 2007 and 2021, the percentage of those who had ever been in out of home care increased, suggesting that children in out of home care have become increasingly over-represented in youth detention in Tasmania over time.⁵⁶⁸

Aboriginal children in Tasmania, particularly younger Aboriginal children, are over-represented in care and further over-represented in youth justice.⁵⁶⁹

Children in care can end up in youth detention more frequently for several reasons:

- residential care homes are more likely than a family of origin to call police for assistance in response to property damage or theft⁵⁷⁰
- youth detention is sometimes seen as an alternative placement for difficult-to-place children in care⁵⁷¹

- children may be remanded or kept in detention longer than their sentence due to difficulties finding them a placement.⁵⁷²

Child protection veteran Jack Davenport told us that he thought some within the Child Safety Service saw youth detention as a means of effectively delegating their guardianship responsibilities:

There was no doubt in my mind that [Ashley Youth Detention Centre] was often seen by [Child Safety Service] staff as a de-facto placement option. It was felt that incarceration often solved problems once a child was in [Ashley Youth Detention Centre]. This was principally on the basis that children couldn't leave [Ashley Youth Detention Centre] and there were other people responsible for them (rather than [the Child Safety Service]). Because of this, workers were happy for children to go to [Ashley Youth Detention Centre]. This attitude was partly driven by workload, but primarily by the sense that the responsibility of carrying risk for the child was relinquished.⁵⁷³

Our recommendations in other sections of this chapter address some of the reasons children in care are over-represented in youth detention. For example, introducing a trauma-informed therapeutic model in out of home care (refer to Recommendation 9.18) should reduce the need for residential care staff to involve police because they will have other ways of approaching challenging behaviours. In Section 5, we make recommendations for reducing the over-representation of Aboriginal children in out of home care.

We also consider that the Department, as guardian, should advocate for a child in care to not enter youth detention, unless it is unavoidable. We discuss the mechanisms for preventing children entering youth detention more generally in Chapter 12 but recommend here that a representative of the Department with knowledge of a child in care advocates, at all times, for that child to not enter youth detention, including in the Magistrates Court.

9.2 Active case management

According to the 2017 *Visiting Children and Young People on Orders* procedure, when a child is detained at Ashley Youth Detention Centre, Child Safety Officers must follow a minimum visiting schedule.⁵⁷⁴ We received no information to satisfy us that the Department monitors compliance with this requirement.

Andrea Sturges from Kennerley Children's Services told us that when she worked for the Department, she noticed children in care who were admitted to youth detention were recorded inappropriately and incorrectly by their Child Safety Officers as having left care.⁵⁷⁵ Consequently, active case work was suspended while a child was in detention.⁵⁷⁶

We found it difficult to assess the level of case management a crossover child receives while in youth detention but, given the closed institutional setting of youth detention and the associated risks of child sexual abuse, we are compelled to be prescriptive about the Department's responsibilities to children in care who enter youth detention. These children need more support, not less, from their guardian. We recommend that the Department ensures Child Safety Officers undertake and report on specific case management tasks while a child is in youth detention, including visiting them frequently, ensuring their needs are being met and planning for their release.

Ongoing case management will show the child that their guardian is actively involved in their care, even when they are in custody. Regular visits by Child Safety Officers will provide opportunities for a child to disclose if they have been victimised.

Recommendation 9.27

In its role as statutory guardian of a child in care, the Department for Education, Children and Young People should:

- a. ensure a representative of the Department with knowledge of the child appears for a child in out of home care in the Magistrates Court (Youth Justice Division) and in the new specialist children's division of the Magistrates Court (Recommendation 12.15), in order to
 - i. support the child in court
 - ii. inform the court of all relevant considerations to the court, including the child's child protection history
 - iii. make submissions to the court on behalf of the childwith arrangements in place for this to occur in out-of-hours bail hearings as well as those that occur during normal business hours
- b. take actions that may address any causes contributing to child offending, including changes to care plans
- c. ensure, when a child in care is admitted to youth detention or another residential youth justice facility, that the child's Child Safety Officer
 - i. arranges an immediate review of the child's care plan with their care team, which includes developing a transition plan for when the child leaves detention
 - ii. visits the child as soon as practicable and regularly thereafter, with a minimum of one visit during their admission in line with the child's revised care plan

- iii. notifies the Commission for Children and Young People of the child's admission to youth detention
- d. report to the Quality and Risk Committee on the number of children in care in detention and on the activities listed above.

10 Addressing other risks of sexual harm

In previous sections on supporting quality care and carers (Sections 6 and 7), we consider measures that focus primarily on reducing the risk to children in care from adults within the out of home care system, as well as the risks posed by children not having their needs met. In this section, we focus on the risk of children in care experiencing harmful sexual behaviours from other children or sexual exploitation from adults outside the care system, and how the Department can address these sources of abuse.

10.1 Harmful sexual behaviour

Harmful sexual behaviours are a known risk for children in care.⁵⁷⁷ Research commissioned by the National Royal Commission suggested that children in out of home care were at greater risk of sexual abuse by peers than by adult staff members.⁵⁷⁸ The research suggests that children living in residential care were more likely to have engaged in or experienced harmful sexual behaviour than children in other care settings.⁵⁷⁹

Research indicates that children who engage in harmful sexual behaviours in out of home care settings are more likely to be older, male, biological children of carers; children who have received inadequate or no sex or relationship education; and young males who have themselves experienced sexual abuse.⁵⁸⁰ Other research shows children who have experienced family violence or been exposed to sexual activity such as pornography, are at heightened risk of displaying harmful sexual behaviours.⁵⁸¹

Research conducted for the National Royal Commission also found that certain organisational features common to out of home care settings, particularly residential care, appeared to increase the risk of children engaging in harmful sexual behaviours. These features include:

- where there are attitudes that 'boys will be boys' and that normalise force as part of male sexuality⁵⁸²
- where there is the attitude that girls are responsible for defending themselves against such abuse⁵⁸³

- where there is a ‘culture of silence’ on discussing sex and child sexual abuse with children in out of home care services, which may inadvertently normalise sexual aggression or abuse as part of normal sexual exploration or experimentation⁵⁸⁴
- where abuse is used as a way of asserting power and establishing ‘pecking orders’⁵⁸⁵
- when out of home care staff are poorly or inadequately trained to differentiate between what is age appropriate and what is abusive sexual behaviour between peers⁵⁸⁶
- where those who have experienced sexual abuse and those who have engaged in harmful sexual behaviours are placed in the same living arrangement⁵⁸⁷
- rostered care settings with a higher ratio of young men to young women⁵⁸⁸
- sometimes the sexual abuse histories of the children in a placement can create a ‘hypersexualised culture’, which may lead young people to cross the boundaries of acceptable sexual behaviours.⁵⁸⁹

The case example of Orson and Ivan described in Chapter 8 highlights the risk of harmful sexual behaviours for children in care, and how prevention and responses need to be improved.

10.1.1 Prevalence and examples

In our file analysis of 22 cases of children in Tasmanian out of home care, we identified that harmful sexual behaviours occur frequently (refer to Chapter 8). Half of the 22 cases involved at least one concern about harmful sexual behaviours and most of those concerns were raised in relation to multiple instances of harmful sexual behaviours. The severity of alleged harmful sexual behaviours ranged from developmentally, socially or culturally inappropriate to coercive and/or violent sexual behaviours (refer to Chapter 21 for more on the spectrum of harmful sexual behaviours). All the children involved were known to have a history of sexualised or harmful sexual behaviours before being moved to the placement where the alleged incident(s) took place.

We also heard directly from providers and victim-survivors about harmful sexual behaviours in care.⁵⁹⁰ For example, Brett Robinson told us that he had experienced abuse from an older child at his respite care.⁵⁹¹ He said that when he disclosed the alleged abuse, his foster carers did not believe him. He later told his father, who took him to police to make a statement. Brett said he found it too difficult to finish his statement to police. He told us that he did not know if there was an investigation in response to his allegations because he was never asked further about it.

Caroline Brown, an experienced out of home care provider quoted earlier in this chapter, told us about an investigation into allegations that a child had been raped by their foster brother. Ms Brown told us that, at a meeting with the Department about the investigation, the Senior Practice Consultant did not believe the younger child's account, instead determining that the child had self-injured their genitals.⁵⁹² Ms Brown stated that the Senior Practice Consultant placed responsibility for any abuse on the younger child, stating that the child needed help because of their 'perpetrative behaviours towards older boys' and that the older boy needed to 'learn how to say no' when a younger child jumped on him.⁵⁹³ It appeared to Ms Brown that the Senior Practice Consultant thought that the older boy could not have abused the younger child because of his intellectual disability.⁵⁹⁴

10.1.2 National Royal Commission recommendations

The National Royal Commission made two specific recommendations to decrease the risk of harmful sexual behaviours in out of home care. Recommendation 12.12 focused on identifying, assessing and providing appropriate interventions and support for those children who had engaged in harmful sexual behaviours, as well as 'rigorously' assessing and managing the risk that such behaviours would continue.⁵⁹⁵ Recommendation 12.13 required the Department to ensure carers and staff understood harmful sexual behaviours and provided them with guidelines and advice about how to prevent and respond to these behaviours.⁵⁹⁶

10.1.3 The Department's response

Prevention Assessment Support and Treatment program

The Tasmanian Government's response to the National Royal Commission's multiple recommendations about harmful sexual behaviours, including those related to out of home care, primarily involves its funding of the Sexual Assault Support Service to provide a statewide primary and secondary prevention and therapeutic intervention program for children and adolescents engaging in harmful sexual behaviours.⁵⁹⁷

The Sexual Assault Support Service's Prevention Assessment Support and Treatment program is discussed in Chapter 21. For the purposes of this section, the main components of the program are:

- limited professional development in harmful sexual behaviours that departmental staff have the option to access⁵⁹⁸
- assessment, treatment and intervention for children with harmful sexual behaviours, to which Child Safety Officers regularly appear to refer children for assistance⁵⁹⁹
- advice for staff who can call the Sexual Assault Support Service for guidance when they are faced with alleged harmful sexual behaviours.⁶⁰⁰

The Prevention Assessment Support and Treatment program appears to be based on principles of best practice.⁶⁰¹ However, the program is limited in what it can provide because the funding is not enough to meet the need.⁶⁰²

We consider that funding a community service to provide limited access to education, expert consultation and therapy for children who have engaged in harmful sexual behaviours is an insufficient response to children in the care of the State. The Government must go further and develop a comprehensive policy for preventing, identifying and responding to harmful sexual behaviours in the out of home care sector.

Harmful sexual behaviours policy

The Department does not have a policy to guide staff and out of home carers in identifying, preventing and responding to children who display harmful sexual behaviours, victims of harmful sexual behaviour and other affected parties. We heard that the only resource available to staff to help identify harmful sexual behaviour is the 2006 *Traffic Lights* tool.⁶⁰³ This tool has some limitations, primarily that it does not assist the user to decide how to respond.⁶⁰⁴

We were told that the Department's care concerns process (refer to Section 11) would not necessarily apply in instances of harmful sexual behaviours because the alleged abuser is not a carer but another child.⁶⁰⁵ If there was some indication that the carer did not act to prevent the harmful sexual behaviours, then a Child Safety Officer could raise a quality of care concern—the less serious of the two care concern options. As discussed in Section 11.4, a quality of care concern focuses on the behaviour of the carers and not the impact on the child. We could not identify any other policy that outlines how to respond to and manage harmful sexual behaviours, and the Department does not provide mandatory training to Child Safety Service staff or out of home care carers and staff about harmful sexual behaviours.⁶⁰⁶

10.1.4 A new whole of government harmful sexual behaviours framework

Other jurisdictions have invested heavily in a whole of government coordinated approach to preventing and responding to harmful sexual behaviours. For instance, in response to National Royal Commission recommendations, New South Wales has publicly released *Children First 2022–2031*. Children First is a whole of government shared framework for preventing and responding to problematic and harmful sexual behaviours by children and young people, which 'sets the vision and priorities for how [New South Wales] can and will work together to support children and young people who have displayed, or been affected by, problematic and harmful behaviours by applying a sector wide, multiagency public health approach'.⁶⁰⁷

The Western Australian Government contracted the Australian Centre for Child Protection to develop the *Framework for Understanding and Guiding Responses to Harmful Sexual Behaviours in Children and Young People*, released in June 2022.⁶⁰⁸ The Western Australian framework ‘is a conceptual map of research evidence, relevant theoretical underpinnings, general practice principles and practice wisdom’ to assist ‘practitioners, policy makers and carers to provide responses that are safe, effective and trauma informed’.⁶⁰⁹ The framework outlines what is known about harmful sexual behaviours, how to interpret sexual behaviours at various developmental stages, and key principles of practice. It also has a section dedicated to responding to harmful sexual behaviours in residential care.⁶¹⁰ The framework is publicly available.

We note that the New South Wales and Western Australian frameworks are not limited to out of home care; instead they aim to provide a common, whole of government framework for understanding and responding to harmful sexual behaviours, and are supplemented by more nuanced guidance for specific contexts, including out of home care.

We recommend the Tasmanian Government develops a statewide framework and plan for preventing, identifying and responding to harmful sexual behaviours that provides a common understanding of harmful sexual behaviours, high level guidance on how to respond and a clear articulation of the roles and responsibilities of different government provided and funded agencies within the response in Chapter 21 (Recommendation 21.8).

10.1.5 A Harmful Sexual Behaviours Support Unit

The Department for Education, Children and Youth is responsible for out of home care, youth justice and schools. We have concluded that these are the three institutions in which there is the greatest risk of children displaying or experiencing harmful sexual behaviours. Additionally, the Department is responsible for the Advice and Referral Line and the Child Safety Service, which are responsible for receiving reports from the public and mandatory reporters regarding child sexual abuse. The Department for Education, Children and Young People must be equipped to provide high quality, best practice responses to harmful sexual behaviours displayed or experienced by children in its care in schools, out of home care or youth detention.

As outlined in Chapter 6, Secretary Bullard described departmental initiatives to prevent and respond to harmful sexual behaviours in Tasmanian schools including employing four additional full time-equivalent senior support staff—two psychologists and two social workers—‘to provide further support for children and young people affected by harmful sexual behaviours or child sexual abuse’ and additional Student Support Response Coordinators.⁶¹¹ We were encouraged by these and other developments in school settings to enhance responses to harmful sexual behaviours. We did not see parallel initiatives to enhance responses in out of home care or youth justice but conclude there is a profound and urgent need for this to occur.

We have concluded that a Harmful Sexual Behaviours Support Unit should be established within the Department for Education, Children and Young People located within the Office of the Chief Practitioner (refer to Recommendation 9.17). The Harmful Sexual Behaviours Support Unit should support all child-facing services in the Department to manage harmful sexual behaviour through the provision of advice, guidance and support and context specific policies. The Unit should have specialist advisors who can:

- support staff to identify whether an incident constitutes harmful sexual behaviour
- assist in the development of appropriate and proportionate local responses to inappropriate and problematic sexual behaviour
- support and guide a critical incident response to persistent, abusive and/or violent harmful sexual behaviours
- help develop tailored risk mitigation plans that are the least restrictive possible and balance the needs of all children
- assist in advising on when and how to communicate with other affected parties (where appropriate)
- assist in arranging access to counselling, and support children displaying harmful sexual behaviours, victims and other affected parties, where required
- advise on appropriate notifications, reporting and information sharing, and follow the child while the risk remains
- ensure accurate and appropriate records are created and appropriately stored.

The Harmful Sexual Behaviours Support Unit would likely benefit from having access to the detailed response guidance in the Child-Related Incident Management Directorate, which could be used to inform the detailed policies, protocols and guidance for responding to harmful sexual behaviours in out of home care, youth justice and schools that we recommend.

The Harmful Sexual Behaviours Support Unit would also work closely with the Quality and Risk Committee (refer to Recommendation 9.5) to ensure systemic risks, practice issues and opportunities for improvement are identified.

The Department's new senior support staff mentioned above could form part of the Harmful Sexual Behaviours Support Unit. The Tasmanian Government will need to allocate additional funding to resource the Unit to also support out of home care and youth justice responses to harmful sexual behaviours.

Detailed specific policies, protocols and guidance for out of home care

Responding to harmful sexual behaviours in out of home care, where the Department may be the guardian of the child displaying the behaviours and children harmed by the behaviours, requires careful consideration and specialist guidance. This guidance would include the initial response to the incident, but also consider issues such as placement suitability; carer support; the safety and therapeutic needs of the child displaying the behaviours; the safety and therapeutic needs of other children impacted by the behaviours; appropriate information sharing; the role of police; and communication with birth parents. Detailed, specific out of home care policy, protocols and practice guidance are required to support best practices responses to harmful sexual behaviours displayed or experienced in out of home care, including:

- correctly identifying and distinguishing developmentally appropriate, inappropriate and harmful sexual behaviours
- supporting Child Safety Officers, non-government out of home care providers and carers to implement proportionate local responses to inappropriate and problematic sexual behaviour in placements
- balancing the safety, treatment, support and connection needs of the child displaying harmful sexual behaviours with the safety needs of other children in the child's life, including siblings, and encompassing safety planning guidance for the out of home care context
- considerations for placement matching and decision making, and conditions under which placements would be temporarily or permanently changed as a consequence of harmful sexual behaviours
- the safety, treatment and support needs of other children in care harmed by or who reside with the child displaying harmful sexual behaviours
- strategies to ensure that appropriate support and referrals/reports occur in response to a child displaying harmful sexual behaviour
- what information should be recorded and the circumstances in which it should be shared with external authorities, affected parties, other services and supports engaged with the child
- guidance about communicating with families and affected parties
- review processes for safety and participation plans, recognising that risk is not static.

We consider this guidance should be proceduralised where possible and used by Child Safety Officers in conjunction with advice, support and guidance from the Harmful Sexual Behaviours Support Unit.

Guidance should direct staff record all incidents of harmful sexual behaviours as a concern about the safety and wellbeing of a child in care and respond in accordance with this policy. Guidance should also advise staff on when and how to seek assistance from the new Harmful Sexual Behaviours Support Unit.

Minimum and advanced education and training in preventing, identifying and responding to harmful sexual behaviours

As identified in Section 4.6 of this chapter, Child Safety Officers, including those providing case management to children in out of home care, receive little professional development on sexual abuse or harmful sexual behaviours as part of their mandatory induction. We recommend mandatory minimum and advanced continuing professional development and education for Child Safety Officers providing out of home care case management (refer to Recommendation 9.11). Advanced professional development should include tailored professional development offerings for Child Safety Officers and carers in understanding and responding to harmful sexual behaviours. Staff working in the Harmful Sexual Behaviours Support Unit must be suitably experienced or undertake additional professional development to advance their knowledge in responding to harmful sexual behaviours. This may be internally developed and implemented or be accessed through specialist external providers. Advanced professional development in harmful sexual behaviours should also be made available to relevant staff in schools and youth justice, such as psychologists or social workers working within these settings.

Power to Kids

As discussed elsewhere in this volume, children in out of home care have heightened vulnerability to displaying harmful sexual behaviours, and to experiencing child sexual exploitation—particularly those living in residential care. They may have experienced child sexual abuse or displayed harmful sexual behaviours (or both) prior to coming into care.

While children in out of home care are more vulnerable to sexual harms, they are also more likely to experience school absences and educational disengagement, which means they miss out on school-based sexual health, respectful behaviours and sexual abuse prevention curriculum. They may not have experienced conversations with parents or carers about sexuality, particularly those in residential care with rostered staff. Residential care staff are often inexperienced with limited qualifications and training. Research for the National Royal Commission showed that residential care staff struggled to have appropriate sexual health conversations with children in their care and to respond to harmful sexual behaviours and risk of sexual exploitation.⁶¹²

Recognising the unique vulnerabilities and needs of children in residential care, Dr Robyn Miller told us that MacKillop Family Services had developed and implemented a prevention and intervention model for harmful sexual behaviours (and child sexual exploitation) called ‘Power to Kids’, across all MacKillop Family Services’ residential care homes in Victoria and New South Wales.⁶¹³

Power to Kids is a whole of residential unit, multi-faceted program aimed at ensuring that identified risks are managed, escalated and responded to appropriately by residential carers, the Child Safety Officer, senior managers and the clinical team.⁶¹⁴ It has been proven to reduce the risk to children in residential care of sexual abuse in the form of harmful sexual behaviours, child sexual exploitation and dating violence.⁶¹⁵

Dr Miller described the three prevention strategies of the Power to Kids model: respectful relationships and sexuality education for the whole house, including staff; the missing from home strategy (primarily relevant for child sexual exploitation); and the sexual safety response.⁶¹⁶ A key element of the Power to Kids approach is to upskill all residential carers within a household to equip them to have ‘brave’ but appropriate conversations about sexuality and risks of sexual harm.⁶¹⁷ Education for children is not formal or structured, but occurs in the moment; for example, as children and a residential carer are travelling in a car or in response to sexualised material a child may have accessed or been exposed to in an online gaming environment. Power to Kids is a supplementary strategy tailored specifically to the high-risk residential care context and was designed to be implemented in residential care contexts with a trauma-informed therapeutic model of care (MacKillop uses the Sanctuary model).

We recommend the Tasmanian Government facilitates the adoption of Power to Kids or another program or approach with comparable common elements in government funded residential care homes. Any response should contain key elements evident in models such as Power to Kids, namely:

- Education—the approach must educate all roles across the sector in identifying, preventing and responding to harmful sexual behaviours. The education must also involve children in care, so that they understand boundaries in relationships and what is unacceptable. Education in this context is not formal class-based education. Education is individual and responsive to the context in the moment where carers are equipped to have ‘brave conversations’ with children in care about sexual abuse and harmful sexual behaviours.⁶¹⁸
- Prevention strategies—specific strategies and guidance about actions that carers and staff can take to reduce the risk of harmful sexual behaviours for children in care. These strategies should be informed by the available evidence.
- Intervention guidance—clear practice guidance for all those involved in the care of each child when harmful sexual behaviours occur. This may involve practice principles, procedures and tools to guide an appropriate response.
- Therapeutic intervention—ensuring sufficient evidence-informed therapeutic resources are available to intervene with children who engage in, or experience, harmful sexual behaviours.

- Whole of workforce knowledge and skill building.

In Chapter 12, we also suggest that Power to Kids or a comparable program or approach may be of benefit in Residential Youth Detention facilities, which share many of the same risks as residential out of home care.

Access to treatment and support for children affected by harmful sexual behaviours while in out of home care

In Chapter 21, Recommendation 21.8, we recommend a sufficiently resourced therapeutic service system for children displaying harmful sexual behaviours. Without an appropriate response, harmful sexual behaviours can escalate and become entrenched and they can seriously compromise the safety, wellbeing and life outcomes of the child displaying the behaviours. Where a child in out of home care displays persistent, abusive or violent sexual behaviours and no timely publicly funded service is available to meet their needs, the State should engage a private service. Similarly, where a child who is sexually harmed in out of home care requires treatment and no timely publicly funded response is available, a private service should be engaged by the State.

Recommendation 9.28

1. The Department for Education, Children and Young People should establish a Harmful Sexual Behaviours Support Unit to support best practice responses to harmful sexual behaviours across the Department, including in schools, Child Safety Services, out of home care and youth detention. The unit should:
 - a. provide advice, guidance, and support across the Department
 - b. develop context-specific policies for all settings informed by the Tasmanian Government's statewide framework and plan to address harmful sexual behaviours (Recommendation 21.8)
 - c. work closely with the Quality and Risk Committee (Recommendation 9.5) to ensure systemic risks, practice issues and opportunities for improvement are identified.
2. The Tasmanian Government should allocate additional funding to support responses to harmful sexual behaviours in out of home care and youth justice.
3. The Harmful Sexual Behaviours Support Unit should develop detailed out of home care-specific policies, protocols and practice guidance to support best practice responses to harmful sexual behaviours in out of home care.

4. The Department should ensure the advanced professional development for departmental staff in understanding and responding to harmful sexual behaviours (Recommendation 9.11) includes tailored professional development for both Child Safety Officers and carers, and is available to staff in relevant roles in schools and youth justice.
5. The Department should ensure staff working in the Harmful Sexual Behaviours Support Unit are suitably experienced or undertake additional professional development to advance their knowledge in responding to harmful sexual behaviours.
6. The Department should ensure Power to Kids or another program or approach with comparable components is implemented in government funded residential care homes as a supplementary strategy to address the heightened risk of harmful sexual behaviours (including child sexual exploitation and dating violence) in out of home care.

10.2 Child sexual exploitation

The National Royal Commission defined sexual exploitation of children in care as children being ‘manipulated or coerced to participate in sexual activity by an adult outside the placement in exchange for, or for the promise of, an incentive’.⁶¹⁹

In its 2015 report on sexual abuse in residential care, the Victorian Commission for Children and Young People stated that ‘external predators posed the greatest risk to children in residential care’.⁶²⁰ In 2016, Victorian data suggested that 63 per cent of sexual abusers of children in care were other adults (external to the placement) who were sexually exploiting children they had targeted in residential out of home care.⁶²¹

In this section, we examine the Department’s response to the sexual exploitation of children in its care and the role of Tasmania Police in preventing and responding to these crimes. We consider the multiagency initiatives in Victoria that have reduced the incidence of, and improved responses to, sexual exploitation of children in care.⁶²² Our recommendations build on these effective interstate responses and require the Department and Tasmania Police to work with other agencies to adopt more coordinated, strategic and proactive responses to the sexual exploitation of children in care.

10.2.1 Increased risk for children in out of home care

While child sexual exploitation occurs across the general population, there are adults who actively target children in out of home care, particularly in residential care.⁶²³ Children in care can be particularly vulnerable to manipulation and grooming by these predators due to their trauma history, previous experiences of sexual abuse and disrupted attachments.⁶²⁴ Moreover, according to a researcher in this area, Dr Gemma McKibbin, children are increasingly grooming and recruiting their peers for the purposes of child sexual exploitation, particularly via online means and social media.⁶²⁵

Dr McKibbin told us about six models of child sexual exploitation that occur in the out of home care setting, as described in the Victorian Government's 2017 publication, *Child Sexual Exploitation: A Child Protection Guide for Assessing, Preventing and Responding*:

- inappropriate relationships model—a significantly older person uses inappropriate power ('physical, emotional and/or financial') over a child to sexually exploit them; the child believes the adult loves and protects them
- boyfriend/girlfriend model (also called the 'loving relationship' model)—the adult befriends the child and grooms them into a 'relationship' but then manipulates or forces the child to have sex with others
- trusted friend or other peer model—a child is encouraged into sexual exploitation by a peer
- organised/networked model—a child is coerced into sexual activity with multiple men; children may be used to recruit others to 'sex parties'; sometimes associated with organised crime
- online model—this model may be used with other models to initiate or maintain contact and exploitation; can be used to target younger children; once children share images, they can be used against them to coerce them into further activity
- betrayal model—the child is befriended by a trusted adult who then organises the child to be sexually exploited by others for their own personal gain.⁶²⁶

We heard about or identified many of these models being used to sexually exploit Tasmanian children in care. For example, as described in Linda's case example (Chapter 8), Linda (a pseudonym) was groomed online by an adult male. He convinced her to send him sexually explicit pictures of herself and, once he had them, he used them to coerce her into trying to recruit other, younger children in care. In another example, we heard that a child had a series of 'boyfriends' aged in their 20s or older who were all known to each other and who supplied her with alcohol and drugs. A non-government provider told us about a girl in care who they believed was being trafficked by her 40-year-old 'boyfriend' to his associates during parties at his house.⁶²⁷

Several children in our commissioned research indicated that they were aware that children in care were vulnerable to child sexual exploitation. They thought that sometimes children in care were seeking a loving relationship with an adult or could not identify an abusive relationship.⁶²⁸ One young person said:

I think it's more with kids in care that they're willing to do ... If someone reached out, had no idea who the kid was, and was like, 'Hey, do you want to meet up?' I feel like a kid in care ... I don't know if this is true, but I feel like a kid that's in care would be more likely to agree to that because ... They want to make connections and they possibly aren't ... They probably don't have that many friends. I hate to say it, but I know a lot of people in care that are very isolated. And if someone that is kind to them via social media and looks like a nice person, why wouldn't you go physically?... I feel like if you're in care, you're going to want to talk to more people and be able to let them know about what's going on in your life. And sometimes people that reach out to you, aren't the best people to talk to.⁶²⁹

Some children in care interviewed for our commissioned research could identify grooming behaviours—for example:

I think it's where you slowly build up to doing things to a younger person, and it's more sexual things. And it can sometimes lead to it feeling OK. And if not, a lot of the time, it can end up that they're too scared to do something about it and they think, 'Oh, well, if it's happening this much, it must be normal'.⁶³⁰

However, the researchers found that most children they interviewed did not know what grooming was and could not describe it or how they might respond to it.⁶³¹ Children said they thought this was important information to know and would like adults to talk to them about it.⁶³²

Children in care who are being sexually exploited often do not view the exploitation as abuse because they have believed the lies of the abuser, and because they do not always have a good sense of what makes a 'healthy' or 'appropriate' relationship.⁶³³ Instead, they may consider the abuser to be their 'boyfriend' or that they are a willing participant in the abuse. Children who are being sexually exploited often present as 'hostile, aggressive, involved in low-level criminality ... under the influence of drugs or drunk and disorderly', making it difficult to engage with them.⁶³⁴ These children are often unwilling to cooperate with police or child protection officers to facilitate their own protection.⁶³⁵ Consequently, those in the out of home care system may believe they are powerless to stop the abuse and take little, or no, action.⁶³⁶ We heard evidence of this attitude in Tasmania, which we discuss below.

10.2.2 National Royal Commission recommendations

The National Royal Commission made specific recommendations to protect children in care from child sexual exploitation:

- Recommendation 12.14—governments implement strategies that identify and disrupt activities involved in child sexual exploitation and that encourage children to cooperate in investigation of the offences.
- Recommendation 12.15—governments align their definitions of child sexual exploitation and report on child sexual exploitation as a form of child sexual abuse.⁶³⁷

10.2.3 Identifying child sexual exploitation

The National Royal Commission noted that it is difficult to estimate the prevalence of child sexual exploitation in out of home care in Australia because it is largely ‘hidden’, possibly due to a lack of awareness of what sexual exploitation is or a lack of reporting by those working with children in out of home care.⁶³⁸

The National Royal Commission observed that child protection staff, out of home care workers and police can struggle to recognise child sexual exploitation, instead misidentifying it as adolescent sexual experimentation, normal behaviour for a young person in residential care, a free ‘choice’ being made by the young person, or engagement in prostitution. Another common misunderstanding is that nothing can be done to protect a child if they are unwilling to make a sworn statement to police.⁶³⁹ In Victoria, reporting rates increased after steps were taken to raise awareness of child sexual exploitation among child protection and out of home care workers.⁶⁴⁰ This suggests that, without an understanding of child sexual exploitation, workers may fail to recognise that a child is being sexually exploited and know how to respond.

In our review of 22 children’s case files from Tasmania, we found evidence of child sexual exploitation in four cases, all of whom were females in their teens. All were exploited by more than one adult outside the placement (refer to Chapter 8). Three of these girls had a known intellectual disability, which may have increased their vulnerability to exploitation.⁶⁴¹

Despite the National Royal Commission raising awareness of these issues more than five years ago, we observed that poor attitudes and misunderstandings remain in some parts of Tasmania’s out of home care system. Child Safety Service staff and police often do not recognise child sexual exploitation for what it is, instead describing such behaviour as prostitution or as the child ‘self-selecting’ a placement or relationship.⁶⁴² We heard that some workers feel powerless to intervene when a child is being sexually exploited or worse, do not see intervention as a priority.⁶⁴³

10.2.4 Tasmania's response

The two government agencies primarily responsible for preventing and responding to child sexual exploitation are the Department and Tasmania Police.

Department responses

We heard from providers that the children who were missing from placement—'self-selecting' or 'self-placing' as the Department sometimes termed it—were often those being sexually exploited.⁶⁴⁴

During his time with the Department, Jack Davenport formed this view of the Department's ability to respond to child sexual exploitation:

[Child Safety Services] demonstrated a limited ability to manage complex networks of offenders, notably sexual offenders targeting children. There was no mechanism to manage social media being used to target children, including those in care. The police had little involvement if no criminal activity explicitly took place. There was no capacity for undertaking complex assessments for [child sexual abuse] where there were multiple abusers.⁶⁴⁵

Non-government providers told us they had each developed their own ways of responding to child sexual exploitation, despite the Department not requiring them to do so.⁶⁴⁶ Some non-government providers said they addressed the risk of child sexual exploitation by working with carers and children on enhancing protective behaviours.⁶⁴⁷ They informed us that current funding levels meant they did not have enough carers available to respond effectively to exploitation when it occurred.⁶⁴⁸

Non-government providers also told us that when they reported instances of child sexual exploitation to the Department, responses were variable. Sometimes reports were not registered as quality of care concerns and no action was taken; on other occasions, Child Safety Officers would visit the child and conduct a safety assessment.⁶⁴⁹

The Department's possible guidance for staff about child sexual exploitation appears to be limited to two documents:

- the *Missing Persons Response Children in Care Practice Advice* and an associated flowchart, which describes the response to missing persons generally⁶⁵⁰
- the *Keeping Children Safe Handbook*, used by the Department and Tasmania Police, which includes a section on responding to children who are absent from placement by filing a missing person's report (discussed below).⁶⁵¹

However, neither of these documents discuss the risk of child sexual exploitation, nor do they allude to it. Other than these documents, we could not find any other explicit references in the online Practice Manual to preventing or responding to the sexual exploitation of children in care.

Secretary Pervan said the Department does not have a ‘general rule or practice’ to guide practitioners’ responses.⁶⁵²

Claire Lovell, Executive Director, Children and Family Services, acknowledged that the Department should be engaging in preventative measures for child sexual exploitation, such as making sure a child in care has secure relationship networks so they can access safe people to disclose to, who can then take action.⁶⁵³ Ms Lovell also said that Tasmania Police should take more responsibility to prevent and respond to child sexual exploitation.⁶⁵⁴

Tasmania Police responses

Police responses to concerns about child sexual exploitation were described as variable.⁶⁵⁵ Providers expressed grief and frustration over situations where they knew a child was being exploited, but because the child would not lodge a complaint, police and the Department took no action.⁶⁵⁶

In one of the 22 cases we reviewed, we read notes from an interagency meeting about a girl who was being sexually exploited—Tasmania Police did not consider it a priority to retrieve the girl because of a perception that she was consensually living with the abuser.⁶⁵⁷

However, in another case we reviewed, where a teenager in care was being exploited by adult males in exchange for alcohol and drugs, police and the Department actively worked together to disrupt the sexual exploitation. Although the girl was unwilling to make a statement, police applied pressure to the abusers through repeated visits and ensuring that minor offences (such as driving violations) were responded to. Where possible, they returned the girl to her care home each time they visited. The Child Safety Officer sought and obtained a restraining order on behalf of the child against one of the men, her ‘boyfriend’ in his late 20s, and out of home care staff continued to make regular contact with the girl, encouraging her to return home.⁶⁵⁸

To explain how Tasmania Police approach child sexual exploitation, Jonathan Higgins APM, then Assistant Commissioner of Operations, Tasmania Police, told us about police involvement in national online child sexual exploitation initiatives—the Australian Centre to Counter Child Exploitation and the Joint Anti Child Exploitation Team—which enable police to track and interrupt the online component of child sexual exploitation.⁶⁵⁹ However, he was less clear on how Tasmania Police could be involved in preventing child sexual exploitation that moves from online to face-to-face interactions with children in care.⁶⁶⁰

Assistant Commissioner Higgins agreed that Tasmanian Police, and the State as a whole, could do better in preventing the sexual exploitation of children in care.⁶⁶¹

10.2.5 Missing persons and ‘self-placement’

Research for the National Royal Commission identified that a child ‘missing from placement’ is a key ‘red flag’ indicator of sexual exploitation for service providers and child protection authorities.⁶⁶² In its 2021 *Out of Sight* report on children who are absent or missing from residential care, the Victorian Commission for Children and Young People found that an ‘alarmingly high number’ of such children were ‘sexually exploited, abused and assaulted, often by adult men’, with devastating and long-term consequences.⁶⁶³

Several non-government providers told us that Child Safety Officers regularly referred to children who had gone missing from a placement as having ‘self-placed’, and that if a child was older than 13 or 14, the Department has not always prioritised assertive outreach to ensure their safety.⁶⁶⁴ We heard that sometimes the Department considered children as young as 12 to be able to ‘self-protect’—that is, to be able to recognise grooming behaviour and remove themselves from an unsafe situation.⁶⁶⁵ As one provider rightly pointed out:

... the idea or notion that young people (some as young as 12), would have the ability to make fully informed, safe decisions for themselves without a safe and protective guardian or adult around to help them was and is something I find incredibly difficult to comprehend. I do not know how that label can be applied to vulnerable children, especially children who have suffered trauma, when it is not a label we would apply to our own children.⁶⁶⁶

Dr Miller told us that the practice of allowing children in care who were around the age of 15 or older to choose where they live is not followed in Victoria.⁶⁶⁷ She said she was aware that this was allowed in Tasmania and New South Wales but described it as a ‘dangerous practice’ because of the risk of exploitation and poor outcomes for the child.⁶⁶⁸

As indicated above, section 9 of the *Keeping Children Safe Handbook* outlines the conditions under which Tasmania Police would respond if a child went missing from a placement.⁶⁶⁹ The handbook includes the following:

- a missing person’s report should only be made to Tasmania Police when the child’s ‘whereabouts are unknown, **and** where there are concerns for the safety **and** welfare of that person’—the handbook acknowledges that ‘a child’s age or vulnerability may put a child into this category’ [bold emphasis is ours]⁶⁷⁰
- the police require the Department to apply for and obtain a warrant under the Children, Young Persons and Their Families Act ‘if it is assessed that intervention will be required to take the child into safe custody’, otherwise a missing persons report ‘does not provide police with any power to apprehend, detain or return the child to their placement’⁶⁷¹
- the missing person’s report remains ‘live’ on the police system until the missing person is found.⁶⁷²

Section 9 does not mention that a child missing from placement is at risk of child sexual exploitation but treats the child as any other missing person who ‘may’ fit criteria for a missing person’s report. The guideline does not appear to cover the circumstance in which a child is missing from placement and their location is known but they are considered at risk of sexual exploitation.

There is no discussion in the handbook about the option for police to charge adults involved in child sexual exploitation with specific offences under sections 95 and 96 of the Children, Young Persons and Their Families Act (refer to discussion below). In fact, child sexual exploitation is not addressed in the handbook at all.

10.2.6 Intervention and disruption

The term ‘disruptive policing’ refers to lawful police action that may interfere with, delay or complicate criminal activity. As indicated above, when describing disruptive policing methods employed by Tasmania Police, Assistant Commissioner Higgins primarily referenced police responses to online child sexual exploitation identified by the Australian Centre to Counter Child Exploitation and the Joint Anti Child Exploitation Team.⁶⁷³

Assistant Commissioner Higgins also identified actions available to Tasmania Police that could disrupt child sexual abuse including:

- mandatory reporting obligations for children suspected of being abused in their family
- automatic information sharing between police databases and Registration to Work With Vulnerable People
- the management of serious sex offenders
- red flags on the police intelligence system for child sex offences
- automatic numberplate recognition
- closed-circuit television coverage across metropolitan areas.⁶⁷⁴

Counsel Assisting our Inquiry asked Assistant Commissioner Higgins to explain how police might respond to a common scenario of child sexual exploitation involving a child in care—that of a 15-year-old girl reported missing by her residential care provider and believed to be staying with a 40-year-old male who gave her alcohol and drugs in exchange for sex.⁶⁷⁵ Assistant Commissioner Higgins talked about the difficulty of extricating a child from this situation if she does not want to leave and suggested that a warrant under the Children, Young Persons and Their Families Act for her retrieval could be counterproductive. He thought that police might be able to use their ‘powers of persuasion’ to negotiate with the child to return to her placement, they could interrogate the male involved and there were ‘certainly avenues that would be followed to bring [the young person] back’.⁶⁷⁶

In some circumstances, police could charge those exploiting children in care with specific offences under the Children, Young Persons and Their Families Act—section 95 (‘Harbour or conceal a child’) and section 96 (‘Remove a child without authority’). Assistant Commissioner Higgins told us that since 1 January 2000, Tasmania Police had only charged four people for offences under these sections of the Act.⁶⁷⁷ He agreed that these provisions are available to police but he did not offer a reason for their infrequent use.

10.2.7 Preventing and responding to child sexual exploitation in other jurisdictions

Some young people interviewed for our commissioned research indicated that prevention strategies directed at addressing the risk of child sexual exploitation would be helpful. One young person said:

So, I know that sometimes people ... their parents might have been sexually abusive, so they ... Even if your parents are horrible, you still associate that with love, so I think then children go on to sort of associate that abuse with being in a relationship with somebody. So, I think that that might be one of the ways that we can help children and young people help themselves to stop being taken advantage of is helping them relearn that love and a relationship doesn’t have abuse in it, and any ... If a relationship has abuse, it’s not a loving relationship. It’s a manipulative one. I think that helping them learn that and relearn that is probably an important way or a good way, because people sometimes tend to go back to that, subconsciously, or sometimes even consciously.⁶⁷⁸

Child sexual exploitation policy approaches from other jurisdictions may help inform change in Tasmania.

The Victorian Government’s *Child Sexual Exploitation: A Child Protection Guide for Assessing, Preventing and Responding* (‘Victorian guide’) outlines how and why multiple agencies work together to prevent, detect, disrupt, intervene and assist children ‘known to child protection’ to recover from child sexual exploitation.⁶⁷⁹

The Victorian guide summarises the research and practice knowledge available about child sexual exploitation, such as indicators of risk and protective factors, as well as push and pull factors, that lead children into child sexual exploitation.⁶⁸⁰ It then lays out the ‘five elements of effective practice in response to child sexual exploitation’: prevention, detection, disruption, intervention, and recovery and connection.⁶⁸¹ Finally, the Victorian guide details the legislation for sexual crimes against children involved in child sexual exploitation.⁶⁸²

As mentioned above, Dr Miller told us the ‘Power to Kids’ program is used in MacKillop Family Services’ residential care homes in New South Wales and Victoria to prevent, disrupt and respond to harmful sexual behaviours, child sexual exploitation and dating violence.⁶⁸³ All three prevention strategies relate to child sexual exploitation, namely:

- ‘whole-of-house respectful relationships and sexuality education’—educating carers and staff to recognise and respond to child sexual exploitation, and educating children about safety, respectful relationships and sexual health—which enables staff to have ‘brave conversations’ with children in care about sexual safety⁶⁸⁴
- ‘missing from home strategy’—establishing protective relationships between children and their carers to counteract grooming, safety planning with children and assertively maintaining contact with children when they are missing from home⁶⁸⁵
- ‘sexual safety response’— ‘proactively supporting exit strategies for child sexual exploitation’ and working with child protection and local police.⁶⁸⁶

Dr Miller told us that in addition to these preventative strategies, MacKillop Family Services has developed partnerships with Victoria Police that have helped identify perpetrators of child sexual exploitation and kept children safe.⁶⁸⁷ In relation to the Victorian approach, Dr Miller stated:

This focus on safety and disruptive policing and a multi-agency, ‘joined up’ response is a key aspect of keeping young people safe. The system needs to focus on the perpetrators much more in order for boundaries and safety to be gained.⁶⁸⁸

Dr Miller said that policing of child sexual exploitation in some jurisdictions was moving away from ‘success equalling a criminal conviction’ to considering success to be the child’s safety and disruption of the sexual exploitation (which may or may not end up in a charge or conviction of a sex crime).⁶⁸⁹ Such a cognitive shift might allow Tasmania Police to act more protectively for children in care who are being sexually exploited.

The final component of the Power to Kids model is strong partnerships with mental health, allied health services and education or schools to meet the needs of children in care.⁶⁹⁰

An evaluation of Power to Kids showed it to be effective in reducing the risk of child sexual exploitation. The evaluation found that children subject to this model were missing from home less often, and carers were better able to identify those who needed help and to then help them out of sexually exploitative situations.⁶⁹¹

10.2.8 Our observations

We consider that the Department and Tasmania Police could greatly improve their responses to sexual exploitation of children in care by developing a framework for preventing and responding to child sexual exploitation based on the example and experience of other jurisdictions. We recommend that the Department and Tasmania Police work with relevant stakeholders to develop such a framework.

Recommendation 9.29

1. The Department for Education, Children and Young People and Tasmania Police should work with non-government providers and other relevant stakeholders to develop a framework for preventing and responding to sexual exploitation of children in care that is informed by best practice and evidence from other jurisdictions. The framework should:
 - a. acknowledge the responsibility of the Department to lead the protection of children in care from child sexual exploitation
 - b. outline the prevention strategies to be used and each agency's role in delivering those strategies
 - c. outline the detection, disruption and intervention strategies to be used and each agency's role in delivering those strategies
 - d. outline how children in care who have been exploited will be supported to heal and recover
 - e. describe how agencies will work together
 - f. implement a reporting framework about the incidence of sexual exploitation of children in care, which is reported to the Quality and Risk Committee.
2. The Chief Practitioner should lead the development of the framework.
3. The *Keeping Children Safe Handbook* and Tasmania Police operating guidelines should be updated to reflect the role of police in responding to child sexual exploitation in the new framework.

Recommendation 9.30

Tasmania Police should more fully utilise the offences in sections 95 and 96 of the *Children, Young People and Their Families Act 1997* (the offences of harbouring or concealing a child and of inducing a child to be absent without lawful authority) to deter behaviour by adults that puts children in out of home care at risk of sexual abuse.

11 Responding to complaints and concerns about child sexual abuse

In this section, we consider the Department's response to complaints and concerns about child sexual abuse.

In Chapter 8, we outline the different ways in which an allegation of child sexual abuse of a child in care can be categorised as an allegation, notification, incident or care concern. In particular, the term 'care concern' is generally used in the out of home care context to refer to any concern about the wellbeing of a child in care.⁶⁹²

The Department can become aware of a concern about the welfare of a child in care from several sources, including the child themselves; a carer; a non-government provider; observations by a Child Safety Officer; someone in the child's life, such as a teacher or family member; or someone from another entity such as the Commissioner for Children and Young People. A person may alert the Department to a concern in a variety of ways, including by contacting the Department's Advice and Referral Line, having a conversation with a Child Safety Officer or informing the Child Advocate.

With respect to sexual abuse of a child in care, complaints and concerns may relate to the conduct of adults in the out of home care system (departmental or provider staff, volunteers or carers), the conduct of other adults (such as family members or others during access visits), harmful sexual behaviours or child sexual exploitation. Each form of child sexual abuse requires a different response. In this section, we focus on responding to complaints and concerns in relation to adults in the out of home care system, although note how other types of concerns need to be triaged to the correct response.

We discuss below what we heard about complaints and concerns. We then discuss the Department's policies and processes for responding to complaints and concerns, making recommendations directed at improving the Department's processes. We recommend:

- developing a publicly-available complaints policy
- a function within the Department for triaging concerns and complaints about the Child Safety Service sitting within the Office of the Chief Practitioner, and sufficiently resourced to enable same-day triaging of care concerns and complaints against staff for children in out of home care
- that the Office of the Chief Practitioner guides and supports experienced practitioners who are independent of the case (this may be a Practice Manager) in assessing and responding to less serious concerns
- that the Office of the Chief Practitioner be responsible for assessing, investigating and leading responses to serious concerns about the safety and wellbeing of children in care, with two exceptions: complaints against state servants should

be referred to the Child-Related Incident Management Directorate; and concerns involving harmful sexual behaviours should be referred to the Harmful Sexual Behaviours Support Unit

- improvements to the process for responding to concerns about allegations of child sexual abuse, including ensuring all concerns about child sexual abuse by adults in the system are directed to the Child-Related Incident Management Directorate we recommend (refer to Chapter 6, Recommendation 6.6).

11.1 What we heard about complaints and concerns

Several witnesses told us of their frustration with the Department's complaints process. A former departmental employee told us that a complaints investigation could take up to 18 months and that the Department's communication about the process and progress of an investigation is poor.⁶⁹³

Dr Kim Backhouse of the Foster and Kinship Carers Association of Tasmania observed that the Department does not manage complaints centrally—instead, 'complaints within the Department seemed to go all over the place'.⁶⁹⁴

Several of the children interviewed for our commissioned research did not trust that adults would listen or keep them safe if they did raise concerns.⁶⁹⁵

As discussed in Chapter 8, our review of the 22 children's files revealed that, overall, there is evidence that departmental and out of home care staff undertook some form of investigation or assessment of each concern raised in relation to the children, although it was not always clear what process was followed.

As also discussed in Chapter 8, we are aware of only four or five instances of Child Safety Service staff being suspended or terminated over more than 20 years. Because of poor record keeping, it was difficult to determine whether there has been more disciplinary action than that reported to us, or whether the Department has been slow to act against staff for concerning behaviour.⁶⁹⁶

11.2 The Department's policies and processes

The National Royal Commission recommended that institutions have a clear complaints-handling policy and procedure to respond to complaints about the sexual abuse of a child, including how to make a complaint, responding to and investigating a complaint, providing support and assistance, and systemic improvements following a complaint. It recommended these policies be 'clear, accessible and child focussed'.⁶⁹⁷

The Department's 2015 *Service Review and Continuous Improvement Policy* outlines how complaints, care concerns, critical incidents and appeals of decisions are to be managed.⁶⁹⁸ The policy requires the Department to:

- Manage feedback from clients and the public in a consistent and transparent manner through robust compliments and complaints processes.
- Improve services through rigorous internal evaluation and compliance with external investigations and reviews where appropriate.
- Prioritise and investigate appeals, concerns, critical incidents and reviewable events.⁶⁹⁹

Three key processes under the policy are:

- the 2013 *Protocol for Managing Complaints* and 2013 *Complaint Handling and Reviews Practice Advice*, which provide general principles and strategies to guide departmental staff in responding to complaints⁷⁰⁰ (the protocol further describes what decisions could be reviewed and how the review of a decision should proceed up the line of delegation)⁷⁰¹
- the care concerns policy and processes, which describe how departmental staff should respond to concerns about the care of children⁷⁰²
- the ‘Serious Events Review’ process, which describes how staff should respond to a serious event involving a child in out of home care where the actions or inactions of the Department may have contributed to the event.⁷⁰³

We discuss each of these below, noting that the latter two have recently been discontinued. None of these policies are, or were at the time of our review, publicly available on the Department’s website.

The Child Advocate also has a role in the Department’s complaints processes, providing support and assistance for children wishing to resolve complaints (we discuss the role of the Child Advocate in Section 12).

11.3 Responding to complaints

11.3.1 Complaints handling

We understand that the *Protocol for Managing Complaints* and the *Complaint Handling and Reviews Practice Advice* are still current policies.⁷⁰⁴ However, they do not refer to some central roles in the Department’s complaints process, including the Child Advocate.⁷⁰⁵

The new Department for Education, Children and Young People’s webpage titled ‘Complaints – Child Safety and Youth Justice Services’ explains that complaints can be made by a person who has a ‘valid interest in an issue’ relating to a decision, a service provided or the behaviour of Child Safety and Youth Justice Services staff.⁷⁰⁶ If the issue relates to the rights of a child in care, the webpage directs the person to contact the

Child Advocate. The page also makes suggestions about what information should be included in the complaint.⁷⁰⁷

If not satisfied with the outcome of a complaint, the ‘Complaints’ webpage directs complainants to contact the Ombudsman Tasmania.⁷⁰⁸ We discuss the adequacy of external review mechanisms separately in Section 12.

Apart from a simple explanation of ‘what you can expect when making a complaint’, the ‘Complaints’ webpage does not fully outline the Department’s complaints process. It would not be possible for someone to know if the Department had followed a reasonable process in response to their complaint or how they might receive ‘timely feedback’ about the outcome of the complaint.⁷⁰⁹

The Child Advocate’s webpage has slightly more information, suggesting methods for contacting the Child Advocate, with links to a list of the rights of children in care, an explanation of how the Child Advocate can assist in upholding the rights of a child in care, and how to let someone know if ‘something’s not OK’.⁷¹⁰

The Child Advocate told us she had also produced a ‘child-friendly’ flip card version of the Child Safety Service complaints process, which was mailed out to all children in care, including those under third-party guardianships, in 2020.⁷¹¹

11.3.2 Improving complaints handling

The Child Advocate said the Children, Youth and Families Executive acknowledged that the complaints process is an ‘area of need’.⁷¹²

Ms Lovell, from Children and Family Services, acknowledged that a coordinated response was necessary to accurately assess the risk of sexual abuse to a child:

... it’s more likely that multiple services will have some pieces of relevant information ... It’s not until you piece together all of that information that you can identify a pattern and history and really appreciate how serious the matter might be and how great the risk to a child might be.⁷¹³

In his letter dated 9 February 2023, Secretary Bullard described hoping to engage in a ‘whole-of-government approach to complaints management’ that is based on the Department of Health’s complaints management system project.⁷¹⁴ In the meantime, Secretary Bullard told us that the Department has started its own ‘complaints management review project’ to develop a child safe complaints policy and process ‘that takes into account any relevant recommendations of the Commission [of Inquiry]’.⁷¹⁵

We welcome Secretary Bullard’s prioritisation of complaints management and recommend that the Department develops a publicly-available complaints policy.

This policy should involve a ‘no wrong door’ approach so all concerns and complaints make their way to a central location for recording, triaging, monitoring and coordinating of a response—this function should sit within the Office of the Chief Practitioner (refer to Recommendation 9.17). It should report regularly to the Quality and Risk Committee.

The policy should apply to the whole of the Child Safety Service, including out of home care, and address all types of complaints and concerns. It should cross-refer to the specific policy for concerns about the safety and wellbeing of children in care, which we discuss in the following section (refer to Recommendation 9.32).

A good complaints process also allows for internal review of decisions. Internal review is an especially important mechanism for people who are concerned that a departmental decision may increase a child’s risk of child sexual abuse (refer to Section 12 for a discussion of external reviews of out of home care decisions in circumstances where the internal review process has not succeeded in resolving someone’s concern).

Recommendation 9.31

1. The Department for Education, Children and Young People should develop and maintain a complaints policy and procedures for Child Safety Services and out of home care. The policy and procedures should:
 - a. explain how to make a complaint and who to complain to using a ‘no wrong door’ approach
 - b. direct who should be informed when a person receives a complaint
 - c. direct who is responsible for responding and within what timeframes
 - d. ensure a child-friendly complaints procedure is made available to all children in care
 - e. apply to all types of complaints or incidents
 - f. cross-refer to the new concerns about the safety and wellbeing of children in care policy (Recommendation 9.32)
 - g. explain how to seek an internal review of a decision made by the Department
 - h. outline how to provide feedback and support for a complainant.
2. The Department should implement a centralised complaints and incident recording system.
3. The Chief Practitioner should receive all complaints about Child Safety Services and out of home care and be adequately resourced to receive, triage, record, monitor and coordinate responses.

4. The Chief Practitioner should report regularly on complaints handling to the Quality and Risk Committee and the Commission for Children and Young People.
5. The complaints policy and procedure should be published on the Department's website.

11.4 Responding to concerns about the safety and wellbeing of children in care

The Department owes children in care a higher duty of care than children who are not under its guardianship. The 2006 Jacob–Fanning report stated that the Department's 'parenting bar should be set high and our parenting should be exemplary if children are removed from their families'.⁷¹⁶ One way to ensure this duty is met is to take concerns about the safety and wellbeing of children in care more seriously.

Between February 2013 and December 2022, the Department followed a care concerns policy and related procedures to guide its response to concerns about the safety and wellbeing of children in care.⁷¹⁷ We discuss this former policy approach in some detail because there are some strengths and weaknesses in this policy that should inform the Department's approach in the future.

11.4.1 Care concerns policy

The *Responding to Care Concerns Impacting a Child in Out of Home Care* policy ('care concerns policy'), which has since been superseded, stated that 'all concerns relating to the care of a child in out of home care should be treated as serious'.⁷¹⁸ It outlined the processes for responding to two different types of care concerns—quality of care concerns and serious care concerns—to ensure 'allegations of a more severe or chronic nature [are] responded to by our most skilled and qualified staff, given the possible impact and implications of such abuse'.⁷¹⁹

The policy directed staff to follow a 'quality of care concern' process if the complaint related to a less serious care issue, such as concerns about inadequate supervision, not supporting a child to engage with school, 'lack of positive regard for the child' or not providing an adequate diet.⁷²⁰ For more serious concerns—defined as acute or chronic physical abuse, sexual abuse, chronic neglect and/or emotional abuse, or cumulative concerns that were ongoing despite intervention with the carers—the policy directed the Department to follow a higher-level investigative process.⁷²¹

Essentially, the difference in response between the two pathways was the level of the responder's seniority and the degree of independence from the child's case management. Quality of care concerns could be handled within the Child Safety Service team or office responsible for the child's case management, while concerns about

more severe abuse were to be escalated for investigation by more experienced and objective Senior Quality Practice Advisors from the Quality Improvement and Workforce Development team.⁷²²

The care concerns policy required that serious care concerns investigations were reviewed by a 'Care Concern Monitoring Group', which was supposed to meet every six months and include departmental staff as well as non-government care providers and the Commissioner for Children and Young People.⁷²³

Overall, we consider that the care concerns policy placed an appropriately specific focus on responding to the safety and wellbeing concerns of children in care, allowed for specialist investigatory processes for serious concerns, and had a governance process for monitoring responses to care concerns. We have reservations about some gaps in the policy, as well as the operation of the policy in practice. We discuss these reservations in the following section.

11.4.2 Problems with the care concerns policy

In relation to child sexual abuse, one of the problems we identified with the care concerns policy was that it did not define child sexual abuse. Importantly, it did not address harmful sexual behaviours, child sexual exploitation or grooming behaviours. In addition, privacy violations—which can indicate voyeuristic abuse—were classified as a lower-level 'quality of care concern'.⁷²⁴

Also, the policy focused on care concerns associated with the behaviour of a carer or the care environment—for example, if the alleged abuser was outside the care home, the policy did not apply. For those concerns about child sexual abuse that fell outside the scope of a care concern, the Department provided no real guidance to staff beyond adopting the 'Child Safety assessment'.⁷²⁵

The care concerns policy was also very procedurally focused rather than child centred. The underpinning framing appeared to be disciplinary in nature, with no clear process for involving the child or supporting non-offending caregivers to protect and support the child in care.

11.4.3 Problems with implementing the care concerns process

We are also concerned about the operationalisation of the care concerns policy. Dr Deborah Brewer was the Manager of the Quality Improvement and Workforce Development team in the Department from 2017 to 2019. On joining the Department, Dr Brewer said she identified a lack of experience and capacity within the Quality Improvement and Workforce Development team, noting that 'none of the team of quality improvement investigators ... had an investigation qualification or experience in abuse in care investigations'.⁷²⁶ She said that she raised concerns about this with leadership and, on one occasion, before going on leave, she refused to sign off on three investigations

‘because I did not feel that they had covered all the areas needed’.⁷²⁷ When she returned from leave, the three investigation reports had been approved without her concerns being addressed.⁷²⁸

Dr Brewer said that she also attempted to introduce investigations training for team members while she was in the role, but she said her suggestion was not accepted.⁷²⁹ She remains an advocate for investigators receiving specialist training:

Interviewing children in an investigation situation is a specialised skill. You can do so much harm if it is done incorrectly, and information collected incorrectly can jeopardise the whole investigation.⁷³⁰

Dr Brewer suggested that the whole care concerns system needed an overhaul, from ‘referral of care concerns up the chain’ and policies, to training of investigators and referrals to other agencies, such as police.⁷³¹ She identified the need for an ‘organisational lead’ to be responsible for responding to care concerns and ensuring investigations were initiated where necessary, as well as for managing mandatory reporting:

There should be a proper end to end process clearly identified where outcomes are tracked and learnings from the incident translated into quality improvements as required.⁷³²

Dr Brewer expressed a view that a unit for ‘serious concerns in care’ be ‘completely separate’ from the Department, and that learnings from care concerns investigations be collated and systematically tracked to assist with quality improvement.⁷³³

We understand that the Quality Improvement and Workforce Development team—including the roles of Senior Quality Practice Advisors—was abolished during the Strong Families, Safe Kids redesign, which began in 2019.⁷³⁴ Secretary Pervan told us that these roles were substantively replaced with new roles performing similar functions, including Practice Leader; Practice Manager; Principal Practice Manager; Service Development Manager; and Service Development Practice Advisor.⁷³⁵ We are unclear about how these roles assisted with the management of care concerns. Ms Lovell advised in June 2022 that she had been overseeing serious care concerns with assistance from her director and other practitioners.⁷³⁶

The Department also told us that the Care Concern Monitoring Group, which was intended to monitor the Department’s response to serious care concerns, ‘was never fully implemented’ and that there is ‘no evidence that this group ever met’.⁷³⁷

11.5 Serious Events Review Team

The Department established a Serious Events Review Team in response to the 2015 death of an infant known to the Tasmanian child protection system. This team operated between December 2017 and June 2020.⁷³⁸ Prior to the Serious Events Review Team, the Department did not have a formal mechanism for reviewing such events.⁷³⁹

The *Serious Events Review Procedure* defined the mandate of the Serious Events Review Team in a way that included children in care:

The Serious Event Review Team undertakes a review when a child or young person or adult who is known to Children, Youth and Families has experienced a serious event, and it appears that the Children, Youth and Families service system (including contracted services) may have contributed to the event through action or inaction.⁷⁴⁰

While the Serious Events Review Team investigated allegations of harmful sexual behaviour in the context of youth detention, it had not been used to investigate concerns about the sexual abuse of children in care.⁷⁴¹ We discuss some of these investigations in Chapter 11 but note here the variability in quality of those investigations, with some being excellent.

The Serious Events Review Team comprised senior practitioners supported by a comprehensive set of policies.⁷⁴² It provided another specialised investigative pathway that could have been used for serious events that involved children in care—one that had external oversight in the form of the multiagency Serious Events Review Committee.⁷⁴³

The Serious Events Review Team was disbanded in June 2020, although we were told it can be reconvened.⁷⁴⁴ We are unclear what efforts are being taken to maintain the investigatory skills of the staff who have been ‘returned to their substantive positions’.⁷⁴⁵ We also understand that reconvened Serious Events Review Team investigations are not subject to the oversight of the Serious Events Review Committee (refer to Chapter 11).

11.6 Recent reforms

Secretary Pervan told us that the Practice Performance and Governance Committee (refer to Section 4.2) had identified an ‘increase in care concerns’ as an ‘emerging risk’ and the need to establish a process to respond to adverse incidents.⁷⁴⁶

The Department replaced the care concerns policy described above with the *Wellbeing in Care Procedure* and associated practice advice, which was uploaded to the Child Safety Service’s Practice Manual intranet on 15 December 2022.⁷⁴⁷

The *Wellbeing in Care Procedure* delineates between less serious concerns ('wellbeing worries') and more serious concerns ('wellbeing concerns'). The two levels of concerns are differentiated in the Procedure as follows:

- a wellbeing worry relates to worries about the child's wellbeing in placement (and could relate to any domain of wellbeing)
- a safety [wellbeing] concern relates to worries specific to the child's safety (specifically Loved & Safe domain), that indicates potential risk as per section 4 of [the Children, Young Persons and Their Families] Act and/or a breach in the Child Safe Code of Conduct.⁷⁴⁸

Wellbeing worries can be dealt with by the care team, whereas wellbeing concerns are escalated to a 'Wellbeing in Care consultation', which comprises, at minimum, the Child Safety Officer, the Practice Leader, out of home care representatives and the Practice Manager.⁷⁴⁹ The procedure outlines who decides the level of concern, how worries and concerns are recorded in the Child Protection Information System, how all parties (including the child) will be kept informed of progress, conditions for referral to Tasmania Police and how meetings of the Wellbeing in Care consultation are to be conducted and recorded.⁷⁵⁰

A statewide Allied Health Professional Level 4 Practice Manager has also been appointed to provide guidance and oversight for managing all wellbeing in care concerns and is accountable to the Director via the Practice and Performance Governance Committee.⁷⁵¹

The new procedure explicitly classifies a concern that relates to a carer's breach of the Department's newly released interim *Child Safe Code of Conduct* (refer to Section 6.4) as a more serious 'wellbeing concern'. Noting that the code of conduct covers unacceptable behaviours such as grooming and boundary breaches, the procedure includes a range of concerning behaviours related to sexual abuse in the more serious category, which were not captured in the former care concerns policy. This is an important improvement.

The *Wellbeing in Care Practice Advice* adopts an explicitly supportive and strengths-based approach to a child in care and those involved in the child's life.⁷⁵² This approach is particularly helpful for responding to non-complicit carers and where the abuser is outside the household or is a child. However, the practice advice and procedure must be more explicit about how these forms of child sexual abuse are to be addressed.

11.7 Ongoing problems

The *Wellbeing in Care Procedure* (and associated practice advice) is a clear improvement on the outdated care concerns policy in that it has updated the positions involved in responding to reflect staffing arrangements and it provides much-needed guidance to staff. It also describes how departmental staff are to communicate with the child, carers and other parties during the process of resolving the concern.

While we welcome the focus on a broader range of conduct and on a more child-focused approach, we consider there are some gaps that should be addressed.

We are concerned that the new procedure does not have a replacement for the investigative capacity, independence and oversight contained in the care concerns policy or the Serious Events Review Team's remit.

Secretary Pervan told us that the *Wellbeing in Care Procedure* reflects the Signs of Safety approach:

Work has been done to re-imagine how the Department can respond to concerns about children in Out of Home Care placements (Care Concerns) in a way that reflects the Signs of Safety approach and the holistic wellbeing of children in care. The Department aims for this approach to be similar to the mechanism used to work with any other family about issues that are impacting the safety and wellbeing of children.⁷⁵³

We do not have a view on the suitability of the Signs of Safety approach to the practice of child protection, but we are concerned that the same approach applied to concerns about children in their family of origin will be applied to concerns about the sexual abuse of children in care. As indicated above, the Department owes children in care a higher duty of care than children who have not been removed from their family of origin.

Signs of Safety was designed for a different context than out of home care—a context where the responsibility and risk for a child's welfare are shared between the child's natural guardians and those around them, including the powerful statutory entity that is the Department.⁷⁵⁴ In the context of out of home care, the Department is guardian and statutory entity—consequently, the risk of sexual abuse for a child in out of home care is entirely the Department's to bear.

11.8 Our observations

We consider it fundamental that there is a specific process for responding to concerns about the safety and wellbeing of children in care, which is distinct from the assessment tools applied to children living with their family of origin.

We propose a new process for the Department to respond to concerns about the safety and wellbeing of children in care that addresses the shortcomings of the previous and current processes, while maintaining their strengths.

Earlier, we recommend a directorate-wide complaints process, which cross-references the new safety and wellbeing of children in care policy. We also recommend that the Office of the Chief Practitioner triages, records, monitors and coordinates all complaints. For less serious concerns, or for concerns that fall outside our terms of reference, the Chief Practitioner should monitor and oversee a more localised response.

The new safety and wellbeing of children in care policy should ensure it has clear processes for responding to all types of sexual abuse. Primarily, the Office of the Chief Practitioner’s care concerns and complaints unit should be responsible for assessing, investigating and leading responses to serious care concerns, with two exceptions: complaints against state servants should be referred to the Child-Related Incident Management Directorate; and care concerns involving harmful sexual behaviours should be referred to the Harmful Sexual Behaviours Support Unit.

In Section 3.2, we recommend that the Department sets expectations in its contracts with out of home care providers (Recommendation 9.3). This should include requirements for reporting all serious concerns about the safety and wellbeing of children in care to the Chief Practitioner, which would include all types of child sexual abuse and related conduct.

The Child-Related Incident Management Directorate should include mechanisms for experts in child safety who understand out of home care settings to help interpret investigation outcomes where technical knowledge is needed to understand if behaviour was reasonable in the course of employment. While the Child-Related Incident Management Directorate will be responsible for investigation, it will need to work closely with the Chief Practitioner and Child Safety Officers to ensure a child in care who has been sexually harmed by a state servant receives appropriate treatment and support.

Concerns about the safety and wellbeing of children in care should form part of the Department’s reporting framework and be reported to the Quality and Risk Committee by the Chief Practitioner.

Recommendation 9.32

1. The Department for Education, Children and Young People should develop a new policy to guide responses to concerns about the safety and wellbeing of children in care. The policy should:
 - a. identify all forms of sexual abuse—including grooming, child sexual exploitation, harmful sexual behaviours, abuse by adults within and outside the out of home care system—as serious and requiring a higher-level response
 - b. describe response pathways for concerns about the sexual abuse of children in care depending on the context. Specifically
 - i. concerns or complaints about the sexual abuse of a child in care, or related conduct, by departmental staff should be referred to the Child-Related Incident Management Directorate (Recommendation 6.6)

- ii. responses to concerns about the sexual abuse of children in care, or related conduct, by adults who are not departmental staff should be led or overseen by the Chief Practitioner
 - iii. responses to concerns about sexual exploitation of children in care should be led or overseen by the Chief Practitioner (Recommendation 9.17)
 - iv. responses to concerns about harmful sexual behaviours involving children in care should be led or overseen by the Harmful Sexual Behaviours Support Unit (Recommendation 9.28).
2. The Chief Practitioner should receive all concerns about the safety and wellbeing of children in care and be adequately resourced to receive, triage, record, monitor and coordinate responses. Where the Chief Practitioner has referred a matter to another entity, the Office of the Chief Practitioner should support the localised response to the child's safety and ongoing welfare.
 3. The Office of the Chief Practitioner should include staff with skills in investigation and child interviewing to conduct investigations.
 4. The outcomes of all concerns about the sexual abuse of children in care should be reported to the Quality and Risk Committee.

12 Independent advocacy and oversight

Children in out of home care need independent advocacy and oversight. As Penny Wright, South Australian Guardian for Children and Young People, said:

To ensure that children can be protected there must be roles that enable fearless and tenacious advocacy and independent public scrutiny that demands accountability. The only agenda for such roles must be the interests of children and young people and no conflict with any other interest.⁷⁵⁵

Given the vulnerability of children in out of home care, there is a need to strengthen individual advocacy and systemic oversight mechanisms to ensure:

- independent advocates take a proactive stance, actively engaging children in care in discussions about their safety, so the onus is not on the child disclosing or raising a concern
- children in care have a trusted adult, who is independent of the Department, with whom they can raise any concerns relating to their experiences in out of home care, including concerns about child sexual abuse

- children are supported and assisted to raise their concerns about out of home care with the Department or another relevant body, and to make a complaint about the Department's responses to their concerns, where necessary
- complaints about out of home care are investigated by a body with relevant knowledge and expertise
- departmental actions or decisions about out of home care, including responses to allegations of child sexual abuse, are subject to independent review
- allegations of child sexual abuse in out of home care that are outside the Reportable Conduct Scheme (such as harmful sexual behaviours or child sexual exploitation) are reported to another appropriate oversight body
- an appropriate independent oversight body has clear functions and powers to monitor and undertake systemic inquiries into the operation of the out of home care system and out of home care services.

In Chapter 18, we recommend establishing a new Commission for Children and Young People, with broader and clearer functions than those currently bestowed on the Commissioner for Children and Young People, as well as specific functions in relation to vulnerable children (refer to Recommendation 18.6). In out of home care, we recommend the new Commission for Children and Young People is responsible for individual advocacy for children in out of home care, systemic monitoring of out of home care and oversight of investigations into reportable allegations involving children in out of home care. The new Commission would include a new Commissioner for Children and Young People (refer to Chapter 18), a new Commissioner for Aboriginal Children and Young People (refer to Section 5 in this chapter) and a new Child Advocate (Deputy Commissioner) (refer to Section 12.1 in this chapter).

The roles of other oversight or similar bodies for the out of home care system would be as follows:

- the Ombudsman would receive and investigate complaints about the Department's actions from children in care, parents, carers or the new Child Advocate on behalf of a child
- the Tasmanian Civil and Administrative Tribunal would have jurisdiction to review departmental decisions about children in out of home care
- the Integrity Commission would have the power to investigate allegations of misconduct by public officials in the out of home care system (refer to Chapter 18)
- the Auditor-General could continue to undertake performance audits of the Department to examine its effectiveness in complying with internal policies and procedures in out of home care (refer to Chapter 2).

12.1 Independent advocacy for children in out of home care

The importance of supportive adult–child relationships to children’s wellbeing and development is well established.⁷⁵⁶ Research we commissioned found that children in out of home care and other institutions:

... wanted and needed allies and confidants that were accessible and, preferably, proactive in engaging children and young people to ask if they had any worries or concerns or wanted to make a complaint. These adults needed to be non-judgmental, have a good appreciation of risks and how to deal with them and to demonstrate a commitment to acting on what children wanted and needed.⁷⁵⁷

Ideally, every child in out of home care would have such a relationship with their carer(s) and Child Safety Officer. In Section 6.1, we recommend that the Department sets a maximum caseload for Child Safety Officers (Recommendation 9.16) and, in Sections 4.6 and 7, we make recommendations to develop and support quality carers (Recommendations 9.11, 9.20 and 9.21). This should increase opportunities for children in care to develop supportive relationships with a trusted adult. However, there is also a need to consider other ways to ensure all children in care have a trusted adult with whom they can raise concerns.

12.1.1 The Child Advocate

Tasmania’s first Child Advocate was appointed in June 2018 following publication of a report on advocacy for children in Tasmania prepared by Dr Maria Harries in 2013.⁷⁵⁸ The purpose of the proposed role within the Department was to provide a means for ensuring concerns and complaints by children in care were appropriately directed and dealt with.⁷⁵⁹

In 2017, the former Commissioner for Children and Young People, Mark Morrissey, published a report on children in out of home care in Tasmania. This report identified the importance of individual advocacy for children in out of home care and suggested that ‘at the very least, consideration could be given’ to establishing a Children’s Advocate within the Department.⁷⁶⁰ The former Commissioner referred to the existence of a similar role in Western Australia and observed that a ‘clear disadvantage’ of such a role was its lack of independence from the Department.⁷⁶¹

The role of the Tasmanian Child Advocate is in the Department and reports directly to the Secretary. The Child Advocate provides ‘advocacy services for and on behalf of all children and young people in the care of the Secretary’ and ensures children in care ‘have a voice in decisions that affect them and in services provided to them’.⁷⁶² The Child Advocate has many responsibilities, covering advocacy for children and departmental capacity building.⁷⁶³ These responsibilities include:

- giving children information on policies and procedures that underpin decisions and service delivery in a format appropriate to their understanding
- promoting the Department’s *Charter of Rights for Tasmanian Children and Young People in Out of Home Care*
- determining when advocacy for children in care should be escalated within the Department
- providing support and assistance for children wishing to resolve complaints
- ensuring the opinions of children are provided to departmental staff
- informing development of policy, procedures, practice standards and quality improvement tools
- developing the knowledge base of the Department for consulting with children in care
- reporting quarterly to the Secretary and the Minister.⁷⁶⁴

The Child Advocate told us that the location of her role inside the Department, but separate from Children, Youth and Families, creates ‘a degree of independence’, which allows her to act ‘like an internal watchdog’.⁷⁶⁵ She said the benefits of being located within the Department include:

- being available to Child Safety Service staff seeking advice on how to uphold a child’s rights
- having collegial relationships within the Department, enabling the role to influence decision making
- having access to the Child Protection Information System to review the files of individual children.⁷⁶⁶

However, the Child Advocate acknowledged that her role in the Department as ‘disruptor and supporter, as well as guide and critic’ has the potential to create confusion.⁷⁶⁷

We heard that the Child Advocate performs crucial work and acts as an important safeguard for children in out of home care.⁷⁶⁸ One person described her as an ‘impressive and dedicated advocate’, while another said she was ‘doing an excellent job’.⁷⁶⁹ One young person living in out of home care who was consulted for our commissioned research explained their confidence in the Child Advocate to act quickly and decisively on their behalf.⁷⁷⁰ However, this young person reflected that it could be difficult for other young people to make contact with the Child Advocate if they did not know her or were very young.⁷⁷¹

We are concerned that with only two people in this advocacy role, and no support staff, many children will not have an established relationship with the Child Advocate.

Several people raised concerns about the independence of the Child Advocate's role and its ability to be the 'safe person' for every child in out of home care.⁷⁷²

We acknowledge and commend the tireless and important work the current Child Advocate has undertaken for individual children in out of home care. However, we note in relation to the role and structure of the Child Advocate more broadly, that:

- the number of children in out of home care makes it impossible for the Child Advocate—even with the assistance of another role—to visit every child regularly and proactively
- for a child who has a concern or complaint about their placement or carer, and who cannot rely on the assistance of an adult, the onus is on that child to contact the Child Advocate—many children will not feel confident enough to do so (despite the child-friendly resources that the Child Advocate has created to publicise her role)
- children may not always feel comfortable raising their concerns or complaints about the Department with the Child Advocate, given the location of this role inside the Department
- there is an inherent conflict in having the Child Advocate internal to the department that makes decisions about children.

In our view, despite the benefits identified by the Child Advocate (outlined above) of being located within the Department, the function of undertaking advocacy for individual children in out of home care should be genuinely independent of the Department. An independent community visitor scheme, administered by the new Commission for Children and Young People and led by the new Child Advocate, could achieve this and is discussed below. The guidance role the Child Advocate offers staff should be maintained and expanded in the new role of Chief Practitioner we recommend (refer to Section 6 and Recommendation 9.17).

12.1.2 Independent community visitor schemes

Across Australia, community visitor schemes exist in many different settings, including disability, mental health, prison, youth detention and out of home care. In such schemes, independent members of the community—known as 'visitors'—have powers to visit, inspect and report on the experiences of residents of these institutions.⁷⁷³ They are an important way to safeguard the rights of those whose care has been entrusted to institutions.

Tasmania has a Mental Health Official Visitors Program and a Prison Official Visitors Program, both of which are administered by the Office of the Ombudsman.⁷⁷⁴ There are no community visitor schemes in Tasmania for children in youth detention or out of home care.

In Queensland, the Public Guardian administers a community visitor program for children, whose purpose is to protect the rights and interests of children staying at 'visitable locations'.⁷⁷⁵ These are detention centres, residential care facilities and homes where children who have been placed under the custody or guardianship of the chief executive are living, among other locations.⁷⁷⁶

Community visitors are appointed by the Queensland Public Guardian under the *Public Guardian Act 2014 (Qld)* ('Queensland Public Guardian Act').⁷⁷⁷ They are not employees of the public service.⁷⁷⁸ The Queensland Public Guardian must decide the remuneration and allowances payable to community visitors.⁷⁷⁹ A person is only eligible for appointment as a community visitor for children if the Queensland Public Guardian considers the person has the 'knowledge, experience or skills needed' to perform the functions of the role.⁷⁸⁰ In these respects, the Queensland scheme differs from some other community visitor schemes, where visitors may be volunteers and are not necessarily required to have particular knowledge, skills or experience.

A Queensland community visitor has a range of statutory functions with respect to each child they visit in care. These include:

- developing a trusting and supportive relationship with the child, so far as is possible
- advocating on behalf of the child by listening to, giving voice to and helping to resolve the child's concerns and grievances
- seeking information about, and facilitating access by the child to, support services appropriate to the child's needs
- enquiring about and reporting on the adequacy of information given to the child about their rights
- enquiring about and reporting on the physical and emotional wellbeing of the child
- inspecting the home or care facility and reporting on its appropriateness for the accommodation of the child, and ensuring carers are meeting the child's needs.⁷⁸¹

The Queensland Public Guardian Act requires children in residential care to be visited 'regularly'.⁷⁸² Acting Public Guardian, Catherine Moynihan, told us that the default frequency of visits for children in residential care is quarterly, but this can be increased to monthly.⁷⁸³ The Queensland Public Guardian has the power to decide the frequency

of visits to a child not living in residential care, considering a range of factors including the child's age and any physical disability or impairment.⁷⁸⁴ Ms Moynihan told us that there are about 100 community visitors for children in Queensland.⁷⁸⁵

Queensland community visitors can assist children in care with issues or concerns about their placement, contact with their birth family, allowances and their Child Safety Officer.⁷⁸⁶ After each visit, the community visitor completes a report that is provided to the Public Guardian. The report covers the child's concerns and grievances, support services, rights (including family contact and cultural rights), physical and emotional wellbeing, and placement conditions and suitability.⁷⁸⁷ Community visitors are mandatory reporters under the Queensland Child Protection Act.

The Queensland community visitor attempts to resolve any issues arising from the visit with relevant service providers and the Department of Children, Seniors and Disability Services. However, if an issue is not resolved, the visitor may formalise the issue into a complaint and/or seek the assistance of a 'child advocate' (discussed below).⁷⁸⁸ Information-sharing provisions in the Queensland Public Guardian Act enable the Public Guardian to obtain information from various entities. Such information may be used for various purposes, including linking a child with another entity to meet the child's needs, supporting a child to resolve an issue with an entity, and helping the child to lodge a complaint with an entity.⁷⁸⁹

In South Australia, the *Children and Young People (Safety) Act 2017 (SA)* establishes the role of an independent Child and Young Person's Visitor.⁷⁹⁰ The main functions of this role are to visit and advocate for children in out of home care.⁷⁹¹ The South Australian Guardian for Children and Young People, Penny Wright, told us that she was appointed to the role of Child and Young Person's Visitor in 2018 but resigned from the position in August 2021 because the appointment was not provided with any extra funding or resources.⁷⁹² The role has been vacant since this time. The South Australian Guardian for Children and Young People has a team that advocates on behalf of individual children in out of home care. This is discussed below.

12.1.3 Other models of individual advocacy for children

In many cases, a Queensland community visitor will be able to help resolve concerns for a child in out of home care. However, where the concerns are more complex or difficult to rectify, a 'child advocate' may also become involved.⁷⁹³ Queensland child advocates are legally trained officers appointed by the Queensland Public Guardian who can:

- provide information and advice to the child about legal issues they might be concerned about
- help the child resolve disputes and make complaints if they are unhappy with a decision made about their time in the child protection system

- support the child and, if requested, speak for the child in meetings with the child protection agency (or any other agency) to make sure their needs are being met and their views and wishes are being heard
- support the child in child protection court proceedings or proceedings in the Queensland Civil and Administrative Tribunal for reviews of decisions about their placement, contact arrangements or other matters.⁷⁹⁴

There are 11 child advocates in the Queensland Office of the Public Guardian.⁷⁹⁵

In South Australia, the Guardian for Children and Young People has an individual advocacy function for children who are under the guardianship or in the custody of the chief executive of the South Australian Department of Child Protection and, in particular, for any such children who have suffered or are alleged to have suffered sexual abuse.⁷⁹⁶ There are four advocates in the South Australian Guardian's advocacy team who assist children in resolving their concerns and upholding their rights.⁷⁹⁷

12.2 A community visitor scheme for out of home care

In 2009, the former Commissioner for Children in Tasmania set up a small pilot visitor scheme for children in out of home care; this scheme ran for 12 months between 2010 and 2011 in southern Tasmania.⁷⁹⁸ Visitors in the pilot scheme were volunteers.⁷⁹⁹ An evaluation of the scheme recommended that it be established as an ongoing program within the then Office of the Commissioner for Children.⁸⁰⁰ Similarly, in 2011, a Select Committee on Child Protection recommended that the pilot be extended to all children in state care.⁸⁰¹ However, the pilot was 'discontinued once it became apparent it was not within the functions or powers of the Commissioner for Children'.⁸⁰² In 2013, Dr Maria Harries' report on advocacy for children in Tasmania concluded that a visitors scheme for children in care was 'not a priority at this point' for the committee that oversaw the report.⁸⁰³

In her 2019 *Monitoring Report No. 1* on the Tasmanian out of home care system, the current Commissioner for Children and Young People, Leanne McLean, recommended establishing a visitor program, initially focusing on children in out of home care living in non-family-based care settings.⁸⁰⁴ Commissioner McLean reiterated support for a children's visitor program in her statement to us but recommended against the model adopted for the pilot, given its 'limited scope'.⁸⁰⁵ Rather, the Commissioner pointed to the more comprehensive model operating in Queensland (described above), comprising community visitors and child advocates, as a preferred model.⁸⁰⁶

We agree that individual advocacy for children in out of home care in Tasmania would be significantly strengthened by establishing an independent community visitor scheme for children in out of home care (based on the Queensland model) that would subsume the advocacy functions of the Child Advocate. Community visitors could proactively ask children about their safety as well as enabling children in care who have a concern

about their placement or any other issue—including a concern relating to child sexual abuse—to raise it confidentially with a supportive person who is independent of the Department, who can then raise that concern with the relevant entity and try to resolve it on the child’s behalf. An independent visitor who has ‘eyes on a child’, and proactively asks for the child’s views and concerns, empowers children to communicate when those concerns arise. Such an arrangement is likely to reduce the risk of those children experiencing sexual abuse and for abuse to be identified and responded to early.⁸⁰⁷

An independent community visitor scheme for children in care should be established in legislation and adequately funded to enable visitors to develop supportive relationships with children in care and to undertake advocacy on their behalf as necessary. As in Queensland, visitors should be paid rather than appointed as volunteers, and have appropriate child-related knowledge, skills and expertise. They should have access to the Child Protection Information System to assist them in their advocacy work. They should also be mandatory reporters. Wherever possible, Aboriginal children in care should have access to an Aboriginal community visitor.

We recommend that the program includes scope for appointing a small number of legally trained child advocacy officers (based on the Queensland model) to assist with more complex concerns and to support children in applying for an external review of a departmental decision (discussed below).

We also recommend that independent community visitors visit children and young people in detention facilities and in the Tasmanian Government’s proposed assisted bail and supported residential facilities, which we refer to as residential youth justice facilities. We discuss this in Chapter 12.

12.2.1 Responsibility for administering the program

As noted above, the Office of the Ombudsman administers the Mental Health Official Visitors Program and the Prison Official Visitors Program.⁸⁰⁸ The Ombudsman is the Principal Official Visitor under the *Mental Health Act 2013* and the coordinator of the Prison Official Visitors Program.⁸⁰⁹ In 2021–22, visitors made 51 visits to adult correctional facilities.⁸¹⁰ At the end of June 2022, there were six visitors in the Prison Official Visitors Program.⁸¹¹ It is not clear how many dedicated visitor roles the Ombudsman has established under that Act.

Given these responsibilities, there is an argument that an independent community visitor scheme for children in out of home care should be administered by the Office of the Ombudsman, alongside its existing visitor programs. It is arguably logical for a single body to be responsible for both visiting children in care and handling their complaints about the Department where issues they raise with a visitor cannot be resolved (complaints handling is discussed more below). However, we are concerned that the Ombudsman already has many roles and functions and lacks specialisation

and expertise in matters relating to children, including children’s rights, effective communication with children and the specific risks and issues facing children in out of home care—in particular, the risk of child sexual abuse (discussed in Chapter 18).

We consider there are significant benefits in giving responsibility for administering a community visitor scheme for children in care to a body that has expertise in child-related matters and the out of home care system. There are also advantages associated with co-locating individual advocacy functions and systemic monitoring functions for the out of home care system (discussed below) in a single independent body—issues children raise with visitors would provide valuable insight into the operation of the system.

As noted above, the Commissioner for Children and Young People’s functions do not include individual advocacy for children in out of home care. In contrast, the Commissioner’s statutory functions *do* include individual advocacy for children in youth detention (refer to Chapter 12).⁸¹²

Although there is no visitors program for children in youth detention, the Commissioner for Children and Young People told us that she personally visited Ashley Youth Detention Centre approximately every three weeks.⁸¹³ Also, an Advocate for Young People in Detention, based in the Office of the Commissioner for Children and Young People, was appointed in February 2022.⁸¹⁴ We note that the Victorian Commission for Children and Young People administers an independent visitor program that involves monthly visits by volunteer visitors to children in Victoria’s two youth justice centres.⁸¹⁵

As noted above, in Chapter 18 we recommend establishing a new Tasmanian Commission for Children and Young People, with broader functions than those currently performed by the Commissioner for Children and Young People (refer to Recommendation 18.6). We recommend that the functions of this new entity include advocating for individual children in out of home care and youth detention, as well as systemic monitoring of out of home care and the youth justice system (Recommendation 9.38). The Commission’s individual advocacy functions should be performed by a new Child Advocate, who would also be a Deputy Commissioner (Recommendation 18.6).

On this basis, we consider that the independent community visitor scheme for children should be administered by the new Commission for Children and Young People. The legislation establishing the new Commission would need to ensure the Child Advocate has the necessary powers to appoint visitors, determine their remuneration and direct them to undertake visits to children in care and children in residential youth justice facilities. Community visitors should be appropriately experienced and qualified, and remuneration should be comparable to similar paid roles in other jurisdictions.

Recommendation 9.33

1. The Tasmanian Government should establish an independent Child Advocate, to be included in the Commission for Children and Young People (Recommendation 18.6).
2. The Child Advocate should have responsibility for:
 - a. the independent community visitor scheme (Recommendation 9.34)
 - b. individual advocacy for children, including making complaints to the Ombudsman on behalf of a child in care (Recommendation 9.35)
 - c. the permanent out of home care advisory group (Recommendation 9.6).

Recommendation 9.34

1. The Tasmanian Government should introduce legislation to establish an independent community visitor scheme for children in out of home care, youth detention and other residential youth justice facilities.
2. The scheme should be administered by the Commission for Children and Young People (Recommendation 18.6) and led by the Child Advocate (Recommendation 9.33).
3. The scheme should be funded to enable every child in care, youth detention or another residential youth justice facility to receive regular and frequent visits, and children in family-based care to be visited regularly or when they request a visit. Resourcing should also enable community visitors to undertake advocacy on behalf of the children they visit.
4. Community visitors should be appointed by the Child Advocate based on their skills, knowledge and expertise, and remuneration should be comparable to similar paid roles in other jurisdictions.
5. Aboriginal children should have access to Aboriginal community visitors under the scheme.
6. Community visitors should be responsible, among other matters, for:
 - a. developing trusting and supportive relationships with children in out of home care, youth detention or other residential youth justice facilities
 - b. advocating on behalf of children by listening to, giving voice to and helping to resolve their concerns and grievances

- c. facilitating children’s access to support services
 - d. inquiring about and reporting on children’s physical and emotional wellbeing
 - e. inquiring about whether children’s needs are being met.
7. The program should include funding for a small number of legally trained child advocacy officers, also appointed by the Child Advocate (Recommendation 9.33), to assist children with more complex concerns and to support them in seeking independent review of departmental decision making.

12.3 Improving independent complaints handling

There should be effective mechanisms for an independent body to investigate how the Department has responded to complaints about child sexual abuse.

Currently, the Ombudsman is responsible for receiving and managing complaints about the Department. The Ombudsman is an independent statutory officer appointed under the *Ombudsman Act 1978*, whose primary role is to investigate the administrative actions of public authorities to ensure they are lawful, reasonable and fair.⁸¹⁶ The Ombudsman does not have the power to alter the decision of an agency but may make recommendations about what should be done to rectify or mitigate the action under investigation.⁸¹⁷

The current Ombudsman, Richard Connock, told us that his office receives ‘very few, if any’ complaints about child sexual abuse or related matters.⁸¹⁸ The Ombudsman’s most recent annual report indicates that only 12 of 81 complaints received in 2021–22 about the Department of Communities related to Children and Youth Services (most often involving complaints about child protection matters).⁸¹⁹ The Ombudsman does not appear to have specialist skills in dealing with complaints involving children, nor does that office have the opportunity to promote its role to, or invite complaints from, children in out of home care.⁸²⁰ Children interviewed for our commissioned research did not identify the Ombudsman as someone with whom they would raise a complaint or concern.⁸²¹

In contrast, the New South Wales Ombudsman has a youth liaison officer who is responsible for ‘developing strategies and providing advice to assist young people [to] access [its] services’.⁸²² The youth liaison officer also provides support, advice and assistance to young people about making a complaint.⁸²³

Commissioner McLean told us that she regularly receives calls from people with complaints about the Department in relation to out of home care; she refers these callers to the Department, the police or the Ombudsman.⁸²⁴ She said that people are often confused about her role and sometimes become frustrated and angry that her office cannot investigate and resolve complaints.⁸²⁵ It is unusual for children’s commissioners to have a complaints-handling and investigation function. In most Australian jurisdictions,

another body, such as an Ombudsman, is responsible for investigating complaints about out of home care.⁸²⁶ The Northern Territory Children’s Commissioner is unusual in having the power to receive and investigate complaints concerning services provided to vulnerable children.⁸²⁷

Giving the Commissioner for Children and Young People a complaints investigation function would involve a significant shift from the current skills, expertise and focus of that office. It would require a substantial investment to develop the capacity of that office to undertake such a function.

In our view, the new Commission for Children and Young People (refer to Chapter 18) should not be given a complaints-handling function. Rather, that body should focus on individual advocacy for children in out of home care through the independent community visitor scheme recommended above (Recommendation 9.34), systemic monitoring and oversight of the out of home care system (discussed below) and regulating the Child and Youth Safe Standards and the Reportable Conduct Scheme (discussed in Chapter 18). Supporting children through individual advocacy to express their concerns and make a complaint if necessary, and remaining involved with a child until their concern or complaint is resolved, will significantly improve children’s participation in complaints processes and go a considerable way to ensuring their concerns are heard and acted on.⁸²⁸

In addition:

- Our recommendations in Section 11.3 for creating a proactive, child-informed and, thus, child-friendly internal complaints process in the new Department should improve the experiences of children (and adults) who make a complaint about out of home care.
- Our recommendation to give the Tasmanian Civil and Administrative Tribunal the power to review departmental decisions will provide another pathway for challenging out of home care decision making (refer to Recommendation 9.36).

To improve the Ombudsman’s processes, the Office of the Ombudsman should work with the new Commission for Children and Young People to set up an accessible, child-friendly complaints process and develop specialisation among investigators for managing complaints from or involving children in out of home care, youth detention or other residential youth justice facilities. The Ombudsman should regularly share information with the Commission for Children and Young People on the outcomes of complaints from children.

To assist children to raise concerns who may not otherwise be able to do so, we also recommend that the new Child Advocate be given the power, with the child’s agreement, to make a complaint to the Ombudsman on behalf of a child in out of home care, youth detention or another residential youth justice facility.

While we recommend several different oversight functions—visitor schemes and

advocacy and complaints handling—across different agencies, these agencies should adopt a ‘no wrong door’ approach. People should be able to raise concerns with any of these agencies and be assured that their matter will be referred to the appropriate agency. In Chapter 18, we recommend the relevant agencies enter into a memorandum of understanding to facilitate this no wrong door approach and develop child-friendly guides to assist people wishing to raise concerns.

Recommendation 9.35

Legislation establishing an independent Child Advocate in the Commission for Children and Young People should provide the Child Advocate with power to make a complaint to the Ombudsman on behalf of a child who is in out of home care, youth detention or another residential youth justice facility, seeking the child’s permission to do so first.

12.4 Independent review of out of home care decisions

Several witnesses, including the Commissioner for Children and Young People, argued for establishing independent, external merits reviews of a departmental decision about out of home care.⁸²⁹

The Queensland Child Protection Act enables children or other ‘aggrieved person(s)’ to apply to the Queensland Civil and Administrative Tribunal to have certain decisions of the child protection agency reviewed.⁸³⁰ Reviewable decisions include:

- deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship⁸³¹
- removing a child from their carer⁸³²
- refusing to allow, or restricting or imposing conditions on, contact between a child and the child’s parents or a member of the child’s family⁸³³
- decisions about other care arrangements.⁸³⁴

Some of these decisions could increase or decrease a child’s risk of sexual abuse in out of home care.

Also, the Queensland Public Guardian may apply to the Queensland Civil and Administrative Tribunal on behalf of a child or on the Public Guardian’s own initiative to review certain decisions made by the child protection agency.⁸³⁵ This includes a decision by the chief executive to take, or to not take, a step under the Queensland Child Protection Act to ensure a child in care is cared for in a way that meets the ‘statement of standards’ under that Act.⁸³⁶ These standards cover children’s physical, emotional,

cultural, educational, medical, social, recreational and material needs, as well as any needs arising from a child's disability.⁸³⁷ For these purposes, the chief executive's failure to act is treated as a decision to not take a step.⁸³⁸

The Queensland Public Guardian may only apply for a review of a decision if they have been unable to resolve the matter with the chief executive, and if satisfied that it is in the child's best interests to do so.⁸³⁹

In exercising jurisdiction, the Queensland Civil and Administrative Tribunal must consider principles under the Queensland Child Protection Act, including the principle that 'the safety, wellbeing and best interests of a child ... are paramount' and specific principles for Aboriginal children.⁸⁴⁰ The Tribunal must have three members with 'extensive professional knowledge and experience of children' and experience in one or more fields of 'administrative review, child care, child protection, child welfare, community services, education, health, indigenous affairs, law, psychology or social work'.⁸⁴¹

The Queensland Child Protection Act also has several provisions for children to participate in proceedings.⁸⁴² These include ensuring children have necessary information and support to participate, access to appropriate representation and the right to express their views.⁸⁴³

Child advocates from the Queensland Office of the Public Guardian can support a child in applying for a review of an out of home care decision and during tribunal proceedings.⁸⁴⁴

The Tasmanian Civil and Administrative Tribunal was established by the *Tasmanian Civil and Administrative Tribunal Act 2020* and began operations in November 2021.⁸⁴⁵ It has no jurisdiction to review child protection or out of home care decisions.

In her evidence to our Commission of Inquiry, Commissioner McLean indicated that the Tasmanian Government had advised her it would consider including reviews of decisions affecting children in out of home care in the jurisdiction of the Tasmanian Civil and Administrative Tribunal as part of the third stage of its establishment in late 2021, but that the implementation timeframe for this had been delayed.⁸⁴⁶

In our view, the Tasmanian Civil and Administrative Tribunal should be given jurisdiction to review departmental decisions affecting a child's experiences in out of home care based on the model established for the Queensland Civil and Administrative Tribunal by the Queensland Child Protection Act and the Queensland Public Guardian Act. This should occur without delay.

Reviewable decisions should include decisions the Department makes about a child's care arrangements following an allegation of child sexual abuse in relation to that child. It would greatly assist the Tribunal's understanding of these matters if Tribunal members received training about child sexual abuse.

As an extension of the individual advocacy functions of the new Commission for Children and Young People (Recommendation 9.38), the new Child Advocate should be given the power to apply to the Tasmanian Civil and Administrative Tribunal for review of an out of home care decision on behalf of a child, or on the Child Advocate’s own initiative.

As discussed above, a child advocacy officer appointed by the Child Advocate (refer to Recommendation 9.34) could provide legal support for a child wishing to apply to the Tribunal for review of a decision, as occurs in Queensland.⁸⁴⁷

Recommendation 9.36

1. The Tasmanian Government should introduce legislation to:
 - a. expand the jurisdiction of the Tasmanian Civil and Administrative Tribunal to include review of decisions of the Department for Education, Children and Young People in exercising its custody or guardianship powers—including decisions about where a child should live and arrangements for the child’s care
 - b. ensure children whose cases are subject to review have the right to express their views and participate in Tribunal proceedings
 - c. give the Child Advocate the power to apply for a Tribunal review of a decision about the care arrangements for a child on behalf of the child, or on the Child Advocate’s own initiative
 - d. grant parties, such as parents or carers, the right to apply for a Tribunal review depending on the nature of the decision.
2. To support their understanding of the experiences of children in out of home care, Tribunal members should be specifically trained in the nature and effects of trauma and child sexual abuse.

12.5 Monitoring investigations into child sexual abuse in out of home care

In Chapter 18, we examine the Tasmanian Government’s Reportable Conduct Scheme, introduced by the Child and Youth Safe Organisations Act. The Act provides for an ‘Independent Regulator’ to be appointed and a ‘Deputy Independent Regulator’ to regulate the Reportable Conduct Scheme.⁸⁴⁸ We recommend that the new Commission for Children and Young People be responsible for administering the Reportable Conduct Scheme (Recommendation 18.6).

Under the Child and Youth Safe Organisations Act, the Reportable Conduct Scheme will apply to entities that provide services or facilities for the care of children under the Children, Young Persons and Their Families Act.⁸⁴⁹ The Scheme will require the ‘head’ of an entity to notify the Independent Regulator of a reportable allegation or a reportable conviction against a ‘worker’ of the entity (including a volunteer), investigate or arrange for an independent investigation of the allegation, and inform the Independent Regulator of the outcomes of the investigation.⁸⁵⁰

Given that it is intended to be limited to allegations against ‘workers’, the Reportable Conduct Scheme will not capture allegations of child sexual abuse and child sexual exploitation against adults outside the child protection or out of home care systems. It will also not cover allegations of harmful sexual behaviours involving children in out of home care because a ‘worker’ is defined as a person aged 18 years or older. The National Royal Commission did not recommend that such allegations be included in reportable conduct schemes, and they are not included in the Victorian scheme.⁸⁵¹

In Section 11.8, we recommend that all allegations of child sexual abuse in out of home care be reported to the Quality and Risk Committee. This will provide a degree of oversight for the Department’s responses to child sexual abuse against children in out of home care.

However, it is also important that the body responsible for overseeing the out of home care system has a complete picture of what is happening in that system. Therefore, we recommend that the Department be required to notify the new Commission for Children and Young People of all allegations of child sexual abuse or risk of sexual harm in out of home care, including those that are not covered by the Reportable Conduct Scheme, such as harmful sexual behaviours and child sexual exploitation. This will ensure this body is fully informed about the scale of child sexual abuse in the out of home care system and the Department’s responses to allegations. The Department should also provide the Commission for Children and Young People with reports on the progress and outcomes of investigations into such allegations.

The Commission for Children and Young People should have the power to audit information about the Department’s responses to allegations of sexual abuse by staff or carers, child sexual exploitation or harmful sexual behaviours.

Recommendation 9.37

1. The Secretary of the Department for Education, Children and Young People should notify the Commission for Children and Young People of sexual abuse allegations involving children in out of home care that fall outside the Reportable Conduct Scheme, including incidents of child abuse by non-carers, and of the outcomes of investigations into those allegations.
2. The Commission for Children and Young People should have the power to require the Department to provide it with information about its responses to such allegations.

12.6 Strengthening systemic monitoring and oversight of out of home care

In this section, we discuss the role of the Commissioner for Children and Young People in monitoring of the out of home care system more broadly. As noted above, in Chapter 18, we recommend establishing a new Commission for Children and Young People, with responsibility for administering the Child and Youth Safe Standards and the Reportable Conduct Scheme.

In this section, we recommend that the new Commission for Children and Young People also be given clear and specific systemic monitoring and oversight functions for children in the out of home care system.

12.6.1 Commissioner for Children and Young People

The Commissioner for Children and Young People is an independent statutory officer appointed by the Governor on the advice of the Minister for Education, Children and Youth, for a term not exceeding five years under the *Commissioner for Children and Young People Act 2016* ('Commissioner for Children and Young People Act').⁸⁵² We discuss the role of the Commissioner for Children and Young People, and their broad powers, in Chapter 18. Here we focus on out of home care.

12.6.2 The Commissioner's role in monitoring out of home care

The functions of the Commissioner for Children and Young People do not refer to children in out of home care. With the exception of the function to advocate for children in youth detention, the functions apply to 'children and young people generally'.⁸⁵³ There is a single, indirect reference to children in out of home care in the Commissioner for Children and Young People Act—this is in the context of the principle that the interests and needs of 'vulnerable' children 'should be given special regard and serious consideration' in the administration of the Act.⁸⁵⁴ 'Vulnerable' children include children

who are the subject of care and protection orders or who are receiving services under the Children, Young Persons and Their Families Act.⁸⁵⁵ The Commissioner for Children and Young People's statutory powers are also broad. They are empowered to do all things necessary or convenient in connection with performing their statutory functions.⁸⁵⁶

The funding allocated to the Commissioner for Children and Young People was \$1,386,000 in 2021–22.⁸⁵⁷ In April 2022, Commissioner McLean told us that she had nine staff, with several new positions recently established.⁸⁵⁸ She also indicated that resourcing for her office 'has remained a constant challenge' and resourcing constraints have limited her ability to fulfil her functions.⁸⁵⁹

In January 2017, former Commissioner for Children and Young People, Mark Morrissey, published a report that recommended the Tasmanian Government:

Establish independent external oversight and monitoring of the [out of home care] system, including by providing the Commissioner for Children and Young People with six-monthly reports on compliance with Standards and other agreed indicators of the wellbeing of children and young people in the [out of home care] system in Tasmania.⁸⁶⁰

In the State Budget that followed this report (2017–18), the Tasmanian Government committed dedicated resources to enable the Commissioner to conduct independent systemic monitoring of out of home care over four years, beginning in July 2017.⁸⁶¹ Commissioner McLean described 'systemic monitoring' for these purposes as follows:

... I look at how Tasmania's children and young people in out-of-home care are going overall, and I look into the processes or features of the out-of-home care system that affect their wellbeing.⁸⁶²

This encompasses:

- 'regular data monitoring', whereby a discrete dataset is regularly provided to the Commissioner on specified matters relevant to out of home care, including the number of care concerns and associated substantiations, but not including the nature of the care concerns or information on other incidents in out of home care⁸⁶³
- 'thematic monitoring', whereby monitoring activities focus on an annual theme drawn from one of six domains of wellbeing such as 'being loved and safe' and 'being healthy'⁸⁶⁴
- 'responsive investigations', whereby the Commissioner uses the 'own motion' investigation powers under the Act to undertake targeted, in-depth investigations of a particular issue in out of home care⁸⁶⁵
- monitoring the Tasmanian Government's implementation of the Commissioner's recommendations on out of home care.⁸⁶⁶

Commissioner McLean told us that the current resourcing of her office limits her ability to undertake own motion investigations or inquiries.⁸⁶⁷ We note, however, that in December 2022, Commissioner McLean announced she would undertake an own motion investigation into the allocation of Child Safety Officers for children in Tasmanian out of home care, under the new out of home care case management model.⁸⁶⁸

In both of the Commissioner for Children and Young People's monitoring reports for out of home care, she has reported on the demographics of children in care, various placement types, case management activities (such as care planning) and expenditure.⁸⁶⁹ Also, in the first monitoring report, Commissioner McLean reported on the first thematic monitoring of the out of home care system, which focused on 'being healthy'.⁸⁷⁰ This report made five broad recommendations supported by more detailed recommendations, one of which was to expand 'the capacity of the existing independent oversight of out-of-home care currently undertaken by the Commissioner for Children and Young People' to engage in systemic monitoring based on agreed standards for out of home care.⁸⁷¹

The theme of the second thematic monitoring report was 'being loved and safe'.⁸⁷² Commissioner McLean indicated that child sexual abuse was 'not the main reason' for selecting this second theme, as it is one of a range of issues that can affect the safety of a child in care.⁸⁷³ The Commissioner for Children and Young People published a monitoring plan for this theme in February 2021.⁸⁷⁴ The plan proposed a series of engagement activities with children, foster carers, kinship carers and staff of relevant organisations.⁸⁷⁵ The plan also indicated that reporting activities may include 'focus reports', described as containing 'findings from a deep-dive into a particular topic'.⁸⁷⁶

In our view, while there is a certain logic in using the six domains of wellbeing to set the parameters for monitoring the out of home care system, the wellbeing themes are so broad as to seriously limit the Commissioner for Children and Young People's ability to meaningfully examine the drivers of children's adverse experiences in out of home care and the system's responses to those experiences. Commissioner McLean agreed that it would be better to focus monitoring on standards for out of home care rather than on wellbeing themes.⁸⁷⁷

12.6.3 Approaches in other jurisdictions

Children's commissioners in other jurisdictions have considerably more targeted functions and powers in relation to the out of home care system and children in care than the Tasmanian Commissioner for Children and Young People.

For example, in Victoria, several functions of the Commission for Children and Young People are directed at the safety and wellbeing of 'vulnerable children and young persons', which includes children who are or have been child protection clients.⁸⁷⁸ These functions include monitoring and reporting to ministers on the implementation

and effectiveness of strategies relating to the safety or wellbeing of vulnerable children and young people, and promoting the interests of vulnerable children and young people in the Victorian community.⁸⁷⁹

The Victorian Commission for Children and Young People also has several specific functions for monitoring out of home care services.⁸⁸⁰ These include advising the responsible minister and secretary on the performance of out of home care services and, at the request of the minister, reporting on a specific out of home care service.⁸⁸¹

The Victorian Commission for Children and Young People also has specific powers in relation to children in out of home care. It may inquire into the safety and wellbeing of a vulnerable child or group of vulnerable children, where the inquiry relates to the services provided or omitted to be provided to that child or group of children.⁸⁸²

Also, the Victorian Commission for Children and Young People has a broad systemic inquiry power that enables it to inquire into (among other matters) child protection services or other services to vulnerable children, if it identifies a persistent or recurring systemic issue in providing those services, and considers that a review will improve those services.⁸⁸³ The Victorian Commission for Children and Young People has produced several significant reports on the out of home care system using this systemic inquiry power, including a 2015 report on the sexual abuse of children in residential care and a 2019 report on the lived experience of children in out of home care in Victoria.⁸⁸⁴

The Victorian Commission for Children and Young People also monitors all serious incidents in out of home care, undertakes onsite inspections of residential care services and monitors government action on past inquiries.⁸⁸⁵

Several of the Northern Territory Children's Commissioner's functions also focus on 'vulnerable children'.⁸⁸⁶ These include:

- undertaking inquiries into the care and protection of vulnerable children
- monitoring 'the ways in which the Chief Executive Officer deals with suspected or potential harm to, or exploitation of, children in the Chief Executive Officer's care'
- promoting an understanding of the rights, interests and wellbeing of vulnerable children.⁸⁸⁷

As noted above, the Northern Territory Children's Commissioner also has a complaints-handling function for out of home care.⁸⁸⁸

There are risks associated with establishing a monitoring role that is not structured or resourced to perform effectively. As outlined above, the South Australian Guardian for Children and Young People resigned from the role of Child and Young Person's Visitor in 2021 due to a lack of funding to support that role.⁸⁸⁹ In describing her decision to inform the public that she was unable to perform the role Ms Wright said:

... I was concerned that the public thought there was this role, there was certainly a legislated role, there was a person in the role and they might have taken comfort to think that there was a person going out and visiting these children and young people in residential care ... these are some of the most vulnerable children and young people in South Australia, and so it was important to me that the public knew that essentially I wasn't doing the job, it was a bit of a fraud really in my view.⁸⁹⁰

A monitoring role that is not performed effectively risks creating the illusion that the out of home care system is operating without major problems. This means that serious flaws in the out of home care system are likely to go unaddressed, and that children will continue to be unacceptably exposed to the risks of sexual abuse.

The preceding discussion highlights the need for greater clarity and specificity in the functions of the Commissioner for Children and Young People for monitoring the out of home care system. As noted, in Chapter 18 we recommend establishing a new Commission for Children and Young People with responsibility for overseeing the Child and Youth Safe Standards and the Reportable Conduct Scheme. We recommend that the new Commission for Children and Young People be given expanded functions and powers in relation to advocacy for individual children and monitoring of the out of home care system, which must be fully resourced. The interaction of those functions and the independence of the new Commission for Children and Young People are discussed in Chapter 18.

In Section 5, we also outline the basis for, and recommend establishing, a Tasmanian Commissioner for Aboriginal Children and Young People who has the statutory powers and functions to monitor the experiences of Aboriginal children in out of home care (refer to Recommendation 9.14). We envisage this role functioning alongside and in partnership with the Commissioner for Children and Young People.

We discuss the role of the Commission for Children and Young People in overseeing the youth detention system in Chapter 12.

Recommendation 9.38

1. The Commission for Children and Young People should have the following functions in relation to out of home care:
 - a. monitoring the operation of the out of home care system and the provision of out of home care services to children, by regularly monitoring data and conducting own motion systemic inquiries into aspects of the system
 - b. conducting own motion inquiries into the services received by an individual child or group of children in out of home care

- c. making recommendations to the Government for out of home care system improvements
 - d. advocating for individual children in out of home care, including supporting children to make complaints to the Ombudsman and to apply for independent reviews of departmental decision making
 - e. administering the independent community visitor scheme
 - f. upholding and promoting the rights of children in out of home care.
2. The Commission should be fully resourced on an ongoing basis to perform these functions.

13 Conclusion

Out of home care should be a place for children and young people to heal from abuse, not a place where children and young people are at risk of further abuse. Children and young people should leave care settings stronger, healthier and more emotionally equipped to deal with life's challenges. The out of home care system must be working to prevent and interrupt intergenerational contact with child protection services, not perpetuate cycles of abuse and harm.

We acknowledge that out of home care is a challenging environment. Holding the trauma of children in care and helping them turn their lives around for the better requires enormous effort, even in a well-resourced out of home care system staffed by the most dedicated workers. We accept that fully implementing significant reform is a long process. This is even more reason why the Government and the Department must prioritise rebuilding the out of home care system now. We urge the Government and the new Secretary to not allow out of home care to again get lost in the process of transitioning to a new, bigger department and the implementation of a broader reform agenda.

Considerable funding is required to ensure our reform recommendations for the out of home care system are implemented in ways that significantly improve the safety of children and young people in out of home care. The Government must commit this funding so the Secretary can effectively acquit his responsibility as the statutory guardian of children in out of home care, and to allow the Department and sector to work with purpose and intent to protect the best interests of children.

Notes

- 1 Statement of Sonya Enkelmann, 26 April 2022, 21 [87].
- 2 Refer to, for example, Statement of Michael Pervan, 6 June 2022, 5 [18–19], 12–14 [44].
- 3 Michael Pervan, *Procedural Fairness Response*, 30 March 2023, 4 [2.23]–5 [2.28].
- 4 Michael Pervan, *Procedural Fairness Response*, 30 March 2023, 5 [3.6]–6 [3.11].
- 5 Michael Pervan, *Procedural Fairness Response*, 30 March 2023, 5 [3.1]–6 [3.12].
- 6 The Child Advocate did not provide a date for when human resources support began but described it as ‘in recent times’: Statement of Sonya Pringle-Jones, 16 June 2022, 26 [69].
- 7 Statement of Sonya Pringle-Jones, 16 June 2022, 27 [70].
- 8 Statement of Sonya Pringle-Jones, 16 June 2022, 27 [70].
- 9 Tasmania’s ‘real expenditure on care services per placement night’ steadily increased up to 2019 and then decreased each year until 2021 (the most recent figures available): Productivity Commission, *Report on Government Services 2022* (Report, 25 January 2022) Part F, Section 16, Table 16.35.
- 10 Department of Health and Human Services, *Out of Home Care Strategic Framework* (December 2007) 15.
- 11 Department of Health and Human Services, *Out of Home Care Strategic Framework* (December 2007) 14; Statement of Caroline Brown, 9 June 2022, 3 [21].
- 12 Department of Health and Human Services, *Out of Home Care Strategic Framework* (December 2007) 30, 55.
- 13 Department of Health and Human Services, *Out of Home Care Strategic Framework* (December 2007) 45–55.
- 14 Statement of Julian Watchorn, 8 June 2022, 9 [53]; Statement of Caroline Brown, 9 June 2022, 7 [36]; Consultation with non-government out of home care providers, 25 October 2021.
- 15 Statement of Caroline Brown, 9 June 2022, 7 [37–40].
- 16 Statement of Julian Watchorn, 8 June 2022, 18 [95–96]. Refer also to Consultation with non-government out of home care providers, 25 October 2021.
- 17 Statement of Sonya Enkelmann, 26 April 2022, 13–14 [54]; Statement of Andrea Sturges, 16 June 2022, 21–22 [88].
- 18 Statement of Michael Pervan, 4 August 2022, 3 [17].
- 19 Statement of Caroline Brown, 9 June 2022, 8 [41]; Transcript of Nicola Crates, Paul Cairns and Andrea Witt, 16 June 2022, 1458 [17–33].
- 20 Statement of Caroline Brown, 9 June 2022, 8 [41]; Transcript of Nicola Crates, Paul Cairns and Andrea Witt, 16 June 2022, 1458 [17–33].
- 21 Statement of Andrea Sturges, 16 June 2022, 8 [18]; Transcript of Nicola Crates, Paul Cairns and Andrea Witt, 16 June 2022, 1458 [17–33].
- 22 Statement of Michael Pervan, 6 June 2022, 68 [327–329].
- 23 Michael Pervan, *Procedural Fairness Response*, 26 July 2023, 4.
- 24 In New South Wales, out of home care service provision began transitioning to non-government providers from 2012; guidelines and transition policies were developed for the transfer process to enable a ‘smooth and consistent transition’, which the Tasmanian Government may find useful. NSW Government, ‘Transfer Process’, *OOHC Transition Policies, Procedures and Tools* (Web Page, 24 September 2019) <<https://www.facs.nsw.gov.au/providers/children-families/oohc/transition/tools/chapters/transfer-process>>; NSW Government, ‘Transition Program Office Policy Paper 1: Transition Cohort Priorities’, *OOHC Transition Policies, Procedures and Tools* (Web Page, April 2012) <<https://www.facs.nsw.gov.au/download?file=320037>>.
- 25 For example, Australian Centre for Child Protection, *Review of Data and Outcomes for the Permanency Support Program (PSP): Data Roadmap* (Report, February 2022).
- 26 Commissioner for Children and Young People, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and ‘Being Healthy’*, *Out-of-Home Care Monitoring Program 2018–19* (Report, October 2019) 66.
- 27 Statement of Timothy Bullard, 28 October 2022, 1 [1].
- 28 Statement of Michael Pervan, 6 June 2022, 38–39 [163].

- 29 Statement of Michael Pervan, 6 June 2022, Annexure 54 (Department of Communities, Template: 'Funding Agreement', undated).
- 30 Statement of Michael Pervan, 6 June 2022, Annexure 54 (Department of Communities, Template: 'Funding Agreement', undated) 15.
- 31 Statement of Michael Pervan, 6 June 2022, Annexure 54 (Department of Communities, Template: 'Funding Agreement', undated) 37–38.
- 32 Statement of Michael Pervan, 6 June 2022, Annexure 54 (Department of Communities, Template: 'Funding Agreement', undated) 16.
- 33 Department of Families, Housing, Community Services and Indigenous Affairs, *An Outline of National Standards for Out-of-Home Care: A Priority Project under the National Framework for Protecting Australia's Children 2009–2020* (Report, Australian Government, July 2011) 2, 4; *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, 2017) vol 6, 141–214; *Child and Youth Safe Organisations Act 2023*, sch 1.
- 34 Department of Families, Housing, Community Services and Indigenous Affairs, *An Outline of National Standards for Out-of-Home Care: A Priority Project under the National Framework for Protecting Australia's Children 2009 – 2020* (Report, Australian Government, July 2011).
- 35 Department of Families, Housing, Community Services and Indigenous Affairs, *An Outline of National Standards for Out-of-Home Care: A Priority Project under the National Framework for Protecting Australia's Children 2009 – 2020* (Report, Australian Government, July 2011) 2, 4.
- 36 Department for Education, Children and Young People, *Tasmanian Out of Home Care Standards* (June 2022) 10.
- 37 Transcript of Michael Pervan, 17 June 2022, 1595 [25–31].
- 38 Department for Education, Children and Young People, *Tasmanian Out of Home Care Standards* (June 2022); Tasmanian Government, *Tasmanian Child and Youth Wellbeing Framework* (undated) 5.
- 39 Department for Education, Children and Young People, *Tasmanian Out of Home Care Standards* (June 2022) 10.
- 40 Statement of Andrea Sturges, 16 June 2022, 23 [97]; Statement of Michael Pervan, 6 June 2022, 38 [157]; Statement of Michael Pervan, 6 June 2022, Annexure 57 (Department of Health and Human Services, 'The Quality and Safety Framework for Tasmania's DHHS Funded Community Sector', 17 January 2014) 6.
- 41 Statement of Sonya Enkelmann, 26 April 2022, 19 [79].
- 42 Transcript of Claire Lovell, 14 June 2022, 1185 [28–41].
- 43 Transcript of Claire Lovell, 14 June 2022, 1185 [35–44].
- 44 Statement of Sonya Pringle-Jones, 16 June 2022, 24–25 [61].
- 45 Transcript of Claire Lovell, 14 June 2022, 1185 [35]–1186 [31].
- 46 Transcript of Timothy Bullard, 12 September 2022, 3926 [47]–3927 [5]; Statement of Timothy Bullard, 28 October 2022, 1 [1]–2 [4(e)].
- 47 *Children, Young Persons and Their Families Act 1997* s 5.
- 48 Australian Human Rights Commission, *National Principles for Child Safe Organisations* (2018) 9.
- 49 Keith Kaufman et al, *Risk Profiles for Institutional Child Sexual Abuse: A Literature Review* (Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, October 2016) 27.
- 50 Statement of Professor Donald Palmer, 12 April 2022, 15 [54].
- 51 Statement of Professor Donald Palmer, 12 April 2022, 15 [55].
- 52 Statement of Caroline Brown, 9 June 2022, 8 [44–45]; Statement of Deborah Brewer, 8 June 2022, 10 [46]; Statement of 'Ophelia', 10 June 2022, 9 [38]–10 [39]. The name 'Ophelia' is a pseudonym; Order of the Commission, restricted publication order, 30 August 2023.
- 53 Statement of Caroline Brown, 9 June 2022, 8 [44–45].
- 54 Statement of Andrea Sturges, 16 June 2022, 13 [44].
- 55 Statement of Andrea Sturges, 16 June 2022, 13 [45].

- 56 Statement of Andrea Sturges, 16 June 2022, 14 [47].
- 57 Statement of Andrea Sturges, 16 June 2022, 17 [63–64]; Transcript of Andrea Sturges, 16 June 2022, 1511 [37]–1512 [45].
- 58 Transcript of Claire Lovell, 14 June 2022, 1208 [46]–1209 [16].
- 59 Transcript of Leanne McLean, 17 June 2022, 1564 [38–42].
- 60 Transcript of Michael Pervan, 17 June 2022, 1612 [3]–1613 [6].
- 61 Transcript of Michael Pervan, 17 June 2022, 1610 [13]–1615 [2].
- 62 Transcript of Michael Pervan, 17 June 2022, 1611 [38]–1612 [1].
- 63 Department for Education, Children and Young People, *Structure from 1 October 2022* (7 October 2022).
- 64 Department for Education, Children and Young People, *Structure from 1 October 2022* (7 October 2022).
- 65 Department for Education, Children and Young People, *Structure from 30 April 2023* (30 April 2023).
- 66 Transcript of Catherine Taylor, 12 September 2022, 3900 [15]–3902 [40].
- 67 Transcript of Catherine Taylor, 12 September 2022, 3900 [23–32].
- 68 Transcript of Catherine Taylor, 12 September 2022, 3900 [29–32].
- 69 Transcript of Catherine Taylor, 12 September 2022, 3901 [11–32], 3902 [39–40].
- 70 Statement of Catherine Taylor, 8 September 2022, 4 [22], [24].
- 71 Transcript of Catherine Taylor, 12 September 2022, 3908 [7]–3909 [17].
- 72 Stephen Smallbone and Tim McCormack, *Independent Inquiry into the Tasmanian Department of Education’s Responses to Child Sexual Abuse* (Report, 7 June 2021).
- 73 Statement of Kathy Baker, 18 August 2022, 32 [181].
- 74 Refer generally to Secretary Pervan’s description of the implementation of the Strong Families, Safe Kids redesign in Statement of Michael Pervan, 6 June 2022, 16 [59]–19 [73]; Statement of Michael Pervan, 7 June 2022, 2 [12]–3 [20]; Statement of Sonya Pringle-Jones, 16 June 2022, 24 [58(q)], [61].
- 75 Tasmania, *Ministerial Statement*, House of Assembly, 24 May 2022, 28 (Jeremy Rockliff, Premier).
- 76 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 6, 147.
- 77 Statement of Samantha Cromptvoets, 10 September 2022, 15 [60]–16 [61].
- 78 Statement of Kim Backhouse, 8 June 2022, 22 [119].
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- 80 Commissioner for Children and Young People, *Monitoring Report No. 2: Key Data on Tasmania’s Out-of-Home Care System, 2020–2021, Out of Home Care Monitoring Program 2023* (Report, 14 March 2023) 4.
- 81 Department of Communities, ‘Table of Non-Government Providers Who Are Funded by the Tasmanian Government to Provide Out of Home Care Services’, 20 August 2021, provided by the Tasmanian Government in response to a Commission notice to produce. Refer also to Statement of Michael Pervan, 6 June 2022, Annexure 83 (‘Data: Out of home care providers’, 22 April 2022); Commissioner for Children and Young People, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and ‘Being Healthy’*, *Out of Home Care Monitoring Program 2018–19* (Report, October 2019) 22.
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- 85 Transcript of Michael Pervan, 17 June 2022, 1624 [43]–1625 [40], 1627 [34]–1628 [26]; Transcript of Leanne McLean, 17 June 2022, 1562 [25–39]; Statement of Michael Pervan, 4 August 2022, 4 [26–28]; Statement of Michael Pervan, 6 June 2022, 52 [232]; Transcript of Claire Lovell, 4 July 2022, 2296 [17–20].
- 86 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 February 2023, 5.
- 87 Statement of Michael Pervan, 7 June 2022, 5 [38]–6 [39].
- 88 Statement of Michael Pervan, 7 June 2022, Annexure 1 (Department of Communities, ‘Children and Family Services Practice Performance and Governance Committee: Terms of Reference’, 30 July 2021) 1–2.
- 89 Statement of Michael Pervan, 7 June 2022, Annexure 1 (Department of Communities, ‘Children and Family Services Practice Performance and Governance Committee: Terms of Reference’, 30 July 2021); Statement of Michael Pervan, 7 June 2022, 5 [38]–6 [39].
- 90 Statement of Michael Pervan, 7 June 2022, 6 [39].
- 91 Statement of Michael Pervan, 7 June 2022, Annexure 75 (Department of Communities, ‘Child Safety State-Wide Service Development Committee: Terms of Reference’, undated) 1.
- 92 Statement of Michael Pervan, 7 June 2022, Annexure 75 (Department of Communities, ‘Child Safety State-Wide Service Development Committee: Terms of Reference’, undated) 1.
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- 94 Transcript of Catherine Taylor, 12 September 2022, 3910 [22–44]. Refer also to Statement of Muriel Bamblett, 10 June 2022, 19 [100]–20 [105], 22 [118–119], 32 [176]; Transcript of Muriel Bamblett, 15 June 2022, 1331 [12–31], 1343 [20–27], 1344 [37–46].
- 95 Transcript of Catherine Taylor, 12 September 2022, 3911 [1–19].
- 96 Statement of Catherine Taylor, 8 September 2022, 9 [54].
- 97 Statement of Robyn Miller, 9 June 2022, 15 [72–74].
- 98 Statement of Robyn Miller, 9 June 2022, 15 [74].
- 99 Transcript of Catherine Taylor, 12 September 2022, 3905 [13–16], 3915 [17–45]; Statement of Robyn Miller, 9 June 2022, 17 [80]–18 [83(g)], [85].
- 100 Secretary Pervan referred to the Department’s 2014 *Quality and Safety Framework for Tasmania’s DHHS Funded Community Sector*, but he provided no further context: Statement of Michael Pervan, 6 June 2022, 37 [155]. Although not mentioned by Secretary Pervan, the Department of Premier and Cabinet’s website stated that ‘consultation on the new approach will commence in 2023/2024: Department of Premier and Cabinet, ‘Quality and Safety Services’, *Community and Disability Services* (Web Page) <<https://www.dpac.tas.gov.au/divisions/cpp/community-and-disability-services/quality-and-safety-services>>.
- 101 Statement of Michael Pervan, 6 June 2022, 33 [138].
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- 105 Statement of Michael Pervan, 7 June 2022, Annexure 5 (Department of Communities, ‘A Children and Youth Services Framework for Organisational Leadership and Sustainability’, 1 November 2019) 9.
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- 111 *Children, Young Persons and Their Families Act 1997* s 10D (3)(c).

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- 114 Statement of Sonya Pringle-Jones, 16 June 2022, 4 [17(a)].
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- 117 The Victorian Commission for Children and Young People’s *Guide for Organisations Working with Children and Young People* includes a tailoring guide for participation of children and young people of different ages and provides guidance on creating safe and inclusive spaces for children and young people and promoting their voice: Commission for Children and Young People, *Empowerment and participation: A Guide for Organisations Working with Children and Young People* (Guide, 2021) 62.
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- 119 Department of Premier and Cabinet, *Aboriginal Partnerships* (Web Page) <<https://www.dpac.tas.gov.au/divisions/cpp/aboriginal-partnerships>>.
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- 121 Department for Child Protection, *Aboriginal and Torres Strait Islander Requirements* (Web Page, 18 April 2019) <<https://www.childprotection.sa.gov.au/service-providers/service-provision-requirements/aboriginal-and-torres-strait-islander-requirements>>.
- 122 Department for Child Protection, *Reconciliation Action Plan May 2022–May 2025* (South Australian Government, undated) 28.
- 123 Department for Child Protection, *Reconciliation Action Plan May 2022–May 2025* (South Australian Government, undated) 11.
- 124 Statement of Elizabeth Jack, 29 April 2022, 6 [28].
- 125 Department of Health and Human Services, *Out of Home Care Strategic Framework* (December 2007).
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- 128 Department of Communities, *Strong Families Safe Kids: Next Steps Action Plan 2021–2023* (undated) 20.
- 129 Refer generally to Secretary Pervan’s description of the implementation of the Strong Families, Safe Kids redesign in Statement of Michael Pervan, 6 June 2022, 16 [59]–19 [73]; Statement of Michael Pervan, 7 June 2022, 2 [12]–3 [20]; Statement of Sonya Pringle-Jones, 16 June 2022, 24 [58(q)], [61].
- 130 Statement of Michael Pervan, 6 June 2022, 68 [329].
- 131 Keith Kaufman et al, *Risk Profiles for Institutional Child Sexual Abuse: A Literature Review* (Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, October 2016) 9–10, 38.
- 132 Australian Human Rights Commission, *National Principles for Child Safe Organisations* (2018) 18; *Child and Youth Safe Organisations Act 2023* sch 1.
- 133 In February 2023, we reviewed the Department’s Practice Manual intranet and identified some policy documents had been replaced in December 2022. We acknowledge these new documents where relevant in the following discussion.
- 134 This refers to websites for the Department of Communities and Department for Education, Children and Young People. The *Consumer Related Reportable Incident Policy for Tasmania’s DHHS Funded Community Sector* and the *Consumer Related Reportable Incident Procedure for Tasmania’s DHHS Funded Community Sector* were the only publicly-available policy documents we could locate; Statement of Mary Dickins, 2 June 2022, 4 [21].
- 135 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023) 45, 62.

- 136 Queensland Government, *Child Safety Practice Manual* (Web Page, 29 July 2021) <<https://cspm.csyw.qld.gov.au/>>; Government of South Australia, *Department for Child Protection Policy Documents* (Web Page, February 2023) <https://www.childprotection.sa.gov.au/___data/assets/pdf_file/0004/116878/dcp-policy-list.pdf>; Victoria State Government, 'Child Protection Manual', *Health and Human Services* (Web Page) <<https://www.cpmanual.vic.gov.au/>>; ACT Government, 'CYPS Policies and Procedures', *Policies* (Web Page, 21 December 2022) <<https://www.communityservices.act.gov.au/ocyfs/policies>>.
- 137 Statement of Sonya Pringle-Jones, 16 June 2022, 29 [77].
- 138 Statement of Michael Pervan, 7 June 2022, Annexure 5 (Department of Communities, 'A Children and Youth Services Framework for Organisational Leadership and Sustainability', 1 November 2019) 5; Statement of Sonya Pringle-Jones, 16 June 2022, 32 [91(a)].
- 139 Statement of Michael Pervan, 6 June 2022, 19 [72].
- 140 Statement of Sonya Pringle-Jones, 16 June 2022, 24 [60].
- 141 We note that two more were updated on 15 December 2022, being the *Wellbeing in Care Procedure* and *Wellbeing in Care Practice Advice*. A new policy document was added on this date, being an interim *Child Safe Code of Conduct*.
- 142 For example, Disability, Child, Youth and Family Services, 'Guidelines for Overnight Stays for Children and Young People in Out of Home Care', undated, produced by the Tasmanian Government in response to a Commission notice to produce; Child Protection Services, 'Guidelines for Referring Children in Out of Home Care to the Paediatric Assessment Clinic' (Draft), 22 October 2007, produced by the Tasmanian Government in response to a Commission notice to produce; Department of Health and Human Services, 'Support Workers' Practice Orientation Handbook', 25 November 2004, produced by the Tasmanian Government in response to a Commission notice to produce.
- 143 For example, Disability Child Youth and Family Services, 'Policy and Practice Advice: Transporting Children and Young People', March 2010, produced by the Tasmanian Government in response to a Commission notice to produce; Disability Child Youth and Family Services, 'Policy and Practice Advice: Foster Care Placements – Number of Children', undated, produced by the Tasmanian Government in response to a Commission notice to produce.
- 144 An interim *Child Safe Code of Conduct* was added on 15 December 2022.
- 145 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) Recommendations, 22 (Recommendation 8.4), 35 (Recommendations 12.1–12.3).
- 146 Department of Communities Tasmania, *Annual Report 2020–2021* (Report, October 2021) 24–30.
- 147 Department for Education, Children and Young People, '*Services for children, youth and families data*', *Data and Statistics* (Web Page) <<https://www.decyp.tas.gov.au/about-us/data-and-statistics/data-for-services-for-children-youth-and-families/>>. On 7 June 2023, the Tasmanian Government announced that it would extend its reporting to seven child safety data indicators: Roger Jaensch, 'Increasing Transparency in Tasmania's Child Safety System' (Media Release, 7 June 2023) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/increasing-transparency-in-tasmanias-child-safety-system>.
- 148 Queensland Department of Child Safety, Seniors and Disability Services, 'Improving Care and Post Care Support', *Our Performance* (Web Page) <<https://performance.cyjma.qld.gov.au/?domain=6r87nygu3rk0>>. These matters were previously reported on by the Queensland Department of Children, Youth Justice and Multicultural Affairs.
- 149 Queensland Department of Child Safety, Seniors and Disability Services, 'Improving Care and Post-Care support', *Our Performance* (Web Page) <<https://performance.cyjma.qld.gov.au/?domain=6r87nygu3rk0>>.
- 150 Commissioner for Children and Young People, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and 'Being Healthy'*, *Out of Home Care Monitoring Program 2018–19* (Report, October 2019) 66.
- 151 Commissioner for Children and Young People, *Monitoring Report No. 2: Key Data on Tasmania's Out-of-Home Care System, 2020–2021, Out-of-Home Care Monitoring Program 2023* (Report, 15 March 2023) 4.
- 152 Statement of Claire Lovell, 4 August 2022, 2 [13]; Statement of Michael Pervan, 6 June 2022, 7–8 [24].
- 153 Department of Families, Housing, Community Services and Indigenous Affairs, *An Outline of National Standards for Out-of-Home Care* (Australian Government, July 2011) 7 <https://www.dss.gov.au/sites/default/files/documents/pac_national_standard.pdf>.

- 154 Statement of Claire Lovell, 4 August 2022, 1 [3].
- 155 Statement of Claire Lovell, 4 August 2022, 1 [3].
- 156 Transcript of Claire Lovell, 14 June 2022, 1209 [46]–1210 [8].
- 157 Transcript of Claire Lovell, 14 June 2022, 1205 [29–42].
- 158 Statement of Sonya Pringle-Jones, 16 June 2022, 26–27 [69].
- 159 Transcript of Claire Lovell, 14 June 2022, 1206 [1–9].
- 160 Statement of Andrea Sturges, 16 June 2022, 11 [39].
- 161 Keith Kaufman et al, *Risk Profiles for Institutional Child Sexual Abuse: A Literature Review* (Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, October 2016) 71.
- 162 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023) 70, 81.
- 163 Statement of Robyn Miller, 9 June 2022, 15–16 [75]; Statement of Catherine Taylor, 8 September 2022, 4 [29].
- 164 Statement of Sonya Enkelmann, 26 April 2022, 11 [39].
- 165 Statement of Sonya Enkelmann, 26 April 2022, 3 [13]; Statement of Jack Davenport, 3 June 2022, 26 [190–195]; Statement of Andrea Sturges, 16 June 2022, 21 [88]–22 [88].
- 166 Statement of Sonya Enkelmann, 26 April 2022, 3 [13].
- 167 Statement of Sonya Pringle-Jones, 16 June 2022, Annexure SPJ-13 (Child Advocate, ‘Collation of Systemic Recommendations 2018–2021’, 16 June 2022) 33; Statement of Sonya Enkelmann, 26 April 2022, 3 [13].
- 168 Statement of Andrea Sturges, 16 June 2022, 21 [84], 21 [88]–22 [90]; Statement of Sonya Enkelmann, 26 April 2022, 10 [34]; Transcript of Kim Backhouse and Julian Watchorn, 14 June 2022, 1267 [39]–1268 [2].
- 169 Statement of Sonya Pringle-Jones, 16 June 2022, Annexure SPJ-13 (Child Advocate, ‘Collation of Systemic Recommendations 2018–2021’, 16 June 2022) 33.
- 170 Statement of Sonya Pringle-Jones, 16 June 2022, Annexure SPJ-13 (Child Advocate, ‘Collation of Systemic Recommendations 2018–2021’, 16 June 2022) 33.
- 171 Statement of Sonya Pringle-Jones, 16 June 2022, Annexure SPJ-13 (Child Advocate, ‘Collation of Systemic Recommendations 2018–2021’, 16 June 2022) 33.
- 172 Statement of Sonya Pringle-Jones, 16 June 2022, 26 [68]–27 [71]; Transcript of Claire Lovell, 14 June 2022, 1210 [30–36].
- 173 Letter from Thirza White to the Commission of Inquiry, 15 July 2022, 3.
- 174 Statement of Sonya Pringle-Jones, 16 June 2022, Annexure SPJ-13 (Child Advocate, ‘Collation of Systemic Recommendations 2018–2021’, 16 June 2022) 32–33.
- 175 Statement of Sonya Pringle-Jones, 16 June 2022, Annexure SPJ-13 (Child Advocate, ‘Collation of Systemic Recommendations 2018–2021’, 16 June 2022) 32.
- 176 Letter from Thirza White to the Commission of Inquiry, 15 July 2022, 1-4.
- 177 Letter from Thirza White to the Commission of Inquiry, 15 July 2022, 4.
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- 179 Statement of Jack Davenport, 3 June 2022, 26 [195].
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- 181 Transcript of Michael Pervan, 17 June 2022, 1605 [11–31].
- 182 Transcript of Michael Pervan, 17 June 2022, 1605 [11–31].
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- 184 Transcript of Michael Pervan, 17 June 2022, 1607 [11–17].
- 185 Transcript of Michael Pervan, 17 June 2022, 1606 [5–17], 1608 [27–34].
- 186 Refer to State Government of Victoria, ‘Specialist Family Violence Workforce’, *Family Violence Reform Implementation Monitor* (Web Page, 23 December 2022) <<https://www.fvrim.vic.gov.au/monitoring-victorias-family-violence-reforms-crisis-response-recovery-model-victim-survivors-3>>.

- 187 We heard of a promising approach from Dr Robyn Miller: Statement of Robyn Miller, 9 June 2022, 16 [77].
- 188 Statement of Catherine Taylor, 8 September 2022, 8 [48]; *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 6, 189–195.
- 189 Statement of Michael Pervan, 6 June 2022, Annexure 50 (Department of Communities, ‘Children, Youth and Families 2022 Training Calendar’, 29 October 2021); Statement of Michael Pervan, 6 June 2022, 31 [130].
- 190 Statement of Michael Pervan, 6 June 2022, 31 [132].
- 191 Statement of Michael Pervan, 6 June 2022, 32 [135].
- 192 Statement of Michael Pervan, 4 August 2022, 2 [9]; Transcript of Claire Lovell, 14 June 2022, 1196 [12–24].
- 193 Statement of Michael Pervan, 4 August 2022, 2 [7–9]; Transcript of Claire Lovell, 14 June 2022, 1196 [12–24]. We understand that ‘Shared Stories Shared Lives’ is used by the Department as both an educational and screening process for prospective carers.
- 194 Statement of Michael Pervan, 4 August 2022, 2 [7–9].
- 195 Statement of Kim Backhouse, 8 June 2022, 8 [40]–9 [44].
- 196 Refer, for example, to Statement of Andrea Sturges, 16 June 2022, 8 [22].
- 197 Statement of Andrea Sturges, 16 June 2022, 22 [94]; Statement of Sonya Enkelmann, 26 April 2022, 13 [50].
- 198 Statement of Michael Pervan, 4 August 2022, 2 [7–9]; Statement of Kim Backhouse, 8 June 2022, 8 [40]–9 [44].
- 199 Statement of Kim Backhouse, 8 June 2022, 12 [61]; Transcript of Kim Backhouse and Julian Watchorn, 14 June 2022, 1281 [38–44].
- 200 Tim Moore and Morag McArthur, *Take notice, believe us and act! Exploring the safety of children and young people in government run organisations* (Research Report prepared for the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, February 2023) 83–85.
- 201 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 6, 189–195.
- 202 Statement of Michael Pervan, 6 June 2022, 30 [127]–32 [135].
- 203 Statement of Robyn Miller, 9 June 2022, 5 [26].
- 204 Statement of Jack Davenport, 3 June 2022, 27 [198–200], 28 [209]–29 [210]; Statement of Andrea Sturges, 16 June 2022, 15 [53–56]; Statement of Caroline Brown, 9 June 2022, 10 [59]–12 [71].
- 205 Statement of Robyn Miller, 9 June 2022, 9[46]–11 [54].
- 206 Statement of Robyn Miller, 9 June 2022, 9[46]–11 [53].
- 207 Statement of Robyn Miller, 9 June 2022, 11 [53].
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- 209 Statement of Sonya Enkelmann, 26 April 2022, 12 [47].
- 210 Transcript of Kim Backhouse and Julian Watchorn, 14 June 2022, 1284 [4–30].
- 211 Statement of Robyn Miller, 9 June 2022, 3 [14–15], 12 [57(d)], 15 [71].
- 212 Statement of Paul Cairns, 9 June 2022, 2 [9(c)].
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- 214 Transcript of Mary Dickins, 16 June 2022, 1485 [11–44].
- 215 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 6, 189, 194–195.
- 216 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 6, 189.
- 217 Transcript of Kim Backhouse and Julian Watchorn, 14 June 2022, 1270 [13–21].
- 218 Statement of Robyn Miller, 9 June 2022, 16 [79].
- 219 Statement of Caroline Brown, 9 June 2022, 8–9 [46].
- 220 Transcript of Caroline Brown and Jack Davenport, 15 June 2022, 1375 [38–44].
- 221 Transcript of Catherine Taylor, 12 September 2022, 3904 [24]–3905 [23], 3906 [39]–3907 [35].
- 222 Transcript of Catherine Taylor, 12 September 2022, 3907 [21–42].

- 223 Transcript of Catherine Taylor, 12 September 2022, 3904 [31–39].
- 224 Statement of Catherine Taylor, 8 September 2022, 11 [62].
- 225 Government of Western Australia, *Framework for Understanding and Guiding Responses to Harmful Sexual Behaviours in Children and Young People* (2022).
- 226 Refer generally to Department of Education, *National Microcredentials Framework* (Report, November 2021) 2.
- 227 Refer to Department of Education, *Microcredentials Pilot in Higher Education* (Web Page) <<https://www.education.gov.au/microcredentials-pilot-higher-education>>.
- 228 *National Agreement on the Closing the Gap* (July 2020) 30.
- 229 Commonwealth of Australia, *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031: Aboriginal and Torres Strait Islander First Action Plan 2023–2026* (Strategic Document, 2022) 36. By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent: *National Agreement on Closing the Gap* (July 2020) 30.
- 230 SNAICC - National Voice for Our Children, *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A Resource for Legislation, Policy, and Program Development* (Report, July 2017) 3.
- 231 The name 'Hudson' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 30 August 2023.
- 232 Statement of Heather Sculthorpe, 15 June 2022, 3–5.
- 233 Kate Warner, Tim McCormack and Fauve Kurnadi, *Pathway to Truth-Telling and Treaty: Report to Premier Peter Gutwein* (Report, November 2021) 47.
- 234 Children and Youth Services, 'Procedure: Confirming Aboriginal and Torres Strait Islander Status', 1 July 2015, 1, produced by the Tasmanian Government in response to a Commission notice to produce.
- 235 Commissioner for Children and Young People, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and 'Being Healthy', Out of Home Care Monitoring Program 2018–19* (Report, October 2019) 10.
- 236 Statement of Michael Pervan, 6 June 2022, 47 [204].
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- 238 Australian Institute of Health and Welfare, *Child Protection Australia 2020–21* (Report, 15 June 2022) Table T3.
- 239 The *Family Matters* report is a collaboration between SNAICC - National Voice for Our Children, the Family Matters campaign and the University of Melbourne: Catherine Liddle et al, *The Family Matters Report 2022: Measuring Trends to Turn the Tide on the Over-representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (Report, 2023) part 1.
- 240 Catherine Liddle et al, *The Family Matters Report 2022: Measuring Trends to Turn the Tide on the Over-representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (Report, 2022) 45.
- 241 Catherine Liddle et al, *The Family Matters Report 2022: Measuring Trends to Turn the Tide on the Over-representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (Report, 2022) 37, 45.
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- 247 Catherine Liddle et al, *The Family Matters Report 2022: Measuring Trends to Turn the Tide on the Over-representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (Report, 2022) 37–38, 42–43, 47.
- 248 Consultations with Aboriginal communities, 31 May 2022, 3 June 2022, 18 July 2022, 19 July 2022, 21 February 2023 and 22 February 2023.
- 249 Statement of Heather Sculthorpe, 15 June 2022, 10–11.
- 250 Consultation with Aboriginal community members, North West Tasmania, 8 April 2022.
- 251 Consultation with Aboriginal community members, northern Tasmania, 18 July 2022.
- 252 Consultation with Aboriginal community members, northern Tasmania, 19 July 2022; Consultation with Aboriginal community members, southern Tasmania, 21 February 2023.
- 253 Consultation with Aboriginal community members, northern Tasmania, 19 July 2022.
- 254 Consultation with Aboriginal community members, southern Tasmania, 24 October 2022.
- 255 Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Report, 1997) ch 25 ('Underlying Issues') 489.
- 256 New South Wales Family and Community Services, 'The Prevalence of Intergenerational Links in Child Protection and Out-of-Home Care in NSW' (Briefing Paper, August 2017) 6.
- 257 Consultation with Aboriginal community members, northern Tasmania, 31 May 2022; Consultation with Aboriginal community members, northern Tasmania, 19 July 2022; Consultation with Aboriginal community members, north west Tasmania, 28 September 2022; Consultation with Aboriginal community members, southern Tasmania, 24 October 2022; Consultation with Aboriginal community members, southern Tasmania, 22 February 2023.
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- 259 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 12, 29 (Recommendation 12.20).
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- 876 Commissioner for Children and Young People, *Monitoring Plan: 'Being Loved and Safe', Out-of-Home Care Monitoring Program* (Report, February 2021) 18.
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- 878 *Commission for Children and Young People Act 2012* (Vic) ss 5(a), 8(1)(a)–(c).
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- 881 *Commission for Children and Young People Act 2012* (Vic) ss 28(b), (c).
- 882 *Commission for Children and Young People Act 2012* (Vic) s 37. Reports produced under this section are not published because they concern individual children; however, the Victorian Commission for Children and Young People reports on them in de-identified form in its annual reports. For example, refer to the section titled 'Inquiry into Services Provided to a Child Known to Child Protection – "Jane"': Commission for Children and Young People, *Annual Report 2020–21* (Report, October 2021) 31–32.
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- 887 *Children's Commissioner Act 2013* (NT) ss 7 (for the definition of 'vulnerable child'), 10(1)(d), (f), (h).
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