Submission – Parliament of Victoria
Family and Community
Development Committee Inquiry
into the processes of responding
to criminal abuse of children by
personnel in religious and other
non–government organisations
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About the Centre for Excellence in Child and Family Welfare (the Centre)

The Centre for Excellence in Child and Family Welfare and its members share social responsibility with government and the broader community for addressing disadvantage and eliminating vulnerability in Victoria. Established in 1912 as the state peak body for child and family welfare, the Centre provides independent analysis, dialogue and cross-sectoral engagement to break down multi-causal factors that perpetuate vulnerability. With our members, our role is to build capacity through research, evidence and innovation to influence change.

Reflecting our purpose, the strategic priorities for the Centre across 2012–2015 are to:

- influence through engagement
- build evidence and innovation
- strengthen capacity through analysis.

The Centre is an incorporated association, guided by a Board of 12 directors. The Board is comprised of individuals drawn from our 90 member organisations, together with our chief executive officer and an expert academic member. Member organisations provide a range of early childhood, child and family support services, youth and out-of-home care services including kinship care, foster care and residential care.

The rights and welfare of children are our central concern

The United Nations Convention on the Rights of the Child Articles 3 and 19 provide for governments to act to protect children. These provisions establish the guiding principle of the ‘best interests of the child’, the responsibility of the State to intervene to ensure protection and care for the child, to put in place legislative measures to ensure protection and to provide support for those who have care of the child.
The Charter of Human Rights and Responsibilities Act 2006 (Vic) provides for the protection of families and children in section 17 and requires public authorities to act to afford protection. It provides that legislation must operate in such a way that recognises that families and children must be protected.

These high level responsibilities of the State are translated into action through the work of community service organisations such as those which are members of the Centre. Ensuring that the intervention of community service organisations in the lives of children and families is positive requires attention to promotion of safe communities, prevention of abuse and appropriate responses to incidences of abuse when they are uncovered.
Three elements of responding to criminal abuse of children in community service organisations:

1. Promotion of safety

Promotion of a child safe community starts with a clear statement of intent in relation to the place of children in society and respective roles in relation to promotion of child safety. Promotion of child safety and the prevention of criminal abuse require a whole-of-community approach. In its response to the Protecting Victoria’s Vulnerable Children Inquiry (PVVC) the Centre proposed a shared social responsibility approach to the development of public policy and programs. (CFECFW 2011a : CFECFW 2011b) This has subsequently been taken up in the Governments Victoria’s Vulnerable Children: our shared responsibility Directions Paper. (Victorian Government 2012, 3)

Efforts to prevent and respond to criminal abuse of children must be undertaken in the context of supportive and protective community attitudes toward children. This requires a whole of community awareness about the centrality of children in our community. Further it requires that the voice of children and young people in all aspects of their lives are listened to (CFECFW 2011d).

Much of the attention and effort in promotion of child safety and wellbeing is focused on family intervention to promote family strengths or address family problems in relation to known risk factors for abuse of children: these include family violence, drug and alcohol abuse and mental health issues. This is to be expected. It does mean however that strategies for promotion of safety and prevention of abuse of children in organisational settings, the subject of this Inquiry, has not received sufficient attention.

In a comprehensive review of research into community attitudes and awareness about child safety Nair identified three key issues:

- the safety of children is not perceived as a major community issue
- there is a need for education for parents and the general community on child safety issues, and
• community awareness campaigns have efficacy in preventing child abuse. (Nair, 2012)

The PVVC Inquiry noted equivocal evidence around outcomes of promotional social marketing approaches to child abuse and neglect but others have noted the effectiveness of social marketing approaches in raising awareness, knowledge, attitudes and in behaviour change which promotes the safety of children in community settings (Cummins 2012, 129-130 : Horsfall, Bromfield and McDonald 2010). These are all necessary to a systematic approach to addressing the issue of abuse in community settings.

2. Prevention of abuse

The Convention on the Rights of the Child sets high level protections for children, as does the Victorian Charter of Human Rights. In addition the Child Wellbeing and Safety Act 2005 sets out principles for non-government and community service organisations providing services for children and families in a way which is protective and responsive. Section 1 (c) requires that those who develop and provide services, as well as parents, should give the highest priority to the promotion and protection of a child’s safety, health, development, education and wellbeing.

The Centre for Excellence in Child and Family Welfare believes that the obligation to have regard to the principles of the Child Wellbeing and Safety Act should be extended to all organisations having contact with children and young people. This would include organisations not currently required to have regard to the principles such as religious organisations and sporting clubs.

Ongoing workforce education is central to prevention of abuse in organisations. Sensitivity and awareness informed by workforce education informs procedural and statutory guidelines. The Centre provides specific general and in-house training, with an emphasis on improving practice, for those working in the child and family services sector. This includes a specific program for residential care workers through the RCLDS (Residential Care and Learning and Development Strategy). During 2011-2012, approximately 550 workers attended our general
training sessions and 810 workers attended our training sessions for residential care workers. In addition, 18 in–house programs were delivered in that same period. Some of the topics covered in the training included Good Documentation, Introduction to Assessment of Risk and Need, Appropriate Screening of Carers and Managing Conflict Effectively. These training opportunities are relevant to all community organisations seeking to develop preventative and protective approaches in their organisation irrespective of their role in the child and family welfare system. A calendar of the training provided by the Centre is contained in Appendix 2.

Community services organisations providing services to children young people and their families are required to ensure recruitment and screening practices for both staff and voluntary carers are compliant with the Working with Children Act 2008. Compliance is subject to external audit under the Department of Human Services Standards (Victorian Department of Human Services, 2011). A 'Staff and Carer Audit Tool' has been developed to ensure the audits capture the required information from files held by community service organisations. While the Human Services Standards and Staff and Carer Audit Tool have only recently been introduced, a comprehensive program of information sessions has been held to ensure that community service organisations are aware of their obligations.

This is an example of preventative approaches which community service organisations implement to address potential abuse within their organisations and has been developed in response to two Victorian Ombudsman Reports (2005 and 2010) addressing out–of–home care which pointed to major deficiencies in the screening and review of employees and carers.

Most community services organisations especially those providing services to children, young people and their families require all staff to hold a working with children check and a police check irrespective of whether they are directly engaged in working with children
3. Responding to reports of abuse

**Current reports of abuse in community service organisations**

Reports of abuse of a child in an organisation require three different modes of responding. It is important that these differing responses are clearly understood by the community service organisation. In most cases it is not appropriate or procedurally compliant for the community service organisation to undertake all three modes of action. However it is the responsibility of the community service organisation to ensure that all three modes of responding are in place.

1. Attending to the child: ensuring that the child or young person's immediate needs are met and that they are appropriately listened to and supported
2. Investigation of the report: ensuring that the appropriate and required investigatory processes are triggered and that these are independent (see below)
3. Response: support counselling and treatment as required

Members of the Centre – if providing services funded by the Victorian Department of Human Services – are required to have particular procedures in place to respond to reports (‘allegations’) of abuse of children in their services. All organisations receiving funding from the Department of Human Service are required to comply with Incident Reporting Processes. Thus children in contact with community service organisations providing family support services are bound within these procedures. (Victorian Department of Human Services, 2012)

The process for **responding to reports of abuse in out-of-home care** was developed with the involvement of community services organisations and released in 2009. (Victorian Department of Human Services, 2009).
Where a report of abuse is made by a child or young person, a family member or a staff member or fellow client there are three streams of procedures which may be triggered:

1. Internal community service organisation procedures
2. Procedures laid down by the Department of Human services for responding to critical incidents and procedures for notification of quality of care concerns in out-of-home care which trigger a DHS investigation
3. Police investigation

These processes are highly formulated with limited discretion on the part of the community organisation. The procedures vary according to whether the report of abuse occurs in community based family support services, residential care (DHS 2009, 181), kinship care (DHS 2009, 231) or foster care (DHS 2009, 250).

Some organisational members have expressed concern about the difficulties of balancing the need to ensure the child’s safety and integrity of their voice and unimpeded investigation with the community service organisation’s obligations as an employer to ensure transparent and respectful processes for the employee: such as when required to stand down staff pending an investigation. This places the community services organisation in a position of conflicting responsibilities when a Police investigation cannot be actioned or concluded in a timely way. Some community organisations have expressed concern about the loss of experienced staff or carers in the context of allegations subsequently not substantiated.

Out-of-home care providers have particular responsibilities in relation to the prevention of abuse because of the additional vulnerabilities of children in their care. In 2010 The Ombudsman identified a number of concerns in relation to the safety of children. These were:

- inadequate screening of carers
- poorly conducted investigations
- children remaining in placements after allegations of inappropriate physical discipline have been substantiated
- failure to take appropriate action against carers after abuse has been substantiated
- inadequate support and training of carers
- inadequate supervision and monitoring of staff (Ombudsman Victoria 2010, 12)

The Ombudsman pointed to the importance of transparency in the reporting of critical incidents and allegations of abuse of children in care to ensure ongoing attention to issues of safety in care (Ombudsman Victoria 2010, 12). Quality of Care investigations which encompass allegations of abuse of children in kinship care, foster care or residential care are now reported in the Department of Human Services Annual Report. In 2010–2012 416 allegations were investigated with 78 substantiated. Quality of Care investigations encompass a broader range of care issues and are not necessarily confined to cases of criminal abuse.

The Child Safety Commissioner has an important role in reviewing Category One Critical Incident Reports and reports on themes arising from these in their Annual Report (Child Safety Commissioner 2012, 22). Invariably these reports encompass known cases of criminal abuse of children in services funded by the Department of Human Services. At present the Child Safety Commissioner reports on Category One Incident Reports directly to the Minister. The report is not publicly available. A 2010 report from the Victorian Ombudsman gives some insight into scale with 467 Category One incidents reported in 2008–09 and 288 reported in 2007–08. The relationship between victim and perpetrator is reported below. Most incidents are in residential care. In 2008–09 593 clients were involved in Category One incident reports including multiple reports. Again, these reports encompass much more than the criminal abuse of children (Ombudsman Victoria 2010, 129).
Transparency about the size and scope of the problem of criminal abuse of children in community service organisations however would be enhanced if the numbers and nature of these reports were reported on in aggregated form in the Annual Report of the proposed Children's Commissioner.

Other Measures

Mandatory Reporting

Mandatory reporting as introduced to Victoria in 1993 was retained in the Children, Youth and Families Act 2005 but has not been extended beyond those professional groups already gazetted to report. Mandatory reporting is now deeply entrenched in the Victorian response to vulnerable children and young people but the fundamental dilemmas obvious at its introduction remain: an under-resourced and poorly distributed system of services to address the needs of those children, young people and families caught up in a report. Mandatory reporting contributes to a high number of child protection notifications and volume is extremely sensitive to media coverage. (CFECFW 2012)
The PVVC Inquiry recommended that mandatory reporting be extended to the additional professional categories already named in legislation in addition to including Ministers of Religion. However, the Centre does not generally believe that expanding current mandatory reporting requirements at this stage would lead to greater security for vulnerable children, young people and their families. Rather, effort should be focused on the education and cultural change in organisations that are not currently sensitised to child safety issues. Provision of comprehensive and well-distributed prevention and support services are also important so that points of immediate response to incidents of abuse are easily identifiable to those who are not necessarily part of the child and family services system (CFECFW 2011).

**Failure to Protect Legislation**

Failure to protect legislation invokes criminal penalties for a third party who fails to act on incidences of abuse of children and young people. In a recent submission to the Attorney General the Centre expressed caution about the experience of the operation of similar provisions in other jurisdictions. The Centre observed that:

*Community welfare and family support agencies seeking to secure the long term wellbeing of children are also concerned about the impact of the legislation. In the United States where Failure to Protect Laws have been operating for 40 years and are now in statute in all States there has been a distinct gender bias in those prosecuted. The gender bias has also been reflected in convictions. Fugate sets out three minimum content requirements for “failure to protect” legislation to ensure that gender bias in the application of the laws is eliminated and that women and their children seek help and are protected. These minimum requirements are:*

- **Laws and courts should clearly define what actions establish a duty to protect children.**
- **Laws should clearly define the steps persons must take when they become aware of abuse.**
Laws should provide for an affirmative defence to excuse persons who fear for their safety or the safety of abused children (CFECFW 2011, 6).

The Centre for Excellence believes that if legislation around “failure-to-protect” is introduced that it should satisfy these three criteria to avoid gender bias arising from the social construction of roles and responsibility in relation to care for children.

Reports of past abuse in community service organisations

The processes of response by community service organisations to allegations of past abuse are not as prescriptive as those in place for current allegations but the same principles should apply:

1. Attending to the victim: ensuring complainants immediate needs are met and that they are appropriately listened to and supported with a clear statement of the options open to them.
2. Investigation of the report: ensuring that where desired the appropriate and required investigatory processes are triggered and that these are independent.
3. Response: support counselling and treatment as required. In some community service organisations reparation is available for victims of past abuse.

The Importance of Information

The Centre has been one of the project partners to the Who Am I Project which under Professor Cathy Humphreys of Melbourne University has made an outstanding contribution to the role of records and archives in underpinning a proper response in the context of allegations of past abuse in community service organisations. The Centre has also established a Forgotten Australians Report working group which has been assisting community service organisations to address issues for people who have been in care and advocating for care leavers.

Some member community service organisations provide well developed information and contact programmes which can be the starting point for addressing allegations of past abuse of people who have experienced care.
Berry Street provides a Heritage and Information Service for past clients and has a comprehensive policy and procedures for the accessing of records.

Berry Street is also the provider of the government funded service for Forgotten Australians, Open Place. The Support Service for Victoria's Forgotten Australians provides former 'care' leavers (people who grew up in institutions or foster care in Victoria until 1989) and their immediate family members with personal support, help with records and family searches, counselling, social activities, reunions, support groups, opportunities to learn new skills, as well as assistance with other specific needs.

Organisations which have Heritage and Information Services have developed policies and processes which have the following features:

- policy and procedures are consistent with Freedom of Information requirements
- a clearly articulated publicly available policy of access to files and associated records which is endorsed at governance level of the organisation which is predicated on entitlement to access and which is periodically reviewed.
- clear procedural statements for responding to requests for information and allegations of past abuse
- a single clear entry point for enquirers which is publicised and approachable
- a service which recognises the importance of archival organisational information for past clients
- a service which provides professional counselling and support to enquirers as well as archival support
- a service which is free to past clients in recognition of the particular responsibility of the organisation providing care
- a service with clearly established referral pathways for specialist referral including to the Victorian Police where additional issues such as allegations of past abuse emerge
Not all community service organisations which provided out-of-home care in the past or their inheritor organisations (possibly up to 100 organisations in Victoria were providers) have such well-developed responses to requests for information advice and support – these requests are often the precursor to emerging allegations of abuse. The Centre for Excellence recommends that:

- Further training around FOI requirements is provided to community service organisations and other organisations which may hold past records.
- The development of standards for the establishment of Information and Advice services for organisations and their successors which have provided care. The report of the forgotten Australians provides a foundation for the establishment of these standards.

It should be recognised that people who have experienced past care or abuse in care do not necessarily feel comfortable or able to approach the organisation responsible for that care. Adequate financial support for the Berry Street Support Service for Forgotten Australians is necessary to ensure that there is an independent entry point for inquirers in this situation.

Justice
The Senate Community Affairs Committee referred to the multiple barriers those who have experienced abuse in care meet when attempting to achieve just outcomes (Senate Community Affairs Committee 2004, 212). These include difficulties in achieving legal action against perpetrators due to cost and evidentiary concerns. While statute of limitations does not apply to prosecution of perpetrators of criminal abuse, information barriers persist, including evidentiary and DPP assessment of the likelihood of success. The Senate Community Affairs References Committee in reviewing implementation of the Forgotten Australians Report recommended the establishment of specialist Police units to receive complaints of past abuse and cooperation between jurisdictions to ensure cumulative information about offenders is collected (Community Affairs References Committee 2009, 226).
Redress

Abuse of a child while under the care of a community service organisation is potentially a failure of duty of care, even where the abuse has not been perpetrated by a staff member or carer. The response by community service organisations to abuse involves consideration of financial reparation to address the long term costs to the individual of trauma and its sequellae.

Some clients of Church – auspiced community service organisations – are eligible for schemes of redress established by their Church. Some community service organisations do not require abuse to be substantiated before considering reparation for past clients.

In other instances past clients must seek redress through civil action in the Courts where they will be required to substantiate harm arising from the abuse. The experience for people who have been in care or past clients of community organisations in Victoria can therefore be quite different. This is inequitable. For this reason and consistent with the recommendation the Senate Community Affairs Committee, the Centre for Excellence in Child and Family Welfare supports the establishment of a redress scheme in Victoria.

Further information:

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References

CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006. No. 43 of 2006


Appendix 1

The Child Wellbeing and Safety Act 2005

s. 5 (1)

The development and provision of services for children and families should be based upon the fundamental principles that—

(a) society as a whole shares responsibility for promoting the wellbeing and safety of children;

(b) all children should be given the opportunity to reach their full potential and participate in society irrespective of their family circumstances and background;

(c) those who develop and provide services, as well as parents, should give the highest priority to the promotion and protection of a child's safety, health, development, education and wellbeing;

(d) parents are the primary nurturers of a child and Government intervention into family life should be limited to that necessary to secure the child's safety and wellbeing, however, it is the responsibility of Government to meet the needs of the child when the child's family is unable to provide adequate care and protection.

(2) Services for children and families should be designed and developed—

(a) to readily identify harm and damage to the child and to provide for intervention by providers of services to remove or ameliorate the causes of that harm or damage and to strengthen the capacity and efforts of parents, their families and communities to support the child as early as possible in the child's life;

(b) to accord with the needs of each local community with the active involvement of that community's cultural groups, and to be accessible and responsive to the particular cultures, languages and circumstances of the community and to be properly planned and co-ordinated with services provided by other local and regional communities;
(c) to give the highest priority to making appropriate and sufficient levels of assistance available to children and families in communities or population groups that are known to have the greatest need;

(d) to promote continuous improvement in the quality of those services, based on the best available knowledge of the needs of children and their stages of development.

(3) The providers of services to children and families should—

(a) protect the rights of children and families and, to the greatest extent possible, encourage their participation in any decision-making that affects their lives;

(b) acknowledge and be respectful of the child's individual identity, circumstances and cultural identity and be responsive to the particular needs of the child;

(c) make decisions about intervention by the providers of services into a child's or family's life and about access by a child or family to those services in a timely manner being mindful of any harmful effects that may be caused to the child by a delay in making decisions or providing services;

(d) ensure that families are made aware of the services available to them and of the benefits these services can provide, especially to those families in most need of assistance;

(e) co-operate with other services or professionals to work in the interests of the child and family.
Appendix 2

Centre for Excellence Training Calendar
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Appendix 3

Processes and Procedures in residential care
B.1: Residential care — overview of screening and investigation procedures
2. Residential care – overview of formal care review procedure

Within 5 days
- FPR Form (Facility Policy Review) completed and submitted
- Quality of Care (QOC) Plan completed
- Written QOC Plan

Within 10 days
- Implementation plan
- Action plan

Within 15 days
- Action plan
- Written QOC Plan

Within 30 days
- Written QOC Plan
- Action plan

Within 3 months
- Action plan
- Written QOC Plan

Within 6 months
- Action plan
- Written QOC Plan

- Review and implementation of action plan

- Continue to develop and improve processes

- Review and implementation of action plan

- Continue to develop and improve processes

- Review and implementation of action plan

- Continue to develop and improve processes

- Review and implementation of action plan

- Continue to develop and improve processes
Processes and Procedures in kinship care
Figure C.2: Kinship care — overview of screening and investigation procedures

[Diagram showing the process of screening and investigation for kinship care, with steps such as completing incident reports, consulting relevant services, deciding on further action, and managing cases within specified time frames.]
Figure C.3: Kinship care procedures for formal care review process
Procedures for review in foster care

Figure 18.1: Overview of CYFA requirements to report and investigate allegations of physical and sexual abuse by a registered carer