

# FINAL REPORT

Contemporary detention environments



**Royal Commission**  
into Institutional Responses  
to Child Sexual Abuse

VOLUME 15

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# FINAL REPORT

Volume 15

Contemporary detention  
environments

## Content warning

This volume contains information about child sexual abuse that may be distressing. We also wish to advise Aboriginal and Torres Strait Islander readers that information in this volume may have been provided by or refer to Aboriginal and Torres Strait Islander people who have died.

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# Preface

## The Royal Commission

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The Letters Patent provided to the Royal Commission required that it ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’. In carrying out this task, the Royal Commission was directed to focus on systemic issues, be informed by an understanding of individual cases, and make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs. The Royal Commission did this by conducting public hearings, private sessions and a policy and research program.

## Public hearings

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A Royal Commission commonly does its work through public hearings. We were aware that sexual abuse of children has occurred in many institutions, all of which could be investigated in a public hearing. However, if the Royal Commission was to attempt that task, a great many resources would need to be applied over an indeterminate, but lengthy, period of time. For this reason the Commissioners accepted criteria by which Senior Counsel Assisting would identify appropriate matters for a public hearing and bring them forward as individual ‘case studies’.

The decision to conduct a case study was informed by whether or not the hearing would advance an understanding of systemic issues and provide an opportunity to learn from previous mistakes so that any findings and recommendations for future change the Royal Commission made would have a secure foundation. In some cases the relevance of the lessons to be learned will be confined to the institution the subject of the hearing. In other cases they will have relevance to many similar institutions in different parts of Australia.

Public hearings were also held to assist in understanding the extent of abuse that may have occurred in particular institutions or types of institutions. This enabled the Royal Commission to understand the ways in which various institutions were managed and how they responded to allegations of child sexual abuse. Where our investigations identified a significant concentration of abuse in one institution, the matter could be brought forward to a public hearing.

Public hearings were also held to tell the stories of some individuals, which assisted in a public understanding of the nature of sexual abuse, the circumstances in which it may occur and, most importantly, the devastating impact that it can have on people’s lives. Public hearings were open to the media and the public, and were live streamed on the Royal Commission’s website.

The Commissioners' findings from each hearing were generally set out in a case study report. Each report was submitted to the Governor-General and the governors and administrators of each state and territory and, where appropriate, tabled in the Australian Parliament and made publicly available. The Commissioners recommended some case study reports not be tabled at the time because of current or prospective criminal proceedings.

We also conducted some private hearings, which aided the Royal Commission's investigative processes.

## Private sessions

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When the Royal Commission was appointed, it was apparent to the Australian Government that many people (possibly thousands) would wish to tell us about their personal history of sexual abuse as a child in an institutional setting. As a result, the Australian Parliament amended the *Royal Commissions Act 1902* (Cth) to create a process called a 'private session'.

Each private session was conducted by one or two Commissioners and was an opportunity for a person to tell their story of abuse in a protected and supportive environment. Many accounts from these sessions are told in a de-identified form in this Final Report.

Written accounts allowed individuals who did not attend private sessions to share their experiences with Commissioners. The experiences of survivors described to us in written accounts have informed this Final Report in the same manner as those shared with us in private sessions.

We also decided to publish, with their consent, as many individual survivors' experiences as possible, as de-identified narratives drawn from private sessions and written accounts. These narratives are presented as accounts of events as told by survivors of child sexual abuse in institutions. We hope that by sharing them with the public they will contribute to a better understanding of the profound impact of child sexual abuse and may help to make our institutions as safe as possible for children in the future. The narratives are available as an online appendix to Volume 5, *Private sessions*.

We recognise that the information gathered in private sessions and from written accounts captures the accounts of survivors of child sexual abuse who were able to share their experiences in these ways. We do not know how well the experiences of these survivors reflect those of other victims and survivors of child sexual abuse who could not or did not attend a private session or provide a written account.



## Policy and research

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The Royal Commission had an extensive policy and research program that drew upon the findings made in public hearings and upon survivors' private sessions and written accounts, as well as generating new research evidence.

The Royal Commission used issues papers, roundtables and consultation papers to consult with government and non-government representatives, survivors, institutions, regulators, policy and other experts, academics, and survivor advocacy and support groups. The broader community had an opportunity to contribute to our consideration of systemic issues and our responses through our public consultation processes.

## Community engagement

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The community engagement component of the Royal Commission's inquiry ensured that people in all parts of Australia were offered the opportunity to articulate their experiences and views. It raised awareness of our work and allowed a broad range of people to engage with us.

We involved the general community in our work in several ways. We held public forums and private meetings with survivor groups, institutions, community organisations and service providers. We met with children and young people, people with disability and their advocates, and people from culturally and linguistically diverse communities. We also engaged with Aboriginal and Torres Strait Islander peoples in many parts of Australia, and with regional and remote communities.

## Diversity and vulnerability

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We heard from a wide range of people throughout the inquiry. The victims and survivors who came forward were from diverse backgrounds and had many different experiences. Factors such as gender, age, education, culture, sexuality or disability had affected their vulnerability and the institutional responses to the abuse. Certain types of institutional cultures and settings created heightened risks, and some children's lives brought them into contact with these institutions more than others.

While not inevitably more vulnerable to child sexual abuse, we heard that Aboriginal and Torres Strait Islander children, children with disability and children from culturally and linguistically diverse backgrounds were more likely to encounter circumstances that increased their risk of abuse in institutions, reduced their ability to disclose or report abuse and, if they did disclose or report, reduced their chances of receiving an adequate response.

We examined key concerns related to disability, cultural diversity and the unique context of Aboriginal and Torres Strait Islander experience, as part of our broader effort to understand what informs best practice institutional responses. We included discussion about these and other issues of heightened vulnerability in every volume. Volume 5, *Private sessions* outlines what we heard in private sessions from these specific populations.

## Our interim and other reports

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On 30 June 2014, in line with our Terms of Reference, we submitted a two-volume interim report of the results of the inquiry. Volume 1 described the work we had done, the issues we were examining and the work we still needed to do. Volume 2 contained a representative sample of 150 de-identified personal stories from people who had shared their experiences at a private session.

Early in the inquiry it became apparent that some issues should be reported on before the inquiry was complete to give survivors and institutions more certainty on these issues and enable governments and institutions to implement our recommendations as soon as possible. Consequently, we submitted the following reports:

- *Working With Children Checks* (August 2015)
- *Redress and civil litigation* (September 2015)
- *Criminal justice* (August 2017)

## Definition of terms

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The inappropriate use of words to describe child sexual abuse and the people who experience the abuse can have silencing, stigmatising and other harmful effects. Conversely, the appropriate use of words can empower and educate.

For these reasons, we have taken care with the words used in this report. Some key terms used in this volume are set out in Chapter 1, 'Introduction' and in the Final Report Glossary, in Volume 1, *Our inquiry*.

## Naming conventions

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To protect the identity of victims and survivors and their supporters who participated in private sessions, pseudonyms are used. These pseudonyms are indicated by the use of single inverted commas, for example, ‘Roy’.

As in our case study reports, the identities of some witnesses before public hearings and other persons referred to in the proceedings are protected through the use of assigned initials, for example, BZW.

## Structure of the Final Report

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The Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse consists of 17 volumes and an executive summary. To meet the needs of readers with specific interests, each volume can be read in isolation. The volumes contain cross references to enable readers to understand individual volumes in the context of the whole report.

In the Final Report:

The **Executive Summary** summarises the entire report and provides a full list of recommendations.

**Volume 1, *Our inquiry*** introduces the Final Report, describing the establishment, scope and operations of the Royal Commission.

**Volume 2, *Nature and cause*** details the nature and cause of child sexual abuse in institutional contexts. It also describes what is known about the extent of child sexual abuse and the limitations of existing studies. The volume discusses factors that affect the risk of child sexual abuse in institutions and the legal and political changes that have influenced how children have interacted with institutions over time.

**Volume 3, *Impacts*** details the impacts of child sexual abuse in institutional contexts. The volume discusses how impacts can extend beyond survivors, to family members, friends, and whole communities. The volume also outlines the impacts of institutional responses to child sexual abuse.

**Volume 4, *Identifying and disclosing child sexual abuse*** describes what we have learned about survivors’ experiences of disclosing child sexual abuse and about the factors that affect a victim’s decision whether to disclose, when to disclose and who to tell.

**Volume 5, *Private sessions*** provides an analysis of survivors' experiences of child sexual abuse as told to Commissioners during private sessions, structured around four key themes: experiences of abuse; circumstances at the time of the abuse; experiences of disclosure; and impact on wellbeing. It also describes the private sessions model, including how we adapted it to meet the needs of diverse and vulnerable groups.

**Volume 6, *Making institutions child safe*** looks at the role community prevention could play in making communities and institutions child safe, the child safe standards that will make institutions safer for children, and how regulatory oversight and practice could be improved to facilitate the implementation of these standards in institutions. It also examines how to prevent and respond to online sexual abuse in institutions in order to create child safe online environments.

**Volume 7, *Improving institutional responding and reporting*** examines the reporting of child sexual abuse to external government authorities by institutions and their staff and volunteers, and how institutions have responded to complaints of child sexual abuse. It outlines guidance for how institutions should handle complaints, and the need for independent oversight of complaint handling by institutions.

**Volume 8, *Recordkeeping and information sharing*** examines records and recordkeeping by institutions that care for or provide services to children; and information sharing between institutions with responsibilities for children's safety and wellbeing and between those institutions and relevant professionals. It makes recommendations to improve records and recordkeeping practices within institutions and information sharing between key agencies and institutions.

**Volume 9, *Advocacy, support and therapeutic treatment services*** examines what we learned about the advocacy and support and therapeutic treatment service needs of victims and survivors of child sexual abuse in institutional contexts, and outlines recommendations for improving service systems to better respond to those needs and assist survivors towards recovery.

**Volume 10, *Children with harmful sexual behaviours*** examines what we learned about institutional responses to children with harmful sexual behaviours. It discusses the nature and extent of these behaviours and the factors that may contribute to children sexually abusing other children. The volume then outlines how governments and institutions should improve their responses and makes recommendations about improving prevention and increasing the range of interventions available for children with harmful sexual behaviours.

**Volume 11, *Historical residential institutions*** examines what we learned about survivors' experiences of, and institutional responses to, child sexual abuse in residential institutions such as children's homes, missions, reformatories and hospitals during the period spanning post-World War II to 1990.

**Volume 12, *Contemporary out-of-home care*** examines what we learned about institutional responses to child sexual abuse in contemporary out-of-home care. The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in out-of-home care and, where it does occur, to help ensure effective responses.

**Volume 13, *Schools*** examines what we learned about institutional responses to child sexual abuse in schools. The volume examines the nature and adequacy of institutional responses and draws out the contributing factors to child sexual abuse in schools. It makes recommendations to prevent child sexual abuse from occurring in schools and, where it does occur, to help ensure effective responses to that abuse.

**Volume 14, *Sport, recreation, arts, culture, community and hobby groups*** examines what we learned about institutional responses to child sexual abuse in sport and recreation contexts. The volume examines the nature and adequacy of institutional responses and draws out common failings. It makes recommendations to prevent child sexual abuse from occurring in sport and recreation and, where it does occur, to help ensure effective responses.

**Volume 15, *Contemporary detention environments*** examines what we learned about institutional responses to child sexual abuse in contemporary detention environments, focusing on youth detention and immigration detention. It recognises that children are generally safer in community settings than in closed detention. It also makes recommendations to prevent child sexual abuse from occurring in detention environments and, where it does occur, to help ensure effective responses.

**Volume 16, *Religious institutions*** examines what we learned about institutional responses to child sexual abuse in religious institutions. The volume discusses the nature and extent of child sexual abuse in religious institutions, the impacts of this abuse, and survivors' experiences of disclosing it. The volume examines the nature and adequacy of institutional responses to child sexual abuse in religious institutions, and draws out common factors contributing to the abuse and common failings in institutional responses. It makes recommendations to prevent child sexual abuse from occurring in religious institutions and, where it does occur, to help ensure effective responses.

**Volume 17, *Beyond the Royal Commission*** describes the impacts and legacy of the Royal Commission and discusses monitoring and reporting on the implementation of our recommendations.

Unless otherwise indicated, this Final Report is based on laws, policies and information current as at 30 June 2017. Private sessions quantitative information is current as at 31 May 2017.



# Summary

This volume describes what we learned during our inquiry about the risk of child sexual abuse in detention environments since 1990, as well as the responses of governments and institutions to the abuse.

It focuses on youth detention and immigration detention, as examples of contemporary detention environments where a significant number of children have been, and in some cases continue to be, detained by Australian governments, and where children may be exposed to a high risk of sexual abuse. Secure psychiatric and disability services are places of public interest in ensuring child safe environments, and are also addressed in this volume. All of these institutions are places where children are extremely vulnerable and the power imbalances between adults and children within them are great. Varying levels of oversight, and connectedness to relatives and outside contacts are all factors that contribute to the safety or lack thereof of children.

We consider institutional responses to child sexual abuse in detention environments before 1990 in Volume 11, *Historical residential institutions*.

## Contemporary detention environments

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Children can be detained in Australia in a range of lawful detention and detention-like environments. These include physically ‘closed’ and community-based detention environments, and otherwise ‘open’ institutions in which children are subjected to restrictive practices, such as physical restraint.

Our inquiry indicated that detention environments may present higher levels of risk of child sexual abuse, as compared to many other institutional contexts. Characteristics of contemporary detention environments that enable opportunities for child sexual abuse can be:

- environmental, such as the lack of privacy afforded to children, which can normalise behaviours that are potentially abusive or are precursors to abuse
- operational, such as when staff are regularly afforded opportunities to be alone with, and have great authority over, children
- cultural, including cultures of disrespecting children or tolerating the humiliating and degrading treatment of children.

Research suggests that children are generally safer in community settings than in closed detention environments. The Australian Government and state and territory governments should only detain children as a last resort and for the shortest appropriate time. Where a government detains children, they should take all appropriate steps to ensure the care and protection of those children.

We recognise there may be circumstances in detention institutions in which the best interests of the child cannot be easily reconciled with other imperatives, such as maintaining safety and security. Still, governments and institutions can and should take steps to improve the safety of children in detention environments, when detention is considered absolutely necessary as a last resort. This includes providing staff with resources and children in detention with access to services to meet their needs.

Detention institutions and those involving detention and detention-like practices should implement our proposed Child Safe Standards, which articulate the essential elements of a child safe institution. These standards can be implemented in a secure environment, and are readily adaptable to the new and emerging detention contexts and changes in existing detention environments. In protecting children with disability in detention, the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework will play a significant role, in concert with our Child Safe Standards.

Further, given the Australian Government's commitment to ratify the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) by December 2017, it should ensure that the 'national preventive mechanism' has the capacity and expertise to monitor, and recommend action on, child sexual abuse in detention environments.

## Youth detention

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Youth detention is intended to provide a secure environment for the detention and rehabilitation of children convicted or accused of criminal offending. State and territory governments owe children in youth detention a duty of care that includes protecting them against, and responding appropriately to, sexual abuse.

Yet we were told in private sessions about the sexual abuse of 515 children in youth detention, 91 of whom told us they were abused after 1990. While the reported impacts of the abuse varied, many victims described a cycle of reoffending and incarceration that they have struggled to break, often driven by substance abuse and mental health problems. Many described feelings of anger towards, as well as distrust of, 'authority'. A number of survivors told us that they did not report the abuse, for reasons that included not feeling safe doing so while in detention, not having access to a trusted adult to whom they felt they could make a report, or fearing being punished or labelled a 'dobber'.



Commissioned research suggests that the nature of youth detention environments means they are high-risk institutional settings. The level of risk of child sexual abuse to which children in youth detention are exposed is influenced by factors such as placement decisions (for example, placing older and younger children together), the institutional culture, the level of access children have to trusted adults, and the extent to which operational procedures and the physical environment provide opportunities for abuse. Risk is also influenced by the vulnerabilities of the detained children, many of whom are particularly vulnerable to child sexual abuse due to experiences of trauma, family violence, abuse and/or neglect before entering youth detention.

It is difficult to assess the adequacy of the responses of governments and institutions to child sexual abuse in youth detention due to a lack of publicly available information. However, in private sessions we heard about responses that did not take children or their complaints of sexual abuse seriously. Of the victims who told us they had disclosed abuse to youth detention staff, medical professionals or other adults in their lives, many said they were not believed or their complaints were dismissed and not reported to the police. Some told us they did not know who they could confide in. Others described responses that failed to remove children from risk of harm, including allowing perpetrators to continue to have access to children following an allegation of child sexual abuse.

We acknowledge that youth detention systems in some jurisdictions are already undergoing significant change. We also acknowledge the particular safety and security concerns that can be presented, particularly by older children in detention. However, the practices of each state and territory vary and it is essential that all jurisdictions address the ongoing risk of child sexual abuse in youth detention institutions. In addition, it is important for jurisdictions to address the needs of survivors of child sexual abuse in youth detention, including by providing, and facilitating access to, therapeutic treatment services. These services would help victims to deal with the impacts of abuse, and may help to reduce negative social outcomes, including anger, substance abuse and recidivism.

State and territory governments should improve the safety of children in youth detention by:

- implementing our proposed Child Safe Standards in youth detention environments
- reviewing the building and design features of youth detention facilities to identify and address elements that may place children at risk of being sexually abused in these environments and enhancing the use of technology to better monitor and prevent abusive behaviours
- reviewing legislation, policy and procedures to ensure that children are detained in appropriate and safe placements (not, for example, in adult prisons), frameworks take account of the importance of children having access to trusted adults, and best practice processes are in place for strip searches and other authorised physical contact between staff and children

- considering further strategies to provide for the cultural safety of Aboriginal and Torres Strait Islander children in youth detention
- providing staff in youth detention with appropriate training in relation to the needs and experiences of vulnerable children, including the barriers these children can face in disclosing sexual abuse, and trauma-informed care
- improving access to therapeutic treatment for victims of child sexual abuse who are in youth detention, including by assessing their advocacy, support and therapeutic treatment needs and referring them to appropriate services, and ensuring they are linked to ongoing treatment when they leave detention
- reviewing internal and external complaint handling systems for youth detention to ensure they are capable of dealing with complaints of child sexual abuse effectively
- ensuring youth detention environments are overseen by an independent body with the appropriate visitation, complaint handling and reporting powers.

## Immigration detention

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The Australian Government's policy is to detain children in 'held' immigration detention only as a last resort and for the shortest time practicable. Children who arrive in Australia by boat are taken to Nauru, which now operates as an 'open' centre. For other children, community detention is now the main form of immigration detention in Australia, although it remains open to the federal government to return to a policy of detaining children in held indefinite detention.

While there is a lack of reliable data on child sexual abuse in immigration detention, recent inquiries provide insight into the nature and extent of such abuse. This includes the 2016 report of the Child Protection Panel (CPP) review, which was established by the Department of Immigration and Border Protection (the department). The CPP found that 27.6 per cent of a sample of 214 incidents of child abuse, neglect and exploitation reported between 1 January 2008 and 30 June 2015 involved child sexual abuse. Further insights, including into institutional responses to the abuse, were gained throughout our inquiry, notably in our public hearing during *Case Study 51: Institutional review of Commonwealth, state and territory governments* (*Institutional review of Commonwealth, state and territory governments*).

The impacts of child sexual abuse in immigration detention are often similar to those experienced by victims in other institutional contexts. Still, we heard about specific impacts, including the particular vulnerability of victims to cumulative harm, difficulty recovering from sexual abuse while in held detention and fears about disclosing abuse. We heard that these impacts may be exacerbated by the extent of detainees' dependency on the department and its service providers, and the perceived effect that disclosure may have on placement and immigration-status decisions. A further challenge for victims of child sexual abuse in immigration detention can be adapting to a new country in the aftermath of abuse.

Our commissioned research identifies immigration detention as a specific institutional context with an elevated risk of child sexual abuse. Held detention has unique features that combine to create this risk. These include a lack of privacy, the close proximity of children and adults in some settings, the clustering together of higher risk groups (for example, unaccompanied minors) and aspects of organisational culture. Institutional risk is likely to be lower in community detention due to protective factors such as access to stronger and more positive social networks, more stable housing, and health and some social services. Yet a number of factors contribute to the risk of abuse in these community-based environments, many of which relate more broadly to out-of-home care environments. These factors include inadequate resources, training and support for carers and staff and the inappropriate placement of, and support for, children with harmful sexual behaviours.

Vulnerability to child sexual abuse is likely to be accentuated for many children in immigration detention. Reasons for this include that the children are likely to have experienced abuse and trauma previously, acquire trauma in the detention environment and experience high levels of social isolation. A further reason is the likelihood that the ability of parents to provide comfort and support to their children is compromised by the detention environment. Before their detention, some children have experienced extreme events, including war crimes and sexual violence. Relatively high numbers of children in immigration detention are also 'unaccompanied' and lack parental or extended family support while in detention. Many of these children are suffering a profound sense of loss and grief following the death of their parents and other family members.

It is difficult to assess the adequacy of responses to child sexual abuse in immigration detention due to the significant barriers to identifying and reporting the abuse and the limited information on it. Additionally many of the immigration detention services are contracted to third parties and the level and adequacy of monitoring and supervision of such services, including responses to reports of abuse, is unclear. Even so, the CPP highlighted some concerns with institutional responses. These included the department's lack of capability to manage complex cases of child abuse effectively, ineffective risk assessment systems, inadequate staff training in relation to child abuse, incomplete and unreliable records of child abuse incidents and inadequate information sharing resulting in inappropriate transfer and placement decisions.

We were told about some important developments to strengthen protections for children in immigration detention, including against sexual abuse – notably the department's adoption in 2016 of its Child Safeguarding Framework. Still, further work is needed to better understand the nature, extent and causes of child sexual abuse in immigration detention, minimise opportunities for abuse to occur in these environments and improve children's safety.

Institutions involved in the administration of immigration detention environments should implement our Child Safe Standards. The Australian Government should establish a mechanism to regularly audit the implementation of the standards in immigration detention by staff, contractors and agents of the department. The outcomes of each audit should be reported publicly.

In addition, the department should improve the safety of children in immigration detention by:

- publicly reporting within 12 months on the implementation of the CPP's recommendations
- contractually requiring its service providers to comply with our proposed Child Safe Standards, as the department applies them to the immigration detention context
- identifying the scope and nature of the need for support services for victims of child sexual abuse and ensuring appropriate therapeutic and other specialist and support services are funded to meet the identified need
- designating appropriately trained child safety officers for each place in which children are detained, to build the capacity of staff and service providers to implement our proposed Child Safe Standards
- implementing an independent visitors program in immigration detention.

# Recommendations

The following is a list of the recommendations made in this volume.

## Contemporary detention environments (Chapter 2)

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### **Recommendation 15.1**

All institutions engaged in child-related work, including detention institutions and those involving detention and detention-like practices, should implement the Child Safe Standards identified by the Royal Commission.

### **Recommendation 15.2**

Given the Australian Government's commitment to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the National Preventive Mechanism(s) should be provided with the expertise to consider and make recommendations relating to preventing and responding to child sexual abuse as part of regularly examining the treatment of persons deprived of their liberty in places of detention.

## Youth detention (Chapter 3)

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### Creating a safer physical environment

#### **Recommendation 15.3**

Youth justice agencies in each state and territory should review the building and design features of youth detention to identify and address elements that may place children at risk. This should include consideration of how to most effectively use technology, such as closed-circuit television (CCTV) cameras and body-worn cameras, to capture interactions between children and between staff and children without unduly infringing children's privacy.

#### **Recommendation 15.4**

As part of efforts to mitigate risks of child sexual abuse in the physical environment of youth detention, state and territory governments should review legislation, policy and procedures to ensure:

- a. appropriate and safe placements of children in youth detention, including a risk assessment process before placement decisions that identifies if a child may be vulnerable to child sexual abuse or if a child is displaying harmful sexual behaviours
- b. children are not placed in adult prisons

- c. frameworks take into account the importance of children having access to trusted adults, including family, friends and community, in the prevention and disclosure of child sexual abuse and provide for maximum contact between children and trusted adults through visitation, and use of the telephone and audio-visual technology
- d. best practice processes are in place for strip searches and other authorised physical contact between staff and children, including sufficient safeguards to protect children such as:
  - i. adequate communication between staff and the child before, during and after a search is conducted or other physical contact occurs
  - ii. clear protocols detailing when such practices are permitted and how they should be performed. The key elements of these protocols should be provided to children in an accessible format
  - iii. staff training that highlights the potential for strip searching to re-traumatise children who have been sexually abused and how the misuse of search powers can lead to sexual humiliation or abuse.

State and territory governments should consider implementing strategies for detecting contraband, such as risk assessments or body scanners, to minimise the need for strip searching children.

## Responding to children's different needs

### **Recommendation 15.5**

State and territory governments should consider further strategies that provide for the cultural safety of Aboriginal and Torres Strait Islander children in youth detention including:

- a. recruiting and developing Aboriginal and Torres Strait Islander staff to work at all levels of the youth justice system, including in key roles in complaint handling systems
- b. providing access to interpreters, particularly with respect to induction and education programs, and accessing internal and external complaint handling systems
- c. ensuring that all youth detention facilities have culturally appropriate policies and procedures that facilitate connection with family, community and culture, and reflect an understanding of, and respect for, cultural practices in different clan groups
- d. employing, training and professionally developing culturally competent staff who understand the particular needs and experiences of Aboriginal and Torres Strait Islander children, including the specific barriers that Aboriginal and Torres Strait Islander children face in disclosing sexual abuse.

### **Recommendation 15.6**

All staff should receive appropriate training on the needs and experiences of children with disability, mental health problems, and alcohol or other drug problems, and children from culturally and linguistically diverse backgrounds that highlights the barriers these children may face in disclosing sexual abuse.

### **Recommendation 15.7**

State and territory governments should improve access to therapeutic treatment for survivors of child sexual abuse who are in youth detention, including by assessing their advocacy, support and therapeutic treatment needs and referring them to appropriate services, and ensure they are linked to ongoing treatment when they leave detention.

## Support and training for staff

### **Recommendation 15.8**

State and territory governments should ensure that all staff in youth detention are provided with training and ongoing professional development in trauma-informed care to assist them to meet the needs of children in youth detention, including children at risk of sexual abuse and children with harmful sexual behaviours.

## Improving complaint handling systems

### **Recommendation 15.9**

State and territory governments should review the current internal and external complaint handling systems concerning youth detention to ensure they are capable of effectively dealing with complaints of child sexual abuse, including so that:

- a. children can easily access child-appropriate information about internal complaint processes and external oversight bodies that may receive or refer children's complaints, such as visitor's schemes, ombudsmen, inspectors of custodial services, and children's commissioners or guardians
- b. children have confidential and unrestricted access to external oversight bodies
- c. staff involved in managing complaints both internally and externally include Aboriginal and Torres Strait Islander peoples and professionals qualified to provide trauma-informed care
- d. complaint handling systems are accessible for children with literacy difficulties or who speak English as a second language
- e. children are regularly consulted about the effectiveness of complaint handling systems and systems are continually improved.

## Independent oversight of youth detention

### **Recommendation 15.10**

State and territory governments should ensure they have an independent oversight body with the appropriate visitation, complaint handling and reporting powers, to provide oversight of youth detention. This could include an appropriately funded and independent Inspector of Custodial Services or similar body. New and existing bodies should have expertise in child-trauma, and the prevention and identification of child sexual abuse.

## Immigration detention (Chapter 4)

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### The Child Protection Panel recommendations

#### **Recommendation 15.11**

The Department of Immigration and Border Protection should publicly report within 12 months on how it has implemented the Child Protection Panel's recommendations.

## Implementing the Child Safe Standards in immigration detention

### **Recommendation 15.12**

- a. The Australian Government should establish a mechanism to regularly audit the implementation of the Child Safe Standards in immigration detention by staff, contractors and agents of the Department of Immigration and Border Protection. The outcomes of each audit should be publicly reported.
- b. The Department of Immigration and Border Protection should contractually require its service providers to comply with the Child Safe Standards identified by the Royal Commission, as applied to immigration detention.



## Therapeutic support for victims in immigration detention

### **Recommendation 15.13**

The Department of Immigration and Border Protection should identify the scope and nature of the need for support services for victims in immigration detention. The Department of Immigration and Border Protection should ensure that appropriate therapeutic and other specialist and support services are funded to meet the identified needs of victims in immigration detention and ensure they are linked to ongoing treatment when they leave detention.

## Training and supporting department and service provider staff

### **Recommendation 15.14**

The Department of Immigration and Border Protection should designate appropriately qualified child safety officers for each place in which children are detained. These officers should assist and build the capacity of staff and service providers at the local level to implement the Child Safe Standards.

## Preventive monitoring and oversight

### **Recommendation 15.15**

The Department of Immigration and Border Protection should implement an independent visitors program in immigration detention.

# 1 Introduction

## 1.1 Overview

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This volume examines what we learned about detention environments during the contemporary period, since 1990, and the risk of child sexual abuse in these settings. It considers the nature of contemporary detention environments, and then focuses on institutional responses to child sexual abuse in two of these settings: youth detention and immigration detention.

The volume makes recommendations to reduce the risk of child sexual abuse in contemporary detention environments and, where it does occur, to help ensure effective responses to that abuse. It draws on relevant recommendations made in other volumes of the Final Report and, in doing so, applies the Royal Commission's proposed Child Safe Standards to detention environments.

This chapter explains why we focused on child sexual abuse in contemporary detention environments, identifies the issues we examined in this context and describes how the volume responds to the Terms of Reference of the inquiry. It also describes the volume's main information sources and significant links with other volumes, and defines key terms used in this volume.

### 1.1.1 Why we focused on contemporary detention environments

Children in detention environments are exposed to a unique set of factors that may heighten their risk of being sexually abused. In detention environments – characterised by strict discipline, rules and punishment – children are deprived of their liberty and wholly reliant on adults for their every need. Despite having different backgrounds, children in detention have often experienced previous adversity and trauma that can make them more vulnerable to sexual abuse when in detention. Such vulnerabilities are exacerbated when children do not have access to family, friends and trusted adults, as well as appropriate therapeutic support and trauma-informed care.

In this volume, we focus on youth detention and immigration detention because the Australian Government and state and territory governments have detained in these settings a significant number of children, and these children may be exposed to an ongoing risk of sexual abuse. Our commissioned research<sup>1</sup> and what we have heard indicate that detention environments generally present higher levels of risk of child sexual abuse when appropriate safeguards are not in place, partly due to their 'closed' nature. While there have been improvements to the safety of children in contemporary detention environments compared to similar institutions that operated in the past (see Volume 11, *Historical residential institutions*), Commissioners were conscious that further work was needed to address the particular vulnerabilities of children in these settings.

We also focused on youth detention and immigration detention because we were told about recent allegations of child sexual abuse by survivors and their families, and many people we spoke to raised concerns about abuse in these environments. In addition, numerous public inquiries and reports have reiterated how detention environments can be harmful to children, and some of these reports detail allegations of children being sexually abused in recent times (see Chapters 3 and 4).

In line with international and domestic law, the Australian Government and state and territory governments should only arrest, detain or imprison children as a last resort and for the shortest appropriate time.<sup>2</sup> We recognise that there may be circumstances in detention institutions in which the best interests of the child cannot be easily reconciled with other imperatives, such as maintaining safety and security. However, it is essential that all institutions understand the risk of child sexual abuse and act to ensure children in their care are safe. When a government places children in detention under certain circumstances, it is responsible for their care and protection, including by minimising opportunities for sexual abuse to occur. Governments and institutions responsible for operating and overseeing detention environments should vigilantly ensure child safety, given their duty of care and the higher risks in these settings.

### 1.1.2 Issues examined

When the Royal Commission was established, there was limited information available on the nature, extent and risk of child sexual abuse in contemporary detention environments, although it was generally well understood that children are at risk of other forms of harm in detention. Through some of our early work, we had understood that children had been sexually abused in some detention-like out-of-home care institutions in the 19<sup>th</sup> and 20<sup>th</sup> centuries. However, we did not know whether the factors that led to abuse, and inadequate responses to the abuse, in those historical institutions were present in today's detention environments.

During our inquiry, issues related to the safety of children in a number of detention environments gained public prominence, and momentum continued to build for policy makers to prioritise the protection of children in detention. We have described some of the ongoing work of jurisdictions in this area, while highlighting where further work is required to protect children from child sexual abuse in detention environments.

There were several overarching areas that the inquiry needed to consider in relation to child sexual abuse in contemporary detention environments, namely:

1. the nature and context of institutions detaining children in Australia
2. the nature of reports of child sexual abuse and barriers to disclosing abuse
3. the risk of child sexual abuse
4. the particular impacts of this abuse
5. the nature and adequacy of the institutional responses
6. how to make these environments safer for children.

These issues required us to consider several questions, which are identified in Table 15.1 below.

**Table 15.1 – Issues and questions for examination of child sexual abuse in contemporary detention environments**

Issues	Questions for examination
Nature and context of contemporary detention environments	<ul style="list-style-type: none"> <li>• What are the types of contemporary detention environments in which children are found?</li> <li>• How are the relevant institutions administered? What oversight mechanisms are in place?</li> <li>• Who are the children in the detention environments?</li> </ul>
Reports of child sexual abuse	<ul style="list-style-type: none"> <li>• What do reports of child sexual abuse in contemporary detention environments tell us about the nature and extent of sexual abuse? Who are the victims? Who committed the abuse?</li> <li>• What do the reports tell us about the barriers to disclosing, identifying and responding to child sexual abuse in detention?</li> </ul>
Risk of child sexual abuse	<ul style="list-style-type: none"> <li>• What are the risks of child sexual abuse in detention environments?</li> </ul>
Impacts	<ul style="list-style-type: none"> <li>• What are the particular impacts on victims of being sexually abused in detention?</li> </ul>
Nature and adequacy of institutional responses	<ul style="list-style-type: none"> <li>• How have governments and institutions responded to child sexual abuse in detention environments?</li> <li>• What issues have been commonly reported about these responses?</li> </ul>
Creating safer detention environments for children	<ul style="list-style-type: none"> <li>• How can our Child Safe Standards be applied in detention environments to improve the safety of children and responses to child sexual abuse?</li> </ul>

This volume focuses on institutional responses to child sexual abuse that occurred in detention environments after 1990; such responses before 1990 are considered in Volume 11, *Historical residential institutions*. In this volume we highlight the particular risk factors in detention environments today, and provide practical guidance to governments and detention institutions to improve the safety of children under their care and protection.

## 1.2 Terms of Reference

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The Letters Patent establishing the Royal Commission required that we ‘inquire into institutional responses to allegations and incidents of child sexual abuse and related matters’ and set out the Terms of Reference of the inquiry. In carrying out this task, we were directed to focus on systemic issues, informed by an understanding of individual cases. We were required to make findings and recommendations to better protect children against sexual abuse and alleviate the impact of abuse on children when it occurs.

This volume addresses the future focus of our Terms of Reference. Under paragraph (a) we were directed to inquire into ‘what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future’. Paragraphs (b) and (c) also directed us to consider what institutions and governments need to do to improve their responses to child sexual abuse in institutional contexts and reduce the impact on survivors.

## 1.3 Information sources

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To inform our understanding of institutional responses to child sexual abuse in contemporary detention environments, we gathered information through public hearings, private sessions and written accounts, research and policy work, and engaging with the community. We also had regard to a range of related public inquiries. Information from these sources informed the development of our findings and recommendations, and are referred to throughout this volume.

Some important information sources relevant to child sexual abuse in contemporary detention environments are highlighted below.

### 1.3.1 Public hearings

We held a public hearing as part of our *Institutional review of Commonwealth, state and territory governments* case study, in which we heard evidence about the response of the Australian Government to the recommendations of an inquiry convened by the department, known as the Child Protection Panel or CPP. The panel’s report included the examination of institutional responses to child sexual abuse in immigration detention, among other matters. The hearing examined the Australian Government’s current policy framework and the steps it agreed to take to implement the panel’s recommendations.

*Case Study 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse (Youth detention centres, Victoria)* examined Victorian youth training and reception centres and was relevant to our consideration of contemporary youth detention. It examined institutional responses to child sexual abuse in the youth detention context between the 1960s and early 1990s, providing insight into historical responses to this abuse. It included evidence given by senior administrators of youth detention today, who provided information about current policies and procedures in Victorian youth detention centres.

Other hearings inquired into the treatment of children in children's residential institutions at a time when there was little distinction between the provision of care for children who were destitute and children incarcerated for criminal offences (see Volume 11, *Historical residential institutions*).

### 1.3.2 Private sessions

In our private sessions we heard about the sexual abuse of children in contemporary detention environments, particularly in youth detention. The experiences of abuse we heard about in these private sessions helped us to understand the nature and impacts of the abuse and the responses of the institutions involved.

We recognise that the information gathered in private sessions and from written accounts captures the accounts of survivors of child sexual abuse who were able to share their experiences in these ways. We do not know how well the experiences of these survivors reflect those of other victims and survivors of child sexual abuse who could not or did not attend a private session or provide a written account.

### 1.3.3 Policy and research

We conducted an extensive research program to support our work. It included research to provide background information, fill crucial evidence gaps and summarise evidence of practices that are known to improve responses to child sexual abuse. A number of commissioned reports were particularly relevant to this volume (see Table 15.2).

**Table 15.2 – Commissioned research relevant to institutional responses to child sexual abuse in contemporary detention**

Report title	Published
<i>Aboriginal and Torres Strait Islander children and child sexual abuse in institutional contexts</i> <sup>3</sup>	2017
<i>Assessing the different dimensions and degrees of risk of child sexual abuse in institutions</i> <sup>4</sup>	2017
<i>Evidence and frameworks for understanding perpetrators of institutional child sexual abuse</i> <sup>5</sup>	2016
<i>Risk profiles for institutional child sexual abuse: A literature review</i> <sup>6</sup>	2016
<i>The role of organisational culture in child sexual abuse in institutional contexts</i> <sup>7</sup>	2016

Issues papers, consultation papers and public and private roundtables provided opportunities for individuals, organisations and governments to give us considered views about institutional responses to child sexual abuse and proposals for policy reform.

Throughout these forums, people raised their concerns about the safety of children in detention environments. We consistently heard how children in detention have little voice, are isolated and face complex challenges in disclosing abuse. We were also told about issues regarding how the Australian Government and state and territory governments responded to risk, and allegations of child sexual abuse in contemporary detention environments.

Moreover, we considered a number of public inquiries into, and reviews of, immigration detention and youth detention, focusing on the treatment of children in these settings. Notably, the Royal Commission into the Protection and Detention of Children in the Northern Territory (NT Royal Commission) was established in mid-2016 to inquire into the treatment of children in detention facilities and child protection in the Northern Territory, and was informative regarding our work on institutional responses to child sexual abuse in youth detention.

### 1.3.4 Community engagement

As part of our youth detention engagement strategy, we facilitated a number of consultations with children as well as staff and volunteers in different youth detention centres across Australia. During the consultations, children told us about their safety concerns, including what can be done to increase their feeling of safety in detention.

We also held a series of multicultural forums around Australia during which we heard from representatives from multicultural and ethno-specific services, community and faith leaders and individuals from culturally and linguistically diverse backgrounds. Many of the participants identified detention environments as institutions of concern for child sexual abuse.

### 1.3.5 Limitations of our work

Our work on institutional responses to child sexual abuse in contemporary detention environments was limited by the available research and evidence.

#### Limited research into responses to child sexual abuse in detention

There is limited research into institutional responses to child sexual abuse in institutional contexts, particularly detention environments. While there have been some studies on child sexual abuse in historical detention environments, particularly out-of-home care settings (see Volume 11, *Historical residential institutions*), there has been little attention given to child sexual abuse in contemporary detention environments.

Despite this limitation, we were able to use the various information sources described above to inform our understanding of the risk of abuse in contemporary detention environments and issues related to institutional responses. We were not able to determine the extent of child sexual abuse in these settings. We note the need for further research and the publication of data on the nature and extent of child sexual abuse in contemporary detention environments.

#### Comparatively fewer victims of abuse came forward

Compared to other institutional contexts we have examined, we heard from a proportionately low number of victims who said they were sexually abused in contemporary detention settings, particularly in immigration detention. Still, our research and experience as a Royal Commission tell us that this is an issue requiring closer examination.

We know that children and their families face particular barriers in disclosing abuse while in detention and hold very real fears of retribution or other adverse consequences if they do disclose. We also heard of the concerns that whistleblowers have in reporting abuse, particularly involving immigration detention (see Chapter 4).

It is unsurprising that fewer than expected survivors came forward to discuss child sexual abuse in *contemporary* detention environments because, on average, survivors take 23.9 years to disclose abuse (see Volume 4, *Identifying and disclosing child sexual abuse*). Other factors may also present challenges for the identification and disclosure of abuse today. For example, some children continue to be held in detention or are at risk of returning to detention, and some adults who told us they were abused as children are now serving sentences in adult correctional facilities or may no longer be in Australia.



## 1.4 Links with other volumes

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This volume examines what we have learned during our inquiry about institutional responses to child sexual abuse in contemporary detention environments.

It builds on Volume 2, *Nature and cause*, which details the nature, extent and causes of child sexual abuse in institutional contexts. It also applies our learnings outlined in Volume 3, *Impacts* and Volume 4, *Identifying and disclosing child sexual abuse*.

This volume should be read with Volume 6, *Making institutions child safe*, Volume 7, *Improving institutional responding and reporting* and Volume 8, *Recordkeeping and information sharing*, which present a national approach to making, improving and supporting child safe institutions. These volumes explain how institutions can be made safer for children by better preventing, identifying, responding to and reporting child sexual abuse in institutional contexts. As protecting children is everyone's responsibility, these volumes look at the roles the community, institutions, government, individuals and a range of other actors can play to create safer institutions for children, including detention environments.

Volumes 6, 7 and 8 address making institutions child safe in all institutional contexts and recommend independent, but interrelated initiatives to create child safe institutions. Recommendations made in those volumes are of general application to detention environments. They are supplemented by the recommendations in this volume.

Volume 9, *Advocacy, support and therapeutic treatment services*, considers the need for trauma-informed care, including in places of detention such as correctional facilities and youth detention centres. Our findings and recommendations in Volume 10, *Children with harmful sexual behaviours*, are also relevant to this volume.

This volume also links to Volume 11, *Historical residential institutions*, which examines a number of historical institutions where children were detained or held in detention-like out-of-home care.

Other volumes that examine institutional responses to child sexual abuse in specific institutions include:

- Volume 12, *Contemporary out-of-home care*
- Volume 13, *Schools*
- Volume 14, *Sport, recreation, arts, culture, community and hobby groups*
- Volume 16, *Religious institutions*.

## 1.5 Key terms

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The inappropriate use of words to describe child sexual abuse and the people who experience the abuse can have silencing, stigmatising and other harmful effects. Conversely, the appropriate use of words can empower and educate.

For these reasons, we have taken care with the words used in this report. Some key terms used in this volume are described below. A complete glossary is contained in Volume 1, *Our inquiry*.

### Children with harmful sexual behaviours

We use the term ‘children with harmful sexual behaviours’ to refer to children under 18 years who have behaviours that fall across a spectrum of sexual behaviour problems, including those that are problematic to the child’s own development, as well as those that are coercive, sexually aggressive and predatory towards others. The term ‘harmful sexual behaviours’ recognises the seriousness of these behaviours and the significant impact they have on victims, but is not contingent on the age or capacity of a child.

The term ‘children with harmful sexual behaviours’ is used when referring to the general group of children with sexual behaviour problems. At times, we use more specific terms:

- ‘Problematic sexual behaviours’ refers to sexual behaviours that fall outside the normal or age-appropriate range for younger children. These may or may not result in harm to another person. Problematic sexual behaviours by young children may be an indicator of them having been harmed themselves and may place the child displaying such behaviours at risk of sexual exploitation.
- ‘Sexual offending’ refers to sexual behaviours that fall within the definition of a sexual offence, where the child could be held criminally responsible for their conduct. In Australia, children aged 10 and over may be charged with a sexual offence.

### Child safe institutions

‘Child safe institutions’ create cultures, adopt strategies and take action to prevent harm to children, including child sexual abuse. The Australian Children’s Commissioners and Guardians defines a child safe institution as one that consciously and systematically:

- creates conditions that reduce the likelihood of harm to children
- creates conditions that increase the likelihood of identifying and reporting harm
- responds appropriately to disclosures, allegations or suspicions of harm.<sup>8</sup>

## Child sexual abuse in an institutional context

The term ‘child sexual abuse’ refers to any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography. It includes child grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child’s inhibitions in preparation for sexual activity with the child.

Our Terms of Reference specify that child sexual abuse occurs in an institutional context if, for example, the abuse:

- happens on a premises of an institution or where its activities occur, or in connection with its activities
- is engaged in by an institution’s official in circumstances where the institution has, or its activities have, in any way contributed to the risk of abuse
- happens in any other circumstances where an institution is, or should be treated as being, responsible for adults having contact with children.

## Contemporary detention environment

Consistent with OPCAT, we define a ‘detention environment’ as a place where an individual is or may be ‘deprived of their liberty’.<sup>9</sup> In Australia, children’s detention and de facto detention occurs along a continuum. It includes closed environments (such as held immigration detention, youth detention and some psychiatric facilities), community-based environments (such as some forms of secure residential treatment or disability support) and restrictive practices within otherwise ‘open’ institutions (such as physical restraint of children).

We use the term ‘contemporary detention environments’ to refer to detention environments operating since 1990.

## Immigration detention

‘Immigration detention’ refers to the lawful, administrative detention of ‘unlawful non-citizens’ under the *Migration Act 1958* (Cth) (Migration Act), for the processing of refugee claims, among other reasons. Australia’s contemporary immigration detention system includes onshore detention on the mainland and in excised places, such as Christmas Island. It also includes the removal of people who arrive by boat seeking asylum in Australia to offshore regional processing centres. In this system, children are detained in different types of held detention and in community detention.

## Offender and perpetrator

The term ‘offender’ refers to a person who is found by a court to have done something that is prohibited by law. Until this happens, a person may be called an alleged offender, defendant or accused or, by the police, a suspect or person of interest.

The term ‘perpetrator’ refers to an adult who has sexually abused a child.

## Victim and survivor

The terms ‘victim’ and ‘survivor’ refer to someone who has been sexually abused as a child in an institutional context. We use the term ‘victim’ when referring to a person who has experienced child sexual abuse at the time the abuse occurred. We use the term ‘survivor’ when referring to a person who has experienced child sexual abuse after the abuse occurred, such as when they are sharing their story or accessing support. Where the context is unclear, we have used the term ‘victim’.

We recognise that some people prefer ‘survivor’ because of the resilience and empowerment associated with the term. We also recognise that some people who have experienced abuse do not feel that they ‘survived’ the abuse, and that the term ‘victim’ is more appropriate.

We recognise that some people may have taken their lives as a consequence of the abuse they experienced. We acknowledge that ‘victim’ is more appropriate in these circumstances.

We also recognise that some people do not identify with either of these terms.

When we discuss quantitative information from private sessions in this volume, we use the term ‘survivor’ to refer both to survivors and victims who attended a private session and those (including deceased victims) whose experiences were described to us by family, friends, whistleblowers and others. This quantitative information is drawn from the experiences of 6,875 victims and survivors of child sexual abuse in institutions, as told to us in private sessions to 31 May 2017.

## Youth detention

The term ‘youth detention’ is used to refer to the secure management and care of children who have come into contact with the criminal justice system. Youth detention environments include youth detention centres and other detention institutions, such as police custody facilities (for example, police stations and lock-ups), court custody facilities and secure transport vehicles when travelling between other facilities.

## 1.6 Structure of this volume

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**Chapter 2** of this volume describes the nature of contemporary detention environments. It provides an overview of:

- the types of contemporary detention environments, institutions and contexts where children may be detained
- the characteristics common to contemporary detention environments that increase the risk of child sexual abuse when appropriate safeguards are not in place
- the broad considerations that are important to the safety of children in all contemporary detention environments.

**Chapter 3** details the results of our consideration of institutional responses to child sexual abuse in contemporary youth detention. It describes:

- youth detention in Australia, including the types, administration and external oversight of youth detention institutions as well as the number and characteristics of children in youth detention
- the experiences of survivors we heard from in private sessions
- our understanding of the risk of child sexual abuse in youth detention
- the particular impacts of child sexual abuse in youth detention
- specific barriers to disclosing and identifying child sexual abuse in youth detention
- key issues related to institutional responses to child sexual abuse in youth detention.

It also makes recommendations for improving the safety of children in youth detention.

**Chapter 4** details our understanding of institutional responses to child sexual abuse in contemporary immigration detention. It describes:

- immigration detention in Australia, including the types, administration and external oversight of immigration detention as well as the number and characteristics of children in immigration detention
- what has been reported about child sexual abuse in immigration detention
- our understanding of the risk of child sexual abuse in immigration detention
- the particular impacts of child sexual abuse in immigration detention
- the specific barriers to disclosing and identifying child sexual abuse in immigration detention
- key issues related to institutional responses to child sexual abuse in immigration detention.

It also makes recommendations for improving the safety of children in immigration detention.

# Endnotes

- 1 P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp 92–94.
- 2 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 37(b); Chapters 3 and 4 of this volume.
- 3 P Anderson, M Bamblett, D Bessarab, L Bromfield, S Chan, G Maddock, K Menzies, M O’Connell, G Pearson, R Walker & M Wright, *Aboriginal and Torres Strait Islander children and child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017.
- 4 P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017.
- 5 M Proeve, C Malvaso & P DelFabbro, *Evidence and frameworks for understanding perpetrators of institutional child sexual abuse*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.
- 6 K Kaufman & M Erooga, *Risk profiles for institutional child sexual abuse: A literature review*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.
- 7 D Palmer, *The role of organisational culture in child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.
- 8 Australian Children’s Commissioners and Guardians, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, *Issues paper 3: Child safe institutions*, 2013, p 2.
- 9 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 4 February 2003, 2375 UNTS 237 (entered into force on 22 June 2006), art 4(1).

## 2 The nature of contemporary detention environments

### 2.1 Overview

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This chapter details:

- the nature and types of contemporary detention environments where children can be detained in Australia
- characteristics of contemporary detention environments that increase the risk of child sexual abuse
- how to create safer detention environments for children.

This chapter lays the foundations for institution-specific discussions of risk and child safe approaches in Chapters 3 and 4 on youth detention and immigration detention, respectively. We were not able to examine all types of contemporary detention environments in detail.

### 2.2 The institutional context

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#### 2.2.1 Types of detention environments

Children can be detained in Australia in a range of lawful detention and detention-like environments – places where an individual is or can be ‘deprived of their liberty’.<sup>1</sup>

Children can be detained:

- in ‘closed’ environments, such as held immigration detention, youth detention and some psychiatric facilities
- in community-based environments, such as some forms of secure residential treatment or disability support
- by being subjected to restrictive practices (for example, physical restraint) in otherwise ‘open’ institutions.

For a variety of reasons, many children are in detention or detention-like settings and this will continue in the foreseeable future. It is often the most vulnerable children who are deprived of their liberty in detention environments, including many children with prior trauma and multiple needs, and some with behaviours that may cause harm to themselves or others. Aboriginal and Torres Strait Islander children are over-represented in youth detention and out-of-home care (see Volume 12, *Contemporary out-of-home care*),<sup>2</sup> and children with disability are over-represented in youth detention and some other contemporary detention environments.<sup>3</sup>



Detention and restrictive practices may be judicially ordered (as in the criminal justice context) or administratively authorised (as in the immigration detention context). Restrictive practices may be applied in practice and not under formal court or administrative orders (that is, de facto detention).

## Closed environments

Certain detention environments are physically closed. Children are restricted by authorities from accessing the outside community, are required to comply with staff directions and are wholly reliant on the institution to meet their basic needs.

Children may be held in closed environments with other children or, in some contexts, in adult facilities.<sup>4</sup>

They are detained in various closed detention environments throughout Australia, such as closed immigration detention facilities (see Chapter 4), police 'lockup', restrictive care environments, detention for treatment and secure out-of-home care.

Police lockup may include custody in police stations, interview rooms, holding cells and, on occasion, courts. Since the array of contexts in which police work, and from time to time detain children, is very broad, it can also include community-based settings, such as where searches are performed (on the train platform or street), where arrests occur (in private dwellings and public buildings) and where police transport children (including on foot and in cars). Children may also be lawfully detained by 'private police' or security guards.

Some children, like adults, are subject to medical assessment and if found to be 'mentally ill' and a risk to their own safety or that of another person, are placed in involuntary admission. That is, they are detained for treatment purposes, even though they may not agree that they are unwell or to being treated.<sup>5</sup> Restrictive care environments and places of detention for treatment can include adult and child mental health units in public hospitals, private hospitals with mental health wards that accept children, and emergency departments. In these settings, children may be held in secure, 'locked' wards. The nature of these environments differs in each jurisdiction and in response to the child's needs at the time of their admission. The purpose of psychiatric treatment in secure (and community-based) environments is protective and therapeutic – it seeks to promote the health and wellbeing of the child, while balancing the risks of harm and restrictions on liberty.<sup>6</sup>

Children may also be detained in a type of secure out-of-home care provided in some states and territories. 'Secure welfare' applies to some children in state care in New South Wales, Victoria and Western Australia.<sup>7</sup> Under the *parens patriae* ('parent of the country') power, state and territory Supreme Courts can make orders to protect the welfare of children if the children have no other, or no other suitable, guardian.<sup>8</sup> This means that children with very challenging behaviours may be held in locked environments under a court order, but outside the legislated 'mental health' framework. This form of secure care is designed to protect the child from extreme risk-taking or life-threatening behaviour, where the therapeutic care can only be effectively delivered in a secure setting, but acute involuntary mental health treatment would not be justified.<sup>9</sup> Placements may involve a child being held in secure therapeutic care programs, such as in a small group residential setting.<sup>10</sup> Rates of admission and the duration of such programs vary across the jurisdictions in which they are used. However, 'secure welfare' affects a relatively small number of children.

## Community-based environments

Children can be detained in community-based environments. Community detention in the immigration context is an example of this. In other instances, it may be less clear whether a child is 'detained' in a community environment, such as where a child lives in the community but is subject to close supervision and monitoring, isolated from peers and other 'outsiders' and limited in their freedom of movement (whether for practical or other reasons).

The involvement of parents, guardians and other supportive adults in the lives of children – a protective factor against sexual abuse<sup>11</sup> – may be greater in community-based detention environments than in closed detention settings, (Volume 2, *Nature and cause* considers factors that could minimise the risk of a child being sexually abused). Parental responsibility and capacity to care for and protect children may also be greater in community-based detention. At other times, community-based detention may have much in common with closed detention environments, such as when a community-based institution operates as an inward-looking 'closed' organisation or 'total' institution, and restricts children's liberty (see Section 2.2.2).

There may be overlap between community-based care and restrictions on children's liberty. Strict enforcement of bail conditions, such as residence and curfew requirements, could also convert community-based residential care into a de facto detention environment. We were told in private sessions about the sexual abuse of children who were living in the community but subject to court orders that placed conditions on their liberty. This included abuse by adults in positions of authority, such as supervisors of children on bail. We were also told about children who were advised they could be released on bail provided they had accommodation available and who were then bailed to reside with adults they did not know – in one instance a convicted sex offender who went on to sexually abuse the child.<sup>12</sup> We were told that another child who ran away from an abuser was repeatedly returned to the perpetrator's house on bail. This was despite the ongoing involvement of the child's family, who said they were not permitted to have him come home because he had been bailed to the abuser's address.<sup>13</sup>

Other community-based settings in which some children may have their liberty restricted include residential disability care, voluntary psychiatric treatment settings and residential out-of-home care (see Volume 12, *Contemporary out-of-home care*).

## Restrictive practices

Restrictive practices are any interventions that have the effect of restricting the rights, including freedom of movement, of a person, with the primary purpose of protecting the person or others from harm. They include the use of seclusion, and chemical, mechanical and physical restraint.<sup>14</sup>

In addition to their use in psychiatric settings, restrictive practices may be used in response to challenging behaviours in disability-supported accommodation and education settings for children with cognitive impairment.<sup>15</sup> Similar practices may be used in youth and immigration detention in some circumstances. Children may also be admitted to hospital settings or placed in restrictive care environments for a range of health reasons. They may often be in the setting as voluntary patients, but experience restrictive practices used for therapeutic purposes.

In the case of children with disability, while restrictive practices are generally intended for protective purposes, they can also render community-based disability care a de facto detention environment, and have been construed as such internationally.<sup>16</sup> Research and previous inquiries have considered the use of restrictive practices towards children and adults with disability, with a growing understanding of the need to limit the use of restrictive practices.<sup>17</sup> For example, the Royal Australian and New Zealand College of Psychiatrists' position is that the use of seclusion and restraint should be reduced and removed entirely for mental health patients, where possible.<sup>18</sup> The NDIS Quality and Safeguarding Framework states that 'it is a relatively small proportion of people with disability that may need additional supports to reduce the risk of harm when some of their behaviours pose a risk to themselves or others'.<sup>19</sup> It also notes that the inappropriate use of these practices can infringe rights and 'There is now also clear evidence that the routine use of restrictive practices to control individuals' behaviour has often been harmful and exacerbated the behaviours they were intended to control'.<sup>20</sup> As such, they are to be reduced or eliminated.<sup>21</sup>

Even so, we are aware of contemporary complaints that some people with disability are 'routinely' subjected to restrictive practices.<sup>22</sup> National disability rights and advocacy organisation People with Disability Australia told us of concerning practices in some health and disability settings, including the use of physical, chemical and pharmacological constraints on children.<sup>23</sup> This is significant because an organisational culture that tolerates violence or other abuses of power can facilitate sexual abuse.<sup>24</sup>

We have been told about child sexual abuse occurring in contexts in which restrictive practices are also in use. People with Disability Australia told us that the trauma of children with disability who have been sexually abused can be compounded if the symptoms of the abuse are interpreted as ‘challenging behaviours’ and responded to with restrictive practices that can make a child more vulnerable, such as solitary confinement, seclusion, forced sedation, chemical restraint or physical restraint.<sup>25</sup>

### 2.2.2 ‘Total’ and ‘closed’ institutions

Many environments in which children have been, and are, detained in Australia have been described as possessing characteristics of ‘total’ or ‘closed’ institutions, particularly those that operated in the past.

The concept of the total institution was first brought to attention by Canadian sociologist Erving Goffman in 1961. He described it as ‘a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life’.<sup>26</sup>

Commissioned research notes that a ‘total institution’ has four defining characteristics:

First, total institutions consist of staff and ‘inmates’, of which there can be numerous types (for example, prisoners, psychiatric patients, military academy cadets, children’s home residents and boarding school students). Second, the staff in total institutions exert nearly total control over all aspects of inmates’ lives. These lives are conducted within a confined physical space (for example, a prison, military academy campus, residential facility or school grounds), and senior staff indirectly control inmates’ lives through supervisory staff. Third, staff members in total institutions exert much of their control over inmates’ lives via impersonal formalised rules and procedures. Finally, while total institutions may have a variety of purposes, their principal objective is the transformation of human beings.<sup>27</sup>

Total institutions are typically highly controlled<sup>28</sup> and relatively closed to the outside world.<sup>29</sup> In some cases they may comprise ‘alternative moral universes’, that is, they may possess internal processes for labelling and responding to wrongdoing that is independent from wider society.<sup>30</sup> They tend to be hierarchical (those within them adhering strictly to formal power structures),<sup>31</sup> have a strong internal norm of obedience,<sup>32</sup> and great power disparity between children and staff.<sup>33</sup> Staff have ‘an inordinate amount of power’ over children because they can provide direction to any child in relation to an exceedingly wide range of behaviours.<sup>34</sup> This is significant in the context of research findings that ‘The more power adults possess over children and young people in institutions, the better positioned they are to sexually abuse them’.<sup>35</sup>

Total institutions have a tendency to ‘embrace degrading assumptions about the fundamental nature of inmates’,<sup>36</sup> for example, that children in police custody are untrustworthy or in need of punishment or control. At the same time, deference to formal rules, processes and procedures can promote cultures in which the obvious care needs of children are easily overlooked or, worse, children are dehumanised.<sup>37</sup>

There is limited outside knowledge or awareness of the internal operations of the total institution.<sup>38</sup> Whether ‘closure’ is achieved by physical or other means, there is a break from the pattern of life beyond the institution. Jacqueline Wilson, Associate Professor in History at Federation University Australia, gave evidence in the public hearing for *Case Study 57: Nature, cause and impact of child sexual abuse in institutional contexts* (*Nature, cause and impact of child sexual abuse*) that ‘total institutions are really not in the business of having a front region: they’ve got a back region and it’s pretty much closed off. It seems to me that there’s an assumption of radical discontinuity between the outside community and the closed institution’.<sup>39</sup> Because they may also promote secrecy<sup>40</sup> and withhold information about their own operations (from children themselves, staff and external authorities<sup>41</sup>) opportunities for (more extreme) abuse are enhanced, while detection efforts and meaningful responses may be impeded.<sup>42</sup>

A related concept is the ‘closed organisation’, described by practitioner and researcher Mr Marcus Erooga. Rather than being *physically* confined, these are ‘enclosed, inward looking organisations’. Mr Erooga notes that:

Organisations managed along hierarchical lines can become so highly controlled that it is not possible to challenge their practices ... Common elements of such organisations can be identified: criticism and complaint are easily stifled; new ideas are discouraged and rigid and conservative routines and patterns of practice encouraged; group norms become so ingrained that to challenge them can be enormously personally and professionally threatening; an absence of any external or moral professional challenge to established practice; patterns of practice have increasingly low standards and aspirations become those of control, order and the absence of problems. The distance from this to becoming a ‘corrupted system’ is relatively small. This will be compounded when external regulation is also lacking.<sup>43</sup>

## Risk of child sexual abuse in total or closed institutions

Our inquiry provided insights into the relationship between the nature of certain institutions and how and why child sexual abuse occurs (see Volume 2, *Nature and cause*), including that:

- some institutions are more likely than others to enable adult perpetrators and children with harmful sexual behaviours to sexually abuse children, and to make it more difficult for the abuse to be detected and addressed<sup>44</sup>
- the level of risk with a particular institutional context is influenced by the type of activities and services provided, the physical environment, the characteristics of the children in the institution, and, to an extent, organisational management and culture<sup>45</sup>
- children are less likely to disclose, and less likely to be believed if they do disclose in institutional contexts where the community has an unquestioning respect for the authority of an institution.<sup>46</sup>

Commissioned research suggests that, in comparison with other institutions, total or closed institutions present a high cumulative risk of child sexual abuse by both adult perpetrators and children with harmful sexual behaviours. Following a review of a number of historical and current institutions where children were sexually abused, researchers identified four factors contributing to risk:

1. The context gives perpetrators ample opportunity to be alone with children unsupervised.<sup>47</sup>
2. Children are completely under the authority of the adults in the institution and so may have no realistic alternative but to comply with their demands to engage in sexual activities.<sup>48</sup>
3. Children in these institutions had no parents actively involved in their lives to whom they could disclose abuse or seek protection, making them particularly vulnerable to sexual abuse.<sup>49</sup>
4. The closed nature of the institutions isolates them from society's expectations and oversight.<sup>50</sup>

We heard in relation to historical institutions that detention environments generally present higher levels of risk of child sexual abuse when appropriate safeguards are not in place.<sup>51</sup> For example, in *Case Study 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay (Parramatta Training School for Girls)*, girls were subject to invasive body searches and constant supervision without any safeguards in place to maintain their dignity. Several witnesses told us they were forced to undergo invasive body examinations that were 'vile', 'scary' and 'humiliating', and without consent or explanation. The guards who supervised girls in the bathrooms were often male, girls had to face the guards at all times while showering and there were no doors on the toilets or showers.<sup>52</sup> Commissioned research

identifies that ‘All residential institutions represent a high situational risk. A juvenile justice detention centre perhaps illustrates the highest level of risk’,<sup>53</sup> and ‘the risk to children and adolescents in immigration detention centres may not be much lower, albeit that very few children remain in detention ...’<sup>54</sup> The research goes on to note: ‘The highest risk, however, would be associated with institutions that also contain elements of, and meet the definition of, a total institution ... This includes residential care institutions and juvenile justice detention centres’.<sup>55</sup> For this reason, understanding the features of total and closed institutions is important to reducing the risk of child sexual abuse in high-risk detention settings.<sup>56</sup>

Several of our case study reports and Volume 11, *Historical residential institutions* detail how some closed and total institutions operated in the past, which led to children being sexually abused and poor institutional responses to the abuse. In relation to detention environments, we heard confronting accounts of child sexual abuse that was perpetrated alongside other extreme forms of violence and neglect. Our case study reports and Volume 11 record our findings on these historical institutions. While there have been many reforms in the contemporary period, some characteristics that reflect aspects of total or closed cultures may increase risk to children who remain in contemporary detention environments. These are explored in the following section.

## 2.3 Characteristics of contemporary detention environments that may increase the risk of child sexual abuse

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As discussed in Volume 2, *Nature and cause*, we learned that child sexual abuse is not the result of a single factor, but the complex interaction between diverse factors related to the institution, as well as the perpetrator and the vulnerabilities of the child. When a perpetrator is present in a detention institution, the institution may enable opportunities for children to be sexually abused – for instance, by providing the perpetrator with unsupervised access to children.

As discussed in Volume 2, while all children are vulnerable to sexual abuse, some children are more vulnerable because of their increased exposure to certain risk factors.<sup>57</sup> For example, experiences of sexual abuse or other types of trauma before being detained can increase the risk of further abuse.<sup>58</sup> Some children whose liberty is, or may be, restricted are more at risk of sexual abuse than other children because of their prior experiences or current circumstances, and may be clustered in institutional settings.<sup>59</sup>

Aboriginal and Torres Strait Islander children, who are disproportionately represented in youth detention and out-of-home care,<sup>60</sup> may experience heightened vulnerability as a result of the impacts of historical, intergenerational trauma and face particular barriers to disclosure.<sup>61</sup>

Many children with disability spend a significant amount of time in institutions, such as specialist education settings, hospitals, residential homes or respite care, partly due to a need to access health services, education support, physical care and other assistance.<sup>62</sup> They may spend longer periods in institutional contexts than peers without disability.<sup>63</sup> Commissioned research suggests that the segregation of children (and adults) with disability in closed institutional contexts leaves them at heightened risk of harm.<sup>64</sup> Institutional practices that isolate children with disability from local communities and wider society can expose them to increased levels of risk.<sup>65</sup>

The heightened vulnerability experienced by children who are psychiatrically unwell is in many cases part of the justification for their detention. Yet this heightened vulnerability does not cease when they are detained for treatment. The nature of some psychiatric illnesses may mean that children are not believed or that children's behaviours increase their vulnerability to child sexual abuse. Also, the effects of some medication may reduce a child's ability to resist abuse. This can increase risk even within the closed treatment environment, which is intended to protect children who are unwell. Commissioned research indicates that children with serious emotional disturbances are one of the groups at greater risk of victimisation by staff.<sup>66</sup> Vulnerability to harm by other children is also heightened in psychiatric institutions.<sup>67</sup> If children's disclosures of abuse or concerns about risk of harm are not responded to effectively, they remain at heightened risk of abuse (see Volume 4, *Identifying and disclosing child sexual abuse*).

This section addresses some of the institutional risk factors that enable opportunities for children to be sexually abused across a range of contemporary detention environments, and that disempower children and reduce their capacity to resist and report abuse. The institutional risk factors specific to youth detention and immigration detention are discussed in Chapters 3 and 4. Understanding these risk factors helps us to understand how child sexual abuse can occur in contemporary detention environments, as well as how best to prevent it and respond when it does occur.

Certain risks can be modifiable or unmodifiable. Modifiable risks are those in which, with some effort, the inherent situational risk can be reduced. There are few institutional settings in which the risk of abuse is unmodifiable.<sup>68</sup> For example, in most detention environments there may be no need for children to be alone with a staff member, but where there is, technology such as CCTV and automatic recording of staff movements can reduce risk. Child safe institutions seek to minimise the modifiable situational risks to the extent that is reasonably possible (see Volume 6, *Making institutions child safe*).

Some of the factors that give rise to increased risk may also be necessary characteristics of environments in which children are lawfully deprived of their liberty and kept under control and surveillance, for security and other reasons. However, they can also create opportunities for abuses of power and sexual abuse, and disempower children from resisting that abuse and also reduce children's ability to raise safety concerns or report abuse.



Our commissioned research, public hearings and private sessions identified a range of characteristics of detention environments that appear to increase the risk of child sexual abuse. They are:

- environmental, including the deprivation of liberty and lack of privacy
- operational, including isolation and disconnection from family, friends, community and culture; lack of trusted adults; the power imbalance between adult staff and detained children; and the use of strict rules, discipline and punishment
- cultural, including a lack of voice for children and cultures of disrespecting children, tolerating the humiliating and degrading treatment of children, and engendering strong group allegiance among management staff.

While some of these characteristics may be intrinsic to a particular environment – for example, the deprivation of liberty in criminal justice settings – others are not essential and unlikely to comply with applicable laws and policies. Additionally, the risk of child sexual abuse can still be mitigated, even where the detention environment itself has features that increase risk. This is achieved by minimising practices that pose greater risk (such as the degree of isolation of the child or children) and increasing protective factors (such as enhancing access to trusted adults and improving oversight mechanisms).

### 2.3.1 Environmental characteristics

#### Deprivation of liberty

Children should be detained only as a last resort and for the shortest appropriate time.

Deprivation of a child's liberty in contemporary detention environments may be a necessary feature of some institutional contexts. In the youth detention context, for example, it is essential to maintaining security and safety in locked facilities. In some health care contexts, it is necessary to curtail the movements of children who are extremely unwell, to ensure the safety of the child and others around them. In other detention contexts, children's liberty may be curtailed to lesser degrees or less directly. When children are in 'community detention' under immigration law, they are able to move about relatively freely, attend school and associate with others, largely as they please. However, they remain under the supervision of the Department of Immigration and Border Control and may not always feel 'at liberty'. In disability care, the practical reality of children's individual disability and support needs may mean that they possess very limited liberty unless it is actively afforded to them by their carers. Sub-optimal care or restrictive practices also restrict children's liberty.<sup>69</sup>

Notwithstanding that the deprivation of a child's liberty in a detention environment may be for security or care purposes, it may also increase the child's vulnerability to sexual abuse, given that such abuse disproportionately happens when perpetrators can be alone with children in private or closed spaces that are not visible to others, or are undetectable.<sup>70</sup> Staff can exert nearly total control over children confined to physical spaces.<sup>71</sup> This significantly infringes on a child's ability to leave, and impairs the exercise of their freedoms. If children must be deprived of their liberty within detention environments, institutions need to ensure that this deprivation does not impede their safety from sexual abuse.

## Lack of privacy

The privacy of children can be limited in some detention contexts.

The need to prevent a child from self-harming or harming others can necessitate body searches. These are by their nature invasive.

At other times, children will be supervised while showering or attending to other personal hygiene needs or in their own 'personal' spaces. For instance, 'Levi' told us in a private session that, in youth detention, there were no doors on the shower cubicles and guards were often stationed in the bathrooms. One guard in particular would make inappropriate jokes. 'The cubicles were just like across from each other and they had no door on them. No privacy at all, you had a guard in there.'<sup>72</sup>

In some settings, children's care needs may mean that staff are often in close physical contact with children. In commissioned research, children with disability in particular noted their lack of bodily autonomy when relying on carers.<sup>73</sup> While these actions may be undertaken to care for and protect children, the denial of privacy can confuse professional boundaries. In this way the institutional lack of privacy can normalise behaviours that are potentially abusive or precursors to abuse.

Lack of privacy may also be an issue in closed detention environments that care for children with disability, particularly those who require adult assistance with daily intimate care. Frequent physical 'handling' can compromise children's developing sense of bodily integrity and undermine their understanding of acceptable touch, increasing the risk of sexual abuse 'under the guise of assistance for physical support needs'.<sup>74</sup> Where attending adults believe that children with disability may not know what is inappropriate and are unlikely to report wrongdoing, vulnerability to risk is increased.<sup>75</sup> The dependency of the child on formal care for daily living can also prevent complaints for fear of losing necessary supports.<sup>76</sup>

In-patient psychiatric care can have similar characteristics. ‘Samantha’ told us in a private session that as an adolescent in the 2000s, she was scheduled and taken to an adult psychiatric unit in New South Wales, where she was initially placed in a locked ward. She was sent there because the adolescent unit did not have a bed available. When she improved a little she was placed in an open ward in an adult facility. A male patient who was about 40 years older than ‘Samantha’ and significantly mentally unwell believed that she was his wife and called her ‘wifey’. Even after she and her parents made it known that she was fearful of this man, they were not separated. ‘Samantha’ told us that one day she was viciously sexually assaulted by him. She didn’t feel able to tell the unit staff, nurses or her parents at the time, and she told us that after the assault her condition deteriorated further, and she was very unwell for more than two years. It wasn’t until she had been released into the care of a psychiatrist that she felt able to disclose the sexual abuse. The abuse took a terrible toll on ‘Samantha’s’ health, both physical and mental. She told us she had not been able to move on with her life and that she would like an apology from the hospital in recognition of the fact that ‘the supervision was not adequate by any means – for my safety and for my health’.<sup>77</sup>

## 2.3.2 Operational characteristics

### Isolation

Institutional contexts can pose high levels of risk when their culture, policies and practices do not implement safeguards to minimise the abuse or harm to children. Safeguards are needed if the nature of an activity involves adults being alone with children or able to have unsupervised access to children, which could facilitate abuse.<sup>78</sup> Detention facilities that house children on a full-time basis are particularly risky environments.<sup>79</sup> Commissioned research suggests that there may be more opportunities in these institutions for children to be alone together unsupervised, and they are less likely to have parents to turn to for protection.<sup>80</sup> Our case studies have shown that these risk factors, in addition to creating opportunities for adults to abuse children, play a key role in enabling children to sexually abuse other children.<sup>81</sup> These risks need to be considered because in a number of contemporary detention environments the separation of children from others is an integral part of their lawful deprivation of liberty, whether this is for security, therapeutic or other reasons.

Research suggests that positive peer relationships and a secure attachment to parents or carers are associated with a decreased likelihood of being a victim of child sexual abuse.<sup>82</sup> However, children in detention environments may often be isolated and disconnected from family, friends, community and culture. This may be because the institution is far from the children’s home community or because it prioritises institutional order over children’s wellbeing and security. Commissioned research on disability and child sexual abuse in institutional contexts suggests that the segregation of children (and adults) with disability in closed institutional contexts leaves them at heightened risk of harm.<sup>83</sup> Deference to ‘the rules’ may mean that children are isolated

and disconnected where this may not be necessary for operational reasons. As we discuss in Volume 3, *Impacts*, when children are abused in an institutional context that isolates them from their family and culture, this may also have lasting implications, exacerbating the impact of the abuse. It is noted that many administrators are already conscious of the importance of ensuring that children continue to have access to family and other supportive people in their lives.

Disability researcher Professor Gwynnyth Llewellyn gave evidence in the *Nature, cause and impact of child sexual abuse* case study about the nature of care provided by institutions to children with disability. She explained that the staff in those institutions may be ‘much less open to public scrutiny’ and that when children are placed there, even to receive specialist services, they are also much more isolated.<sup>84</sup> Commissioned research suggests that the segregation of children (and adults) with disability in closed institutional contexts leaves them at heightened risk of harm.<sup>85</sup> During her evidence, Professor Llewellyn explained that ‘The power differential between staff and children with disability is very exaggerated in these settings’<sup>86</sup> and that these settings tend not to emphasise children’s rights, including the right to be heard.<sup>87</sup> Professor Llewellyn also spoke about the increased risk faced by children who come into regular contact with non-familial and non-familiar adults in these settings;<sup>88</sup> the challenges of recruiting and retaining committed staff;<sup>89</sup> and the difficulty of training staff to understand sexual abuse. We also heard that there are strong disincentives for parents and guardians to complain in these settings, and that some may fear that they will lose access to disability services if they complain.<sup>90</sup>

## Lack of access to trusted adults

Where children in detention environments are isolated, or not supported to maintain strong attachments with their family and community, they may lack access to trusted adults. Having access to trusted and trustworthy adults may be protective for children.<sup>91</sup> It facilitates children’s active resistance of abuse, disclosure of abuse and effective responses. As commissioned research discusses, ‘when children do not have positive protective relationships, they are vulnerable to grooming by sexual abusers, less likely to report abuse and less likely to be believed if they do so’.<sup>92</sup>

In contemporary detention environments children may have more or less access to trusted adults, depending on the nature and purpose of the environment. Commissioned research states that ‘too often staff in residential care and other institutions are preoccupied and overloaded, or only able to offer help according to a timetable that reflects the needs of the organisation rather than those of children and so [are] not really “there” for children’.<sup>93</sup> Research describes the lack of access to trusted adults as the ‘more pervasive’ problem underlying the lack of agency and voice for children. If staff are not accessible to or trusted by children, and not sensitive and responsive to children’s needs, risk may be increased.<sup>94</sup> In closed detention environments, children’s contact with other protective adults may be limited.

## Power imbalance

A power differential between adult staff and children in detention is another operational feature that may be present to greater or lesser degrees in contemporary detention environments. It is significant because:

the more power adults possess over children and young people in institutions, the better positioned they are to sexually abuse them. Staff members have an inordinate amount of power over children and young people in total institutions because they can provide direction to any child or young person in the institution ... Most directly, staff members can command children and young people to not demonstrate overt resistance to child sexual abuse perpetrated against them, and to not disclose the abuse. Further, staff members can punish children and young people if they resist sexual abuse or report it.<sup>95</sup>

There is a high risk of abuse in all institutional settings where the nature of the institution's activity or staff roles give adults the opportunity to be alone with children or the power to create opportunities in which they will be sufficiently unobserved to facilitate abuse.<sup>96</sup> When adult staff have great power and authority over detained children and appropriate safeguards are not in place, the risk of abuse may increase.

To some degree, unequal distribution of power between the adults who are in charge of places of detention and the children who are detained in them is an intrinsic feature of detention environments. However, the scope of that power and the manner of its use may be modifiable. Leadership, culture and clear policies and procedures, supplemented by effective internal and external oversight and audit systems, can help to manage the risks that arise from power imbalances between adults and staff.

## Strict rules, discipline and punishment

Like total institutions, detention environments are often characterised by strict rules and the use of discipline and punishment. In some settings these may be necessary for the safety and wellbeing of children and staff. Strict rules and discipline may also be associated with high levels of control and compliance, a high risk feature of total institutions. Any accompanying threat of punishment reinforces control.<sup>97</sup>

Professor Donald Palmer, Professor of Management at the University of California, gave evidence in the *Nature, cause and impact of child sexual abuse* case study about the implications of ‘control’ in the youth detention context:

If the primary goal is to control children who are offenders, then there’s a sharp distinction between staff and those who are being controlled, and there tends to be stereotyping on both parts. Children, for example, look at staff as untrustworthy. Staff look at children as not worthy of their trust, needing control. That sets up a distinction of perceiving oneself as morally superior and others as less superior. Then that triggers a whole set of what sociologists refer to as techniques of neutralisation: good people who would not normally harm somebody see the environment as providing extenuating circumstances – ‘The children deserve harsh treatment’. That’s referred to as the denial of victim – ‘They’re not victims, they’re being treated appropriately’; and denial of responsibility – ‘I had no alternative but to treat the children harshly to keep them under control’.<sup>98</sup>

In detention environments set around strict rules that cannot be easily challenged or that enable the perpetuation of cultures and practices of harsh discipline and punishment, there is a risk that sexual abuse can become normalised and reinforced by staff as a form of discipline or punishment. Staff can instruct children not to resist the abuse, and can further punish children if they do resist or report the abuse.<sup>99</sup> Children who challenge these forms of cruel behaviour may also be viewed as disobeying or disrespecting established rules and may be seen as deserving such punishments. They may also be at greater risk of becoming entrapped in a system where they cannot question these rules without punishment or they fear the negative consequences of resisting.<sup>100</sup>

### 2.3.3 Cultural characteristics

#### Failure to prioritise children’s welfare and wellbeing

Just as the isolation and disconnection of children can occur when operating procedures and security are prioritised, children’s welfare and wellbeing can be deprioritised in detention environments. Research suggests that ‘risk is higher in institutional care settings where children’s welfare and wellbeing are not at the heart of the institution’.<sup>101</sup>

Where staff tend to view children as troublesome and difficult, they may be more concerned about managing their behaviour than caring for them. Where they see caring for children as simply a job, they are unlikely to invest effort and attention; children who have had adverse experiences are likely to respond negatively in a negative feedback loop ...<sup>102</sup>

Again, this factor may be more or less present in the detention environment, in part depending on the purpose and activities of the institution, as well as its leadership and culture. It may be more common in criminal justice settings, which are concerned primarily with the management of children and maintenance of security.

Conversely, organisational leadership, governance and goal-setting can set in motion a series of beneficial consequences.<sup>103</sup>

## Lack of voice

Engaging with children and listening to their views is an essential element of a child safe environment (see Volume 6, *Making institutions child safe*). However, we learned from commissioned research<sup>104</sup> as well as some private sessions and case studies that some detention institutions have failed to listen to children.

Commissioned research notes that the failure to provide children with the opportunity to communicate their views reflects a culture in which children are not listened to, and their views are not respected. Even if the institution has a complaints mechanism for sexual abuse that children are aware of, they may not be confident that they will be listened to and not victimised if they do complain.<sup>105</sup> Perpetrators can continue to abuse children without impediment if children are not encouraged to make complaints or raise concerns. In this way, institutional culture that discourages children from making complaints can contribute to the continuing sexual abuse of children.<sup>106</sup>

## Disrespecting children

Where there is a culture of disrespect for children, they may be seen as ‘less worthy’ and staff may show discriminatory attitudes towards them. Commissioned research describes staff in total institutions as having a tendency to ‘view inmates in stereotypically negative ways – in particular as morally inferior’, noting that this may facilitate perpetration, impede detection and undermine responses to child sexual abuse.<sup>107</sup> A culture of disrespecting children may also inhibit remedial or developmental action that may prevent re-offending or improve access to psychiatric treatment.

## Tolerating humiliating and degrading treatment of children

An institutional culture of dehumanising children can weaken the usual inhibitions or concerns of staff or volunteers.<sup>108</sup> When children are dehumanised, staff can become desensitised to children’s needs, and cease seeing them as children in need of care and protection.<sup>109</sup> Children’s ability to resist and report abuse can also be impaired.<sup>110</sup> As commissioned research describes, in total institutions children can be conditioned into obedience to authority.<sup>111</sup> In these circumstances it can be easier for adults to abuse children or overlook abuse.<sup>112</sup> The reduction of these moral concerns in institutional contexts has been referred to as the ‘corruption of care’.<sup>113</sup>

Children are more vulnerable to abuse in institutions that dehumanise children. Commissioned research describes the function of total institutions in wiping out the pre-existing identities of those who are detained,<sup>114</sup> even though ‘some staff may consider this harsh and even inhumane’.<sup>115</sup> This is achieved by controlling all aspects of detained children’s lives (implying that they are ‘incapable of effective self-control’),<sup>116</sup> through rewards and punishments and by humiliating those who are subject to control.<sup>117</sup> Staff may come to see themselves as the controllers of the ‘inferior beings’. Both staff and the detained children themselves may come to see the children as ‘inanimate objects controlled by others’. Commissioned research suggests that this can cause detained children to view themselves as powerless, which in turn can reduce their ability to resist abuse.<sup>118</sup>

We have been told about powers to perform body searches being used inappropriately, and about children being ‘supervised’ while showering in a way that they considered inappropriate and made them feel uncomfortable.

As we discuss in Chapter 3, in our consultations with children in youth detention centres across Australia, many children told us about staff using derogatory, racist and sexual language towards them and other children, and about the use of violence and excessive force on children. We were also told about this occurring in some community-based environments.<sup>119</sup>

Commissioned research discusses children being assigned derogatory names as a humiliating practice in past ‘total’ institutions.<sup>120</sup> Instances of children in immigration detention being referred to by their boat identification number, rather than name, have also been reported.<sup>121</sup> For instance, the Australian Human Rights Commission (AHRC) has mentioned in several reports their concerns about the practice of referring to people in detention by their identification number, rather than their name, and how some are distressed by the practice.<sup>122</sup> The AHRC has found this practice to be dehumanising, a view supported by Dr Sarah Mares, Child and Family Psychiatrist and Paediatrician Professor Elizabeth Elliott, who assisted the AHRC during visits to the Christmas Island detention centres.<sup>123</sup> Some of the children told AHRC staff during the visits that being referred to by a number made them feel like criminals. One unaccompanied 17-year-old detained on Christmas Island said, ‘I feel like a killer when they use my boat number’.<sup>124</sup>

Our commissioned research has found that negative attitudes can mean children with disability are treated as of lesser value in institutions.<sup>125</sup>

## Engendering a strong sense of group allegiance

Research highlights that children are less likely to disclose abuse, and less likely to be believed if they do disclose, in organisations that ‘engender a strong sense of group allegiance’. People in these organisations may also find it difficult to accept that one of their personnel has sexually abused a child.<sup>126</sup> Commissioned research explains that:



Staff and inmates in total institutions constitute separate cohesive informal groups, in which the imperative to support one's fellow group members is particularly strong. Staff members share the common interest to control inmates, who are perceived to represent a threat to their own, and to the institution's safety.<sup>127</sup>

Professor Neil Morgan, the Inspector of Custodial Services in Western Australia, who gave evidence in the *Nature, cause and impact of child sexual abuse* case study, said that:

[W]hat often goes through my head when I look at the cultures in prisons for adults and in youth detention centres is the sense of people feeling that they're struggling to do a tough job in a tough environment, and there's a danger that mateship and working together turns into this strange Australian tradition of 'you don't dob in your mates', and I think that is something that ought to be challenged. I think with it people should be encouraged to adhere to standards and sometimes that does mean, actually, that you have to give up the mateship for the time being.<sup>128</sup>

Where there is a strong sense of solidarity between the staff of an institution, this may also contribute to the members of the institution being defensive or disbelieving when allegations are made against one of the members of the group. This characteristic may be particularly prominent in more contentious detention environments where children may have very challenging behaviours. As commissioned research outlines:

individuals are especially likely to form groups when they perceive themselves to possess common interests in relation to non-group members, or 'outsiders' ... As informal groups form, they also develop norms about appropriate ways to think and act ... The fundamental norm is to support fellow group members, especially from attacks by non-group members.<sup>129</sup>

A 'local rationality' that excuses departures from stated policy in any individual context may also emerge.<sup>130</sup> As commissioned research describes, institutional culture is in part created by explicit strategies and the stated messages of senior figures, but it is also strongly influenced by the covert messages that run through an organisation and influence individual behaviour.<sup>131</sup> The degree to which workers trust senior staff to respond well to a report (and keep the identity of the reporter confidential) influences the number and nature of reports.<sup>132</sup> A related issue is that an organisation is at higher risk of having sexual abuse occur if people in or associated with it feel it would damage their career, or they would suffer other repercussions if they raised concerns.<sup>133</sup> On the other hand, an organisational culture of 'extended guardianship' – in which the responsibility for preventing abuse is understood as an ordinary responsibility of all adults – helps staff to be alert to suspicious behaviour and to share any concerns.<sup>134</sup>

## 2.4 Creating safer detention environments for children

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A key aspect of inquiring into what governments and institutions should do to better protect children against sexual abuse has been to examine what makes institutions 'child safe'. All institutions, including detention institutions and those involving detention and detention-like practices, have a responsibility to keep children safe. As discussed earlier, children in some detention environments may be more vulnerable to sexual abuse and require a higher level of protection, oversight and support.

We acknowledge that administrators of detention environments often need to balance competing priorities, for example, the need to maintain the security of a facility and ensure the physical safety of staff and other children and the need to promote the wellbeing and best interests of each child in their care. However, while these and other operational challenges can exist in detention environments, institutions can work to identify modifiable risk factors and implement preventive interventions. Institutions can also support children in their care to reduce their vulnerability to abuse, for example, through offering child sexual abuse prevention education and access to trusted adults.

In this Final Report, we have identified how all institutions can improve the safety of children, including by recommending a range of child safety initiatives, in Volume 6, *Making institutions child safe*, Volume 7, *Improving institutional responding and reporting* and Volume 8, *Recordkeeping and information sharing*. Recommendations specific to youth detention and immigration detention are discussed in Chapters 3 and 4.

### 2.4.1 Child Safe Standards

We identified 10 Child Safe Standards that articulate the essential elements of a child safe institution – standards that set out best practice and can guide institutions towards becoming child safe. The Child Safe Standards are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training

8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe.

See Appendix A for practical guidance on the 10 standards.

All of the Child Safe Standards are equally important and interrelated and work together to articulate what makes a child safe institution. They are a benchmark against which institutions can assess their child safe capacity and set performance targets. For example, the standard on institutional leadership, governance and culture is an important part of other standards such as children's participation and empowerment. Similarly, the standard on equity and diverse needs cuts across, and is a relevant consideration for, all standards.

## 2.4.2 Implementing the Child Safe Standards in contemporary detention environments

In Volume 6, *Making institutions child safe*, we recommend that all institutions engaged in child-related work be required to implement our Child Safe Standards and be guided by the core components of each standard. We consider that the institution-specific application of the Child Safe Standards will increase the safety of children in all detention settings. Implementing the standards will require agencies to identify the risks that are relevant to them and ensure they put in place effective strategies to mitigate those risks and meet the standards. We have outlined how the standards can apply in youth detention and immigration detention environments in Chapters 3 and 4. Appendix A provides practical guidance in relation to the implementation of the standards.

### **Recommendation 15.1**

All institutions engaged in child-related work, including detention institutions and those involving detention and detention-like practices, should implement the Child Safe Standards identified by the Royal Commission.

All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), all institutions should act with the best interests of the child as a primary consideration. This obligation is not negated because children are lawfully deprived of their liberty. We acknowledge that in detention institutions there may be circumstances in which the best interests of the child cannot be easily reconciled with maintaining security. However, we consider that our Child Safe Standards can be implemented in a secure environment.

The standards are principles-based and focused on outcomes. They do not attempt to create detailed and prescriptive rules that must be followed or specific initiatives that should be implemented. This flexibility means that they would be readily adaptable to new and emerging detention contexts and changes in existing detention environments, such as the expansion of community-based detention, as has occurred in Australia in immigration detention (see Chapter 4) and disability care. The flexibility would also allow detention institutions to implement the standards to suit the nature and characteristics of their particular environments, including existing frameworks and policies for managing security, ensuring safety and delivering best practice in therapeutic and disability care.

Several contemporary developments are consistent with the Child Safe Standards and, if implemented, are likely to improve the safety of children (as well as adults) in a range of detention and detention-like environments.

The NDIS Quality and Safeguarding Framework, when implemented, will apply across the disability sector, creating a range of national-level protections to safeguard the rights of children with ‘behaviours of concern’ and reporting requirements for the use of restrictive practices. As discussed above, protections will include that restrictive practices are used only as a last resort, are the least restrictive option available and are in proportion to the risk posed by the challenging behaviour. Given what our commissioned research found about the social isolation and exclusion of some children with disability<sup>135</sup> and children who rely extensively on others for day-to-day tasks,<sup>136</sup> as well as factors that increase the risk of sexual abuse,<sup>137</sup> the NDIS Quality and Safeguarding Framework will have a significant role to play, in concert with the application of the Child Safe Standards, in the protection of children in the disability care settings discussed in this chapter.

### 2.4.3 Independent external oversight of detention environments

Another relevant contemporary development, consistent with the implementation of the Child Safe Standards, is the Australian Government’s announcement that it intends to ratify OPCAT by December 2017.<sup>138</sup>

Compliance with the protocol is significant for all children in detention because it mandates the monitoring and oversight of all places of detention by two complementary, independent bodies, namely:

1. a national preventive body, known as the ‘National Preventive Mechanism’ (NPM)
2. the United Nations Subcommittee on Prevention of Torture, the UN body of independent experts responsible for conducting visits to places of detention in jurisdictions that have ratified the protocol and for guiding NPMs to fulfil their role.<sup>139</sup>

The Australian Government has indicated that a network of federal, state and territory bodies will be responsible for inspecting detention environments. This network will be coordinated by the Commonwealth Ombudsman, which will become the Australian NPM. Best practice internationally suggests that the NPMs should conduct regular and unannounced visits, but take a preventive and collaborative, rather than a complaints-driven, approach.<sup>140</sup> This would allow NPMs to identify and respond to detention issues dynamically and proactively. It would also mean that NPMs could work strategically, choosing which places of detention to prioritise and encouraging information sharing and sector-wide practice improvement,<sup>141</sup> with the goal of addressing problems before they escalate.<sup>142</sup>

While the Australian NPM will not be solely focused on preventing child sexual abuse, it could play an important role in protecting children from such abuse, as well as other forms of ill-treatment outlined in international law. As discussed in Chapters 3 and 4, for the NPM to be most effective in preventing child sexual abuse its work should be informed by the Child Safe Standards and understand the specific risks of child sexual abuse in closed environments.

#### **Recommendation 15.2**

Given the Australian Government's commitment to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the National Preventive Mechanism(s) should be provided with the expertise to consider and make recommendations relating to preventing and responding to child sexual abuse as part of regularly examining the treatment of persons deprived of their liberty in places of detention.

In Volume 6, *Making institutions child safe*, we recommend that state and territory independent oversight bodies promote, report on and exchange information about the Child Safe Standards. We also recommend that the Australian Government establish a National Office for Child Safety to coordinate the implementation of the standards across states and territories, including through national evaluation, consultation with children, collaboration on capacity building and awareness raising. The NPM could work with the national office to ensure detention inspections and monitoring standards are informed by the Child Safe Standards. Collaboration between the NPM, state and territory bodies and the National Office for Child Safety would be essential in implementing the standards in detention environments.

# Endnotes

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## 3 Youth detention

### 3.1 Overview

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This chapter focuses on institutional responses to child sexual abuse in youth detention during the contemporary period, since 1990. State and territory governments are responsible for almost every aspect of the lives and wellbeing of children in youth detention, and their duty of care to these children includes preventing and responding to allegations of sexual abuse appropriately. For example, Juvenile Justice NSW recognises that institutional environments can have a negative impact on children and that it has a responsibility to ensure that 'policies and practices are designed to minimise harm that may occur during a period in custody and that systems are in place to identify, report and address harm if it does occur'.<sup>1</sup>

This chapter focuses on those children who have been remanded in custody awaiting trial or sentencing, or who have been convicted of a criminal offence and sentenced to a period in a youth detention centre (also known in some jurisdictions as a juvenile justice centre or youth training centre). Children may also be detained in detention facilities in court complexes and police stations and vehicles, and occasionally in adult prisons under certain circumstances.<sup>2</sup> Children aged 16 years and over can be detained under a preventative detention order in relation to imminent or recent terrorist incidents.<sup>3</sup>

In 2015, during the *Youth detention centres, Victoria* public hearing the Secretary of the Victorian Department of Health and Human Services<sup>4</sup> told us that despite efforts throughout the contemporary period to make youth detention safer for children, sexual abuse still occurs in youth detention centres and this is an area requiring ongoing vigilance.<sup>5</sup>

During this Royal Commission there has been significant public and media attention on the treatment and safety of children in youth detention. In this time, the NT Royal Commission was established, led by Royal Commissioners, the Hon Margaret White AO and Mr Mick Gooda.<sup>6</sup> At the time of writing the NT Royal Commission was scheduled to publish its final report in November 2017.

As we discuss in this chapter, the youth detention environment necessarily prioritises the security of the community at large, of youth detention staff and of the children detained. Research and evidence suggests that there are strategies that can address the risk of child sexual abuse in youth detention without compromising security objectives. Many jurisdictions have taken steps to improve the safety and wellbeing of children in youth detention while maintaining security. Generally, these steps include implementing trauma-informed care approaches, improving staff training and increasing children's access to therapeutic treatment, education and vocational training programs.

This chapter details the results of our consideration of institutional responses to child sexual abuse in youth detention. It:

- provides an overview of Australia’s youth justice systems
- details the themes we observed regarding child sexual abuse in contemporary youth detention
- identifies key issues related to institutional responses to the abuse
- makes recommendations for ensuring the safety of children in youth detention.

### 3.1.1 Our approach

Our approach in considering institutional responses to child sexual abuse in contemporary youth detention was to focus on the responses of state and territory governments to the risk of such abuse since 1990.

We gained important insights into the risk of, and institutional responses to, child sexual abuse in contemporary youth detention contexts through:

- our consultations with children and young people, and staff working with children, in youth detention centres across Australia in 2016
- requests for information and notices to produce issued to state and territory governments regarding policies and procedures in each jurisdiction
- evidence given during the *Nature, cause and impact of child sexual abuse* case study and evidence concerning contemporary youth detention practices given during the *Parramatta Training School for Girls* and the *Youth detention centres, Victoria* case studies
- commissioned research on risk in closed and total institutions (see Chapter 2)
- private sessions with survivors of child sexual abuse, including incarcerated survivors who told us they were sexually abused in youth detention<sup>7</sup>
- written accounts from survivors who told us they were sexually abused in youth detention
- publicly available information, including the reports of the 1999 Commission of Inquiry into Child Abuse in Queensland Institutions (the Forde Inquiry) and the 2008 Children in State Care Commission of Inquiry in South Australia, as well as relevant reports by ombudsmen, children’s commissioners and guardians, and the New South Wales and Western Australian inspectors of custodial services.

In making recommendations to improve the safety of children in youth detention, we considered the current policies and procedures of state and territory government departments and what further steps need to be taken to address the risk of child sexual abuse and improve institutional responses.

### 3.1.2 Our work

There is a lack of data on child sexual abuse in youth detention in Australia. For example, there is no cross-jurisdictional collection and public reporting of incidents of child sexual abuse in youth detention. Therefore, we do not know the extent of the problem or the demographic features of survivors. However, during the *Youth detention centres, Victoria* case study we were told that from January 2005 to June 2015 there had been 121 incidents reported in Victorian youth detention settings that appeared to be instances of child sexual abuse.<sup>8</sup>

To understand the contemporary risk of child sexual abuse in youth detention, we have considered the views of children and young people in youth detention and the experiences of survivors who told us they were sexually abused in youth detention. We have also applied our understanding of risk from commissioned research to contemporary youth detention. From this information we identified a number of issues that may contribute to a risk of child sexual abuse in youth detention today. In doing so, we have not sought to make findings about the conduct of any particular individual or government department.

### 3.1.3 Historical context

We were also informed by what we heard about child sexual abuse in youth detention before 1990, insofar as the circumstances of abuse and the institutional responses remain relevant to contemporary youth detention settings.

In Volume 11, *Historical residential institutions* we describe what we learned from case studies, research, private sessions and written accounts about child sexual abuse in youth detention and similar residential environments pre-1990. These residential institutions included orphanages, reformatories, training homes, children's and family group homes, and missions. They share some characteristics of contemporary youth detention environments. Reformatories acted as an early form of youth detention.<sup>9</sup>



Most survivors from the pre-1990 period who told us they were abused in a historical residential institution said their childhoods were marked by trauma, brutality and violence. Experiences that we often heard about from these survivors included:

- strip searches conducted as a matter of everyday operations and that many found to be sexually abusive
- forced internal medical examinations of young girls<sup>10</sup>
- multiple forms of abuse, including physical and emotional abuse and neglect
- adult perpetrators and children with harmful sexual behaviours having opportunities to abuse children due to poor supervision, lack of oversight and children having limited access to trusted adults
- confusion about who children could report the abuse to or a sense that there was nobody to disclose abuse to
- uncaring and inadequate responses to disclosures of child sexual abuse that failed to protect children, dismissed or ignored the abuse or blamed and punished victims, and that allowed perpetrators to have continued access to children
- a lack of policies and procedures for handling complaints of child sexual abuse
- staff with no training on child protection, and a lack of basic processes and checks to ensure that prospective employees were suitable for child-related work.

We also learned about the risk of child sexual abuse in historical youth detention during the *Parramatta Training School for Girls* and *Youth detention centres, Victoria* case studies. In *Parramatta Training School for Girls* we heard from 16 survivors who told us about experiencing physical and sexual abuse at the Parramatta school and the Institution for Girls in Hay from 1950 to 1974.<sup>11</sup> In *Youth detention centres, Victoria* we heard from 13 survivors who described suffering serious sexual, physical and emotional abuse while they resided at the Turana Youth Training Centre, Winlaton Youth Training Centre, and the Baltara Reception Centre during the 1960s to the early 1990s.<sup>12</sup> Generally, the institutions examined in these case studies were established to accommodate children deemed to be neglected or ‘uncontrollable’, children in need of care and youth offenders.<sup>13</sup> A number of Aboriginal and Torres Strait Islander children were accommodated in these institutions due to the adverse impact of child protection legislation on their families.<sup>14</sup> All these institutions are now closed.

### 3.1.4 Developments in youth detention since the 1990s

Research highlights that the history of youth justice in Australia ‘has been one of constant review, amendment and reform to legislation, policy and practice’.<sup>15</sup> This is partly due to the tension between, and attempts to reconcile, the objectives of punishing young offenders and of acknowledging their age and status and providing for their needs.<sup>16</sup> This has had implications for the management and treatment of children in Australia’s youth justice systems.

During the contemporary period, there has been a general shift in most jurisdictions towards promoting the rehabilitation of children in youth detention by implementing strategies that aim to address the causes of their offending and prevent further offending. Such strategies are informed by an understanding that the children in youth detention are often vulnerable and may have histories of sexual, physical and emotional abuse or neglect. It has also corresponded with the implementation of trauma-informed approaches in youth detention centres in many jurisdictions (see Section 3.8.4).

In most jurisdictions, changes to the physical infrastructure of youth detention are likely to have reduced some of the environmental risks of child sexual abuse. Some of these changes acknowledge child safety and attempt to mitigate the risks of sexual and other abuse – for example, the construction of single cells that include a bathroom and the installation of CCTV surveillance cameras. New youth detention centres have been constructed in a number of jurisdictions during the contemporary period, including in New South Wales, Queensland and South Australia.

At the time of writing, the youth detention systems in many jurisdictions were in a state of transition. Some states and territories were developing plans for new youth detention centres, transferring youth justice responsibilities between government departments, reviewing policies and procedures, and implementing legislative changes. We were told by jurisdictions that they have policies aimed at creating safer environments for children in youth detention.

### 3.1.5 Contemporary youth detention

We have considered how the experiences of children and the administration of youth detention have changed over the historical and contemporary periods to help us understand the risks that may exist in youth detention today.

Children in youth detention may be vulnerable to sexual abuse because of the nature of the detention environment, which can expose them to a range of associated risks. Research we commissioned notes that considerable situational risk is present in all residential institutions and that youth detention centres ‘perhaps illustrate the highest level of risk’.<sup>17</sup>

Our work in relation to historical youth detention, particularly the *Youth detention centres, Victoria* case study, gave us insights into the systemic issues that can increase the risk, and hinder the disclosure or identification, of child sexual abuse in youth detention environments. It is likely that some of these systemic issues remain relevant.



We consider that areas requiring ongoing vigilance in youth detention institutions include:

- the safety of the physical environment, particularly in relation to placements of children, strip searching and contact with trusted adults
- institutional culture and staffing
- addressing the needs of vulnerable groups of children
- complaint handling and reporting processes in relation to child sexual abuse
- preventive monitoring and independent oversight.

## 3.2 Youth detention in Australia

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This section describes the institutional context of youth detention. It outlines what we learned about:

- the institutions and administration of youth detention centres and other detention institutions
- children in youth detention
- external oversight of youth detention.

### 3.2.1 Institutions and administration

Contemporary youth detention varies widely across Australia as each jurisdiction administers different legislation, regulations, policies and procedures. However, each institution shares a common purpose – to provide a secure environment for the detention and rehabilitation of children who have been convicted or accused of criminal offending – and this shapes their essential nature.

Australian governments have various responsibilities at the domestic and international level to keep children safe, including to prevent child sexual abuse in youth detention. Australia is a signatory to a number of international human rights treaties that confer obligations relevant to the treatment of children in youth detention.<sup>18</sup> Of particular relevance is the UNCRC.<sup>19</sup> The UNCRC stipulates that states parties shall take all appropriate measures to protect children from all violence, injury or abuse, neglect or negligent treatment and maltreatment or exploitation, including sexual abuse.<sup>20</sup>

A number of states and territories have incorporated key principles from the UNCRC, or elements of the principles, into the legislation governing their youth justice systems, including that:

- in all actions concerning children, the best interests of the child shall be a primary consideration<sup>21</sup>
- children should only be detained as a last resort and for the shortest appropriate time<sup>22</sup>
- children in detention should be treated in a manner that takes into account the needs of people their age.<sup>23</sup>

State and territory legislation and policies provide for the responsibilities of those who administer and work in youth detention. Legislation in some jurisdictions provides that the official responsible for the security and management of youth detention centres is also responsible for the safety and wellbeing of the children in youth detention.<sup>24</sup> Youth justice agencies also owe a duty of care to protect children from sexual and other forms of abuse.<sup>25</sup>

In 2009, the Australasian Juvenile Justice Administrators (AJJA), a body comprising senior executive officers responsible for delivering youth justice services in each state and territory and New Zealand, adopted the National Standards for Juvenile Custodial Facilities, which outline non-binding minimum standards for youth justice agencies. In 2014, AJJA adopted the Principles of Youth Justice in Australia, which build on the 2009 standards to guide the development, implementation and evaluation of youth justice services.<sup>26</sup>

## Youth detention centres

The physical environment of a youth detention centre can influence both a child's feeling of safety as well as their actual safety. There is a range of youth detention environments across Australia, with differences in the age and maintenance of centres and their design and layout.

Typically, youth detention centres are located on a large, secure area of land and comprise multiple buildings. Most contemporary centres include:

- cells with a bed and a toilet
- an isolation unit or observation rooms
- a medical unit for onsite visits from health practitioners and limited onsite treatment
- admissions areas for securely transporting children to and from the centre
- a communal kitchen and dining space
- education and training facilities, for example, classrooms, art rooms and, in some centres, spaces for teaching vocational and life skills such as cooking, carpentry or mechanics

- visiting facilities for family and community interactions with young people and for legal and other interviews
- indoor and outdoor common areas for exercise and recreation
- CCTV monitoring
- secure staff areas.

At the time of writing, there were 16 youth detention centres in Australia: six in New South Wales; two each in Victoria, Queensland and the Northern Territory; and one each in South Australia, Western Australia, Tasmania and the Australian Capital Territory. Most of these centres house both male and female children. Of the six centres in New South Wales, female children are only detained in Reiby Juvenile Justice Centre,<sup>27</sup> as well as boys under the age of 16.<sup>28</sup> Malmsbury Youth Justice Precinct in Victoria only accommodates boys and young men.<sup>29</sup>

In all Australian jurisdictions, the minimum age of criminal responsibility is 10 years.<sup>30</sup> This means that children under 10 cannot be charged or prosecuted for acts that would – with the required mental element – constitute crimes. Upon the making of regulations under section 6 of the *Youth Justice Act 1992* (Qld) to include 17-year-olds in Queensland’s youth justice system, the criminal proceedings legislation in every jurisdiction will define a child or youth as a person under the age of 18 years.<sup>31</sup> Most youth detention centres accommodate children aged between 10 and 17. Some centres house young people up to the age of 21.<sup>32</sup> Of the 914 children and young people in youth detention on an average day in 2015–16, 125 (13.7 per cent) were aged 18 years and over.<sup>33</sup>

Table 15.3 lists the youth detention centres in each Australian jurisdiction, the responsible government agency and the governing legislation.

**Table 15.3 – Youth detention centres by jurisdiction, with responsible government agency and legislation**

Jurisdiction	Youth detention centres	Government agency	Legislation
New South Wales	<ol style="list-style-type: none"> <li>1. Acmena Juvenile Justice Centre</li> <li>2. Cobham Juvenile Justice Centre</li> <li>3. Frank Baxter Juvenile Justice Centre</li> <li>4. Orana Juvenile Justice Centre</li> <li>5. Reiby Juvenile Justice Centre</li> <li>6. Riverina Juvenile Justice Centre</li> </ol>	Juvenile Justice, Department of Justice	<p><i>Children (Detention Centres) Act 1987</i> (NSW)</p> <p>Children (Detention Centres) Regulations 2015 (NSW)</p>
Victoria <sup>34</sup>	<ol style="list-style-type: none"> <li>7. Malmesbury Youth Justice Centre</li> <li>8. Parkville Youth Justice Precinct – Melbourne Youth Justice Centre and Parkville Youth Residential Centre</li> </ol>	Youth Justice Service, Department of Justice and Regulation since 3 April 2017 (previously the Department of Health and Human Services, Vic) <sup>35</sup>	<p><i>Children, Youth and Families Act 2005</i> (Vic)</p> <p>Children, Youth and Families Regulations 2017 (Vic)</p>
Queensland	<ol style="list-style-type: none"> <li>9. Brisbane Youth Detention Centre</li> <li>10. Cleveland Youth Detention Centre</li> </ol>	Youth Justice, Department of Justice and Attorney-General	<p><i>Youth Justice Act 1992</i> (Qld)</p> <p>Youth Justice Regulation 2016 (Qld)</p>
South Australia	<ol style="list-style-type: none"> <li>11. Adelaide Youth Training Centre</li> </ol>	Youth Justice, Department for Communities and Social Inclusion	<p><i>Youth Justice Administration Act 2016</i> (SA)</p> <p>Youth Justice Administration Regulations 2016 (SA)</p>
Western Australia	<ol style="list-style-type: none"> <li>12. Banksia Hill Detention Centre</li> </ol>	Youth Justice Services, Department of Corrective Services	<p><i>Young Offenders Act 1994</i> (WA)</p> <p>Young Offenders Regulation 1995 (WA)</p>
Tasmania	<ol style="list-style-type: none"> <li>13. Ashley Youth Detention Centre</li> </ol>	Youth Justice Services, Department of Health and Human Services	<p><i>Youth Justice Act 1997</i> (Tas)</p> <p>Youth Justice Regulations 2009 (Tas)</p>
Australian Capital Territory	<ol style="list-style-type: none"> <li>14. Bimberi Youth Justice Centre</li> </ol>	Community Services Directorate	<i>Children and Young People Act 2008</i> (ACT)
Northern Territory <sup>36</sup>	<ol style="list-style-type: none"> <li>15. Alice Springs Youth Detention Centre</li> <li>16. Don Dale Youth Detention Centre</li> </ol>	Youth Justice division, Territory Families <sup>37</sup> since 12 September 2016 (previously the Department of Correctional Services) <sup>38</sup>	<p><i>Youth Justice Act</i> (NT)</p> <p>Youth Justice Regulations (NT)</p>

## Other detention institutions

Children may also be detained for short periods in police custody facilities, such as police stations and lockups, court custody facilities or in secure transport vehicles when travelling between other facilities.<sup>39</sup> Police and court detention facilities may also be used to detain adults, including those attached to children's courts that may deal with matters concerning adult defendants accused of committing criminal offences as children.<sup>40</sup> In some states and territories, transport services and court custody facilities are managed by private contractors.<sup>41</sup>

Most jurisdictions make provision in legislation for children over a specified age to be detained in an adult prison in certain circumstances,<sup>42</sup> including because a child's behaviour has threatened the security or safe operation of the youth detention centre.<sup>43</sup>

The detention of children in adult prisons is now rare. However, arrangements in some states and territories have until recently resulted in children being detained in separate units in adult prisons. As noted, in Queensland, legislation commencing in November 2017 will end the practice of treating children aged 17 as adults in the criminal justice system.<sup>44</sup> Previously, 17-year-olds in custody in Queensland were detained in adult prisons.<sup>45</sup> In 2016, the Grevillea unit in Victoria's Barwon Prison, an adult prison, was gazetted as a youth detention centre.<sup>46</sup> At the time of writing, Queensland was transitioning 17-year-olds into the youth detention system<sup>47</sup> and, in Victoria, children had been removed from the Grevillea unit and placed in youth detention centres.<sup>48</sup>

### 3.2.2 Children in youth detention

Children who are sentenced to a period in youth detention tend to be those who have histories of previous offending or who have committed serious offences.<sup>49</sup>

According to the Australian Institute of Health and Welfare (AIHW), on an average day in 2015–16, there were 5,482 children and young people under youth justice supervision, either in the community or in youth detention.<sup>50</sup> Of these, 914 children and young people (17 per cent) were in youth detention.<sup>51</sup> Nearly two-thirds (64 per cent) of the children aged 10 to 17 in youth detention were unsentenced and waiting for the outcome of their legal matter or to be sentenced.<sup>52</sup> About two-fifths of young people (44 per cent) under youth justice supervision during 2015–16 were in detention at some point during the year.<sup>53</sup> Across Australia, 7,842 young people were received into detention in 2015–16.<sup>54</sup>

Over the five year period, from 2011–12 to 2015–16, there has been a steady decrease in the number and rate of children aged 10 to 17 years under youth justice supervision and in youth detention.<sup>55</sup> During this period, the number of children in youth detention on an average night decreased by 11 per cent, although the number increased by 4 per cent in the most recent year.<sup>56</sup> The decrease in the number and rate of children in youth detention may reflect the implementation of diversion schemes in all states and territories during the contemporary period or that there are fewer young people overall being remanded and sentenced.<sup>57</sup> Despite this general downward trend, the youth detention population at times has increased sharply in response to criminal justice law and policy changes, resulting in significant additional children being detained.

Children in youth detention are predominantly male and aged between 15 and 17. On an average day in 2015–16, of the 914 children in youth detention, 830 (91 per cent) were male and 85 (9 per cent) were female.<sup>58</sup> Most of these children were aged 15 (176 or 19 per cent), 16 (229 or 25 per cent) or 17 years (219 or 24 per cent).<sup>59</sup>

Some of the cohorts of children in youth detention are described below. Generally there is a lack of data about the characteristics of children in youth detention. Some jurisdictions conduct health surveys of children in detention that provide some indication of their needs and experiences.<sup>60</sup>

It is important to note that many of these children have multiple and complex needs. For example, a recent review of the Victorian youth justice system highlighted that:

many young people in youth justice (both in the community and in custodial centres) have complex needs, and data suggests their needs are becoming more complex over time. Many young offenders exhibit one or more of the following complicating characteristics:

- socioeconomic disadvantage
- intergenerational trauma and grief
- childhood abuse
- exposure to criminal activity committed by parents or siblings
- disrupted education
- high levels of disability, cognitive impairment, language and communication delays
- high levels of mental health concern, drug and alcohol disorders and fetal alcohol syndrome disorder
- high levels of family conflict, unstable accommodation and homelessness.<sup>61</sup>

## Children in the child protection system

Many children in youth detention have experienced abuse and neglect and have been involved in the child protection system. According to AIHW, over one-third (40.8 per cent) of the 1,909 young people in detention in 2014–15 were also in the child protection system at some time in the same year.<sup>62</sup> The most common types of child protection service for these children were care and protection orders (26.5 per cent), investigated notifications (19.9 per cent) and out-of-home care (16.8 per cent).<sup>63</sup> Children aged 10 to 17 who were in out-of-home care during 2014–15 were 16 times as likely as the equivalent general population to be under youth justice supervision.<sup>64</sup>

## Aboriginal and Torres Strait Islander children

Research shows that historical factors, systemic racism, policing practices and a range of socioeconomic factors mean that Aboriginal and Torres Strait Islander children are significantly over-represented in youth detention.<sup>65</sup> Aboriginal and Torres Strait Islander children comprise less than 6 per cent of children aged 10 to 17 years in Australia.<sup>66</sup> However, on an average day in 2015–16, 59 per cent of children in youth detention were Aboriginal and Torres Strait Islander children.<sup>67</sup> In the four years from June 2012 to June 2016, Aboriginal and Torres Strait Islander children aged 10 to 17 years were the largest group in youth detention.<sup>68</sup>

Aboriginal and Torres Strait Islander children are also significantly over-represented in the child protection system. In 2015–16, Aboriginal and Torres Strait Islander children were seven times more likely than non-Indigenous children to have received child protection services.<sup>69</sup> At 30 June 2016, the rate of Aboriginal and Torres Strait Islander children in out-of-home care was 10 times the rate of non-Indigenous children.<sup>70</sup>

Research also suggests that Aboriginal and Torres Strait Islander children have a higher rate of disability compared to other children in youth detention<sup>71</sup> and that Aboriginal and Torres Strait Islander children with disability are more likely to be in youth detention compared to their non-Indigenous counterparts.<sup>72</sup>

## Children with disability

Research from some Australian jurisdictions indicates that children with disability, particularly cognitive disability, are significantly over-represented in youth detention.<sup>73</sup> Various studies have shown that young people in contact with youth justice systems have higher levels of cognitive impairments including fetal alcohol spectrum disorder,<sup>74</sup> intellectual disability, speech and language impairments, brain injury, attention deficit hyperactivity disorder, and autism spectrum disorders.<sup>75</sup>

A 2015 survey of 227 children and young people in youth detention in New South Wales found that many had an IQ in the intellectual disability or borderline range (18.1 per cent and 39.2 per cent respectively).<sup>76</sup> A snapshot survey of 176 children (167 males and nine females) detained on sentence and remand in Victorian youth detention centres found that 11 per cent were registered with Disability Services and 24 per cent presented with issues concerning their intellectual functioning.<sup>77</sup> In Queensland, a 2016 review of disability practice and service improvement considered 36 children in youth detention centres with identified existing disabilities, of whom 42 per cent had an intellectual disability.<sup>78</sup>

The 2015 New South Wales survey also found that 51.4 per cent of children and young people in youth detention had severe difficulties in core language skills, and 78.9 per cent had severe difficulties in reading comprehension.<sup>79</sup> The survey also noted that more than half (56 per cent) of children and young people in detention had mild to moderate hearing loss, predominantly in both ears, and that one-quarter (25 per cent) have had a head injury resulting in unconsciousness.<sup>80</sup> Of the 36 children considered during the Queensland review, 22 per cent had a hearing impairment and over half had varying levels of language deficiencies.<sup>81</sup>

## Children with mental health or substance use problems

Research suggests that significant numbers of children in youth detention have mental health and/or substance use problems.<sup>82</sup> Of the 227 children surveyed in the 2015 Young People in Custody Health Survey, 83.4 per cent were found to have a psychological disorder, 77.7 per cent were found to have a behavioural disorder and 64.5 per cent were found to have a substance disorder.<sup>83</sup> The Victorian snapshot survey of 176 children in youth detention showed that 30 per cent presented with mental health issues and 18 per cent had a history of self-harm or suicidal ideation.<sup>84</sup> In relation to substance use, 66 per cent had a history of both drug and alcohol misuse and 58 per cent had offended while under the influence of both alcohol and drugs.<sup>85</sup> The Queensland 2016 Youth Justice Census found that 79.3 per cent of children and young people under youth justice supervision were known to be using at least one substance.<sup>86</sup>

## Children from culturally and linguistically diverse backgrounds

Available data in New South Wales and Victoria suggests that, on the whole, children from identified migrant and refugee backgrounds are under-represented in youth detention.<sup>87</sup> However, particular groups of culturally and linguistically diverse children have been found to be over-represented, including Indo-Chinese, Lebanese, New Zealander (including Maori), Pacific Islander, South Sudanese, Turkish and Vietnamese children.<sup>88</sup> Research suggests that experiences of social and economic exclusion, intergenerational trauma or acculturative stress among culturally and linguistically diverse children can explain why some groups enter youth detention at higher rates.<sup>89</sup>



### 3.2.3 External oversight of youth detention

Each state and territory takes a different approach to monitoring youth detention, often involving multiple inspection bodies and both internal and external complaint handling systems. External systems vary in their level of independence from government, funding, mandate and powers. Some jurisdictions have well-established monitoring and complaint handling systems, whereas other jurisdictions are in the process of reviewing existing systems or establishing new systems.

#### Inspectors of custodial services

Inspectors of custodial services were established in Western Australia in 2000<sup>90</sup> and New South Wales in 2013 to provide independent oversight of specified detention facilities, including youth detention centres.<sup>91</sup> Both inspectors report directly to their state parliament.<sup>92</sup> They are required to visit youth detention centres at least once every three years and have the power to inspect a centre at any time.<sup>93</sup> Both also have powers to access documents and to speak to youth detention centre staff and detained children.<sup>94</sup>

The Inspector of Custodial Services in Western Australia conducts regular monitoring visits to all detention facilities in its jurisdiction as part of a 'continuous inspection' model. These visits can be announced or unannounced. The WA inspector visits Banksia Hill Detention Centre at least six times a year.<sup>95</sup>

In practice, the Inspector of Custodial Services in New South Wales employs a theme-based model of inspection that examines particular issues across multiple centres and consults with relevant agencies and stakeholders when determining inspection themes.<sup>96</sup> The NSW inspector undertakes liaison visits to inform this inspection work, as well as to assist in monitoring recommendation implementation and facilitate information sharing.<sup>97</sup>

In March 2016, South Australia established the Training Centre Visitor to conduct visits to and inspections of the Adelaide Youth Training Centre.<sup>98</sup> The South Australian Guardian for Children and Young People has since been appointed as the Training Centre Visitor.<sup>99</sup> In August 2016, the Tasmanian Parliament passed legislation providing for the establishment of a Tasmanian Custodial Inspector to inspect adult prisons and the Ashley Youth Detention Centre at least once every three years. The Custodial Inspector will be attached to the office of the Ombudsman, Tasmania.<sup>100</sup>

Currently no inspectors operate in Victoria, Queensland, the Australian Capital Territory and the Northern Territory. In April 2017, the Queensland Government announced that it would establish an independent inspectorate, in accordance with a recommendation made by the *Independent review of youth detention*.<sup>101</sup>

## Visitor schemes

Visitor schemes exist in New South Wales, Victoria, Queensland, Western Australia, the Australian Capital Territory and the Northern Territory. Each scheme varies in its scope, powers, operation and independence. They generally provide a coordinated program of regular visits to youth detention centres and a mechanism to resolve concerns that children raise during visits. Each scheme is established by legislation, with the exception of the Victorian Independent Visitor Program, which has no legislative basis.<sup>102</sup>

The New South Wales Official Visitor scheme and the Western Australian Independent Visitor Service are administered by the NSW and WA inspectors.<sup>103</sup> The Victorian Independent Visitor Program is coordinated by the Commission for Children and Young People and the Queensland Community Visitor program is administered by the Office of the Public Guardian.<sup>104</sup> The Australian Capital Territory Official Visitor scheme is administered by the Official Visitors Board, chaired by the Public Trustee and Guardian.<sup>105</sup> The Northern Territory Official Visitor scheme is administered by the Department of Correctional Services.<sup>106</sup>

The timing and frequency of visits to youth detention centres vary across visitor schemes. Official visitors in the Northern Territory have a legislated obligation to visit their allocated detention centres at least once a month.<sup>107</sup> In practice, visits take place weekly in Queensland,<sup>108</sup> once a fortnight in New South Wales,<sup>109</sup> monthly in both Victoria<sup>110</sup> and the Australian Capital Territory<sup>111</sup> and at least once every three months in Western Australia.<sup>112</sup>

## Children's commissioners and guardians

Children's commissioners and guardians in each state and territory have a range of functions related to the promotion and protection of the rights and interests of the children in their jurisdiction, such as advocating for the rights of children. They also examine legislation, policy and practices that affect the welfare of children.<sup>113</sup> Children in youth detention are considered to be a vulnerable group of children requiring particular attention in the exercise of a commissioner's or a guardian's functions.<sup>114</sup>

In some jurisdictions, children's commissioners and guardians have specific roles in relation to children in youth detention. As mentioned above, some are responsible for administering visitor schemes. In South Australia, the Guardian for Children and Young People is also the Training Centre Visitor. Further, the Tasmanian Commissioner for Children and Young People is required to advocate for children in youth detention, including seeking information about those children, facilitating their access to support services, and assessing their emotional and physical wellbeing.<sup>115</sup>

## Ombudsman offices

Ombudsman offices in each state and territory have the power to receive and investigate complaints against public authorities, including those responsible for administering youth detention centres.<sup>116</sup> They can also undertake investigations on the ombudsman's own initiative.<sup>117</sup> Where a person detained in custody wants to make a complaint to the relevant ombudsman, the relevant public authority is obliged to facilitate the making of the complaint.<sup>118</sup> Children in youth detention centres have confidential access to the ombudsman office in their state and territory.<sup>119</sup>

### 3.3 The experiences of the survivors we heard from in private sessions

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This section describes what we heard in private sessions from survivors who told us that they were sexually abused as children in contemporary youth detention.

The survivors who attended private sessions chose to do so; we do not know anything about the experiences of survivors who did not come forward. Further, because the information that the survivors provided at private sessions varied, we cannot draw any definitive conclusions from their experiences about all children in contemporary youth detention.

#### 3.3.1 Who we heard from in private sessions

As at 31 May 2017, Commissioners had heard from or about a total of 6,875 survivors of child sexual abuse in private sessions. Of those survivors, 515 told us they were sexually abused in youth detention, 91 of whom told us about sexual abuse that occurred after 1990. The timeframe was unknown for a further 65 survivors who told us about being sexually abused in youth detention.

In private sessions we were told about sexual abuse that occurred across the 27 years of the contemporary period – particularly during the 1990s and early 2000s, but also as recently as 2014. We also heard about clusters of sexual abuse that occurred in particular youth detention centres, involving multiple victims and similar forms of abuse or the same alleged perpetrator. At the time of writing, some of these allegations were the subject of ongoing criminal investigations or proceedings.

We note that, due to the nature of private sessions and the numbers of survivors we heard from, we cannot draw any statistical conclusions from the private session information in this chapter.

Of the 91 survivors we heard from in private sessions who told us they were sexually abused in contemporary youth detention:

- 86 were male and five were female
- 39 identified as Aboriginal and Torres Strait Islander people<sup>120</sup>
- eight said that they had a disability at the time of the abuse
- 47 said they were aged between 10 and 14, and 38 said they were aged between 15 and 17 at the first incident of abuse in contemporary youth detention, with an average age of 14 years at the first incident of abuse described in that institution.

The survivors who participated in private sessions also told us about being sexually abused by adult perpetrators and/or children with harmful sexual behaviours in contemporary youth detention. Of the 91 survivors we heard from in private sessions who told us they were sexually abused in contemporary youth detention:

- 71 told us they were abused by an adult perpetrator. Of these, 65 (91.5 per cent) told us they were abused by a male perpetrator and eight (11.3 per cent) told us they were abused by a female perpetrator. Some survivors said they were abused by both adult male and adult female perpetrators
- 60 told us they were abused by 'custodial staff'
- 16 told us they were abused by a child with harmful sexual behaviours.

### 3.3.2 Themes arising from private sessions

We observed a number of common themes across the survivor accounts of sexual abuse in contemporary youth detention, including:

- sexual abuse occurring in connection or association with physical abuse and sexual exploitation
- a slightly higher proportion of adult female perpetrators than in other institutional contexts
- the vulnerability of younger children detained with older children, and children detained in adult prisons, to sexual abuse
- sexual abuse occurring during operational procedures, such as strip searching, staff supervising children during showering and staff escorting children to use communal bathrooms (the last of which was more common in the early 1990s).

We heard about a wide range of sexually abusive behaviours in contemporary youth detention. These abusive behaviours, including non-penetrative contact abuse and penetrative abuse, are not different from those that we heard about in other institutional contexts. We also heard from survivors who described experiences consistent with sexual exploitation. Child sexual exploitation occurs when a child is manipulated or coerced to participate in a sexual activity in exchange for, or on the promise of, an incentive, such as food, drugs, alcohol, cigarettes, affection or safety. For example, 'Clint Jordan' told us that a staff member provided him with cigarettes. 'Clint Jordan' said that the staff member began to touch him inappropriately and told him that he would not continue to give him cigarettes unless he 'touched him and stuff'.<sup>121</sup>

Many of the 91 survivors we heard from in private sessions told us about experiencing co-occurring forms of abuse and neglect, particularly physical and psychological abuse. For example, 'Colby Ian' told us he was brutally physically and sexually abused while in detention. 'Colby Ian' said that he had counted at least 20 occasions when he was assaulted while in handcuffs and once spent three months in segregation with four other boys, without a towel or bed linen or clean clothing. 'Colby Ian' said that, while in segregation, on three occasions one particular guard stripped him naked, digitally penetrated him and rammed his head into the wall.<sup>122</sup>

The proportion of adult female perpetrators in contemporary youth detention who we heard about in private sessions was slightly higher than in other institutional contexts. Of the 71 survivors who told us about abuse by an adult perpetrator in contemporary youth detention, eight (11.3 per cent) survivors said they were abused by an adult female perpetrator. By comparison, 9.4 per cent of survivors in historical youth detention and 7.3 per cent of survivors across all private sessions told us about abuse by an adult female perpetrator.

A number of survivors told us about perpetrators taking advantage of operational procedures to abuse them during strip searches or while supervising children in communal bathrooms. Survivors told us they felt uncomfortable while being supervised by some guards when showering because of the way the guards would look at them or because they made inappropriate comments. 'Alan Sam' told us about being sexually abused by a staff member who supervised him while he washed off a cream that was applied to treat his severe scabies.<sup>123</sup> 'Cindy-Lee' described being abused by guards who escorted her to the bathroom:

You had to knock at night to get out of your room, to go to the toilet. And sometimes you wouldn't want to do that because you'd know who was on. And you'd go into the toilet and you'd go to shut the door, and they would come in, usually males, they'd sit down and play with themselves in front of you, or want to try and touch you.<sup>124</sup>

Strip searches and the vulnerability of children detained with older children or in adult prisons are discussed in more detail in Section 3.4.2, as these are current issues of concern.

For information about the nature of child sexual abuse in all institutional contexts, see Volume 2, *Nature and cause*.

### 3.4 Understanding the risk of child sexual abuse in youth detention

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As discussed in Volume 2, *Nature and cause*, child sexual abuse is not the result of a single factor but the complex interaction between diverse factors related to the institution itself, adult perpetrators, children with harmful sexual behaviours, and potential victims. When a potential perpetrator is present in a youth detention centre and the centre enables opportunities for abuse to occur, all children will be vulnerable. Some children in youth detention may be more or less vulnerable depending on their exposure to certain risk or protective factors – for instance, their experience of sexual abuse before being detained.<sup>125</sup>

This section focuses on the particular risk factors in youth detention that we learned about from commissioned research and the themes we observed across private sessions. The risk factors in youth detention that we heard about are dynamic, rather than static. They have altered over time, influenced by changes in the administration of youth detention, social and cultural attitudes towards children, the regulatory and legal framework, and the leadership and staff of individual youth detention centres.

Some of the risks in youth detention institutions that existed before 1990 arise in current institutions, despite changes in legislation, external oversight and the physical environment intended to increase children's safety. Some risks are likely common to all centres, while others may be specific to individual centres or only apply to a particular setting in a centre. The safety of children in youth detention varies across centres and depends on factors including the:

- legislation, policies and practices in each state and territory and the systems that ensure their effective implementation
- management and culture of each institution
- design and maintenance of the physical environment
- combination, complexity and number of children in the youth detention institution
- experience, training and attitudes of the adult staff responsible for the care and supervision of children.

Understanding the risk factors unique to these settings helps us to better understand how child sexual abuse can occur in youth detention, as well as how best to prevent it and respond when it does occur.

### 3.4.1 Factors that may influence a person to sexually abuse a child in youth detention

#### Adult perpetrators

While institutional risk and other factors can facilitate child sexual abuse, responsibility for abuse will always rest with the adult perpetrator. All children are vulnerable to abuse whenever a potential perpetrator is present in a youth detention facility. The longer a child is held in youth detention, the more potential opportunities a perpetrator will have to sexually abuse a child.

A number of roles in youth detention may allow adults to come into contact with children, including:

- youth detention officers and other custodial staff
- doctors, nurses, psychologists and other health professionals
- case managers
- community, recreation and educational service providers
- chaplains and other religious personnel
- legal representatives
- people undertaking external inspection and complaint handling functions.

Current practices in most jurisdictions today limit the ability of adult staff to have unsupervised access to children, including through CCTV cameras, policies and electronic monitoring systems. Nevertheless, there are gaps in oversight and perpetrators may be able to create opportunities to sexually abuse children by taking advantage of weaknesses in existing systems.

As discussed in Volume 2, *Nature and cause*, there is no typical profile of an adult who sexually abuses a child, despite commonly held misconceptions and persistent stereotypes. While there are no known characteristics that are unique or directly attributable to perpetrators of abuse in youth detention environments, some motivations may be more present among adult perpetrators in this setting.

All youth detention centres are closed, secure environments under the control of adults who exercise a high degree of power and authority over detained children. This power dynamic can also allow perpetrators to exploit opportunities to sexually abuse children, prevent abuse from being identified and inhibit disclosure, both at the time of the abuse and in the following years.<sup>126</sup> Some research suggests that a need for power and control may be a common characteristic among perpetrators of child sexual abuse.<sup>127</sup> Research also suggests that children's obedience to people in authority, particularly in institutions, may reinforce compliance with directed actions, facilitating abuse.<sup>128</sup>

There is relatively little research on female perpetrators of child sexual abuse in institutional contexts. Some of the limited available research suggests that adult male and female perpetrators are equally likely to exploit their power and authority to facilitate abuse and to commit similar sexual acts against their victims.<sup>129</sup>

## Children with harmful sexual behaviours

Some children in youth detention will have been convicted of a sexual offence or their risk of displaying further harmful sexual behaviours has been identified in other institutional contexts, such as out-of-home care. Other children in youth detention may have displayed harmful sexual behaviours that have not been identified.

As discussed in Volume 2, *Nature and cause*, there are complex social and environmental factors that may influence a child with harmful sexual behaviours, including adverse experiences in childhood, such as prior sexual or physical abuse and exposure to family violence; interpersonal difficulties; exposure to pornography; and exposure to violence in an institutional context.<sup>130</sup> Experiences of neglect, physical and sexual abuse, and exposure to family violence are not unique to children with harmful sexual behaviours. However, given the high numbers of children in youth detention who have experienced trauma (see Section 3.4.3), these factors may be of particular relevance to children with harmful sexual behaviours in youth detention.

The risk of children sexually abusing other children may be high in youth detention because children who have harmful sexual behaviours or have engaged in criminal or antisocial behaviour are disproportionately clustered in youth detention institutions,<sup>131</sup> and placement decisions involving highly complex children with serious backgrounds of offending are challenging for administrators. Many children with harmful sexual behaviours may also model their behaviour on how they see adults or older children behave in institutions.<sup>132</sup>

Research also suggests that many children with harmful sexual behaviours act impulsively rather than in a premeditated manner.<sup>133</sup> They may also be motivated by exerting power over or perpetrating violence towards other children.

For more detail, see Volume 10, *Children with harmful sexual behaviours*.

### 3.4.2 Institutional factors that may enable opportunities for child sexual abuse in youth detention

While there is no simple explanation for why child sexual abuse occurs in some institutions, we have identified a number of ways in which institutions may enable opportunities for abuse. Youth detention, like all residential institutions, presents an elevated situational risk of child sexual abuse perpetrated by either an adult or a child.<sup>134</sup>



Youth detention environments operate as total institutions. Commissioned research highlights that in total institutions ‘members are sharply delineated into staff members and “inmates”. Staff members comprehensively control most facets of inmates’ lives, which are largely restricted to a demarcated physical space’.<sup>135</sup> In youth detention, custodial staff are responsible for the day-to-day care and supervision of detained children. Unlike children in other institutional contexts, children in youth detention are entirely deprived of their liberty as a consequence of their actual or alleged criminal offending. This means that staff have a significant amount of power and control over most aspects of the lives of those children, including when they eat, when they leave their room and what they wear.

The institutional risks identified in Volume 2, *Nature and cause* and outlined in the research literature that may be particularly relevant in youth detention include:

- placements of children – in adult prisons, with other children with harmful sexual behaviours, with older children, or of girls in predominantly male environments
- the institutional culture
- the level of access children have to trusted adults
- positions, procedures and physical environments that provide opportunities for abuse.

## Placements of children

Youth detention centres can face significant difficulties in managing safe placements of children and young people. They aim to separate children on the basis of their gender, age and legal status. Female detainees will be separated from male detainees; ideally, younger children will not be accommodated with older children; and children on remand will not be detained with sentenced children. Centres may also need to separate co-offenders and children in conflict who may become violent, as well as manage children with harmful sexual behaviours and different security classifications.<sup>136</sup>

Appropriately placing these different populations in a youth detention centre can be very challenging, particularly where there are limited accommodation options – for example, if there is only one youth detention centre or an increase in the numbers of detained children.<sup>137</sup> A number of recent reports have highlighted that the inability to appropriately place separate certain cohorts of detained children can compromise the security of youth detention centres and the safety of both children and staff.<sup>138</sup>

In some circumstances, children may also be placed in the same cell. Shared cells were more common in the pre-1990 period. However, room sharing may be permitted to manage overcrowding or provide peer support, particularly for Aboriginal and Torres Strait Islander children, following a risk assessment.<sup>139</sup> The 1991 Royal Commission into Aboriginal Deaths in Custody recommended that jurisdictions support shared accommodation options to provide a more humane custodial environment, subject to security requirements.<sup>140</sup> A recent review of the Victorian youth justice system highlighted that sharing a room with someone they trust can improve a young offender's sense of wellbeing and security in youth detention.<sup>141</sup> Generally, the factors considered as part of the risk assessment process for children to share a room include offences, previous incidents, age, gender and misbehaviour.<sup>142</sup>

In private sessions, we heard from survivors who described being placed in situations that demonstrated possible deficiencies in the risk assessment and management processes relating to the placement and supervision of children. Below, we consider some of the placement decisions that may increase the risk of child sexual abuse in youth detention.

### **Older children with younger children**

As discussed in Section 3.2.1, children in youth detention can be as young as 10 years. Most children in youth detention are aged from 15 to 17, and this has been consistent throughout the contemporary period.<sup>143</sup> Although youth detention centres generally try to separate younger children from older children, there are circumstances in which this may not be possible. Where older and younger children come into contact, younger children may be targeted by older children with harmful sexual behaviours.

In our consultations, children and staff in youth detention told us they had safety concerns in relation to shared cells and children of different ages being accommodated in the same detention centre.<sup>144</sup> One staff member highlighted the difficulties of managing children who have been convicted of sex offences in centres where there are limited accommodation options.<sup>145</sup>

In our *Youth detention centres, Victoria* case study, we found that the placement of older children with younger children increased the risk of children sexually abusing other children in Turana, Winlaton and Baltara during the 1960s to the early 1990s.<sup>146</sup> Further, we found that overcrowding was a serious problem in these institutions, which hindered the provision of adequate supervision and that the placement of children was often based on the availability of beds, rather than compatibility, suitability and safety.<sup>147</sup>

The 1999 Forde Inquiry also reported youth detention staff raising concerns about possible sexual assaults by 'older, bigger residents on the younger, more vulnerable ones' and that opportunities for sexual abuse existed, particularly where children were sharing cells.<sup>148</sup> Some people told that inquiry about sexual abuse that occurred in the context of older boys intimidating and 'standing over' younger boys.<sup>149</sup>

We heard from survivors in private sessions who described being sexually abused by ‘older boys’ in contemporary youth detention. ‘Jeffrey’ told us he was raped by older boys in a recreation room and threatened with serious harm if he told anyone.<sup>150</sup> ‘Tony Blake’ told us he was raped by his older cellmate.<sup>151</sup> ‘Dermott’ described older boys sexually abusing younger boys, including him, in the showers.<sup>152</sup>

### **Girls in predominantly male detention environments**

Girls are a much smaller cohort than boys in youth detention, as noted in Section 3.2.2. This has been consistent throughout the contemporary period.<sup>153</sup> However, the small numbers do not tell us much about the risk of sexual abuse for female children in youth detention.

Although there is a lack of research on the characteristics of girls in youth detention, some research suggests that they are a particularly vulnerable group, with many experiencing abuse or neglect before entering youth detention. In the 2015 NSW Young People in Custody Health Survey, of the 20 girls and young women surveyed, 75 per cent reported experiencing prior abuse and 58.3 per cent reported experiencing severe abuse.<sup>154</sup>

The 2017 Victorian *Youth justice review and strategy: Meeting needs and reducing offending* observed that girls in youth detention are ‘subject to an inequitable regime compared to their male counterparts’ as a result of the need to separate these cohorts. The review highlighted that girls in youth detention in Victoria do not have access to the same rehabilitation programs as boys and, where they do participate in rehabilitation programs, they may be required to do so alongside boys. The review said, ‘These environments can be highly intimidating for young women and negatively impact their rehabilitation’.<sup>155</sup>

The WA inspector has also observed that girls in youth detention have historically been marginalised as they are a small proportion of all children in youth detention.<sup>156</sup> The inspector recently raised concerns about the impact of temporarily relocating girls to a different unit in Banksia Hill Detention Centre from December 2016 to March 2017. The inspector considered that the relocation did not adequately separate male and female children, particularly verbally. This included girls and boys being placed in observation cells alongside one another. Although they could not see each other, they could hear each other, which the inspector described as ‘inappropriate and confronting for young women in distress and potentially created trauma’.<sup>157</sup>

In our consultations with girls in youth detention, we heard about the concerns girls felt in relation to their physical privacy. We observed that, in some centres, a disproportionate number of young, male staff were responsible for their supervision and that one of the challenges for the management of some centres was assigning female staff to detained girls where there are smaller numbers of female staff. Consequently, male staff would be allocated to detained girls for significant periods.<sup>158</sup>

Many of those girls told us about staff displaying sexualised behaviour towards them or other female detainees. This behaviour included sexual and degrading comments, and staring at girls in a way that was suggestive or threatening. Some non-custodial staff also told us that they had observed this behaviour. The girls we spoke to told us that this behaviour significantly compromised their sense of safety in youth detention. One non-custodial staff member told us about a girl who felt uncomfortable with male staff as a result of her previous experiences in institutions. The staff member highlighted the need for youth detention centres and staff members to be aware and responsive to the needs of young women who have experienced trauma and who feel more comfortable with female staff.<sup>159</sup>

The concerns described above about the privacy and vulnerability of girls in youth detention are consistent with what we heard in private sessions from female survivors who told us they were sexually abused in youth detention. Both 'Cassie' and 'Monica' told us they were sexually abused and assaulted multiple times before and after entering youth detention.<sup>160</sup> 'Cassie' described the distress she experienced after being strip searched: 'I became hysterical because I did not want him taking my clothes off ... I ended up lying curled up on the floor in a ball trying to hide my body'.<sup>161</sup> 'Monica' told us that she was harassed by male staff in youth detention and would frequently wake up naked in her cell with no recollection of what may have happened to her. One day 'Monica' said she was placed in isolation and felt so sad that she began to self-harm. She has spent most of her adult life in prison or mental health facilities.<sup>162</sup>

### **Children in adult prisons**

Children detained in adult prisons are separated from adult prisoners.<sup>163</sup> However, oversight bodies in several states and territories have raised concerns about the detention of children in adult prisons.<sup>164</sup> In 2013, the Victorian Ombudsman reported on the 2012 transfer of five children from the youth justice system to the adult prison system as a result of their violent behaviour. That report highlighted the difficulties of accommodating children in adult prisons as they are vulnerable to sexual abuse in the mainstream prison population, and noted that a dedicated unit can lack sufficient places for managing children who are violent or have a history of sexual offending.<sup>165</sup> The WA inspector has also noted the difficulties of segregating children and adults in court custody facilities.<sup>166</sup>

A number of survivors we spoke to in private sessions also told us about being sexually abused when they were detained in adult prisons while under the age of 18 during the 1990s. As highlighted in Section 3.2.1, although this practice is not common, most states and territories retain the ability to hold children in adult prisons. 'Bo' told us he was sexually abused by an adult inmate who was acting as a mentor for younger prisoners.<sup>167</sup> 'Bo' said that he was sexually assaulted when he was unsupervised in a cell with the perpetrator and another inmate, who did nothing to stop the assault.<sup>168</sup> 'Garth Peter' told us he was sexually assaulted numerous times by adult inmates as well as a prison officer in an adult prison.<sup>169</sup>

## Institutional culture

Institutional culture is a significant factor in creating a risk of child sexual abuse, as well as other forms of abuse.<sup>170</sup> Institutional culture broadly refers to the assumptions, values, beliefs and norms of an institution relating to appropriate and inappropriate attitudes and behaviour.<sup>171</sup> These include shared understandings about what someone should or should not think or do, and what is considered to be 'good' and 'bad' behaviour.<sup>172</sup> The importance of strong leadership in establishing and maintaining good organisational culture cannot be understated. The nature of the institution and its purpose and physical characteristics also influence how staff understand the culture.

While institutional culture can change over time, in our consultations we heard about features of unhealthy cultures that appear to have persisted in some contemporary youth detention centres. Similar cultural risk factors that existed in youth detention environments before 1990 are discussed in Volume 11, *Historical residential institutions*.

Unhealthy cultures that may create particular risk in youth detention include:

- some staff members dehumanising and devaluing children
- the normalisation of physical and emotional abuse and neglect of children, which increases the likelihood of children being sexually abused
- a hyper-masculine culture that reinforces assumptions, values, beliefs and norms about boys and young men<sup>173</sup>
- inappropriate behaviour towards staff and children, including the use of sexualised language or discriminatory treatment.

Research we commissioned suggests that closed institutions like youth detention can defer to internal processes for dealing with issues such as child sexual abuse. A defining characteristic of total institutions, the imperative of 'near total control of members', can entrench an 'alternative moral universe'.<sup>174</sup> This alternative moral universe relies on its own internal processes that are 'independent of civil society' and may inhibit opportunities to prevent, identify and respond effectively to abuse.<sup>175</sup> Children in youth detention are reliant on staff in virtually all aspects of their daily lives and this gives staff considerable power over detained children.

Institutions that need to prioritise security can be characterised by a high degree of control that can dehumanise children. Research suggests that, in this context, some staff may begin to see children more as 'inanimate objects subject to their control' rather than as individual children with particular needs.<sup>176</sup> This can reinforce perceptions that these children are inferior, making it easier to overlook their rights and needs.<sup>177</sup>

In this context, there is a risk that the physical or emotional abuse of children in youth detention may become normalised. To ensure the safety and security of youth detention centres, staff may be required to use reasonable force on children, as permitted and outlined in legislation and policy.<sup>178</sup> In private sessions we heard from a number of survivors who, in addition to experiencing sexual abuse, described being subjected to excessive use of force and other physical abuse, threats and other potentially unlawful practices. 'Aaron James' told us that guards would practise their restraint techniques on randomly selected children.<sup>179</sup> 'Dawson' described being beaten, stripped and thrown into a cell, where he was left, naked, for three days.<sup>180</sup>

Commissioned research also suggests that there may be a link between hyper-masculine cultures and child sexual abuse. Hyper-masculine cultures are characterised by physically aggressive posturing, verbally aggressive communication, the use of sexualised slang and homophobic taunts.<sup>181</sup> A number of assumptions underlie such cultures, including that it is natural for boys to exhibit aggressive and dominating behaviour and that it is a sign of strength and maturity to tolerate harsh treatment.<sup>182</sup> While hyper-masculine cultures are typically found in all male settings, they can also arise in mixed-gender settings that convey 'the assumption that aggressive behaviour is necessary for survival in the setting, and that aggressive behaviour and the tolerance of harsh treatment are desirable traits'.<sup>183</sup> In this environment, abuse can become normalised, making it easier for staff to dismiss allegations of child sexual abuse.

Inappropriate or abusive treatment of children by some staff members may also create an environment in which all children feel unsafe and mistrustful of the adults responsible for their care. Research highlights that staff can view children according to negative, discriminatory cultural stereotypes in relation to ethnicity and sexual orientation.<sup>184</sup> For example, 'Shad' told us that he complained about being sexually assaulted by other inmates to a psychologist, who responded, 'You're a homosexual. You probably enjoy it'.<sup>185</sup>

Further, some staff members may consider children in youth detention to be delinquent and in need of discipline and punishment, or inferior and unworthy of support. These attitudes can facilitate the perpetration of child sexual abuse, impede its detection and undermine the institutional response to allegations.<sup>186</sup>

During our consultations in youth detention centres, children told us about the importance of being treated with respect and dignity. Some of the children we spoke to described how some staff used degrading and disrespectful language towards them or that they felt that children were treated differently because of their ethnicity. Others described witnessing or experiencing instances of alleged excessive use of force. Some non-custodial staff members told us that custodial staff have little understanding of the children in youth detention and how to communicate effectively with them.<sup>187</sup>

## Level of access to trusted adults

The importance of supporting children in youth detention to maintain their relationships with the significant people in their lives is recognised in the legislation governing youth detention in many states and territories.<sup>188</sup> For example, it is an object of the *Children (Detention Centres) Act 1987* (NSW) that ‘satisfactory relationships are preserved or developed between persons on remand or subject to control and their families’.<sup>189</sup> Most youth detention centres today consider telephone and visitation access to be an entitlement, rather than a privilege. However, it is not clear whether this is consistently the case in practice and practical limitations may apply, including security and safety considerations, remoteness or family members not having access to transport, telephone or the internet.

Children in youth detention have limited and regulated contact with their parents, guardians, families and other significant people in their lives, primarily through in-person visits, telephone calls and mail. Youth detention centres have policies and procedures related to external visitors and telephone access that define the frequency and duration of contact and the process for creating lists of approved visitors and telephone contacts.<sup>190</sup>

Visits from family or significant others are supervised by staff. In some jurisdictions, the appropriate staffing level for supervising a visit is determined by a risk assessment procedure.<sup>191</sup> These restrictions are typically justified by the need to restrict the entry of contraband into youth detention centres or for other security reasons.

Children may also be visited by inspectors of custodial services, children’s commissioners or guardians or representatives from visitors schemes and ombudsman offices (see Section 3.2.3).

Maintaining connection and communication with family was a primary concern among the participants in our consultations in youth detention centres. Disconnection from family was cited as one of the biggest stressors for children in youth detention. We heard about the particular difficulties faced by children from remote or regional areas in maintaining contact with their families. All states and territories except New South Wales have only one or two youth detention centres and these are located in the outer suburbs of capital cities.<sup>192</sup> Children can be detained in a centre that is difficult for their parents or guardians to physically visit due to distance, lack of transport and financial constraints. Some jurisdictions offer financial assistance to facilitate face-to-face visits where needed.<sup>193</sup> Poor mobile phone and internet reception in remote areas can further limit contact between children and their families and communities. For Aboriginal and Torres Strait Islander children in youth detention, this increases the likelihood that they will be further disconnected from country and culture.

The privacy of children’s telephone calls was also raised during our consultations. We heard that some telephone booths are located in public spaces, near senior staff offices.<sup>194</sup> While these policies may be designed with the children’s physical safety and wellbeing in mind, they can also present barriers to children having confidential, sensitive conversations with trusted adults.

A lack of supervision by parents or guardians has been associated with an increased risk of child sexual abuse.<sup>195</sup> Parental contact and support is a protective factor that may reduce a child's vulnerability to sexual abuse.<sup>196</sup> In our *Youth detention centres, Victoria* case study, we gained an insight into the importance of providing children in youth detention institutions with trusted adults to whom they can disclose sexual abuse.<sup>197</sup> Commissioned research asked young people who they would turn to if an adult or young person was demonstrating grooming-like behaviours or behaviours that made them feel uncomfortable: 54.5 per cent of respondents said they would turn to their mother, and 33.7 per cent said they would turn to their father.<sup>198</sup>

A number of inquiries over many years have also emphasised the significance of contact with family and significant others for detained children. The 1999 Forde Inquiry recommended that contact with family and friends should be treated by youth justice agencies as a 'basic entitlement of all detainees, essential to their psychological wellbeing and successful reintegration ...'<sup>199</sup>

In 2015, the NSW inspector examined the issue of providing support for children in youth detention. The inspector noted that children being housed outside their home region was common in New South Wales due to policies around placing young people at centres in accordance with their gender or behavioural and security needs.<sup>200</sup> The inspector also highlighted that for children in youth detention, family and community contact is:

an important protective factor ... It can reduce their sense of isolation while in custody, reduce symptoms of depression, and maintain emotional wellbeing. It is essential to their rehabilitation and has a role in supporting reintegration outcomes when a young person is released from custody.<sup>201</sup>

The provision of education and health services by education and health departments, rather than youth justice agencies, in most jurisdictions has provided more opportunities for children to develop protective relationships with trusted adults.

## Practices, procedures and physical environments that provide opportunities for abuse to occur

Operational practices, the positions held by adult staff and the physical environment of youth detention can compromise the safety of detained children and enable sexual abuse to occur. The very high level of control that staff exercise over the day-to-day lives of children in youth detention can enable a perpetrator to create opportunities to sexually abuse children.



Youth detention by its very nature involves a higher level of supervision and monitoring of children than other institutional contexts. To ensure the safety and security of staff and children, youth detention centres must be completely in the control of adults and frequently offers little privacy for children. Despite the lack of privacy, there are physical spaces in centres, such as bathrooms, where interactions with or between children will not be easily observable by others. Staff members may be able to use these spaces and their control over children's movements to be alone with children, increasing the risk of child sexual abuse.<sup>202</sup> Building design features, such as low roof-lines and ill-placed staircases, may also create blind spots that can amplify the risk of harm to children.<sup>203</sup> Although these spaces can increase risk, this concern must be balanced against the importance of maintaining as much privacy as possible for detained children.

Some of the survivors we spoke to in private sessions told us they were abused in circumstances contrived by perpetrators, in which perpetrators moved or confined children to secluded areas. 'Russell David' described how he was abused by a teacher who had a room upstairs in the detention centre and would 'take you up there and just do dirty things to you'.<sup>204</sup> 'Alan Sam' told us about a staff member who took him and other boys up to the gym to abuse them.<sup>205</sup> 'Kane Jacob' told us he was sexually abused by a staff member in the pool showers.<sup>206</sup>

The secure and controlled environment of youth detention also provides few opportunities for children to avoid perpetrators or to take other measures to protect themselves from abuse, particularly where the perpetrator is a staff member. In private sessions, some survivors told us that they went to great lengths to avoid the abuse. 'Jai Alex' said that once he turned 17 he requested to be transferred to an adult prison to get away from the sexual and physical abuse he experienced while in a youth detention centre.<sup>207</sup> 'Carey' told us that he attempted to escape from a youth detention centre after being sexually abused over many months.<sup>208</sup>

This controlled environment may also provide opportunities to sexually exploit or groom children in youth detention using prohibited items, such as cigarettes or special privileges. 'Aaron Travis' told us that, in one of the youth detention centres he spent time in as a child, an officer used to touch boys 'inappropriately, you know, for cigarettes and that'.<sup>209</sup> 'Blair Aaron' told us that a youth detention centre staff member would give him rewards such as cigarettes and chocolates if he performed sexual acts.<sup>210</sup>

Staff exploiting or creating opportunities to sexually abuse children may be exacerbated where there is inadequate supervision of staff, and inadequate internal and external oversight of the day-to-day operations of the centre, including quality assurance systems and regular audits (see Section 3.8.5).

## Strip searches

A number of survivors told us in private sessions about perpetrators taking advantage of opportunities for abuse resulting from operational procedures including strip searches.

Personal searches of children entering youth detention are undertaken to prevent dangerous and prohibited items, such as drugs, weapons and cigarette lighters, being taken in and threatening the safety of children and staff. The types of personal searches that may be undertaken in youth detention centres include:

- clothed body searches, or frisk searches, which involve custodial staff using their hands to detect prohibited items while the child is fully clothed
- screening searches, which involve custodial staff using an electronic device passed over the body externally
- strip searches, or unclothed searches, that may require the child to remove all or some of his or her clothing.<sup>211</sup>

Body cavity searches on children are not authorised in most states and territories. In Queensland, a cavity search can be conducted by a medical practitioner in extreme circumstances.<sup>212</sup> In the Australian Capital Territory, a non-treating doctor may conduct an internal examination as part of a search.<sup>213</sup>

Searches can be conducted on both a routine and non-routine basis. Routine searches typically occur in circumstances including when a child is first admitted to a youth detention centre, before returning to a centre after leave and following a visit.<sup>214</sup> In most jurisdictions, non-routine searches may occur where there are reasonable grounds to believe that such a search is necessary to maintain the security of the youth detention centre or that a detained child may be in possession of a prohibited item.<sup>215</sup>

Legislation, policies and procedures outline how strip searches are to be conducted.<sup>216</sup> For example, in the *Parramatta Training School for Girls* case study, the Chief Executive of Juvenile Justice NSW described the process that is currently used for strip searches in New South Wales youth detention centres:

During the search, two staff must be present. One staff member (who must be the same gender as the detainee) conducts the search, and the second staff member sights the searching officer only. Searches are conducted in an “L” shaped area, with the searching officer at the point where the two arms of the “L” join. This means the searching officer is seen by the witnessing officer but the young person can only be seen by the searching officer. Staff are not permitted to touch the detainee’s body, or to direct the detainee to squat, part their buttocks or touch their genitals. Detainees must not remove all of their clothes at once.<sup>217</sup>

The potential negative impacts of strip searches on children have been highlighted in a number of previous inquiries.<sup>218</sup> Both the NSW and WA inspectors of custodial services have raised concerns in relation to the frequency of strip searching in the youth detention centres in those states and its impact on vulnerable children.<sup>219</sup>

The NSW inspector's concerns related to the 'routine' strip searching of detained children when they are first admitted to a New South Wales youth detention centre, after leave or after a visit with a family member or significant other. The inspector highlighted that strip searching is 'an invasive and humiliating procedure for anyone, but especially so for vulnerable adolescents. It may invoke hostile or violent reactions or emotional trauma'.<sup>220</sup>

The WA inspector has engaged with Banksia Hill Detention Centre about the high number and frequency of strip searches of detained children. In a 2015 inspection report, the inspector emphasised that strip searches are 'inherently humiliating and potentially distressing to traumatised young people'<sup>221</sup> and are 'likely to be especially traumatising for the many young people in detention who have been victims of sexual abuse'.<sup>222</sup>

In 1999, the Forde Inquiry also raised concerns about strip searching in youth detention in Queensland, finding:

The frequency with which detainees in Queensland's juvenile detention centres are searched indicates that their dignity, privacy and psychological wellbeing are repeatedly ignored in favour of scrupulous security procedures. Searches of any kind are intrusive, embarrassing and reinforce the relative powerlessness of the person subjected to them. Unclothed searches are especially so, particularly for self-conscious adolescents, many of whom have suffered physical and sexual abuse.<sup>223</sup>

Many survivors we heard from in private sessions described strip searches that they considered to be sexually abusive. In some private sessions, we were told about strip search procedures that departed from usual practice and involved requiring children to fully undress or squat. In others, survivors described behaviour that they felt was abusive and degrading, including digital penetration, sexualised comments or touching.

'Brendon Jeremy' told us he was subjected to a strip search during which he was required to strip completely naked, squat and cough. He said that he only realised that this was wrong when he was not required to do this during a later strip search and was told by a guard that such a search was prohibited.<sup>224</sup> 'Joseph John' also told us that guards made him 'squat and cough' during strip searches, after which they would 'put the mirror underneath our arses'. He said that if a boy was thought to be hiding something, a guard would then 'stick their finger up there'. 'Joseph John' said he thought it 'was just a normal procedure' and if a particular guard was on duty 'it seemed like we always got strip searched that way'.<sup>225</sup> 'Guy Benjamin' told us he was 11 years old when he was sent to a youth detention centre. He said that when he was strip searched, the officers ridiculed him about his body, particularly the size of his penis. 'They actually pointed at it, and said, "It's not like the other ones, and it's not as big"'.<sup>226</sup>

### 3.4.3 Factors that may influence a child's vulnerability to sexual abuse in youth detention

All children are vulnerable to sexual abuse but some may be more vulnerable than others.<sup>227</sup> Some children are more vulnerable because of their increased exposure to certain risk factors.

A significant number of children in youth detention face social circumstances that expose them to a greater risk of sexual abuse.<sup>228</sup> Below, we consider some of the risk factors that may increase a child's vulnerability, including their:

- level of involvement in institutional settings<sup>229</sup>
- previous experiences of trauma, including sexual abuse<sup>230</sup>
- family characteristics and circumstances, including family violence or breakdown.<sup>231</sup>

We also consider the risks and challenges that may arise for Aboriginal and Torres Strait Islander children, children with disability and children from culturally and linguistically diverse backgrounds in youth detention.

#### Level of involvement in institutional settings

Children who spend more time in institutional settings may be at greater risk of child sexual abuse in an institutional context than other children.<sup>232</sup> There is elevated risk when children who are particularly vulnerable are congregated together in high-risk institutional environments, such as youth detention and residential out-of-home care.<sup>233</sup> Children in youth detention can be detained for periods ranging from one day to a few years. Whatever the length of their detention, children are typically detained for 24 hours a day in an institutional setting.

Many children in youth detention are vulnerable as a result of prior abuse and trauma, difficult family circumstances and parental absence. Many have also come from out-of-home care and will return when they are released. A number of the survivors we spoke to in private sessions who told us they were sexually abused in contemporary youth detention also described their experiences of the child protection system.

'Sheldon' said that he was a ward of the state by the time he was 12 weeks old, as his father was in prison and his mother was addicted to drugs and homeless. He lived with foster families until his father was released. 'Sheldon' told us that when he was six years old, he began weekend respite stays with foster carers, one of whom sexually abused him. He told us he was sexually abused by a staff member after being placed on remand in a youth detention centre.<sup>234</sup> 'Gene Luke' said that he stayed in a series of foster and group homes after running away from his

violent father. He was also sent to a number of youth detention centres and told us that he was sexually abused in all of them.<sup>235</sup> 'Braddon' told us that he was moved between relatives after the end of his parents' relationship, before being made a ward of the state. He was later sent to a youth detention centre that he described as being physically and sexually violent.<sup>236</sup>

## Previous experience of maltreatment

As discussed in Volume 2, *Nature and cause*, the association between child maltreatment and subsequent victimisation may stem from the emotional, cognitive and psychological effects of the maltreatment, which may make a child vulnerable to being targeted and manipulated by perpetrators.

Many children in youth detention are themselves victims of crime. A significant number have been abused, neglected or otherwise harmed and have experiences of the child protection system. The 2015 Young People in Custody Health Survey found that of the 227 children surveyed in youth detention in New South Wales, 70.1 per cent had experienced abuse, 29.9 per cent had experienced severe abuse.<sup>237</sup> Nearly half the children surveyed (48 per cent) had been exposed to a traumatic event.<sup>238</sup> The snapshot survey of 176 children in youth detention in Victoria showed that 63 per cent reported having been victims of abuse, trauma or neglect.<sup>239</sup>

For Aboriginal and Torres Strait Islander children, this context also includes 'the historical legacy of colonisation, racism, deprivation, forced removal of children from their families and ensuing intergenerational trauma'.<sup>240</sup> For children from culturally and linguistically diverse backgrounds, particularly refugee children, this may also include exposure to violence or systemic persecution by police or other government authorities in their country of origin.<sup>241</sup>

A number of the survivors we heard from in private sessions who told us about being sexually abused in youth detention also described experiencing trauma, including sexual abuse, before they entered youth detention. 'Pablo' told us that he was molested by his grandfather when he was five years old. In his early teens, 'Pablo' began to get into trouble with the police and was sent to a youth detention centre, where he told us he was sexually abused by multiple staff members.<sup>242</sup> 'Oliver Patrick' said he often stayed with his grandmother and other relatives, as his mother was in and out of jail and his father was 'on his own mission'. He told us that when he was seven he was sexually abused by a boy twice his age. 'Oliver Patrick' was sent to a youth detention centre at the age of 13, where he said he was groomed and sexually abused by a female staff member.<sup>243</sup>

### **‘Shad’**

‘Shad’ grew up with his father, stepmother and brother. ‘Shad’ told us that he and his brother were regularly beaten, starved or locked in the shed for days on end by their father. ‘Shad’ said that he was sexually abused by his stepmother’s father and that this abuse was facilitated by his father. He told us he was also sexually abused by his brother when they were children.

When ‘Shad’ was 11 he was taken into foster care for the first time, presumably because the authorities became aware of the abuse as ‘the bruising was pretty hard to miss’. However, ‘Shad’ was later returned to the care of his father, where he said the abuse continued. He told us that he told the police but nothing was done and when he was about 14, he ran away. The police returned ‘Shad’ to his father, who arranged for him to live with his stepmother’s father, who had previously sexually abused ‘Shad’.

‘Shad’ said that he ran away again and began living on the streets. He was arrested for car theft and sent to a youth detention centre, where he said he was subjected to further sexual and physical abuse. He has spent his entire adult life in jail.<sup>244</sup>

## **Family characteristics and circumstances**

Research suggests that conflict or violence between family members and family breakdowns may be associated with an increased risk of child sexual abuse.<sup>245</sup> The numbers of children in youth detention who have also had contact with the child protection system<sup>246</sup> suggests that many children in youth detention are disconnected from families, community and culture and may not have even limited access to an adult they trust.

Many of the survivors who told us they were sexually abused in contemporary youth detention also told us that they grew up in complex and painful family circumstances characterised by conflict, violence, substance use, mental health problems, poverty and parental absence. Some also described having parents or siblings who were involved in crime and had also spent time in prison or youth detention.

‘Shaun Michael’ told us his mother was a ‘good lady’ but described his father as ‘cruel’ and ‘violent’, although he ‘tried his best ... to be a father’. He told us he spent 12 months in a youth detention centre, where he said he was physically and sexually abused by staff members.<sup>247</sup> ‘Pierce’ told us that he did not have ‘the best of upbringings’. He moved frequently between states and schools, and his father was a heavy drinker and often violent. When ‘Pierce’ was 13, his father committed suicide and his mother put him into foster care. He told us he was later sent to a youth detention centre, where a staff member groomed and exposed himself to ‘Pierce’.<sup>248</sup> ‘Jai Alex’ described his upbringing as ‘pretty shocking’ as a result of his father’s imprisonment and his mother’s alcoholism and drug addiction. He ran away from home at the age of nine and then entered the child protection system. He became addicted to heroin at the age of 13 and spent significant periods of his teenage years in youth detention centres, where he told us he was sexually assaulted on a number of occasions.<sup>249</sup>

## Vulnerable cohorts of children in youth detention

Certain risk factors overlap and interact, creating higher levels of risk for particular groups of children who more commonly experience combined risks. As highlighted in Section 3.2.2, there are a number of cohorts of children in youth detention who may experience heightened vulnerability to abuse, including Aboriginal and Torres Strait Islander children, children with disability, and children from culturally and linguistically diverse backgrounds.

There is no data that suggests the extent to which these children may experience child sexual abuse in youth detention environments. These children are not inherently more vulnerable to sexual abuse. Rather, they more often encounter circumstances that:

- place them in institutions with high risk
- make it less likely they will be able to disclose or report abuse
- make it more likely they will receive an inadequate response to sexual abuse.

### Aboriginal and Torres Strait Islander children

Commissioned research indicates that as a result of systemic racism and structural disadvantage, Aboriginal and Torres Strait Islander children are significantly over-represented in high-risk institutions such as youth detention.<sup>250</sup>

In our *Nature, cause and impact of child sexual abuse* case study, Mr Andrew Jackomos, the Commissioner for Aboriginal Children and Young People in Victoria, told us that for many Aboriginal and Torres Strait Islander children in youth detention, the experience of intergenerational trauma and attachment trauma of out-of-home care means they have been exposed to a high level of cumulative harm by the time they enter youth detention.<sup>251</sup> He highlighted the link between out-of-home care and youth detention:

You can't separate child protection from youth justice. In Victoria a minimum of two-thirds of our children that go into youth justice detention have come from child protection. Nine out of 10 of our Koori kids, Aboriginal kids, that go into child protection, that then go on to youth justice, are victims of family violence.<sup>252</sup>

Commissioned research suggests that a strong connection to culture is protective because it helps children to 'maintain their sense of self and positive identity in the face of racism'.<sup>253</sup> Strong culture can also be protective by combating racism that historically exposed Aboriginal and Torres Strait Islander children to disproportionate institutionalisation and the high situational risk of sexual abuse in out-of-home care and youth detention.<sup>254</sup> As Mr Jackomos told us, 'The greatest resilient factor for Aboriginal children is culture, and when you take kids away, take children away from culture, from family, you break them down'.<sup>255</sup>

Known protective factors against child sexual abuse in institutions for Aboriginal and Torres Strait Islander children, such as connection to culture and access to Aboriginal and Torres Strait Islander adults they know and trust, may be weaker for Aboriginal and Torres Strait Islander children in youth detention.<sup>256</sup> For example, the WA inspector has observed:

Given the high proportion of Aboriginal young people in detention, there was not enough Aboriginal culture reflected in the physical environment of the centre or in the services and activities available to detainees. Although Banksia Hill [Detention Centre] had more Aboriginal staff than most other custodial facilities in Western Australia, the numbers were still too low. There is a need to improve recruitment of Aboriginal people to existing positions and consider new roles within the centre that may provide more opportunities for Aboriginal people.<sup>257</sup>

### **Children with disability**

All children with disability are at heightened risk of child sexual abuse. Research suggests that the risk of abuse for children with disability varies with the level and type of impairment,<sup>258</sup> but that children with intellectual disability, communication disorders or behavioural disorders may have a heightened risk of all forms of abuse.<sup>259</sup>

Children with intellectual disability or cognitive impairment may not be regarded as competent or believable witnesses.<sup>260</sup> Children with communication difficulties may find it hard to describe their experiences or identify abusers.<sup>261</sup> Research suggests that workers who lack appropriate knowledge and awareness may mistake non-verbal or behavioural indicators of sexual abuse as issues related to disability.<sup>262</sup> Perpetrators may also deliberately target children they believe have a reduced capacity to disclose abuse or may not be believed.<sup>263</sup>

### **Children from culturally and linguistically diverse backgrounds**

There are a range of factors particular to children from culturally and linguistically diverse backgrounds that can influence vulnerability to sexual abuse in institutions, including youth detention.

Children from culturally and linguistically diverse backgrounds in youth detention may have limited English language proficiency and limited access to cultural and language translation services.<sup>264</sup> This can hinder the development of trusting relationships with case managers and other staff in youth detention,<sup>265</sup> and make it difficult for children to share their concerns or disclose abuse if it does occur.

Children from refugee backgrounds may also have prior trauma resulting from experiences of persecution and violence in their country of origin.<sup>266</sup> Research suggests that social networks, such as extended family, have 'positive effects on family and child outcomes in adverse circumstances' and are an important protective factor for children from refugee backgrounds.<sup>267</sup> This may be lost for children from refugee backgrounds who are in youth detention.



Institutional risk can also be heightened where there is a failure to address racism and prejudice towards particular groups.<sup>268</sup> In our consultations, a number of children from culturally and linguistically diverse backgrounds in youth detention told us they had been the subject of racist taunts and discriminatory treatment by youth detention staff and other children.<sup>269</sup>

### 3.5 The impacts of child sexual abuse in youth detention

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As Volume 3, *Impacts* describes, the effects of child sexual abuse in institutional contexts can be devastating. The effects, we were told, are different for each victim although some commonalities have been identified through our work. Some victims experience deep, complex trauma that pervades all aspects of their lives. Others do not perceive themselves to be profoundly harmed by the experience. Some impacts are immediate and temporary, while others can last into adulthood. Some emerge only after ‘trigger’ events or at different life stages, and others accumulate over time.

The effects most commonly described to us by survivors in private sessions related to their mental health. These impacts included depression, anxiety and post-traumatic stress disorder (PTSD); other symptoms of mental distress such as nightmares and sleeping difficulties; and emotional issues such as feelings of shame, guilt and low self-esteem. After mental health, relationship difficulties were the long-term impacts most frequently raised by survivors in private sessions, including difficulties with trust and intimacy, lack of confidence with parenting, and relationship problems. Education and economic impacts were also frequently raised. Survivors also commonly described to us the impacts on their physical health, social wellbeing, culture, spirituality, sexual behaviour, sexuality and gender identity.

Although some survivors told us of one or two of these effects, others described a constellation of impacts, which were interconnected in complex ways. Part of the explanation for this profound and complex web of effects lies in the detrimental impact that interpersonal trauma can have on the biological, social and psychological development of the child. Child sexual abuse can result in profound trauma, affecting the chemistry, structure and function of the developing brain and potentially interrupting normal psychosocial development at every critical stage of a child’s formative years (see Volume 3, *Impacts*).

While the impacts of abuse in youth detention and the resulting institutional responses are likely to be similar to the impacts experienced by victims in other institutional contexts (see Volume 3, *Impacts*), we heard about some particular impacts of child sexual abuse in youth detention environments. This section details what we learned about these particular impacts.

### 3.5.1 Cumulative harm

The term ‘cumulative harm’ refers to ‘the effects of multiple adverse or harmful circumstances and events in a child’s life’.<sup>270</sup> The impact of these experiences can be ‘profound and exponential’ and ‘diminish a child’s sense of safety, stability and wellbeing’.<sup>271</sup> Children who have experienced cumulative harm can have difficulty monitoring and regulating emotions, behaviours and thoughts.<sup>272</sup>

Children who are sexually abused while in youth detention may be particularly vulnerable to cumulative harm because of prior experiences of maltreatment and other adverse experiences. The cumulative harm they have experienced could be further aggravated by the closed environment of youth detention. Children in youth detention may be further traumatised by being unable to avoid, and regularly coming into contact with, their perpetrator. This may also intensify and prolong their fear of harm and lead to a sense of powerlessness and loss of control over their own safety.

As highlighted in Sections 3.2.2 and 3.4.3, children in youth detention may have previously experienced abuse, neglect and mental health problems. Aboriginal and Torres Strait Islander children are also likely to be experiencing the impacts of intergenerational trauma.

### 3.5.2 Criminal pathways

Of the 713 survivors who were in prison at the time of their private session, one-third (32.7 per cent) told us they were abused in youth detention. Across all private sessions, 22.7 per cent of survivors who spoke about the impacts of abuse identified crime involvement as an impact of the abuse. Most of these private sessions concerned sexual abuse that was said to have occurred before 1990. Of the 91 survivors who told us in private sessions about experiencing child sexual abuse in contemporary youth detention, 82 identified further involvement in the criminal justice system as an impact of the abuse.

We are not aware of any research examining the impact that sexual abuse in youth detention may have on the risk of reoffending for those children. There is some research suggesting there may be a relationship between experiences of child sexual abuse and subsequent criminal offending.<sup>273</sup> While most survivors do not go on to commit a criminal offence, one Australian study found that child sexual abuse survivors were almost five times more likely to be charged with an offence than their peers from the general population.<sup>274</sup> However, a commissioned review of literature shows that research findings vary, with some studies highlighting that a direct relationship between abuse and later criminal offending has not been definitively established.<sup>275</sup>

In the context of children in youth detention, it is difficult to determine which of the relevant, compounding factors may drive future offending. These factors may include experiences of abuse outside youth detention, mental health issues, acting out behaviours, substance use, homelessness and a lack of family support. Some research suggests that children in youth detention may already be susceptible to further criminal offending.<sup>276</sup> In particular, the younger a child is when they first offend, the more likely they are to reoffend.<sup>277</sup> The extent to which any of these factors influences criminal offending and recidivism will depend on the circumstances of each person.

Many of the survivors we heard from in private sessions identified their experiences of child sexual abuse in youth detention as a factor that contributed to their subsequent criminal offending. Survivors described complex pathways that led them to engage in criminal behaviour and a cycle of reoffending and incarceration they have struggled to break, often driven by anger, substance use and mental health problems. Many survivors spoke about using drugs and alcohol as a way to cope with the memories of the abuse, and then committing criminal offences either while affected by drugs or alcohol or to finance their substance use. Survivors also described feeling enormous anger about their experiences of abuse, which appeared to contribute to their anti-social behaviour or violent offending.

‘Lochie Andrew’ told us that he had spent most of the past 11 years in jail as a result of his drug addiction and related offending, explaining that he began experimenting with heavier drugs after being sexually abused in a remand centre: ‘And I just seem to keep coming back to jail. Every time I get out of jail it’s within 24 hours I’ve got a needle in me arm again ... and then it’s just a downhill spiral, you know’.<sup>278</sup> ‘Bryant Tom’ described developing a drug addiction and debilitating anxiety after being sexually abused in youth detention: ‘I only take the drugs ‘cause then I don’t have to think about it, and then when I’m off my face, I end up doing something stupid. That’s why I’m trying to get help with this now, because it’s cost me – I’m only 39 and I’ve done 21 years jail’.<sup>279</sup>

### 3.5.3 Distrust of and anger towards authority

Children who have been sexually abused in youth detention may develop a distrust of, and considerable anger towards, authority as a result of the abuse. This is because of the high level of authority and control exercised over children in youth detention and how a perpetrator can use this to create opportunities for abuse. The sense of distrust and anger towards authorities experienced by survivors may have been exacerbated where there were repeated negative responses to disclosure or failures to protect them from further abuse.

A number of children in youth detention may already be suspicious of authority due to prior trauma or previous negative experiences with authority figures, such as parents, guardians, teachers or the police. During our consultations in youth detention centres, we heard from staff members about the negative relationships children in youth detention can have with the police.<sup>280</sup> This distrust of authority may be heightened where children have experienced discrimination. For example, Aboriginal and Torres Strait Islander children and their families may fear or distrust authorities because of past experiences of forced removal and racism.<sup>281</sup>

Commissioned research on the impacts of child sexual abuse suggests that survivors can experience a sense of ‘institutional betrayal’ where they perceive an institution to be complicit in ‘creating situations where abuse can occur, concealing abuse or failing to attend to disclosures in appropriate ways’.<sup>282</sup>

A number of the survivors who told us they were sexually abused in youth detention during private sessions described their difficulties with trusting others, particularly authority figures. ‘Ralph Steven’ told us that he thought people who work in institutions need to be monitored more carefully and noted that ‘People can be untrustworthy, manipulative ... I’ve learned that the hard way ... Watch ‘em very closely, and don’t ever trust ... anybody’.<sup>283</sup> ‘Grant Lee’ told us that the abuse he experienced in youth detention has resulted in him being a ‘very angry person’ and ‘very rebellious against authority in general’.<sup>284</sup>

Survivors also told us about their anger. In a written account, ‘Mark Joseph’ told us that he was violently digitally penetrated during a strip search. He wrote: ‘I felt worthlessness and angry, I was left naked for a number of hours, bleeding from my anus. I honestly did nothing wrong, and they knew it as well. I remember one of them later on said sorry to me but it just made me angry’.<sup>285</sup>

### 3.6 Barriers to disclosing and identifying child sexual abuse in youth detention

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As Volume 4, *Identifying and disclosing child sexual abuse* described, noticing child sexual abuse in institutional contexts is a critical step in protecting children from ongoing or potential abuse, providing support to children in need and holding the perpetrator or child with harmful sexual behaviours accountable. It can also be an important part of the healing process for survivors.

Child sexual abuse in institutional contexts can be noticed as a result of a survivor’s disclosure or through another person’s identification of the abuse, or indicators of the abuse.

We were told about significant barriers that needed to be overcome before survivors were able to disclose their experiences of abuse to another person. We were also told about barriers that prevented adults from recognising abuse or indicators of abuse in survivors and in perpetrators and children with harmful sexual behaviours. Building on Volume 4, this section focuses on the barriers to disclosing and identifying child sexual abuse in youth detention that were identified in commissioned research and commonly described to us in private sessions.

Of the 91 survivors who told us about child sexual abuse in contemporary youth detention, 64 described barriers that left them feeling unable or unwilling to disclose the abuse. Of these 64 survivors:

- 29 said they did not disclose abuse because of feelings of shame and embarrassment
- 24 said they did not disclose abuse because they feared retribution
- 20 said they did not disclose abuse because there was nobody to disclose to
- 12 said they just wanted to forget that the abuse had happened.<sup>286</sup>

Some barriers arise more frequently in the youth detention context, while others are also common in some other institutional contexts we heard about. In this section we discuss those barriers that are most specific to youth detention environments.

### 3.6.1 Not understanding what sexual abuse is

We heard from several survivors who, at the time, did not comprehend certain incidents as abusive. A number of survivors who said they were sexually abused by female staff told us that they did not understand that what had happened to them was abusive until they were older. This is consistent with research that suggests that young males who engage in what they consider to be consensual sexual relations with female staff or who respond to inducements to engage in sexual activity may not interpret these interactions as abusive at the time.<sup>287</sup> ‘Barnaby Neil’ said that he was abused by a female staff member and observed that other boys who were also abused ‘were all bragging about it, sort of thing ... it was sort of ... looked upon as, like, it was all right because she was a woman’.<sup>288</sup>

'Rusty' told us about being abused by a female guard and the confusion he experienced as a result:

At the time I guess I was just confused. I didn't really understand whether it was wrong or right. And then over the time that I was there and it kept happening then I just thought it was normal. Then thinking about it now but, it was shit to be honest ... At the time I didn't really think it was bad or anything like that, but now sitting here, thinking about if it was my daughter and it was a 40-year-old man, you know, I'd be quite upset ... It feels like something was taken from me, I guess.<sup>289</sup>

Limited privacy for children in youth detention may further complicate a child's ability to understand when an incident is abusive or inappropriate. For example, some of the survivors we heard from in private sessions told us about being supervised by officers while they were showering. They also described being strip searched and not realising until later that a search had been conducted inappropriately.

We also heard that Aboriginal and Torres Strait Islander children, children with disability and children from culturally and linguistically diverse backgrounds may not understand what is abusive because of a lack of access to appropriately tailored prevention and sex education programs across institutional contexts throughout childhood.<sup>290</sup>

### 3.6.2 Not feeling safe to disclose abuse while in youth detention

A number of factors in the youth detention environment can undermine a child's sense of safety and act as barriers to children disclosing abuse. Children may not feel safe to disclose abuse because of their detention and subsequent dependence on the institution and the power disparities between staff and children, or between different children, in youth detention. This fear may be heightened if children have experienced other forms of abuse or violence by staff in youth detention.

Commissioned research highlights that the formal power differentials in organisations can 'make it costly' for victims to disclose abuse and create the possibility of perpetrators and their allies seeking retribution.<sup>291</sup> The greater the status and power of a perpetrator in an organisation, the harder it may be for survivors and others who are aware of abuse to have their disclosures heard and believed.<sup>292</sup> Research also indicates that sexual abuse often occurs alongside other forms of abuse and neglect.<sup>293</sup>

This is consistent with what we heard from survivors who told us about sexual abuse in contemporary youth detention. A number of survivors also described institutions that were violent and oppressive and in which they did not feel safe generally. 'Guy Benjamin' described his experiences of sexual abuse in three different youth detention centres and told us that physical and emotional abuse were common in these facilities.<sup>294</sup>

In our *Youth detention centres, Victoria* case study we heard evidence that children did not disclose child sexual abuse in historical youth detention because they feared retribution from other residents and being labelled a 'lagger' or 'dobber'.<sup>295</sup> We heard similar reports in relation to contemporary youth detention. During our consultations in youth detention centres, some staff members told us that there is still a strong non-disclosure or 'anti-dobbing' culture among children in youth detention.<sup>296</sup> In a written account, 'Darrell Paul' told us that it was difficult for children to disclose abuse because 'they feel like they're dobbing ... Even though they're sex offenders ... it's still dobbing'.<sup>297</sup>

The survivors we heard from in private sessions spoke of not wanting to disclose abuse for fear of retribution from staff or other children in the institution. Some of the survivors who spoke to us said they were threatened by their perpetrators and afraid of the consequences of disclosure, especially if they were not believed and protected from future abuse by the institution.

'Edwin James' told us that he still fears retribution from the man who abused him, who remains known in the prison community, if he discloses the abuse.<sup>298</sup> 'Angelo' said that he disclosed being abused by a youth detention staff member to his grandfather. 'Angelo' told us that he asked his grandfather not to take the matter further because he was afraid of being punished by other staff members, some of whom were 'big men' who would 'flog' inmates.<sup>299</sup> 'Dermott' told us he was sexually abused by older boys in the showers. He said that the guards knew but 'didn't really care'. Although 'Dermott' said he had a caseworker he could have talked to, 'the older fellas were threatening me, you know. I was there on my own ... I was too scared. I didn't know how to come out with stuff like that'.<sup>300</sup>

We also heard that homophobic attitudes discouraged some survivors in youth detention from disclosing abuse. 'Aaron Travis' spent time in three different youth detention centres as a child, and told us he was physically and sexually abused in all of them. 'Aaron Travis' said that he felt he could not tell his family about the abuse because 'they would think I'm gay, and my dad hated gay people'.<sup>301</sup>

### 3.6.3 Avenues for disclosure

Children in youth detention may have developed a distrust of authority as a result of previous negative experiences of government institutions, such as the child protection system and the police. In particular, some Aboriginal and Torres Strait Islander children may be too suspicious of authorities to disclose abuse due to experiences of racism and the continuing impact of past policies of forced removal of children.<sup>302</sup>

In our consultations with children and young people in youth detention, we were told that they feel there are few people they can trust. A group of boys we spoke with in one centre told us that they could identify just one or two officers who they trusted, although some topics were off limits even with these trusted officers. Some boys in the consultations told us that these close relationships enabled them to feel as if they had a friend, and that they were treated 'like a human being'.<sup>303</sup> Some boys told us that they did not trust most officers and believed they were just there for the benefits of a government job. They also told us that they did not seek out the health or psychiatric staff for support and would actively avoid them if seeking help for a friend. One boy told us, 'I've got one or two officers in the unit that I trust, like, I actually trust to talk to about stuff. But even then, I don't talk to them about everything ...'<sup>304</sup>

This is consistent with what survivors told us in private sessions. 'Carey' said that there was no staff member to whom he felt able to report the violence and sexual abuse he told us he experienced in youth detention. He also told us that he was concerned about the risk of payback or punishments from other staff.<sup>305</sup> 'Ryce' told us that he may have disclosed being abused if he had been able to speak to someone independent: 'Speaking for myself, like the trust issues that I have, if I knew that they worked for any kind of government agency or anyone like that there's no way I'd go. I'd get nowhere near them ...'<sup>306</sup> 'Sheldon' told us that he did not disclose being sexually abused by officers because he believed it would be a waste of time and make things worse for him: 'I thought because they worked for them and they worked for the government, nothing's going to happen'.<sup>307</sup>

Other children may simply feel powerless – they do not feel they will be believed and do not have access to a trusted or supportive adult to disclose to. 'Joseph Rick' told us that he did not disclose that he'd been sexually abused by a staff member while he was in youth detention because he did not find his caseworker, who worked for all the detainees, helpful or trustworthy. He said, 'They don't make the effort to sit down and see if someone's alright, see if they need help ...'<sup>308</sup> 'Aidan Paul' told us that he had a caseworker at the youth detention centre he discussed most things with, but he did not feel he could tell the caseworker about being sexually abused as the caseworker knew the perpetrators, who were staff at the centre.<sup>309</sup>

We also heard that a lack of access to appropriate communication and other related supports is a particular barrier to disclosure in all institutional contexts for children with communication difficulties arising from physical or cognitive impairment.<sup>310</sup>

Complaint handling systems and responses to disclosures of child sexual abuse are discussed in more detail below.



## 3.7 Institutional responses to child sexual abuse in youth detention

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This section outlines what we have been told about institutional responses to child sexual abuse in contemporary youth detention. It also outlines the common concerns we heard about how detention staff and administrators have responded to allegations of child sexual abuse. It is difficult to assess the adequacy of responses to child sexual abuse in youth detention due to the significant barriers to identifying and reporting the abuse and the limited information on it. This section highlights some areas of concern and is informed by our private sessions with survivors of child sexual abuse in youth detention and other relevant inquiries into youth detention.

There are a number of different potential responders to child sexual abuse in the context of youth detention, including youth detention centre staff, youth justice agencies and government departments, the police, ombudsmen and the child protection system. We have identified some key issues that may arise in response to allegations of child sexual abuse in youth detention from commissioned research, private sessions and our youth detention consultations, namely:

- not taking children seriously, including ignoring allegations
- lack of knowledge of, or access to, complaint handling systems, including staff discouraging children from making formal complaints or not reporting allegations to the police
- risk assessment and management that may have compromised child safety after alleged abuse.

### 3.7.1 Responses to victims

Research suggests that some staff in total institutions, such as youth detention centres, may judge the children in their care to be ‘untrustworthy and generally morally inferior’, undermining a child’s inclination or attempts to disclose abuse.<sup>311</sup> This is consistent with what we heard from survivors in private sessions who told us about sexual abuse in contemporary youth detention. Many of the survivors who said they had previously disclosed being sexually abused in contemporary youth detention described dismissive responses by institutions. These responses commonly involved the person they disclosed to ignoring or rejecting the disclosure.

‘Ralph Steven’ told us he was not believed when he tried to report being sexually abused to a psychologist who worked in the youth detention centre. He did not attempt to report it again.<sup>312</sup> ‘Oliver Patrick’ told us he was abused by multiple perpetrators in three different youth detention centres. In one centre, ‘Oliver Patrick’ said that he told the ‘boss’ that he had been abused by a staff member but the boss thought he was lying as ‘he didn’t think his staff members would do it’. In another centre, ‘Oliver Patrick’ told us that he complained about being sexually assaulted by other children to a staff member and that the staff member told him that staff could not do

anything about it unless they witnessed it.<sup>313</sup> ‘Jeffrey’ said that he was raped by another boy in a recreation room. About a week later he complained about the rape to a staff member who laughed. ‘Jeffrey’ told us, ‘I said “This isn’t a joke”, and I broke into tears’. He said he was taken to hospital and then placed in a different unit in the youth detention centre.<sup>314</sup>

### 3.7.2 Complaint handling and reporting systems

As discussed in Section 3.6.3, avenues to report sexual abuse that children find inaccessible or lack confidence in can be a significant barrier to disclosing and identifying child sexual abuse in contemporary youth detention. Complaint handling systems that children find inaccessible, or a lack of knowledge of those systems among both staff and children are issues that may impede the ability of youth detention administrators and external authorities to respond appropriately to child sexual abuse.

In our consultations with children in youth detention centres, we observed that in some centres, a number of children had a very poor understanding of the internal and external complaint systems available to them or the processes for making a complaint. Some children also reported low levels of confidence in complaint handling systems, due to inappropriate responses to past complaints. These children often said that they would not make another complaint because they felt it would not be taken seriously or would be futile. Some non-custodial staff members in one youth detention centre told us that internal complaints were inappropriately handled, deterring children from making further complaints. It was also alleged that staff in some youth detention centres had been observed destroying written complaints.<sup>315</sup>

In relation to historical youth detention, in our *Youth detention centres, Victoria* case study we observed the importance of staff training to recognise signs of child sexual abuse and to deal with complaints in preventing and responding to abuse. We also observed the importance of reporting disclosures of child sexual abuse to the police in safeguarding against further abuse.<sup>316</sup>

Commissioned research highlights that formal power differentials can make it costly for third parties to report abuse perpetrated by their superiors, peers or subordinates. Staff members may be reluctant to report abuse that has come to their attention due to fears of their complaints being ignored or punishment for reporting abuse – for example, by not being promoted.<sup>317</sup> Staff members may also fail to address allegations of abuse by colleagues due to the ‘impulse to trust one’s co-workers’.<sup>318</sup> This impulse may be stronger in workplaces such as youth detention centres that require staff to work together to manage volatile and, at times, violent circumstances and behaviours.

This is consistent with what we were told by survivors in private sessions in relation to contemporary youth detention. Survivors told us about disclosing abuse to adults who failed to act on the allegations or report abuse to the police. Many survivors we heard from also described feeling that continuing to complain was pointless. ‘Aaron Travis’ said, ‘I tried to report

what happened to me to senior officers and counsellors, but no one was interested in my cry and complaints for help ... I lost faith in adults and authorities'.<sup>319</sup> 'Davy' told us that he and other children complained about abuse they had experienced or witnessed to a supervisor at the youth detention centre but that this made no difference. He said:

We used to tell [a supervisor] a lot of shit and that and it never went anywhere. It'd just float around amongst the staff members and that, and we'd get beaten up because of trying to let it out ... We learned how to shut up, and I think [the officers] learned how to stick together ...<sup>320</sup>

We were told in private sessions that staff discouraged survivors from making formal complaints in relation to child sexual abuse. 'Lochie Andrew' spoke to a staff member about two other detained children anally penetrating him with a toothbrush and 'he told me to have a good long hard think about what I was doing before I did it, because it was just going to create dramas for me in the unit'. 'Lochie Andrew' decided not to pursue his complaint because he was due to be released in a few days.<sup>321</sup> 'Findlay' told us that when he complained about being sexually abused by a youth detention centre staff member, the general manager of the centre implied that pressing charges may threaten his eligibility for early release.<sup>322</sup>

We also heard from survivors who described not being supported during a complaint or investigative process in relation to alleged abuse. Several survivors told us that staff did not communicate decisions related to the complaint or the outcome of the complaint. 'Pierce' told us about his negative experience when asked to answer questions as part of an inquiry regarding a youth detention centre staff member who had exposed himself to 'Pierce'. He felt the treatment he received throughout the process was as bad as the original incident:

I still struggle to this day because of the way they made me feel. I wasn't lying. I had no reason to lie. But for them to do that, fuck, I was only 14. I might have been a little older, I can't remember exactly, but I wasn't allowed to have no one there. They didn't give me a chance. I just got ripped out of here and taken there, sat down and pumped.<sup>323</sup>

### 3.7.3 Risk assessment and management

Youth detention is an institution with a range of inherent risks, including of child sexual abuse, associated with the administration of a closed, secure environment. Critical to an appropriate response is the assessment and management of risks to other children following the disclosure of abuse. This includes risk management policies that identify existing and emerging risks and strategies for mitigating those risks. Procedures for responding to incidents or allegations of child sexual abuse should also form part of risk assessment and management processes. Without these processes, opportunities to identify, prevent and respond effectively to other incidents of child sexual abuse will likely be missed.

Some survivors told us that the youth detention centres in which they said they were sexually abused did not take immediate steps to assess and manage risks to other children following an allegation of abuse. 'Joshua Michael' told us that he was raped by an older boy. He said that he cried out during the attack, attracting the attention of a staff member but that the staff member instructed the boys to be less noisy and did nothing to stop the assault. 'Joshua Michael' told us that after the assault he was placed in an observation unit. He thinks this was more to protect him from other detained children than because he was at risk of self-harm.<sup>324</sup>

In many of the cases we were told about during private sessions, we heard that perpetrators continued to have access to, and sexually abuse, the victim or other children and opportunities to prevent further abuse were missed. 'Bo' said that he immediately complained about being sexually assaulted by an adult prisoner to a staff member. 'Bo' told us that he was moved to a different unit and put on suicide watch and that the adult prisoner continued to have access to young men. 'Bo' was confident that the adult prisoner had sexually assaulted boys before and after him: 'I'm pretty sure he done it to others too. A lot of people were really quiet and kept to themselves, and a lot of people were scared of him, scared to stand up and say something. He'd just smack your head in'.<sup>325</sup>

#### **'Joanne Lisa'**

'Joanne Lisa' told us that she worked as a health worker in a youth detention centre in the early 2000s, running a reintegration program. 'Joanne Lisa' said that policies and procedures were not followed by staff and management. For example, she told us that one client was a known sex offender and a potential danger to other children in the centre; however, the manager rather than establish a behaviour management plan for the client, got a nurse to 'have a chat with him about his sexuality'.

'Joanne Lisa' said that after four of her clients were assaulted she assisted one in reporting the assault to the police, but she was then moved to another unit, which meant she couldn't see his case through. 'Joanne Lisa' believes that nothing eventuated from the police report.

'Joanne Lisa' also said that she knew of staff members who sexually and physically assaulted detained children and young people. She told us that one staff member was revealed to be sexually abusing an underage youth and was not removed from her position.<sup>326</sup>

## 3.8 Creating safer youth detention environments

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The recommendations made in this section aim to strengthen the protection of children in youth detention institutions. We acknowledge that youth detention systems in a number of jurisdictions are already undergoing significant change. It is important to stress at the outset that research suggests children are generally safer in community settings than in closed detention environments.<sup>327</sup> However, when youth detention is considered necessary as a last resort, there are many ways governments can improve the safety of children. A number of inquiries, including the Royal Commission into Aboriginal Deaths in Custody<sup>328</sup> and the Forde Inquiry<sup>329</sup> have emphasised that developing initiatives aimed at diverting young offenders from the criminal justice system or community-based sentences are preferable to detaining them in custody.<sup>330</sup>

Our recommendations reflect the challenging operational environment and the variation in approaches across different states and territories. Most jurisdictions have contemporary policies and procedures that aim to protect the rights of children and ensure appropriate reporting of abuse. However, we are concerned that there may be weaknesses in the implementation, monitoring and oversight of systems in some jurisdictions that could place children at risk. We suggest that state and territory governments and youth detention institutions consider the extent to which current policies, procedures and practices reflect best practice in keeping children safe in youth detention, and how our recommendations could strengthen current approaches.

The recommendations build on and supplement recommendations made elsewhere in this Final Report. In particular, this includes recommendations contained in Volume 6, *Making institutions child safe*, Volume 7, *Improving institutional responding and reporting* and Volume 8, *Recordkeeping and information sharing*, where we recommend a number of independent but interrelated initiatives to create child safe institutions. They also build on the work of a number of other public inquiries and reports.

This section outlines:

- children's views of safety
- existing child safe approaches
- our proposed Child Safe Standards, which would provide a benchmark for improving the safety of children in all institutions
- initiatives that could improve both the safety of children in youth detention and institutional responses to abuse.

### 3.8.1 Children's views of safety in youth detention

This chapter highlights the risks to children's safety in contemporary youth detention, and focuses on the lessons learned from survivors who told us they were sexually abused in youth detention post-1990. At the same time, it is important to acknowledge the many staff who are committed to supporting and protecting children in youth detention, and the significant developments in some jurisdictions to improve the safety of children.

Many of the children in youth detention we spoke to during our consultations across Australia said that they felt safe in youth detention.<sup>331</sup> A 2010 survey of children in youth detention centres in Queensland reported that most felt safe in youth detention.<sup>332</sup> Themes identified in children's responses about what helps them to feel safe in youth detention included positive interactions with staff and other children in the centre, contact with family and friends in the community and participation in programs and activities.<sup>333</sup>

Children are safer when institutions acknowledge and teach them about their rights to be heard, listened to and taken seriously. Article 12 of the UNCRC details the right of a child to express their views and participate in decisions that affect their lives.<sup>334</sup> A child safe institution seeks the views of children, takes into account their age, development, maturity, understanding and abilities, and provides formal and informal opportunities for them to share their views on institutional issues.

When children are equipped with knowledge of their rights, they will be better able to voice their concerns. As we heard from one young person in our youth consultations:

If I was the Prime Minister I think more so instead of us trying to protect the children we would make them more aware of what their rights are. So, in a lot of cases they don't know what their rights are, so other people would take advantage of that. And if they were aware they would be knowledgeable if someone was doing wrong by them, they would actually know rather than being too scared to speak out because they weren't sure.<sup>335</sup>

Commissioned research found that, to feel safe to voice their concerns, children need some power and control in an institution.<sup>336</sup> We acknowledge that this may be difficult to achieve in a youth detention context where power and control over almost every facet of children's lives are conferred on adult staff for the purpose of ensuring legitimate safety and security objectives. Nevertheless, there appears to be scope to provide children with some autonomy and input into decision-making in a way that would not compromise the security and safety of the children and others. For example, as we discuss below, consultations with children should form part of internal audits of the effectiveness of systems in youth detention.

Children and young people also told researchers that adults should recognise and value children's concerns, and help them to better understand risks.<sup>337</sup> Commissioned research suggests that a child safe institution values children and young people and their participation.<sup>338</sup>

Children and young people said they ‘want to be involved in identifying and dealing with safety issues and believe that, in partnership with adults and institutions, issues such as child sexual abuse can be better dealt with’.<sup>339</sup>

In the context of youth detention, providing processes for children to communicate their views and concerns and respecting their input can help to build relationships between them and staff. In the *Children’s Rights Report 2016*, the National Children’s Commissioner, Ms Megan Mitchell, highlighted that youth advisory or leadership groups have been established in some youth detention centres. Generally, these groups consist of detained children, staff and management and provide a forum for discussing issues of concern. Ms Mitchell observed:

Where these groups existed, it appeared that the relationships between children and young people, staff and management were more positive, mutually respectful and constructive. Such opportunities also develop the skills and capabilities of children and young people in meaningful ways, providing and modelling non-aggressive ways to resolve issues and problems.<sup>340</sup>

The Detainee Representative Committee in New South Wales is one example of such a group. This committee aims to provide a regular and organised forum for children in youth detention to present their views and raise, discuss and resolve issues in relation to the management and operation of youth detention centres.<sup>341</sup>

Sections 3.8.4 and 3.8.5 outline the many areas in which we propose to address the safety concerns of children in youth detention. These practical initiatives work to create a safer environment for children in youth detention and improve institutional responses to any allegations of abuse. They are also consistent with one of our key Child Safe Standards that ‘Children participate in decisions affecting them and are taken seriously’ (see Section 3.8.3).

### 3.8.2 Existing child safe approaches

A range of mandatory and voluntary child safe approaches that aim to prevent harm to children, including in youth detention, exist at a national and state and territory levels. This section summarises some of the key approaches (see Volume 6, *Making institutions child safe* for more detail).

#### National Framework for Protecting Australia’s Children 2009–2020

The National Framework for Protecting Australia’s Children 2009–2020 makes it clear that the Australian and state and territory governments, and non-government institutions, must work together to protect Australia’s children.<sup>342</sup> Strategy 3 of the framework’s Third Action Plan 2015–2018 aims to improve how institutions respond to children and young people to keep them safe.

## National Statement of Principles for Child Safe Organisations

In late 2016, the Community Service and Disability Ministers agreed to the development of a National Statement of Principles for Child Safe Organisations to ‘drive implementation of a child safe culture across all sectors’ and ‘be used as a benchmark for cross-sectoral jurisdictional child safety policy making, funding and investment decisions, and legislation and compliance regimes’.<sup>343</sup> It is envisaged that these principles would apply to youth detention facilities.<sup>344</sup>

## State and territory child safe approaches

Victoria, Queensland and South Australia have implemented the following mandatory child safe approaches that apply to all organisations providing services for children, including youth detention institutions.

- In Victoria, all institutions that provide services to children are required to have a child safe policy, a code of conduct and processes for responding to and reporting suspected child abuse.<sup>345</sup>
- In Queensland, as part of that state’s Working With Children Check scheme (WWCC), institutions must have risk-management strategies for high-risk activities, special events and, for example, communications with parents.<sup>346</sup>
- In South Australia, religious organisations must provide a ‘child safe environment’ and lodge a statement with the Department of Child Protection about their child safe environment policies and procedures.<sup>347</sup>

New South Wales, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory have voluntary child safe institution approaches, to varying extents. These jurisdictions focus on raising awareness, providing capacity building training and resources and consulting with children.

## Working With Children Checks

In Australia, each state and territory has its own scheme for conducting background checks for people seeking to engage in child-related work. These schemes, commonly known as WWCCs, help to ensure that appropriate people are chosen to work or volunteer with children.<sup>348</sup> They do this by preventing people from working or volunteering with children if records indicate they pose an unacceptable risk to children.



Each of the eight schemes operates independently of the others. In our *Working With Children Checks* report, we found that these schemes are inconsistent and complex, and there is unnecessary duplication across them. There is no integration of the schemes, and there is inadequate information sharing and monitoring of WWCC cardholders.<sup>349</sup> We recommend in the report that the Australian Government facilitate the development of a national model for WWCCs.<sup>350</sup>

Youth detention staff who have, or may have, contact with a child are required to have a WWCC in most states and territories.<sup>351</sup> In South Australia, staff working in youth detention who have regular unsupervised contact with children are required to have a ‘relevant history’ check.<sup>352</sup>

### 3.8.3 Child Safe Standards

A key aspect of inquiring into what institutions and governments should do to better protect children against child sexual abuse has been to examine what makes institutions ‘child safe’. In Chapter 2, we recommended that all institutions, including detention institutions and those involving detention and detention-like practices, should implement the Child Safe Standards identified by the Royal Commission. The standards are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe.

The Child Safe Standards are discussed in more detail in Volume 6, *Making institutions child safe*, and Appendix A provides practical guidance on implementing the standards.

We acknowledge that in youth detention there may be circumstances in which the best interests of the child cannot easily be reconciled with maintaining security and the safety of others. However, we consider that our Child Safe Standards can and should be implemented in youth detention (see Chapter 2 and recommendation 15.1).

Each of the recommendations in this chapter is underpinned by the Child Safe Standards, which, when appropriately applied to youth detention, could improve the safety of children and institutional responses to and reporting of child sexual abuse.

### 3.8.4 Improving safety in youth detention

Commissioned research suggests that situational risks of child sexual abuse can be classified as modifiable or unmodifiable and that there are few institutional settings in which risks are unmodifiable. Child safe institutions are those that aim to minimise modifiable situational risks to the greatest extent possible.<sup>353</sup> The Child Safe Standards provide a useful framework for youth detention institutions to address modifiable risk.

The leadership and culture of an institution are integral to addressing situational risk. Creating a safer environment for children requires the commitment of institutional leadership, a culture that values child safety and governance arrangements that facilitate the implementation of the Child Safe Standards, as reflected in Child Safe Standard 1: Child Safety is embedded in institutional leadership, governance and culture. This would help to ensure that risks are identified and addressed at all levels of the organisation. The importance of leadership and governance to the effective operation, security and safety of youth detention environments has been highlighted in several recent youth detention reviews.<sup>354</sup>

### Ensuring a safer physical environment for children in youth detention

Creating a safer physical environment for children in youth detention involves institutions identifying and mitigating risks to children's safety in the physical environment, reducing opportunities for child sexual abuse to occur and increasing the likelihood of perpetrators being identified. It is consistent with Child Safe Standard 8: Physical and online environments minimise opportunities for abuse to occur.

#### **Building and design features**

While most jurisdictions have built new youth detention facilities since 1990, there remains significant variation in the safety features of current youth detention centres. Building and design features that impede the supervision of interactions among children and between children and staff can be exploited by perpetrators and provide opportunities for sexual abuse to occur (see Section 3.4.2). Ongoing vigilance is required to identify elements of the physical environment that may present risks to children. Where risks are identified, jurisdictions should consider best practice design standards, building modifications and changes in staff practices and procedures that could address these risks.

One of the most significant developments for the safety of children in youth detention has been the introduction of CCTV systems throughout youth detention facilities in Australia. CCTV footage acts as a deterrent for abuse and can corroborate allegations of abuse, giving children a voice where they may have previously been disbelieved. CCTV cameras should be considered where blind spots exist. Staff equipped with body-worn cameras, which provide visual and audio recordings of staff interactions with children, may provide an additional layer of transparency and accountability. Body-worn cameras have been introduced in Queensland youth detention facilities as part of a broader range of prevention and de-escalation strategies.<sup>355</sup> Electronic systems that monitor staff movements at night – for example, by recording when a cell door has been opened – offer similar benefits.<sup>356</sup>

If such technologies are not already in place, jurisdictions should consider how they could be used to mitigate risk in each youth detention institution. However, it is important that these measures accommodate the privacy of children in youth detention to the greatest extent possible and that less intrusive technologies are used where privacy concerns exist.

### **Placement and supervision of children**

During this inquiry, we have observed that the placement of younger children with older children, girls in predominantly male detention environments or children in adult prisons can heighten particular risks to child safety. However, as noted in Section 3.4.2, ensuring that children are separated according to their age, legal status, security classification and gender within a limited physical environment can become particularly challenging when youth detention centres near or reach their capacity.

Youth detention agencies need to ensure that the placement of children in youth detention is appropriate and that the interactions children have with staff and other children are adequately supervised and monitored. To the extent that institutions do not already have formal policies and procedures in place, they should consider the need for a structured risk assessment process before making placement decisions. State and territory governments should consider the potential impact of criminal law and policy changes – for example, changes in bail laws – on youth detention populations, and the capacity of administrators to safely place additional children.

### **Strip searches**

The authorised use of strip searching is a feature that distinguishes contemporary youth detention environments from the other institutions we have examined. As described in Section 3.4.2, several reports during the contemporary period have raised concerns about the impact of strip searching on children in youth detention, particularly on children who have been sexually abused before entering detention. We were often told by survivors in private sessions about their experiences of being subjected to potentially abusive, inappropriate or traumatising strip searches.

We acknowledge that there may be circumstances in which children will need to be searched in youth detention for safety and security reasons. However, as discussed in Section 3.4.2, strip searching can create opportunities for perpetrators to sexually abuse children and search procedures that deviate from best practice may be traumatising for children, particularly those with a history of sexual abuse.

The NSW and WA inspectors of custodial services have suggested that other measures could be used to minimise the use of strip searching to detect contraband. The NSW inspector considered that routine strip searching in relation to visits was 'inconsistent with good practice' and recommended that Juvenile Justice NSW implement a 'rigorous risk-based assessment process to target the trafficking of contraband' in place of routine strip searching.<sup>357</sup> This recommendation was accepted by Juvenile Justice NSW with respect to visits and outings.<sup>358</sup> Similarly, the WA inspector did not accept that 'frequent and routine use of strip-searching is justified by security considerations', highlighting that many items carried externally can be identified by using walk-through or hand-held metal detectors and items carried internally are unlikely to be detected by a strip search.<sup>359</sup> The WA inspector recommended that the frequency of strip searching be reduced by using other measures to detect contraband.<sup>360</sup> The Queensland Youth Detention Inspectorate has recommended that the Queensland Government consider purchasing electronic contraband detection equipment to further minimise the need for unclothed searches.<sup>361</sup>

A critical first step in verifying that children's safety is not unduly compromised by strip search procedures would be for jurisdictions to ensure that existing legislation, policies and procedures clearly articulate the circumstances in which a child can be strip searched and the process for conducting searches. These procedures should be communicated effectively to staff. This would not only ensure that staff follow proper procedures, but that they understand why these processes are important. Staff must also clearly communicate these procedures to children so that if they are strip searched, they understand what is happening and the reasons why. To the extent they are not already, children's rights in relation to strip searches should be explained during induction and in posters in search areas.

Jurisdictions should review their strip search policies and procedures to ensure they reflect best practice and investigate alternatives to strip searches, such as risk assessments and electronic scanners. Where jurisdictions have appropriate policies and procedures in place, they should ensure that they are followed in practice through regular internal monitoring and auditing systems. This should include consulting with children about their experiences and understanding of strip searches.

### **Access to trusted adults**

As highlighted in Section 3.4.2, research suggests that children with no parent or guardian actively involved in their lives are particularly vulnerable to sexual abuse and may reside in total institution environments, such as youth detention.<sup>362</sup> In a physical environment in which children are largely isolated from the adults they trust, maximising the contact children have with parents, guardians and other trusted adults may help to mitigate this risk and provide those children with more opportunities to disclose abuse or inappropriate behaviour.

Several reports have emphasised the importance of children in youth detention having contact with the significant people in their lives. The 1999 Forde Inquiry also recommended that contact should be 'actively encouraged' and that contact with partners and 'significant others' is given the same status as contact with parents and siblings.<sup>363</sup> The NSW inspector recommended that Juvenile Justice NSW review its telephone contact policy to ensure that contact with family is not apportioned according to behaviour.<sup>364</sup> Juvenile Justice NSW supported this recommendation.<sup>365</sup>

While most jurisdictions have contemporary policies that recognise children's right to be in contact with their family, they should consider how they can better support and connect children to trusted adults, including family, friends, and community. This includes considering any practical impediments to contact, such as telephone contact and visitation approval processes. Consideration should be given to how audio-visual technology, such as Skype, could be better used, particularly for children whose family members are far from youth detention facilities and cannot visit. For children from remote locations a range of strategies may be needed to enable and support contact with family and culture.

Some children may not have any adults in their lives who they feel they can trust and rely on, and may have experienced familial abuse or neglect. In this context, it is important that they have supportive and constructive relationships with internal and external staff, as well as accessible complaint handling systems and external oversight bodies (see Section 3.8.5).

### **Recommendation 15.3**

Youth justice agencies in each state and territory should review the building and design features of youth detention to identify and address elements that may place children at risk. This should include consideration of how to most effectively use technology, such as closed-circuit television (CCTV) cameras and body-worn cameras, to capture interactions between children and between staff and children without unduly infringing children's privacy.

### **Recommendation 15.4**

As part of efforts to mitigate risks of child sexual abuse in the physical environment of youth detention, state and territory governments should review legislation, policy and procedures to ensure:

- a. appropriate and safe placements of children in youth detention, including a risk assessment process before placement decisions that identifies if a child may be vulnerable to child sexual abuse or if a child is displaying harmful sexual behaviours
- b. children are not placed in adult prisons
- c. frameworks take into account the importance of children having access to trusted adults, including family, friends and community, in the prevention and disclosure of child sexual abuse and provide for maximum contact between children and trusted adults through visitation, and use of the telephone and audio-visual technology
- d. best practice processes are in place for strip searches and other authorised physical contact between staff and children, including sufficient safeguards to protect children such as
  - i. adequate communication between staff and the child before, during and after a search is conducted or other physical contact occurs
  - ii. clear protocols detailing when such practices are permitted and how they should be performed. The key elements of these protocols should be provided to children in an accessible format
  - iii. staff training that highlights the potential for strip searching to re-traumatise children who have been sexually abused and how the misuse of search powers can lead to sexual humiliation or abuse.

State and territory governments should consider implementing strategies for detecting contraband, such as risk assessments or body scanners, to minimise the need for strip searching children.

## Responding to children's different needs

Consistent with Child Safe Standard 4: Equity is upheld and diverse needs are taken into account, institutions including youth detention should anticipate and respond to children's diverse circumstances. This involves ensuring that all children have fair and equal access to the relationships, skills, knowledge and resources they need to be safe. It includes addressing additional barriers to disclosure, and tailoring child safe strategies to meet children's different needs.

As discussed in Section 3.4.3, there are many children in youth detention who are exposed to circumstances – such as a high level of involvement in institutional settings, previous experiences of maltreatment and family breakdown or family violence – that may expose them to a greater risk of child sexual abuse. The particular needs of these children should be considered in strategies for preventing and responding to child sexual abuse and making youth detention safer for children. In this section we consider the particular needs of:

- Aboriginal and Torres Strait Islander children
- children with disability or other health needs, such as mental health conditions or substance use issues
- children from culturally and linguistically diverse backgrounds
- children who have experienced sexual abuse and other forms of abuse or neglect.

As highlighted by a review of the Northern Territory youth detention system it is important that staff receive training regarding the needs and experiences of detained children. The review stated:

Many young people in the youth justice system come from homes where poverty, alcohol abuse, violence and dysfunctional relationships are the norm. These are young people in greatest need and the ones who are likely to require a higher level of intervention and case management. It is important that staff keep in step with this challenge by training and awareness.<sup>366</sup>

### **Aboriginal and Torres Strait Islander children's needs**

Given the chronic over-representation of Aboriginal and Torres Strait Islander children in youth detention and the risks inherent in youth detention, we have made recommendations that seek to address the safety of Aboriginal and Torres Strait Islander children.

As highlighted in Section 3.4.3, it is important that youth detention services provide for the cultural needs of Aboriginal and Torres Strait Islander children. There are a range of benefits to this approach, including that it helps to create an environment in which detained Aboriginal and Torres Strait Islander children feel safe to disclose child sexual abuse or inappropriate behaviour that makes them feel uncomfortable. Some institutions would need to access appropriately

skilled language interpreters and cultural advice to receive and understand a disclosure. The small size of some language communities and the small number of suitably qualified translators in these communities can mean that some children may be reticent to engage with translators due to fears that they would share what is discussed with others in the community. We were told that the professional obligations of translators need to be emphasised up-front, and that language translation needs to be accompanied by quality cultural interpretation to create a safe environment for these children to disclose and to ensure that meaning and cultural nuances are conveyed.<sup>367</sup>

A number of youth justice agencies have introduced initiatives that attempt to better support Aboriginal and Torres Strait Islander children in youth detention and help them to maintain connections to their communities and culture. For example:

- The Queensland Department of Justice and Attorney-General has established a Youth Justice First Nations Action Board, which advises senior management on understanding the cultural needs and reducing the over-representation of Aboriginal and Torres Strait Islander children in the youth justice system.<sup>368</sup>
- Cobham Juvenile Justice Centre in New South Wales employs Aboriginal Engagement Officers and is constructing a learning circle where Aboriginal and Torres Strait Islander children can discuss issues, speak with Elders and learn about their culture.<sup>369</sup>
- A number of jurisdictions have developed plans to support the delivery of culturally appropriate services, including the Aboriginal and Torres Strait Islander Cultural Capability Action Plan 2015—2019 (Department of Justice and Attorney-General, Queensland)<sup>370</sup> and the Youth Justice Aboriginal Cultural Inclusion Strategy 2015—18 (Department for Communities and Social Inclusion, South Australia).<sup>371</sup>

Staffing is a significant aspect of creating a supportive environment in youth detention for Aboriginal and Torres Strait Islander children. This includes the recruitment, development, support and retention of Aboriginal and Torres Strait Islander staff across all levels of youth justice agencies. As Victorian Commissioner for Aboriginal Children and Young People Mr Jackomos told us:

When children do come in to youth justice we need to have the right workers. We need to have the culturally competent. We need more Koori workers inside. And we don't just need Koori workers, we need Koori executives, Aboriginal executives. We need managers. We need policies and practices that are culturally safe, and this is what we don't have in Victoria and I imagine in most other Australian jurisdictions.

We need it to be where culture for Aboriginal children isn't just one hour a week or two hours a week in Parkville College [the school at Parkville Youth Justice Precinct in Victoria], but it needs to be part of the whole institution. It's not just an Aboriginal flag flying outside of the institution or the manager having an Aboriginal painting behind his head in his office – it needs to be right throughout the institution.<sup>372</sup>



The 2016 Queensland *Independent review of youth detention* considered that there is a lack of programs that adequately address the needs of Aboriginal and Torres Strait Islander children in youth detention in that state.<sup>373</sup> That review also highlighted that staff, including female staff and staff from minority groups, should be demographically representative of the children being detained and be selected on the basis of their professional capacity to deal with children.<sup>374</sup>

### **Disability and other health needs**

As discussed in Section 3.4.3 children with disability in youth detention may be particularly vulnerable to abuse and face additional barriers to disclosing abuse. Research and feedback from youth detention staff suggests that many children in youth detention may have an undiagnosed disability.<sup>375</sup> Improving the diagnosis of disability and other conditions alongside improving the quality of support available to children with disability may improve the safety of this group in youth detention.

The *Independent review of youth detention* in Queensland also found that there is a lack of specific programs in youth detention to address the needs of children with disability or learning difficulties, and recommended that consultation with external stakeholders be undertaken in developing such programs.<sup>376</sup>

Children with disability in youth detention need to be appropriately supported. This would help to ensure that they have opportunities to disclose abuse. This would require youth detention staff to understand how to engage with children with disability and understand the barriers they may confront in raising concerns or disclosing abuse. Making youth detention safer for children with disability would also require that children are provided with accessible pathways for raising issues, including appropriate supports and communication tools to facilitate their engagement.

Jurisdictions should also consider the merits of conducting regular, standardised and published independent health surveys of children in youth detention, such as that conducted in New South Wales.<sup>377</sup> Such surveys would provide a better understanding of the backgrounds and needs of all children in youth detention and guide treatment and service provision. This would be assisted by services aimed at the identification of disability and mental health issues – for example, such as the Justice Health & Forensic Mental Health Network in New South Wales<sup>378</sup> and the Mental Health, Justice Health and Alcohol & Drug Services programs provided by ACT Health.<sup>379</sup>

### **Children from culturally and linguistically diverse backgrounds' needs**

Staff in youth detention should be trained in culturally sensitive and responsive practice, and children who have low English proficiency should have ongoing and appropriate access to translation services.<sup>380</sup> Specific efforts should also be made to actively involve families and community networks who can support culturally and linguistically diverse children in and beyond youth detention.<sup>381</sup> Particular efforts should be made by youth detention operators to understand and respond to varying forms of prior trauma experienced by children from culturally and linguistically diverse backgrounds, especially refugee children. It is also the responsibility of leadership to ensure that youth detention environments are free from racism

and prejudicial or discriminatory attitudes, and that front-line staff are committed to developing and promoting cultural knowledge and skills specific to the backgrounds of children in each facility.<sup>382</sup> This should include an understanding of the dynamics around disclosure and reporting barriers that are particular to children from culturally and linguistically diverse backgrounds, as described in Volume 4, *Identifying and disclosing child sexual abuse* and Volume 7, *Improving institutional responding and reporting*.

#### **Recommendation 15.5**

State and territory governments should consider further strategies that provide for the cultural safety of Aboriginal and Torres Strait Islander children in youth detention including:

- a. recruiting and developing Aboriginal and Torres Strait Islander staff to work at all levels of the youth justice system, including in key roles in complaint handling systems
- b. providing access to interpreters, particularly with respect to induction and education programs, and accessing internal and external complaint handling systems
- c. ensuring that all youth detention facilities have culturally appropriate policies and procedures that facilitate connection with family, community and culture, and reflect an understanding of, and respect for, cultural practices in different clan groups
- d. employing, training and professionally developing culturally competent staff who understand the particular needs and experiences of Aboriginal and Torres Strait Islander children, including the specific barriers that Aboriginal and Torres Strait Islander children face in disclosing sexual abuse.

#### **Recommendation 15.6**

All staff should receive appropriate training on the needs and experiences of children with disability, mental health problems, and alcohol or other drug problems, and children from culturally and linguistically diverse backgrounds that highlights the barriers these children may face in disclosing sexual abuse.

### **Prevention education**

Child sexual abuse prevention education aims to provide children with knowledge and skills to help protect themselves from potentially abusive situations and to be aware of how to seek help in the event of abuse or attempted abuse.<sup>383</sup> Because it would help children to understand and articulate their safety concerns, prevention education is critical to realising Child Safe Standard 2: Children participate in decisions affecting them and are taken seriously.

Child sexual abuse prevention education as well as broader prevention strategies are discussed in Volume 6, *Making institutions child safe*. In that volume we highlight the need for a nationally consistent approach to child sexual abuse prevention education programs for children in preschool and school, with minimum national standards for this program content. We recommend that the Australian Government establish a mechanism to oversee the development and implementation of a national strategy to prevent child sexual abuse (see Recommendation 6.1).

There is a need for evidence-informed prevention education strategies, tailored to the needs of children in youth detention. This includes ensuring that programs consider the particular vulnerabilities of children in youth detention, including previous experiences of sexual and other forms of abuse. As discussed in Section 3.2.2, a number of children in youth detention have limited education, learning difficulties and cognitive disability, factors that may affect a child's capacity to engage with educational programs without appropriate support. Programs must also be culturally sensitive and accessible for Aboriginal and Torres Strait Islander children and children from culturally and linguistically diverse backgrounds. To ensure accessibility, it would be essential to consider the ways in which sexual abuse is discussed and understood across different religions and cultures. This includes adapting programs for specific sub-populations and groups.

Offering prevention education in youth detention would provide an opportunity to reach some particularly vulnerable children who may not receive this education in the community as a result of disrupted and fragmented schooling. Preferably, all children in youth detention would be able to access the school-based programs available to children in the community, which would be supplemented by secondary prevention education or early intervention strategies delivered by experts in youth detention contexts. However, we acknowledge that there are significant practical difficulties to providing this education to children who are on remand or spend short periods in youth detention.

### **Therapeutic treatment for sexual abuse survivors in youth detention**

Information available to us indicates that while there are a range of therapeutic treatment services available in youth detention settings, there are few, if any, that specifically respond to the needs of victims and survivors of child sexual abuse.

No jurisdiction provides funding specifically for survivors of child sexual abuse in youth justice settings. However, survivors may be referred to external health services. For example, in the Northern Territory, youth survivors of child sexual abuse are referred to the Sexual Assault Referral Centre, a Northern Territory Department of Health service. Youth survivors of child sexual abuse are ineligible for this service if they have a history of harmful sexual behaviours.<sup>384</sup> In South Australia, there is a program for residents in youth justice centres with a history of problematic sexual behaviours.<sup>385</sup>

During consultations in youth detention settings we heard that disclosures of sexual assault which took place before coming into custody were inappropriately handled, limiting the ability to determine that the victim or survivor may be in need of support.<sup>386</sup> Multiple submissions to our *Issues paper 10: Advocacy and support and therapeutic treatment services* noted a lack of privacy and confidentiality as a significant barrier to accessing services in detention environments.<sup>387</sup>

In mid-2015, following public hearings conducted by this Royal Commission, the Victorian Department of Health and Human Services introduced a practice change that resulted in all children 'being asked about events [of child sexual abuse] prior to being admitted to custody'.<sup>388</sup> This has resulted in an increase in disclosures of abuse and assault alleged to have occurred before a child entered youth detention.<sup>389</sup> Jurisdictions should consider how intake procedures could assist in supporting detained children who are sexual abuse survivors to access therapeutic treatment services.

Many children in youth detention have either a short period of sentenced custody or are remanded in custody awaiting trial or sentencing. This creates difficulties for children to access therapeutic treatment programs and other health services.<sup>390</sup> It is difficult for staff to plan and provide programs and services for children on remand as the length of their detention and the outcome of their charge are unclear.<sup>391</sup> A short period of sentenced custody may not be enough time for staff to work with children and provide treatment sufficient for their needs. In addition, when children are first admitted to a youth detention institution they may be experiencing significant distress, alcohol or other drug withdrawal or have other immediate health needs.<sup>392</sup>

In this context, it is important that strategies are implemented to ensure that children who have experienced sexual abuse are offered adequate therapeutic treatment, both in detention and when they are released into the community, and that there is continuity of care during that transition. For example, the Queensland Child and Youth Mental Health Service operates a Mental Health Transitions program for Aboriginal and Torres Strait Islander young people leaving youth detention who live in the Brisbane catchment area. This program links young people with community-based mental health and other support services.<sup>393</sup> In Victoria, the Multiple and Complex Needs Initiative aims to facilitate better coordination of supports for people aged 16 years and older who have been identified as having multiple and complex needs.<sup>394</sup> We note that effort needs to be focused on developing strategies for providing services to children from rural and remote areas with less access to community-based therapeutic treatment services.

The Victorian *Youth justice review and strategy: Meeting needs and reducing offending* observed that as young offenders often have complex needs they should be given priority access to mainstream services and there needs to be better coordination across Victoria's youth justice agency and family violence, general health, mental health, disability and education services.<sup>395</sup> That review recommended focusing on 'identifying and intervening with young people to address their mental health needs in custody and supporting referral to mental health services in the community'.<sup>396</sup>

In Volume 9, *Advocacy, support and therapeutic treatment services* we highlight that victims and survivors of child sexual abuse in detention environments experience particular barriers when seeking help and support. We recommend that the Australian Government and state and territory governments fund dedicated community support services for victims and survivors of child sexual abuse that use case management and brokerage to coordinate and meet service needs. We also recommend that these services are trauma-informed, collaborative, available, accessible, acceptable and high quality and that peer-led service models are supported.

We consider that therapeutic treatment is vital for all survivors and victims of child sexual abuse. For those in youth detention, therapeutic treatment could aid in their rehabilitation by addressing behaviours, such as anger and substance use, which may be related to their experiences of sexual abuse and contribute to their offending.

#### **Recommendation 15.7**

State and territory governments should improve access to therapeutic treatment for survivors of child sexual abuse who are in youth detention, including by assessing their advocacy, support and therapeutic treatment needs and referring them to appropriate services, and ensure they are linked to ongoing treatment when they leave detention.

### **Supporting children with harmful sexual behaviours in youth detention**

As discussed, some children in youth detention have been convicted of sexual offences against other children, some of whom may continue to display harmful sexual behaviours while in youth detention. Other children may be in detention for separate offences but have also exhibited harmful sexual behaviours and others still may have harmful sexual behaviours that have not been identified.

Although only a very small proportion of offences dealt with by Australian courts are juvenile sex offences,<sup>397</sup> we recognise that serious sexual abuse committed by children may have severe, possibly lifelong, consequences for the victims and juvenile sex offenders can present serious threats against which the community requires protection. Australian research with clinicians suggests that when children are in youth detention for sexually abusing other children, there are benefits of comprehensive therapeutic care being available to them. This care should ideally involve the child's family (where appropriate) and be culturally appropriate.<sup>398</sup>

Currently, children in youth detention may receive treatment for harmful sexual behaviours individually or through treatment programs that operate in youth detention.<sup>399</sup> In some jurisdictions therapeutic interventions are mandated; in others they are voluntary. Australian research with clinicians has highlighted the complexities for children who come into contact with the justice system but who, without a conviction, remain ineligible for the therapeutic interventions that are available under a court mandate.<sup>400</sup>

We address the criminal justice system as it relates to juvenile offenders in our *Criminal justice* report<sup>401</sup> and discuss some of the limitations of the system as a tertiary response to children with harmful sexual behaviours in Volume 10, *Children with harmful sexual behaviours*.

The study of harmful sexual behaviours in children is a developing field. There is only a small body of research examining therapeutic interventions that may help the behaviours to cease and very little that specifically evaluates how well therapeutic interventions delivered in youth detention facilities work. We commissioned a systematic review to better understand the current best available evidence about therapeutic intervention for children with harmful sexual behaviours.<sup>402</sup> The review found evidence for the effectiveness of Multisystemic Therapy (MST) in reducing a number of negative social outcomes, including sexual aggression, violence and recidivism.<sup>403</sup> However, further work is required to ensure that MST interventions are effective in the Australian context and in institutional settings, including in residential institutions such as youth detention.<sup>404</sup>

During our consultations with experts we also heard about a range of other models and approaches to working with children with harmful sexual behaviours that practitioners considered useful. We were told about promising practices including:

- individualised treatment that can be tailored to the specific situation and behaviours that have occurred
- collaborative and multidisciplinary models where agencies and practitioners work together to respond to the multiple issues that many children may be experiencing alongside problematic and harmful sexual behaviours
- practitioners initially focusing their efforts on engaging the child in interventions to increase the likelihood of the child completing the therapeutic intervention
- responding to both past and current trauma that the child with harmful sexual behaviours may have experienced.<sup>405</sup>

We consider that all children with harmful sexual behaviours, including those in youth detention institutions, should receive professional, expert assessment so that they can receive appropriate responses that match their particular circumstances and needs, including therapeutic interventions where they are required. We also believe that staff in child-focused institutions should be equipped to recognise and respond to harmful sexual behaviours exhibited by children. Volume 10, *Children with harmful sexual behaviours* discusses this issue and contains our recommendations for improving the range of responses available to all children who have exhibited harmful sexual behaviours.

## Support and training for staff

Providing adequate support and training for staff is relevant to Child Safe Standard 5: People working with children are suitable and supported and Child Safe Standard 7: Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training. This would involve promoting child safety in staff recruitment and training and continually building staff capacity to protect children from harm.

Cultural change is necessary to make institutions safer for children. Support and training should aim to change people's attitudes and behaviours, rather than focusing only on achieving compliance with mandatory standards. This is particularly important to guard against tick-box compliance (see Volume 6, *Making institutions child safe*). Stakeholders in our consultations and commissioned research on the elements of a child safe institution told us that governments should focus on building institutions' capacity, changing their culture and clarifying what the Child Safe Standards mean in practice.<sup>406</sup>

Commissioned research found that government oversight should prioritise supporting institutions to continuously improve in measuring outcomes and identifying poor performance. Participants in commissioned research also advised that building the capacity of the systems, processes and individuals in an institution, supported by tools and training, would help to ensure compliance with the Child Safe Standards.<sup>407</sup>

During our consultations in youth detention centres, children told us about the qualities that 'good' youth detention staff should have, mentioning a range of characteristics including trust, respect and treating them like a human being.<sup>408</sup>

Each jurisdiction takes a different approach to staff training and development. Some staff have completed the Certificate IV in Youth Justice, which includes units on identifying and supporting children at risk, supporting Aboriginal and Torres Strait Islander children, and supporting the rights and safety of children in youth detention.<sup>409</sup>

Several reviews of youth justice systems in Australia have expressed concerns about staff recruitment, training and support. Issues raised include:

- poor workforce retention or reliance on a casual workforce and the impact of this on staff morale and operational knowledge<sup>410</sup>
- staff feeling unsafe and not receiving the support they need to work in a high-pressure environment, particularly following critical incidents<sup>411</sup>
- staff not understanding or maintaining professional boundaries in their interactions with children<sup>412</sup>
- poorly defined and articulated roles and responsibilities.<sup>413</sup>

Training should help staff to understand the prior experiences, including sexual abuse, of children entering youth detention, the factors in the youth detention environment that may enable or facilitate opportunities for child sexual abuse, and how to prevent and identify abuse. Staff in institutions can face significant issues identifying harmful sexual behaviours in children in their care, due to a range of factors including levels of professional training, experience, social attitudes and values.<sup>414</sup> Professionals in child-related roles should be provided with the knowledge to distinguish between healthy and harmful sexual behaviours in children who are in their care and help equip staff to react and respond appropriately when they notice harmful sexual behaviour.<sup>415</sup> This training would enable staff to better prevent and respond to abuse, and provides an opportunity to challenge the perceptions and assumptions that create barriers to disclosing and identifying child sexual abuse in youth detention, including that detained children are unreliable reporters of abuse or that children sexually abusing children in youth detention is normal or inevitable.

### **Making youth detention trauma-informed**

As described in Volume 9, *Advocacy, support and therapeutic treatment services*, mental health and human services in Australia are increasingly recognising the importance of becoming trauma-informed.<sup>416</sup> Being trauma-informed involves systemically planning to meet the needs of trauma survivors and ensuring that the agency's processes do not inadvertently re-traumatise them. It is not in itself a therapeutic response to trauma, but is rather an approach to working with survivors of trauma.<sup>417</sup>

We commissioned research to identify the principles underpinning trauma-informed approaches to child sexual abuse.<sup>418</sup> This research suggests that trauma-informed systems of care:

- understand the prevalence and nature of trauma arising from interpersonal violence and its impacts on other areas of people's life and functioning
- ensure that organisational, operational and direct service-provision practices and procedures promote rather than undermine the physical, psychological and emotional safety of service users
- adopt service cultures and practices that empower consumers in their recovery by emphasising autonomy, collaboration and strength-based approaches
- recognise and respond to the lived, social and cultural contexts of service users which shape their needs as well as their recovery and healing pathways
- recognise the relational nature of both trauma and healing.<sup>419</sup>



A trauma-informed youth justice system recognises and is responsive to the needs of young people who were victims of child sexual abuse or other forms of trauma before entering custody, as well as those who may have been abused in the detention setting. However, some common procedures in youth detention – including searches, restraint and isolation – may replicate the dynamics of prior traumas and therefore be inherently retraumatising.<sup>420</sup> In addition, trauma-informed approaches require appropriate resourcing and may not be possible when staff are working at or beyond their capacity. In our *Nature, cause and impact of child sexual abuse* case study, Professor Morgan observed:

My experience is that the vast majority of people come in with the best will in the world: they want to work with children; that's why they're doing it. But I think you're right: we need to do better by actually helping people understand more about the backgrounds of these kids and somehow freeing up time to talk. Because I find young people come up and talk to me just partly because they want somebody to talk to.

I think officers are often just swamped by the day-to-day procedures, doing all of those things that they're not finding time to engage. So we're a long way short of what I would regard as the effective trauma-informed management of children.<sup>421</sup>

In the detention environment, becoming trauma-informed may involve increased empathy, compassionate care and the development of verbal de-escalation skills. Trauma-informed practice may prevent young people in detention who are survivors of child sexual abuse from being retraumatised, by reducing practices such as seclusion that may reflect aspects of past abuse.<sup>422</sup> Becoming trauma-informed may also work to address other priorities in the detention system, such as preventing riots, reducing assaults, helping to de-escalate confrontations between staff and children, and increasing staff morale.<sup>423</sup> Despite these benefits, we note that implementation of this approach may require agencies to overcome barriers associated with organisational culture, such as a perception amongst corrections officers that trauma-informed practice is 'weak' or 'ineffective'.<sup>424</sup>

All states and territories have introduced,<sup>425</sup> or are introducing,<sup>426</sup> specific trauma-informed practice training for their staff in youth detention environments. For example, the trauma-informed approach implemented across Queensland's youth justice agency involves both staff and children in youth detention being provided with skills and knowledge about the impacts of trauma on children and behavioural triggers.<sup>427</sup>

However, in our consultations we noted that the take-up and understanding of trauma-informed approaches varied across each youth detention centre we visited. We were told by some staff psychologists that there was a tendency to be 'offence focused' as opposed to 'victim focused'.<sup>428</sup>

### **Recommendation 15.8**

State and territory governments should ensure that all staff in youth detention are provided with training and ongoing professional development in trauma-informed care to assist them to meet the needs of children in youth detention, including children at risk of sexual abuse and children with harmful sexual behaviours.

## **3.8.5 Improving institutional responses to child sexual abuse in youth detention**

Improving institutional responses to child sexual abuse is a key part of making institutions child safe. In Volume 7, *Improving institutional responding and reporting* we make recommendations to:

- enhance the reporting of child sexual abuse in institutional contexts to external authorities
- improve institutional complaint handling policies and procedures
- ensure implementation of reportable conduct schemes that oblige designated institutions to report complaints of child sexual abuse made against employees and volunteers to an independent oversight body.

In this section, we make recommendations for improving the responses to and reporting of child sexual abuse in youth detention. We discuss improving complaints and reporting processes and preventive monitoring and oversight mechanisms for youth detention.

### **Child-focused complaint process**

A child-focused complaints process is important for helping children and others in institutions make complaints.

In Section 3.6.3, we described how distrust of the avenues for disclosure or poor responses to disclosures of child sexual abuse can deter children from coming forward and obstruct the identification of child sexual abuse. In Section 3.7.2, we discussed how inaccessible complaint handling mechanisms or a lack of knowledge of complaint processes among staff and children can inhibit effective institutional responses to allegations of child sexual abuse in contemporary youth detention.

Internal complaint handling systems exist in every youth detention centre. Legislation in New South Wales, Victoria, Queensland, Tasmania and the Northern Territory specifies that a child or their representative may make an internal complaint.<sup>429</sup> In addition, the legislation in New South Wales, Queensland, Tasmania and the Northern Territory provides requirements for complaint handling systems in youth detention centres, such as to whom complaints should be directed and how they should be dealt with, although the level of detail varies across jurisdictions.<sup>430</sup> In most jurisdictions, the process for making and handling complaints is outlined in internal policy documents. Generally, these policies outline how children can make a complaint and how staff should manage and resolve complaints.<sup>431</sup>

Many children in youth detention know how to make a complaint, and do so. However, we consider that more can be done to make internal complaint handling systems in youth detention more accessible for children and responsive to their concerns. We have heard from children in youth detention about a variety of different types of internal complaint systems, in which children expressed varying levels of confidence. For example, children told us that some complaint handling systems consist of a complaint box managed by staff or a form that must be requested from staff.<sup>432</sup> One staff member highlighted the importance of discretion and confidentiality in handling complaints as some children will not want to be seen making a complaint for fear of a backlash from other children or staff.<sup>433</sup>

While Child Safe Standard 6: Processes to respond to complaints of child sexual abuse are child focused targets institutional complaint handling processes, such processes, policies and procedures should be informed by all the Child Safe Standards to create an environment where children, families and staff feel empowered to raise complaints and trust that these complaints will be taken seriously.

Child Safe Standard 6 aims to ensure that institutions have in place a child-focused complaint handling system that is understood by children, staff, volunteers and families. An effective complaint handling policy and procedure should clearly outline roles, responsibilities and approaches to dealing with different types of complaints, and obligations to act and report.

Child Safe Standard 6 provides that a child-focused complaint process for complaints of child sexual abuse involves the following core components:

- a. the institution has a child-focused complaint handling system that is understood by children, staff, volunteers and families
- b. the institution has an effective complaint handling policy and procedure which clearly outlines roles and responsibilities, approaches to dealing with different types of complaints and obligations to act and report
- c. complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met.

Policies should be accessible to all children and adults connected to the institutions, who may have varying communication and support needs. As discussed in Volume 7, complaint processes may require particular adjustments to be accessible to Aboriginal and Torres Strait Islander children, children with disability and children from culturally and linguistically diverse backgrounds. Institutions should consider who needs to access the policies and how best to communicate with stakeholders, who might have specific needs in language or culture, and to account for disability. For example, the Western Australian ACCESS registry provides a 24-hour, seven-day confidential telephone system where complainants with a disability are able to leave recorded messages or speak directly with a complaints officer.<sup>434</sup>

Hearing the voices of children is important because a lack of participation by young people is one of the contributors to an environment that enables sexual abuse, as reflected in Child Safe Standard 2: Children participate in decisions affecting them and are taken seriously. Where children do not feel listened to, they are less likely to report abuse and to have their reports taken seriously. Children need easy access to an adult they can talk to, and a complaints system that is accessible and in which they can have confidence.<sup>435</sup> To ensure the implementation and effectiveness of complaint handling systems, institutions should regularly consult with children as part of their internal audit systems. Complaint systems should then be reviewed and updated to respond to children's concerns.

In the context of contemporary youth detention, it is important to consider the accessibility and responsiveness of both internal and external complaint handling mechanisms. The confidence that children in youth detention will have in these mechanisms depends largely on how those systems operate in each centre. It requires children to feel that their concerns have been heard and taken seriously. This includes acknowledging complaints, engaging with children constructively about their complaint and communicating with children at all stages of the process, particularly the resolution. It also requires making the complaint system safe, private, confidential and accessible for children. The training of staff and the culture of the youth detention centre are also contributing factors.

Independent visitor schemes could also increase children's confidence in both internal and external complaint handling systems. For example, they could provide independent information about the complaint handling system, receive complaints and make referrals to external bodies. They could also act as a support person for a child going through the complaint handling process. For example, in Queensland youth detention centres there are communications boxes where children can leave messages or complaints for community visitors. When community visitors receive these complaints, they report them to relevant staff and, importantly, follow up on how they have been addressed.<sup>436</sup>

Children and others will also have more confidence in complaint handling systems where institutions are transparent about these processes. For example, youth detention institutions should consider publishing their complaint handling policies and data recording the number of complaints received and the nature of those complaints.

While complaint handling systems are essential, institutions should acknowledge the limitations of formal systems. In addition to internal youth detention staff, it is important that external oversight bodies, health and education staff and legal representatives also have the capacity to respond appropriately to allegations of child sexual abuse. Children will disclose their concerns or describe their experiences to the people they trust and feel comfortable with, and the information they provide may not be by way of a direct complaint. Staff need to have the skills and understanding to engage in these conversations with children in a way that is sensitive and supportive.

Volume 7 gives further guidance on how institutions should handle complaints about child sexual abuse. It recommends that institutions have a child-focused complaint handling policy and code of conduct, and outlines the key components of these policies (see Recommendations 7.7 and 7.8).

#### **Recommendation 15.9**

State and territory governments should review the current internal and external complaint handling systems concerning youth detention to ensure they are capable of effectively dealing with complaints of child sexual abuse, including so that:

- a. children can easily access child-appropriate information about internal complaint processes and external oversight bodies that may receive or refer children's complaints, such as visitor's schemes, ombudsmen, inspectors of custodial services, and children's commissioners or guardians
- b. children have confidential and unrestricted access to external oversight bodies
- c. staff involved in managing complaints both internally and externally include Aboriginal and Torres Strait Islander peoples and professionals qualified to provide trauma-informed care
- d. complaint handling systems are accessible for children with literacy difficulties or who speak English as a second language
- e. children are regularly consulted about the effectiveness of complaint handling systems and systems are continually improved.

## Reporting and recordkeeping processes

All states and territories have policies and procedures for responding to and reporting instances of child sexual abuse and other critical incidents including a death or serious injury, assault, attempted escape, suicide and self-harm that occur in youth detention.<sup>437</sup> The detail of these policies and procedures varies across jurisdictions but they generally outline:

- the information about the incident that must be recorded and the manner in which it is to be recorded
- the reporting process, including who must be informed of incidents and the circumstances in which incidents must be reported externally to agencies such as the police or the ombudsman
- the process staff should follow where a child has made an allegation of abuse or misconduct.

### Recordkeeping

Good recordkeeping is an important part of making and supporting institutions to be child safe. In Volume 8, *Recordkeeping and information sharing* we recommend that all institutions that engage in child-related work implement five principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse in the institution (see Recommendation 8.4).

The principles for records and recordkeeping are supplementary to our recommended Child Safe Standards and, in particular, Child Safe Standard 1: Child safety is embedded in institutional leadership, governance and culture.

In relation to the disposal of records we also recommend that, to allow for delayed disclosure of abuse by survivors and to take account of limitation periods for civil actions for child sexual abuse, all institutions that engage in child-related work should retain for at least 45 years records relating to child sexual abuse that has occurred or is alleged to have occurred (see Recommendation 8.1).

### Obligatory reporting to external authorities

In each state and territory, certain individuals and institutions are legally obliged to report suspicions, risks and instances of child abuse and neglect, including child sexual abuse, to the police, child protection authorities and/or oversight agencies. The aim of obligatory reporting is to detect, stop and prevent child abuse and neglect by requiring certain individuals and institutions to report to an external government authority.<sup>438</sup> Obligatory reporting generally applies to a range of types of abuse and neglect of children, including child sexual abuse. The main types of obligatory reporting relevant to youth detention institutions include mandatory reporting to child protection authorities, failure to report criminal offences and reportable conduct schemes.

Generally, youth detention staff must report all allegations of sexual abuse to the police.<sup>439</sup> In addition, suspected or alleged child abuse and/or neglect must be reported to the child protection authorities.<sup>440</sup>

Mandatory reporting laws in each state and territory require designated individuals to report to child protection authorities any known and suspected cases of child abuse and neglect, including child sexual abuse. The laws have common features but also differences, including who must report abuse or neglect and the threshold required to activate a reporting obligation. These differences between jurisdictions can cause confusion and frustration, and potentially create varying levels of safety and protection for children.

New South Wales<sup>441</sup> and Victoria<sup>442</sup> have enacted legislation that imposes criminal liability on third parties who know or believe that child sexual abuse has taken place but fail to report this abuse to the police. These offences may apply to youth detention staff. Reporting offences are considered in our *Criminal justice* report.<sup>443</sup>

Reportable conduct schemes oblige the heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees and oblige the oversight body to monitor institutions' investigation and handling of allegations. The only reportable conduct scheme in full operation during this inquiry was in New South Wales. Reportable conduct schemes commenced in Victoria and the Australian Capital Territory in July 2017.<sup>444</sup> The NSW scheme includes Juvenile Justice NSW.<sup>445</sup> The Victorian scheme covers any department within the meaning of the *Public Administration Act 2004* (Vic), which includes youth justice and Corrections Victoria.<sup>446</sup> The Australian Capital Territory scheme covers any administrative unit that deals with the safety, welfare or wellbeing of a particular child or class of children, which would cover youth justice in the territory.<sup>447</sup>

See Volume 7, *Improving institutional responding and reporting* for more detail on the responsibilities of institutions to report child sexual abuse to external authorities.

## Information sharing

As we explain in Volume 8, *Recordkeeping and information sharing*, information relevant to child sexual abuse is often personal and sensitive information. In general terms, personal information which has been properly collected by an agency or organisation for certain purposes, as required or permitted by law, may be disclosed for those (and related) purposes.<sup>448</sup> Disclosure of personal information related to child sexual abuse is otherwise restricted by privacy legislation,<sup>449</sup> child protection legislation,<sup>450</sup> and other laws such as defamation, obligations of confidentiality,<sup>451</sup> ethical codes, and in some cases under contract.<sup>452</sup>

Restrictions on the disclosure of personal information may be overcome by consent,<sup>453</sup> or specified exemptions and arrangements under privacy legislation.<sup>454</sup> Across Australia there are also numerous laws that operate to require or permit the exchange of information related to institutional child sexual abuse, including personal and sensitive information. Such laws overcome privacy and confidentiality restrictions on the disclosure of personal information by authorising or requiring information sharing contrary to those restrictions. In addition, a number of administrative arrangements support information sharing either consistently with these laws, or with privacy laws.

In South Australia, Tasmania, the Australian Capital Territory and the Northern Territory, youth justice and child protection are the responsibility of the same agency. In other jurisdictions, these areas are the responsibility of different agencies. Commissioned research on child sexual abuse in institutional contexts notes that this can create barriers to information sharing that do not exist where these two areas are managed in the same agency.<sup>455</sup>

Barriers created by having different agencies handle youth justice and child protection can be addressed through information sharing schemes. For example, in New South Wales and the Northern Territory, child protection legislation provides for the sharing of information between a specified range of bodies, including government and non-government institutions and certain individuals with responsibilities related to children's safety and wellbeing.<sup>456</sup> In New South Wales, prescribed bodies include the NSW Police Force, public service agencies or a public authority,<sup>457</sup> such as the Department of Family and Community Services, Corrective Services NSW and Juvenile Justice NSW.<sup>458</sup> In the Northern Territory information may be shared between 'information sharing authorities' including public sector employees 'acting under a law of the Territory in relation to a child'.<sup>459</sup>

In Volume 8, *Recordkeeping and information sharing*, we recommend that Australian governments implement a nationally consistent information exchange scheme for intra-jurisdictional and inter-jurisdictional sharing of information related to children's safety and wellbeing, including information relevant to child sexual abuse in institutional contexts. This scheme would apply to a range of prescribed bodies which have responsibilities related to children's safety and wellbeing. The scheme would facilitate timely and appropriate sharing of relevant information with those who need that information to prevent, identify and respond to child sexual abuse in institutional contexts (see Recommendations 8.6–8.8).

We have not made prescriptive recommendations specifically identifying the institution-types that should be included in this scheme. Instead, we have recommended that Australian governments consider the need for a range of bodies, including service providers, government and non-government agencies, law enforcement agencies, and regulator and oversight bodies, to be included. In our discussion of the recommended scheme we have set out what are, in our view, relevant considerations for Australian governments to take into account, in determining that range of bodies. See Volume 8 for discussion of our recommended scheme and its potential application in youth detention contexts.



## Preventive monitoring and oversight

The Child Safe Standards when coupled with child protection and detention standards provide useful benchmarks for administrators and external oversight bodies to measure the performance of youth detention institutions. To ensure the effective implementation of these standards and continuous improvement, institutions should assess their performance and seek feedback from children in youth detention. This approach should also apply to key operational policies and procedures relevant to the safety of children, such as those concerning strip searching, use of force and incident reporting. Internal self-assessment could be complemented and verified by external monitoring and oversight systems which are independent from the institution. A monitoring process that includes internal self-assessment and external oversight will promote a culture of shared responsibility for change and help ensure that standards, policies and procedures are being applied in practice.

### Internal monitoring

Internal monitoring and evaluation is fundamental to ensuring staff compliance with policies and procedures and the effectiveness of systems designed to protect children in youth detention. Thorough quality assurance processes support organisational cultures that encourage continuous improvement and best practice in youth detention. According to a review of the Northern Territory youth detention system, quality assurance should involve 'phases of self-assessment, annual review, improvement review and progress review'.<sup>460</sup>

In 2011, Juvenile Justice NSW introduced a Quality Assurance Framework (QAF) that provides for 'annual reviews to monitor and ensure the quality of administrative processes, systems and internal controls, and the quality of outcomes'.<sup>461</sup> The QAF is aligned with the AJJA Juvenile Justice Standards 2009 and Principles of Youth Justice in Australia 2014.<sup>462</sup> The QAF review process is conducted by executive and senior operational staff who are external to the youth detention centre or community unit under review. Following each review, a report is prepared and youth detention centres or community units are required to address any identified service gaps.<sup>463</sup>

Children in youth detention are surveyed and interviewed in a focus group to identify any concerns they may have about the services delivered by Juvenile Justice NSW.<sup>464</sup> In Victoria, children leaving youth detention have the option of undertaking an anonymous exit interview conducted by independent visitors from the Victorian Commission for Children and Young People. During the interview, children are asked about whether they felt safe in the youth detention centre, if staff listened to them, if they were told how to make a complaint and if they felt any complaints they may have made were taken seriously.<sup>465</sup>

## External monitoring and oversight

According to commissioned research, one of the reasons total institutions present a high cumulative risk of child sexual abuse is because their closed nature can shield them from the norms and observation of broader society.<sup>466</sup> This could be mitigated by preventive monitoring and independent oversight. In the context of youth detention, this could be achieved through independent monitoring and oversight bodies such as the inspectors of custodial services and visitor schemes operating in some jurisdictions and discussed in Section 3.2.3. Oversight bodies can minimise burdens on institutions by auditing at greater or lesser frequency, and at differing levels of focus, depending on the type of institution and its level of risk.<sup>467</sup>

We heard that in the context of youth detention environments, external oversight can have a positive impact on organisational culture, facilitate changes in policy and practice and help build the capacity of an institution to implement best practice. Professor Morgan told us in our *Nature, cause and impact of child sexual abuse* case study:

I think you can't overstate the importance of having a regular, visible presence. Things get fixed quite often because people know we're there and they know that we will be coming.

Can I say that an inspection system prevents all abuse? Of course not.

Do I think we help prevent systemic abuse? Yes, I believe we do. You cannot always prevent all forms of individual abuse, but we also have networks where children talk to us, the staff talk to us, and out in the community the families talk to us. So we have quite good, interesting, intelligence networks that tend to tip us off to certain things that are happening.<sup>468</sup>

Professor Morgan described how independent oversight bodies build relationships with staff and can influence practice in youth detention centres:

I have very good relationships also with the people who run the facilities and I think they're an absolutely critical part of the jigsaw. Most of the people who run detention centres and prisons, in my experience, want to do the right thing. Again, it is a simple example – they may be going into that place every day, but a fresh set of eyes and ears will bring things to them at the end of a visit that they've not realised and which most of them will try to address on the spot.<sup>469</sup>

Professor Morgan also emphasised the importance of both functional and structural independence for oversight agencies:

I believe the strongest model is one where you've got structural independence, and I think it is one where you've got a robust framework that has credibility, and in my instance, I've got a statutory responsibility to do certain things, so it's not even optional.<sup>470</sup>

Oversight bodies also provide an additional layer of transparency and accountability. The publication of reports by oversight bodies that highlight concerns, findings and recommendations provide the public with important information about the operations of youth detention and the treatment of detained children that otherwise may not be revealed. We have observed that there is significantly less publicly available information about the youth detention systems in jurisdictions that do not have independent oversight arrangements.

As discussed in Section 3.2.3, many jurisdictions have or are in the process of establishing independent inspection and oversight bodies. Existing inspection and oversight bodies for youth detention in Australia have different inspection powers and levels of independence.

As discussed in Chapter 2, the Australian Government has announced its intention to ratify OPCAT by December 2017 and this will have consequences for monitoring and oversight systems in youth detention environments.<sup>471</sup>

The ratification of OPCAT and the establishment of the NPM presents an opportunity to ensure that nationally consistent, independent and rigorous oversight and monitoring systems exist in every state and territory. As recommended in Chapter 2, it is important that the NPM considers and make recommendations relating to preventing and responding to child sexual abuse as part of its functions in regularly examining the treatment of persons deprived of their liberty in places of detention. While the NPM will have a specific mandate, our recommended National Office for Child Safety (see Volume 6, *Making institutions child safe*), could provide information and build the capacity of the NPM around children's safety issues, in particular, the identification and prevention of child sexual abuse. The Child Safe Standards could be used to inform the development of child-focused inspection standards for youth detention environments.

**Recommendation 15.10**

State and territory governments should ensure they have an independent oversight body with the appropriate visitation, complaint handling and reporting powers, to provide oversight of youth detention. This could include an appropriately funded and independent Inspector of Custodial Services or similar body. New and existing bodies should have expertise in child-trauma, and the prevention and identification of child sexual abuse.

# Endnotes

- 1 *Client Protection & Wellbeing Policy*, Juvenile Justice NSW, Sydney, 2014, p 3.
- 2 Article 37(c) of the Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) provides that '[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances'. When Australia ratified the Convention, it made the following reservation: 'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c)'. Committee on the Rights of the Child, *Reservations, Declarations and Objections relating to the Convention on the Rights of the Child*, UN Doc CRC/C/2/Rev.3 (11 July 1994), p 12.
- 3 *Criminal Code Act 1995* (Cth) Div 105; *Terrorism (Police Powers) Act 2002* (NSW) Pt 2A; *Terrorism (Community Protection) Act 2003* (Vic) Pt 2A; *Terrorism (Preventative Detention) Act 2005* (Qld) Pt 2; *Terrorism (Preventative Detention) Act 2005* (SA) Pt 2; *Terrorism (Preventative Detention) Act 2006* (WA) Pt 2; *Terrorism (Preventative Detention) Act 2005* (Tas) Pt 2; *Terrorism (Extraordinary Temporary Powers) Act 2006* (ACT) Pt 2; *Terrorism (Emergency Powers) Act* (NT) Pt 2B.
- 4 At the time of the public hearing, the Department of Health and Human Services was responsible for youth detention services in Victoria. As of 3 April 2017, the Department of Justice and Regulation is responsible for the statutory supervision of young people in the criminal justice system in Victoria. See Department of Justice and Regulation, *Youth justice*, 2017, [www.justice.vic.gov.au/home/justice+system/youth+justice/](http://www.justice.vic.gov.au/home/justice+system/youth+justice/) (viewed 15 September 2017).
- 5 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 84.
- 6 Royal Commission into the Protection and Detention of Children in the Northern Territory, *About us*, 2017, [www.childdetentionnt.royalcommission.gov.au/about-us/Pages/default.aspx](http://www.childdetentionnt.royalcommission.gov.au/about-us/Pages/default.aspx) (viewed 15 September 2017).
- 7 We established a national program to ensure that people in prison who had been sexually abused in an institutional context had access to private sessions. Underpinned by agreements between the Royal Commission and the commissioner for corrective services (variously termed) in each state and territory, the program revealed that a significant number of people in prison had experienced sexual abuse in youth detention centres.
- 8 Exhibit 30-0046, 'Amended First Statement of Varughese Pradeep Philip', Case Study 30, STAT.0626.003.0001 at 0043–4. One of these instances concerned a young person over the age of 18 years at the time of the incident and therefore falls outside our Terms of Reference.
- 9 S Swain, *History of institutions providing out-of-home care to children*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 21.
- 10 See Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, Sydney, 2014, p 15.
- 11 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, Sydney, 2014, p 4.
- 12 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 6.
- 13 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 22; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, Sydney, 2014, p 4.
- 14 Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 7: Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay*, Sydney, 2014, p 11; Royal Commission into Institutional Responses to Child Sexual Abuse, *Report of Case Study No 30: The response of Turana, Winlaton and Baltara, and the Victoria Police and the Department of Health and Human Services Victoria to allegations of child sexual abuse*, Sydney, 2016, p 22.
- 15 C Alder & J Wundersitz, 'New directions in juvenile justice reform in Australia' in C Alder and J Wundersitz (eds), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism*, Australian Institute of Criminology, Canberra, 1994, p 2.
- 16 C Alder & J Wundersitz, 'New directions in juvenile justice reform in Australia' in C Alder and J Wundersitz (eds), *Family Conferencing and Juvenile Justice: The Way Forward Or Misplaced Optimism*, Australian Institute of Criminology, Canberra, 1994, pp 2–3.
- 17 P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, p 92. Note: this report refers to 'juvenile justice centres'.

- 18 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987). There are also several international human rights instruments that expand the obligations in these treaties in relation to youth detention: *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules), GA Res 40/33, 40th sess, 96th plen mtg UN Doc A/RES/40/33 (29 November 1985); *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (JDL Rules or Havana Rules), GA Res 45/113, 45th sess, 68th plen mtg, UN Doc A/RES/45/113 (14 December 1990); *United Nations Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines), GA Res 45/112, 45th sess, 68th plen mtg (14 December 1990); *United Nations Guidelines for Action on Children in the Criminal Justice System* (Vienna Guidelines), ESC Res 1997/30, 36th plen mtg (21 July 1997); Committee on the Rights of the Child, *General Comment No 10: Children's rights in juvenile justice*, 44th sess, UN Doc CRC/C/GC/10 (25 April 2007).
- 19 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- 20 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 19, 34.
- 21 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3(1). See *Children (Detention Centres) Act 1987* (NSW) s 4(2)(a); *Children, Youth and Families Act 2005* (Vic) s 482(1)(a); *Youth Justice Act 1992* (Qld) Sch 1, cl 2; *Youth Justice Administration Act 2016* (SA) s 3(2)(a); *Children and Young People Act 2008* (ACT) ss 8, 94(1).
- 22 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 37(b). See *Young Offenders Act 1997* (NSW) s 7(a); *Children, Youth and Families Act 2005* (Vic) s 482(2); *Youth Justice Act 1992* (Qld) Sch 1, cl 17; *Young Offenders Act 1993* (SA) s 23(4); *Young Offenders Act 1994* (WA) ss 7(h), 120; *Youth Justice Act 1997* (Tas) ss 5(1)(g), 80; *Children and Young People Act 2008* (ACT) s 94(1)(f); *Youth Justice Act* (NT) ss 4(c), 81(6).
- 23 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 37(c); International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 10(1). See *Children, Youth and Families Act 2005* (Vic) s 482(2); *Youth Justice Act 1992* (Qld) Sch 1; *Youth Justice Administration Act 2016* (SA) s 3(2)(e); *Young Offenders Act 1994* (WA) s 7; *Youth Justice Act 1997* (Tas) ss 5, 129(1)(a); *Children and Young People Act 2008* (ACT) s 94(1)(g); *Youth Justice Act* (NT) s 4(d).
- 24 *Children (Detention Centres) Act 1987* (NSW) s 14; *Youth Justice Act 1992* (Qld) s 263(1); *Youth Justice Act 1997* (Tas) s 124(1); *Youth Justice Act* (NT) s 151(2).
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- 26 Australasian Juvenile Justice Administrators, *Principles of Youth Justice in Australia*, 2014, [www.dcsi.sa.gov.au/\\_\\_data/assets/pdf\\_file/0019/40186/Australasian-Juvenile-Justice-Administrators-Principles-October-2014.pdf](http://www.dcsi.sa.gov.au/__data/assets/pdf_file/0019/40186/Australasian-Juvenile-Justice-Administrators-Principles-October-2014.pdf) (viewed 4 October 2017); Australasian Juvenile Justice Administrators, *Juvenile Justice Standards, 2009*, [www.juvenile.justice.nsw.gov.au/Documents/updated\\_october\\_2012\\_-\\_ajja\\_juvenile\\_justice\\_standards\\_2009\\_part\\_1\\_and\\_2.pdf](http://www.juvenile.justice.nsw.gov.au/Documents/updated_october_2012_-_ajja_juvenile_justice_standards_2009_part_1_and_2.pdf) (viewed 4 October 2017).
- 27 Juvenile Justice NSW, *Juvenile Justice: Year in Review 2015-16*, Juvenile Justice NSW, Sydney, 2016, pp 3, 35.
- 28 Juvenile Justice NSW, *Information about centres: Reiby Juvenile Justice Centre*, 2015, [www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/aboutdjj/centres\\_information/centres\\_ReibyJJC.aspx](http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/aboutdjj/centres_information/centres_ReibyJJC.aspx) (viewed 15 September 2017).
- 29 Section 32 of the *Sentencing Act 1991* (Vic) provides that a 'young offender' (an offender who is under the age of 21 years at the time of being sentenced: s 3) convicted of an offence can be detained in a youth justice centre or a youth residential centre, rather than an adult prison, where the sentencing court believes that a) there are 'reasonable prospects for the rehabilitation of the young offender' or b) the young offender is 'particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison'. Consequently, Malmsbury Youth Justice Precinct operates a Senior Youth Justice Centre for males aged 18 to 20 years and a Secure Youth Justice Centre for males aged 15 to 20 years. See Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017, p 9.
- 30 *Crimes Act 1914* (Cth) s 4M; *Criminal Code Act 1995* (Cth) Sch 1 s 7.1; *Children (Criminal Proceedings) Act 1987* (NSW) s 5; *Children, Youth and Families Act 2005* (Vic) s 344; *Criminal Code Act 1899* (Qld) Sch 1 s 29(1); *Young Offenders Act 1993* (SA) s 5; *Criminal Code Compilation Act 1913* (WA) Appendix B, Sch 1 s 29; *Criminal Code Act 1924* (Tas) Sch 1 s 18(1); *Criminal Code 2002* (ACT) s 25; *Criminal Code Act* (NT) Sch 1 s 38(1).
- 31 *Children (Criminal Proceedings) Act 1987* (NSW) s 3 definition of 'child'; *Children (Detention Centres) Act 1987* (NSW) s 3 definition of 'child'; *Children, Youth and Families Act 2005* (Vic) s 3(1) definition of 'child'; *Youth Justice Act 1992* (Qld) Sch 4 definition of 'child'; *Young Offenders Act 1993* (SA) s 4 definition of 'youth'; *Young Offenders Act 1994* (WA) ss 3, 4 definition of 'young person'; *Youth Justice Act 1997* (Tas) s 3 definition of 'youth'; *Magistrates Court Act 1930* (ACT) s 288 (giving the Children's Court jurisdiction); *Crimes Act* (ACT) s 4 and Dictionary definition of 'child'; *Children and Young People Act 2008* (ACT) s 11 definition of 'child' and s 12 definition of 'young person' (see also *Legislation Act 2001* (ACT) s 2 and Dictionary Part 1 definition of 'adult'); *Youth Justice Act* (NT) s 6 definition of 'youth'.



32 For example *Children (Criminal Proceedings) Act 1987* (NSW) s 19; *Children, Youth and Families Act 2005* (Vic) s 412; *Children and Young People Act 2008* (ACT) s 95(2). Circumstances in which a person over the age of 17 years may be held in youth detention include if the relevant offence was committed when the person was under the age of 18 years or if they are not transferred to an adult prison after they turn 18. See Australian Institute of Health and Welfare, *Youth justice: About*, 2017, [www.aihw.gov.au/reports-statistics/health-welfare-services/youth-justice/about](http://www.aihw.gov.au/reports-statistics/health-welfare-services/youth-justice/about) (viewed 15 September 2017).

33 Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Australian Institute of Health and Welfare, Canberra, 2017, Supplementary Table S74a. Note: the percentages were calculated from the figures in the table.

34 On 6 February 2017, the Victorian Government announced plans to build a new 224-bed youth detention centre to replace the Parkville Youth Justice Precinct. See The Hon D Andrews MP, (Premier of Victoria), *Building a stronger and more secure youth justice system*, media release, Parliament House, Melbourne, 6 February 2017.

35 Victorian Department of Justice and Regulation, *Youth justice*, 2017, [www.justice.vic.gov.au/home/justice+system/youth+justice/](http://www.justice.vic.gov.au/home/justice+system/youth+justice/) (viewed 15 September 2017).

36 In November 2016, the Northern Territory Government announced that funds have been budgeted to build new youth detention facilities, including a centre to replace Don Dale Youth Detention Centre. See The Hon N Manison, (Northern Territory Treasurer), *New infrastructure plan to support Territory jobs*, media release, Parliament House, Northern Territory, 21 November 2016.

37 Formerly known as the Department of Children and Families, NT.

38 Northern Territory Department of Correctional Services (NT), *2015-16 Annual Report*, Northern Territory Government, Darwin, 2016, p 53.

39 Australian Human Rights Commission, *Children's Rights Report 2016*, Australian Human Rights Commission, Sydney, 2016, p 78.

40 See Office of the Inspector of Custodial Services (WA), *2015-16 Inspection of Court Custody Centres*, Government of Western Australia, Perth, 2016, p 20.

41 For example, in Western Australia all court custody centres, including that at the Perth Children's Court are managed by private contractors: Office of the Inspector of Custodial Services (WA), *2015-16 Inspection of Court Custody Centres*, Government of Western Australia, Perth, 2016, pp 1, 19. In South Australia, a private contractor is responsible for transporting children from Adelaide Youth Training Centre and police stations to courts and to hospitals and other related appointments with community-based health practitioners: G4S Australia & New Zealand, *South Australia prisoner movement and in-court management*, 2017, [www.au.g4s.com/what-we-do/care-justice-services/transport-courts-security/south-australia-prisoner-movement-and-in-court-management/](http://www.au.g4s.com/what-we-do/care-justice-services/transport-courts-security/south-australia-prisoner-movement-and-in-court-management/) (viewed 15 September 2017).

42 *Children (Detention Centres) Act 1987* (NSW) s 28B; *Children, Youth and Families Act 2005* (Vic) s 467; *Young Offenders Act 1993* (SA) s 63(4); *Young Offenders Act 1994* (WA) s 178; *Youth Justice Act* (NT) s 154. In Tasmania, transfers from Ashley Youth Detention Centre to the Tasmania Prison Service occur pursuant to a Memorandum of Understanding between the Department of Health and Human Services (Tas) and the Department of Justice (Tas): See Letter from the Tasmanian Department of Health and Human Services to Ms Megan Mitchell, National Children's Commissioner, Australian Human Rights Commission, 27 July 2016, p 8.

43 For example *Children, Youth and Families Act 2005* (Vic) s 467(1)(d); *Young Offenders Act 1993* (SA) s 63(5)(a); *Young Offenders Act 1994* (WA) s 178(4)(a)(i).

44 In November 2016, the Queensland Government passed the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) legislation to end the practice of treating 17-year-olds as adults in Queensland's criminal justice system. This legislation will commence in November 2017: see Queensland Department of Justice and Attorney-General, *Inclusion of 17-year-olds in the youth justice system*, 2017, [www.justice.qld.gov.au/corporate/business-areas/youth-justice/inclusion-of-17-year-old-persons](http://www.justice.qld.gov.au/corporate/business-areas/youth-justice/inclusion-of-17-year-old-persons) (viewed 15 September 2017).

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46 Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville*, Victorian Ombudsman, Melbourne, 2017, p 14.

47 In November 2016, the Queensland Government passed the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) legislation to end the practice of treating 17-year-olds as adults in Queensland's criminal justice system. This legislation will commence in November 2017: see Queensland Department of Justice and Attorney-General, *Inclusion of 17-year-olds in the youth justice system*, 2017, [www.justice.qld.gov.au/corporate/business-areas/youth-justice/inclusion-of-17-year-old-persons](http://www.justice.qld.gov.au/corporate/business-areas/youth-justice/inclusion-of-17-year-old-persons) (viewed 15 September 2017).

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- 54 Australian Institute of Health and Welfare, *Youth detention entries and exits: 2015-16*, Australian Government, Canberra, 2017, p 1.
- 55 Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Australian Institute of Health and Welfare, Canberra, 2017, pp 15–16.
- 56 Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Australian Institute of Health and Welfare, Canberra, 2017, p 16.
- 57 C Cunneen, R White & K Richards, *Juvenile justice: Youth and crime in Australia*, 5th edn, Oxford University Press, Sydney, 2015, p 281.
- 58 Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Australian Institute of Health and Welfare, Canberra, 2017, Supplementary Table S75a. Note: the percentages were calculated from the figures in the table.
- 59 Australian Institute of Health and Welfare, *Youth justice in Australia 2015-16*, Australian Institute of Health and Welfare, Canberra, 2017, Supplementary Table S74a. Note: the percentages were calculated from the figures in the table.
- 60 For example D Indig, C Vecchiato, L Haysom, R Beilby, J Carter, U Champion, C Gaskin, E Heller, S Kumar, N Mamone, P Muir, P van den Dolder & G Whitton, *2009 NSW Young People In Custody Health Survey: Full report*, Justice Health & Juvenile Justice, Sydney, 2011, pp 152–3; NSW Health Justice and Forensic Mental Health Network & NSW Juvenile Justice, *2015 Young People In Custody Health Survey: Key findings for all young people*, 2016, [www.childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence8may/Exh-338-012.pdf](http://www.childdetentionnt.royalcommission.gov.au/NT-public-hearings/Documents/evidence-2017/evidence8may/Exh-338-012.pdf) (viewed 15 September 2017); Victorian Youth Parole Board, *Annual Report 2015–16*, Government of Victoria, Melbourne, 2016.
- 61 P Armytage & J Ogloff, *Youth justice review and strategy: Meeting needs and reducing offending – Part 1*, Victorian Government, Melbourne, 2017, p 138.
- 62 Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision 2014-15*, Australian Institute of Health and Welfare, Canberra, 2016, p 15.
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- 69 Australian Institute of Health and Welfare, *Child protection in Australia 2015-16*, Australian Government, Canberra, 2017, p 15.
- 70 Australian Institute of Health and Welfare, *Child protection in Australia 2015-16*, Australian Government, Canberra, 2017, p 52.
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114 The definition of ‘vulnerable children’ in the *Commission for Children and Young People Act 2012* (Vic) s 8 and the *Children’s Commissioner Act 2013* (NT) s 7 explicitly includes children in youth detention.

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124 Name changed, private session, ‘Cindy-Lee’.

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- 151 Name changed, private session, 'Tony Blake'.
- 152 Name changed, private session, 'Dermott'.
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- 160 Name changed, private session, 'Cassie'; Name changed, private session, 'Monica'.
- 161 Name changed, private session, 'Cassie'.
- 162 Name changed, private session, 'Monica'.
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- 168 Name changed, private session, 'Bo'.
- 169 Name changed, private session, 'Garth Peter'.
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- 173 D Palmer, *The role of organisational culture in child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 9.
- 174 D Palmer, *The role of organisational culture in child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 9, 38.
- 175 D Palmer, *The role of organisational culture in child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 9, 38.
- 176 D Palmer, *The role of organisational culture in child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 44.
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179 Name changed, private session, ‘Aaron James’.

180 Name changed, private session, ‘Dawson’.

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205 Name changed, private session, ‘Alan Sam’.

206 Name changed, private session, ‘Kane Jacob’.

207 Name changed, private session, ‘Jai Alex’.



208 Name changed, private session, 'Carey'.

209 Name changed, private session, 'Aaron Travis'.

210 Name changed, private session, 'Blair Aaron'.

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225 Name changed, private session, 'Joseph John'.

226 Name changed, private session, 'Guy Benjamin'.

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395 P Armytage & J Ogloff, *Youth justice review and strategy: Meeting needs and reducing reoffending - Part 2*, Victorian Government, Melbourne, 2017, p 36.

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400 W O'Brien, *Australia's response to sexualised or sexually abusive behaviours in children and young people*, Australian Crime Commission, Canberra, 2010, p 47.

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404 A Shlonsky, B Albers, D Tolliday, SJ Wilson, J Norvell & L Kissinger, *Rapid evidence assessment: Current best evidence in the therapeutic treatment of children with problem sexual behaviour, harmful sexual behaviour, and children who have sexually offended*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp 62, 73–4; S Hackett, *Children and young people with harmful sexual behaviours*, Research in Practice, Devon, UK, 2014, p 104. Much of the research evaluating MST interventions for children exhibiting harmful sexual behaviours was from the United States and focussed on children aged between 10 and 17 years who had some contact with the juvenile justice system. Many of these studies were of community-based treatment programs for children who had sexually offended, rather than interventions delivered in youth detention institutions. In addition, one of the key elements of MST is that it is mediated by the family and caregivers, which may be difficult to achieve for children currently in youth detention. See A Shlonsky, B Albers, D Tolliday, SJ Wilson, J Norvell & L Kissinger, *Rapid evidence assessment: Current best evidence in the therapeutic treatment of children with problem sexual behaviour, harmful sexual behaviour, and children who have sexually offended*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp 29–47, 60, Table 5; SASS, *Position Paper - Pathways to Change: Responding to Problem Sexual Behaviour and Sexually Abusive Behaviour in Tasmania*, SASS, Tasmania, 2015, p 11; C-A Fortune & I Lambie, 'Sexually abusive youth: A review of recidivism studies and methodological issues for future research', *Clinical Psychology Review*, vol 26, no 8, 2006, p 1092.

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406 For example Royal Commission into Institutional Responses to Child Sexual Abuse, Making Institutions Child Safe - Private Roundtable, Sydney, 2016; k valentine, I Katz, C Smyth, C Bent, S Rinaldis, C Wade & B Albers, *Key elements of child safe organisations – Research study*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 50–1.

407 k valentine, I Katz, C Smyth, C Bent, S Rinaldis, C Wade & B Albers, *Key elements of child safe organisations – Research study*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 46, 51.

408 Royal Commission consultation with children and young people in youth detention, 2016.

409 Commonwealth Department of Education and Training, *myskills: Certificate IV in Youth Justice*, 2017, [www.myskills.gov.au/courses/details?Code=CHC40513](http://www.myskills.gov.au/courses/details?Code=CHC40513) (viewed 15 September 2017).

410 P Armytage & J Ogloff, *Youth justice review and strategy: Meeting needs and reducing reoffending - Part 2*, Victorian Government, Melbourne, 2017, pp 277–8; M Vita, *Review of the Northern Territory Youth Detention System Report*, Government of the Northern Territory, Darwin, 2015, pp 26–7.

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412 P Armytage & J Ogloff, *Youth justice review and strategy: Meeting needs and reducing reoffending - Part 2*, Victorian Government, Melbourne, 2017, pp 276–7.

413 P Armytage & J Ogloff, *Youth justice review and strategy: Meeting needs and reducing reoffending - Part 2*, Victorian Government, Melbourne, 2017, pp 268–70.

414 S Hackett, D Holmes & P Branigan, *Operational framework for children and young people displaying harmful sexual behaviours*, National Society for the Prevention of Cruelty to Children, London, 2016, p 25.

415 This guidance should be widely distributed and accessible online. A number of resources are freely available for this purpose. We do not endorse any particular tool. However, some examples are included at Appendix B of Volume 10, *Children with harmful sexual behaviours*.

416 J Bateman, C Henderson & C Kezelman, *Trauma Informed Care and Practice: Towards a cultural shift in policy reform across mental health and human services in Australia*, *A National Strategic Direction, Position Paper and Recommendations of the National Trauma-Informed Care and Practice Advisory Working Group*, Mental Health Coordinating Council, Lilyfield, 2013; A Quadara & C Hunter, *Principles of trauma-informed approaches to child sexual abuse: A discussion paper*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016.

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429 *Children (Detention Centres) Regulation 2015* (NSW) cl 48; *Children, Youth and Families Act 2005* (Vic) s 482(2)(e); *Youth Justice Act 1992* (Qld) s 277(1); *Youth Justice Act 1997* (Tas) s 137; *Youth Justice Act* (NT) s 163(1).

430 *Children (Detention Centres) Regulation 2015* (NSW) Pt 5; *Youth Justice Act 1992* (Qld) s 277; *Youth Justice Act 1997* (Tas) Pt 6, Div 4; *Youth Justice Regulations* (NT) cl 66–7.

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438 B Mathews, *Mandatory reporting laws for child sexual abuse in Australia: A legislative history*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2014, p 28.

439 For example Exhibit 30-0011, 'Youth justice custodial practice manual: Contacting the police', Case Study 30, DHS.3004.030.0020; ACT, Children and Young People (Complaints Management) Policy and Procedures 2015 (No 1) – Notifiable instrument NI2015-383 at [6.5]. *Crimes Act 1900* (NSW) s 316(1) requires a person who knows or believes that a serious indictable offence has been committed to report information that might be of material assistance to the New South Wales Police Force. *Crimes Act 1958* (Vic) s 327(2) requires an adult who has information that leads them to form a reasonable belief that a sexual offence has been committed in Victoria against a child by another adult must report that information to the Victoria Police.

440 For example: Exhibit 30-0011, 'Youth justice custodial practice manual: Contacting the police', Case Study 30, DHS.3004.030.0020 at 0022; Children and Young People (Records and Reporting) Policy and Procedures 2015 (No 1) (ACT) – Notifiable instrument NI2015-381, [6.23]–[6.25] and Children and Young People (Complaints Management) Policy and Procedures 2015 (No 1) (ACT) – NI2015-383, 6.4; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 27; NSW Department of Justice policy documents confirm that juvenile justice employees are mandatory reporters under s 27: NSW Juvenile Justice, *Client Protection and Wellbeing Policy*, Office of the Chief Executive, Sydney 2014; *Children's Protection Act 1993* (SA) s 11(2)(f); *Care and Protection of Children Act 2007* (NT) s 26. In the Australian Capital Territory, youth justice staff are mandatory reporters if they are public servants. See *Children and Young People Act 2008* (ACT) s 356(2)(m).

441 *Crimes Act 1900* (NSW) s 316(1) requires a person who knows or believes that a serious indictable offence has been committed to report information that might be of material assistance to the New South Wales Police Force.

442 *Crimes Act 1958* (Vic) s 327(2) requires an adult who has information that leads them to form a reasonable belief that a sexual offence has been committed in Victoria against a child by another adult must report that information to the Victoria Police.

443 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal justice: Parts III–VI*, Sydney, 2017, Chapter 16.

444 Department of Health and Human Services (Vic), *Creating child safe organisations*, 2017, <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/creating-child-safe-organisations> (viewed 15 September 2017); ACT Ombudsman, *Reportable Conduct Scheme*, 2017, <http://www.ombudsman.act.gov.au/reportable-conduct-scheme> (viewed 15 September 2017).

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447 *Ombudsman Act 1989* (ACT) s 17D(1)(a).

448 For example *Privacy Act 1988* (Cth) Sch 1, APP 6.1; *Privacy and Personal Information Protection Act 1998* (NSW) ss 18(1)(a) and 18(2); *Information Privacy Principles Instruction 2016* (SA) cl 4(10).

449 The *Privacy Act 1988* (Cth) imposes obligations and restrictions (with respect to collection, use and disclosure of personal information) on commonwealth public sector agencies and on private sector organisations (those with an annual turnover of \$3,000,000 or more, and health service providers) in all states and territories. State/Territory privacy legislation imposes obligations and restrictions on state/territory public sector agencies in most jurisdictions: *Information Privacy Act 2014* (ACT); *Information Privacy Act 2002* (NSW); *Information Act* (NT); *Information Privacy Act 2009* (Qld); *Personal Information Protection Act 2004* (Tas); *Privacy and Data Protection Act 2014* (Vic). In South Australia, the handling of personal information by state/territory public sector agencies is regulated by a Cabinet Administrative Instruction: *Information Privacy Principles Instruction 2016* (SA). Western Australia has no dedicated privacy legislation – government agencies are directed to observe standards in the state's *Policy Framework and Standards for Information Sharing between Government Agencies* as well as any applicable statutory provisions and common law, and to share information consistently with appropriate minimum privacy standards, such as those under Commonwealth privacy legislation (see *Policy Framework and Standards: Information Sharing between Government Agencies*, Department of the Attorney General, Canberra, 2003; *Policy Framework and Standards for Information Sharing Between Government Agencies*, Public Sector Commission, Government of Western Australia, Perth, 2014). In some jurisdictions, obligations and restrictions (with respect to personal information related to health) are also imposed under specific health privacy legislation, which applies to both public sector agencies and private sector organisations: *Health Records (Privacy and Access) Act 1997* (ACT); *Health Records and Information Privacy Act 2002* (NSW); *Health Records Act 2001* (Vic). Information related to child sexual abuse may also be classified as sensitive information under privacy laws, and subject to higher privacy standards than other types of personal information – see, for example: *Privacy Act 1988* (Cth) s 6 and Sch 1, APP 6.2(a); *Information Act* (NT) s 4 and Sch 2, IPP 2.1(a); *Personal Information Protection Act 2004* (Tas) s 3 and Sch 1, PIPP 2 (1)(a); *Privacy and Data Protection Act 2014* (Vic) Sch 1, IPP 10. See also *Privacy and Personal Information Protection Act 1998* (NSW) s 19(1). The handling of criminal records is also subject to particular obligations and restrictions under the *Crimes Act 1914* (Cth) and state/territory criminal records legislation, as well as under privacy legislation.

450 For examples of confidentiality obligations in child protection legislation, see: *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 29, 254; *Care and Protection of Children Act* (NT) ss 150, 195, 221; *Child Protection Act 1999* (Qld) ss 186–8; *Children, Young Persons and Their Families Act 1997* (Tas) ss 16, 103; *Children and Community Services Act 2004* (WA) s 241; *Children's Protection Act 1993* (SA) ss 13, 52E, 52L, 58; *Children, Youth and Families Act 2005* (Vic) ss 127(5) and 180.

451 This includes equitable and common law obligations of confidence. For examples of confidentiality obligations in child protection legislation, see: *Children and Young Persons (Care and Protection) Act 1998* (NSW) ss 29, 254; *Care and Protection of Children Act* (NT) ss 150, 195, 221; *Child Protection Act 1999* (Qld) ss 186–8; *Children, Young Persons and Their Families Act 1997* (Tas) ss 16, 103; *Children and Community Services Act 2004* (WA) s 241; *Children's Protection Act 1993* (SA) ss 13, 52E, 52L, 58; *Children, Youth and Families Act 2005* (Vic) ss 127(5) and 180.

- 452 For example, service agreements for government funded out-of-home care services, and professional and ethical codes. See: The Royal Australian & New Zealand College of Psychiatrists, *Code of Ethics*, 2010, [www.ranzcp.org/Files/Resources/College\\_Statements/Practice\\_Guidelines/code\\_ethics\\_2010-pdf.aspx](http://www.ranzcp.org/Files/Resources/College_Statements/Practice_Guidelines/code_ethics_2010-pdf.aspx) (viewed 15 September 2017); Australian Association of Social Workers, *Code of Ethics*, 2010, [www.aasw.asn.au/practitioner-resources/code-of-ethics](http://www.aasw.asn.au/practitioner-resources/code-of-ethics) (viewed 15 September 2017).
- 453 For example *Privacy Act 1988* (Cth) Sch 1, APP 6.1; *Information Privacy Act 2014* (ACT) TTP 6.1(a); *Privacy and Personal Information Protection Act 1998* (NSW) s 26(2); *Information Act* (NT) Sch 2, IPP 2.1(c); *Information Privacy Act 2009* (Qld) Sch 3, IPP 11(1)(b) and Sch 4, NPP 2(1)(b); *Personal Information Protection Act 2004* (Tas) Sch 1, PIPP 2 2(1)(b); *Privacy and Data Protection Act 2014* (Vic) Sch 1, IPP 2.1(b).
- 454 For example *Privacy Act 1988* (Cth) ss 16A, 16B(3), APP 6.2; *Privacy and Personal Information Protection Act 1998* (NSW) ss 23–5. Privacy laws may also support information sharing where privacy commissioners authorise special arrangements, including public interest directions and codes of practice, to modify privacy restrictions in particular circumstances. For example *Privacy Act 1988* (Cth) ss 72–3; *Privacy and Personal Information Protection Act 1998* (NSW) s 41.
- 455 C Adams and K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 138.
- 456 *Children and Young Persons (Care and Protection) Act 1998* (NSW) ch 16A; *Care and Protection of Children Act* (NT) ch 5, pt 5.1A.
- 457 *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 248.
- 458 C Adams and K Lee-Jones, *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 138.
- 459 *Care and Protection of Children Act* (NT) s 293C.
- 460 M Vita, *Review of the Northern Territory Youth Detention System Report*, Government of the Northern Territory, Darwin, 2015, p 34.
- 461 Exhibit 7-0023, ‘Statement of Valda Ruis’, Case Study 7, STAT.0170.001.0001 at 0006.
- 462 M Vita, *Review of the Northern Territory Youth Detention System Report*, Government of the Northern Territory, Darwin, 2015, p 34.
- 463 Exhibit 7-0023, ‘Statement of Valda Ruis’, Case Study 7, STAT.0170.001.0001 at 0006–0007.
- 464 M Vita, *Review of the Northern Territory Youth Detention System Report*, Government of the Northern Territory, Darwin, 2015, p 34.
- 465 Exhibit 30-0046, ‘Amended First Statement of Varughese Pradeep Philip’, Case Study 30, STAT.0626.003.0001 at 0033.
- 466 P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, p 89.
- 467 B Mathews, *Oversight and regulatory mechanisms aimed at protecting children from sexual abuse: Understanding current evidence of efficacy*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, p 215.
- 468 Transcript of N Morgan, Case Study 57, 28 March 2017 at 27547:26–41.
- 469 Transcript of N Morgan, Case Study 57, 28 March 2017 at 27573:47, 27574:1–18.
- 470 Transcript of N Morgan, Case Study 57, 28 March 2017 at 27562:26–32.
- 471 The Hon J Bishop MP and The Hon G Brandis QC, *Improving oversight and conditions in detention*, Ministry for Foreign Affairs and Trading, Canberra, 2017.

## 4 Immigration detention

### 4.1 Overview

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As discussed in Chapter 2, the nature and operation of detention environments give rise to particular institutional risks that can make child sexual abuse more likely to occur. Our commissioned research suggests that detention environments generally present higher levels of risk of child sexual abuse when appropriate safeguards are not in place, and identifies immigration detention as a specific institutional context carrying an elevated risk.<sup>1</sup> We consider children in immigration detention environments to be particularly vulnerable to sexual abuse because of the inherent risks of these environments.

This chapter details the results of our consideration of institutional responses to child sexual abuse in contemporary immigration detention. In it we:

- provide an overview of Australia's immigration detention system
- detail what has been reported about child sexual abuse in immigration detention
- discuss the risk of such abuse
- detail the particular impacts of the abuse
- identify barriers to disclosure and identification of the abuse
- identify key issues related to institutional responses to the abuse
- make recommendations and propose initiatives for improving the safety of children within immigration detention.

We focus on the responses of institutions in Australia to child sexual abuse in immigration detention since 1990.

#### 4.1.1 Background

During the period of our inquiry, there has been significant public and media attention given to the treatment and welfare of children in immigration detention. Related publications include:

- the Australian Human Rights Commission's (AHRC's) report, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (the Forgotten Children report), published in 2014<sup>2</sup>
- the *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru 2015*, produced by Philip Moss on behalf of the Australian Government (the Moss Review)<sup>3</sup>
- 2,116 'leaked' incident files from the Nauru Regional Processing Centre, which were published by The Guardian in August 2016 (the Nauru files).<sup>4</sup>



These and other reports, described in Section 4.2.5, identified allegations of child sexual abuse within onshore immigration detention and at the Nauru Regional Processing Centre. They suggested that systemic issues may be contributing to an increased risk of abuse.

In May 2015, following the release of the *Forgotten Children* report and the Moss Review,<sup>5</sup> the Department of Immigration and Border Protection (the department) appointed the Child Protection Panel, or CPP, to advise on issues regarding the wellbeing and protection of children in immigration detention in Australia and at the Nauru Regional Processing Centre.<sup>6</sup> The CPP was directed to review incidents of abuse (including sexual abuse), neglect and exploitation of children within the immigration detention system, and make recommendations to improve the department's related policies and procedures.<sup>7</sup> The CPP's Terms of Reference also required it to 'ensure that a comprehensive and contemporary framework for the [d]epartment relating to the protection of children is in place'.<sup>8</sup> The CPP's report, *Making children safer – The wellbeing and protection of children in immigration detention and regional processing centres* (CPP report), was finalised in May 2016 and published by the department in December 2016.<sup>9</sup>

The department later developed a child protection framework, the Child Safeguarding Framework.<sup>10</sup> The CPP was involved in the development and refinement of the framework,<sup>11</sup> which is the overarching child protection policy applying to departmental staff and contracted service providers involved in the care and welfare of children in Australia's immigration program.<sup>12</sup>

These developments have both informed and framed our approach to considering institutional responses to child sexual abuse in immigration detention.

#### 4.1.2 Our work

The Royal Commission has conducted investigations and made inquiries about child sexual abuse in immigration facilities. We issued notices to produce documents to the department, its contracted service providers and some state agencies in relation to allegations of child sexual abuse in immigration detention.

Our primary work in relation to immigration detention was through evidence given during our public hearing in the *Institutional review of Commonwealth, state and territory governments* case study, which inquired into the department's Child Safeguarding Framework and the response of the Australian Government to the CPP report and recommendations.<sup>13</sup>

In contrast to many of the other institutional contexts we heard about, only a very small number of people came forward in private sessions to tell us about responses to child sexual abuse in immigration detention. Some were the parents of victims in immigration detention. The significant barriers to disclosing and reporting child sexual abuse in immigration detention are discussed in Section 4.6.

In addition to a small number of private sessions, we held multicultural community forums and received submissions and correspondence from relevant organisations where people expressed concerns about immigration detention. We also had regard to the reports of a number of past inquiries into immigration detention (see Section 4.2.5), together with the work of the CPP.

### 4.1.3 Our approach to the work of the Child Protection Panel

In addition to ensuring ‘a comprehensive and contemporary framework for the department relating to the protection of children is in place’<sup>14</sup> the CPP was required to assess: ‘the adequacy of departmental and service provider policy and practice around the management of incidents of abuse, neglect or exploitation involving children’.<sup>15</sup> The investigations undertaken by the CPP included all incidents of abuse, neglect or exploitation involving children in the period 1 January 2008 to 30 June 2015.<sup>16</sup>

It was the first independent review instigated by the department itself, and the first to assess in detail such a large number of incidents of child abuse across all immigration detention settings.<sup>17</sup> The CPP had unprecedented access to documents regarding all reported incidents, from both Australian Government agencies and its contracted service providers.<sup>18</sup> The review included allegations related to Australian onshore detention as well as the Nauru and Manus Island regional processing centres.<sup>19</sup>

The CPP accepted all allegations for the purpose of inquiring into the adequacy of departmental and service provider responses.<sup>20</sup> It reviewed how effective the department and its service providers were in applying the policies, procedures and legal advice in place at the time of the incident of concern.<sup>21</sup> We discuss the CPP’s key findings and recommendations in Sections 4.2.5, 4.7 and 4.8.

Our Terms of Reference are concerned with institutional responses to child sexual abuse, whereas the CPP reviewed incidents involving all forms of child abuse and neglect. However, the CPP highlighted some issues of relevance to our inquiry, such as the capability of community detention service providers and staff to identify and act on emerging risks to children and respond effectively to critical incidents of abuse in community detention. It did not examine these in any detail due to the limited time available.<sup>22</sup>

We have reviewed a number of documents prepared and considered by the CPP in the course of its work. Most relevant to us, the CPP selected 61 incidents identified as falling within Notices to Produce that we issued to the department for ‘in-depth review’.<sup>23</sup>

Ms Margaret Allison, a member of the CPP, and Ms Cheryl-Ann Moy, first assistant secretary of the Children, Community and Settlement Services Division of the department, both gave evidence in our *Institutional review of Commonwealth, state and territory governments* case study. They told us that since the development of the Child Safeguarding Framework, the Commonwealth had already developed a number of policies to support it.<sup>24</sup> During the course of the hearing Ms Allison also told us what further work was needed to implement the framework.<sup>25</sup> The department also gave evidence about the steps it would take to give effect to the CPP's recommendations. We discuss recent developments in improving institutional responses to child sexual abuse in Section 4.7.2.

While we have been informed by the CPP's work, we have applied our understanding of the specific risk of child sexual abuse within a range of institutional contexts to analyse the risk of child sexual abuse in 'held' (or 'closed') detention and community detention and to make recommendations to improve the safety of all children in immigration detention.

## 4.2 Immigration detention in Australia

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The Australian Government's current policy is to detain children in held detention only as a last resort.<sup>26</sup> In documents tendered in our *Institutional review of Commonwealth, state and territory governments* case study, the department indicated that the current policy is also to do so for the shortest time practicable.<sup>27</sup> Community detention, which enables children and their families to live in the Australian community with fewer restrictions, has become the primary form of immigration detention for children in Australia.<sup>28</sup> However, under the Migration Act, it remains open to the Government to revert to detaining children in held detention facilities and for indefinite periods of time.<sup>29</sup> A reduction in numbers of children in held detention in recent years does not eliminate the risks of child sexual abuse associated with Australia's immigration detention environment, as highlighted in the CPP report and our *Institutional review of Commonwealth, state and territory governments* case study.<sup>30</sup>

This section describes the institutional context of immigration detention. It provides an overview of:

- Australia's immigration detention system
- children in immigration detention
- the responsibilities of government and institutions to protect children in immigration detention
- oversight of immigration detention
- various inquiries relevant to child sexual abuse in immigration detention.

### 4.2.1 Australia's immigration detention system

Australia's contemporary immigration detention system is governed by the Migration Act and other federal, state and territory laws, ministerial directions and departmental policies and procedures. Under the Act, all people, including children, without a valid visa are considered 'unlawful' and placed in immigration detention.<sup>31</sup> They must be kept in immigration detention until they are removed from Australia,<sup>32</sup> dealt with for the purpose of taking them to a regional processing country,<sup>33</sup> deported,<sup>34</sup> or granted a visa.<sup>35</sup>

The immigration detention system includes onshore detention on the mainland and in excised places,<sup>36</sup> such as Christmas Island.<sup>37</sup> It also includes the removal of people seeking asylum in Australia to offshore regional processing centres. Within this system, the department detains children in different types of held detention and in community detention.

This system should be understood in the context of Australia's immigration policies and practices since 1990, as well as global refugee-producing events. Initially, mandatory detention was intended as a temporary and exceptional measure in response to 'unauthorised boat arrivals'.<sup>38</sup> While successive Australian governments have maintained the mandatory detention regime,<sup>39</sup> changes have been made to the policies and practices over the past decade.<sup>40</sup> As such, the nature of immigration detention and the specific experiences of children have changed. They are also likely to continue to change. As the CPP report recognised, the broader environment is one characterised by unpredictability and constant change.<sup>41</sup>

The history of Australia's migration policies and practices is well documented and has been outlined in previous inquiries,<sup>42</sup> as well as in a sizeable body of scholarly articles and other literature.<sup>43</sup> Table 15.4 identifies some significant legislative and policy changes made since 1990 that have shaped Australia's immigration detention practices.

**Table 15.4 – Major immigration policy and law changes since 1990**

Year	Major immigration policy and law changes since 1990
1992	<ul style="list-style-type: none"> <li>Mandatory detention was introduced<sup>44</sup></li> </ul>
1994	<ul style="list-style-type: none"> <li>Indefinite detention was introduced<sup>45</sup></li> </ul>
2001	<ul style="list-style-type: none"> <li>Offshore processing (known as the 'Pacific Solution')<sup>46</sup> was introduced<sup>47</sup></li> </ul>
2005	<ul style="list-style-type: none"> <li>Ministerial discretion to issue a bridging visa<sup>48</sup> or make a residency determination<sup>49</sup> to place a person or family in the community while their protection claims were assessed was introduced</li> <li>The principle of detention 'as a measure of last resort' for children was introduced<sup>50</sup></li> </ul>
2008	<ul style="list-style-type: none"> <li>The 'Pacific Solution' ended<sup>51</sup></li> <li>Seven key immigration detention values were announced, including that immigration detention centres would not be used for children, used only as a last resort and for the shortest practicable period<sup>52</sup></li> </ul>
2010	<ul style="list-style-type: none"> <li>The residence determination program was expanded and children and their families began to be moved out of held detention into community-based detention<sup>53</sup></li> </ul>
2012	<ul style="list-style-type: none"> <li>Offshore processing of boat arrivals was reintroduced and transfers re-commenced to regional processing centres in Nauru and Manus Island, Papua New Guinea<sup>54</sup></li> <li>The 'no advantage principle' was introduced 'to ensure that no benefit is gained through circumventing regular migration arrangements'<sup>55</sup></li> </ul>

The department administers the Australian immigration detention system and is the main institution responsible for children in held and community detention. It is responsible for detaining 'unlawful non-citizens' and granting refugee status and visas under the Migration Act. It also funds regional processing centres, transfers people seeking asylum to these centres and oversees the contracts of the centres' service providers.<sup>56</sup>

While the department has responsibility for people in immigration detention, the primary providers of day-to-day services in detention are contracted service providers (and sub-contractors).<sup>57</sup>

The department makes decisions about where to place people who seek asylum, including children, in line with the Migration Act and policies and practices. The department considers a person's background and personal circumstances, as well as operational and security factors, in making placement decisions.<sup>58</sup>

## Onshore held immigration detention

The department administers different types of held immigration detention facilities in Australia.<sup>59</sup> These facilities are closed places under the direct control of the department. People in held detention are deprived of their liberty or are subject to some degree of supervision, management or restraint. Some facilities are less restrictive than others.

While some facilities are located in, or in relatively close proximity to, urban metropolises (such as Broadmeadows, Kilburn, Maribyrnong, Perth, Pinkenba and Villawood), others are in more remote locations (such as Christmas Island and Yongah Hill). A number of more remote detention centres (including Baxter, Woomera, Leonora and Pontville) are no longer operational.<sup>60</sup>

Children have been detained in all types of held detention. However, today children are held at lower-security facilities<sup>61</sup> and generally for short periods of time pending resolution of security issues or removal.<sup>62</sup>

Table 15.5 outlines the different types of detention currently used in Australia as at August 2017.

**Table 15.5 – Types of held immigration detention in Australia**

Type	Description
Immigration detention centres	The most 'secure' immigration detention facilities. According to the department, they primarily detain people with a high risk profile. <sup>63</sup> There are five in Australia, located at Christmas Island, Maribyrnong (Vic), Perth (WA), Villawood (NSW) and Yongah Hill (WA). <sup>64</sup>
Immigration transit accommodation	Closed facilities, usually with lower security and less intrusive security measures than immigration detention centres. <sup>65</sup> They are intended to provide short-term and semi-independent hostel-style accommodation for people assessed as being a low security and flight risk. <sup>66</sup> However, they have been used for longer stays. <sup>67</sup> There are three facilities, located at Kilburn (SA), Pinkenba (Qld) and Broadmeadows (Vic). <sup>68</sup>
Immigration residential housing	Closed facilities with less intrusive security than immigration detention centres. The department describes these as allowing low-risk detainees, particularly families and children, to live in family-style accommodation with greater autonomy. <sup>69</sup> There is one facility located in Perth (WA). <sup>70</sup>
Alternative places of detention	The department can hold people in any place designated by the Minister for Immigration and Border Protection as an alternative place of detention. These include leased private housing; hotel and motel accommodation; hospitals; schools; temporarily designated places such as police stations, correctional facilities, psychiatric facilities and foster care; or with a designated person at a private residence. <sup>71</sup> The department classifies some low-security closed immigration detention facilities as 'alternative places of detention'. The level of restriction, security and supervision depends on where a person is held. <sup>72</sup>

Within held immigration detention, Serco and International Health and Medical Services (IHMS) are the primary service providers contracted by the department. Serco provides security, detention and facilities management services.<sup>73</sup> IHMS provides contracted primary and mental health services to people in detention, including children, such as health screening and assessment services, and referrals to secondary and tertiary health services.<sup>74</sup>

## Regional processing centres

As noted above, under Australia's policy of offshore processing, people who arrive in Australia by boat on or after 13 August 2012 must be transferred to a regional processing country 'as soon as reasonably practicable'.<sup>75</sup> Under this policy, children have been detained in held detention in Australia and in the relatively remote regional processing centres in Nauru and Manus Island, Papua New Guinea (PNG).

The department has not reported any children being held at the PNG processing centre since 31 October 2013, when 1,135 men and two children were held there.<sup>76</sup> Following a decision of the Supreme Court of Papua New Guinea,<sup>77</sup> that centre is due to be closed in late 2017.<sup>78</sup>

However, children are still detained at the Nauru Regional Processing Centre.<sup>79</sup> In the past, this was a 'closed' centre. After a transition period operating as a 'daytime open centre', the Nauru Regional Processing Centre has been 'completely open' since 6 October 2015.<sup>80</sup> The secretary of the department, Mr Michael Pezzullo, told us in our *Institutional review of Commonwealth, state and territory governments* case study that this means that at all times, detainees 'can come and go'. They are 'free to move around the island [of Nauru] at their will' and 'reside there for the evening'.<sup>81</sup>

The centre is managed by the Government of Nauru, but it is funded by the Australian Government under a memorandum of understanding entered into in August 2012.<sup>82</sup> The department manages the service providers, including managing service provider contracts.<sup>83</sup> The department also provides support services to the Government of Nauru, including support with the development of status resolution processes,<sup>84</sup> identifying third countries for refugees to permanently settle in<sup>85</sup> and advising on the development of a child protection legal regime.<sup>86</sup>

At the time of writing, Broadspectrum Limited is the provider of all security and welfare services to asylum seekers at regional processing centres.<sup>87</sup> However, a number of contractors engaged to provide services in regional processing centres, including Broadspectrum Limited, have announced that they will not re-tender when their contracts end.<sup>88</sup> IHMS is contracted to provide health services to people detained in regional processing centres.<sup>89</sup>

## Community detention

Since July 2008, families with children, unaccompanied children and vulnerable people in immigration detention in Australia have been prioritised for community detention.<sup>90</sup> Community detention is now the primary form of detention for children awaiting determination of their immigration status in Australia.<sup>91</sup>

Community detention is a less restrictive form of immigration detention.<sup>92</sup> It enables a person in immigration detention to live in the general community, at a particular residence and under specific conditions, while they await the resolution of their immigration status.<sup>93</sup> For a person to be released into community detention, the Minister for Immigration and Border Protection must make a residency determination allowing this, although there is no obligation requiring the Minister to do so.<sup>94</sup>

People in community detention are not generally under any direct or physical supervision and are able to move about in the community relatively freely.<sup>95</sup> However, they are still considered 'unlawful non-citizens'<sup>96</sup> and do not have the same rights or entitlements as a person with a valid visa.<sup>97</sup> If the Minister for Immigration and Border Protection considers it in the public interest to do so, the Minister may revoke or vary a residence determination at any time.<sup>98</sup> Breach of placement conditions may lead to a community detention residence determination being revoked.

Children in community detention remain under the legal control and supervision of the department while they reside within community settings and receive support from contracted service providers. While the department does not have direct oversight of children in community detention, it remains responsible for the welfare of these children, including ensuring appropriate responses to any allegations of child sexual abuse.<sup>99</sup>

The department's Status Resolution Service currently engages 11 service providers in Australia to deliver services to assist those living within the community.<sup>100</sup>

### 4.2.2 Children in immigration detention

Children may enter Australia in the care of their parents or other legal guardians, or on their own as unaccompanied minors.<sup>101</sup> In both instances, most children in immigration detention have arrived in Australia seeking asylum.<sup>102</sup>



Children may also be placed in detention if they or their parents:

- receive an adverse security assessment, despite being found to be a refugee
- have their visa cancelled on character grounds
- breach the conditions of their visa or residency determination
- overstay their visa
- are suspected of being involved in people smuggling or illegal fishing in Australian waters.<sup>103</sup>

Children in immigration detention are from culturally and linguistically diverse backgrounds. Children and their families seeking asylum in Australia have often been exposed to war and conflict, torture, injury and incarceration; have witnessed atrocities; or have been displaced before arriving here.<sup>104</sup>

Since 2005 the Migration Act has provided that, as a matter of principle, children should only be detained in an immigration detention centre 'as a measure of last resort'.<sup>105</sup> Despite this, fluctuating numbers of children have at different times been placed in held detention, usually in response to increasing numbers of arrivals.<sup>106</sup>

From October 2010, the Australian Government increased efforts to move children out of held detention and into community detention.<sup>107</sup> Although this resulted in the number of children accommodated in community detention substantially increasing, a significant number of children remained in held immigration detention. At July 2013 there were 1,992 children in onshore held detention facilities and alternative places of detention.<sup>108</sup> By October 2013, there were 1,045 children in various forms of held detention and 1,770 children in community detention.<sup>109</sup>

The number of children held in offshore detention reached its highest peak in August 2014, with 222 children held in the Nauru Regional Processing Centre.<sup>110</sup> From 2014, more children were placed in community detention in Australia and the number of children in held detention has declined.<sup>111</sup>

As at 31 January 2017, fewer than five of the 1,351 people in onshore held immigration detention were children.<sup>112</sup> At the same time, 234 children resided in community detention under a residence determination.<sup>113</sup>

The departmental Secretary, Mr Pezzullo, told us in the *Institutional review of Commonwealth, state and territory governments* case study that 45 children were detained at the Nauru Processing Centre, awaiting their refugee status determination, or that of their parent or guardian, to be resolved.<sup>114</sup> In the same public hearing, Ms Moy gave evidence that there were no unaccompanied children living on Nauru at the time of her evidence on 6 March 2017.<sup>115</sup>

An additional cohort of children in immigration detention are those originally transferred from Australia to regional processing centres, but who have been temporarily transferred to Australia so they, or a family member, can receive medical treatment.<sup>116</sup> Mr Pezzullo gave evidence in the *Institutional review of Commonwealth, state and territory governments* case study that there are ‘some 300 plus... [people], some of whom are children’ in this situation,<sup>117</sup> and they will be returned to a regional processing centre ‘as soon as reasonably practicable’ under Australian law.<sup>118</sup>

### 4.2.3 Responsibilities to protect children in immigration detention

The Australian Government and its contracted service providers are responsible, directly or indirectly, for the safety and wellbeing of children in immigration detention who have been detained, sometimes for prolonged periods. This includes children in community detention. The department is responsible for maintaining adequate supervision of its contractors, to ensure proper care is provided.

The particular roles played by departmental staff and service providers vary between held detention, community detention, and the Nauru Regional Processing Centre. While day-to-day services are primarily provided by contracted service providers in all detention environments,<sup>119</sup> it is the department that carries ultimate responsibility for responses to child sexual abuse within Australia’s immigration detention network.

Obligations to keep children safe arise under legislation in Australia, international law and commercial contracts. Children do not forfeit any rights to protection under domestic or international law because they are in immigration detention. This means that the Australian Government has various responsibilities at the domestic and international level to keep children safe. This includes protecting children from child sexual abuse in immigration detention.<sup>120</sup>

Australia is a signatory to a number of international human rights treaties that confer obligations relevant to the treatment of children in immigration detention.<sup>121</sup> Of particular relevance is the obligation in the UNCRC<sup>122</sup> to take all appropriate measures to protect children from all violence, injury or abuse, neglect or negligent treatment and maltreatment or exploitation, including sexual abuse.<sup>123</sup>

The Australian Government is responsible for ensuring that any child who is seeking, or has, refugee status receives appropriate protection and humanitarian assistance.<sup>124</sup> This is consistent with Australia’s international law obligations under the United Nations Convention Relating to the Status of Refugees (1951 Refugee Convention),<sup>125</sup> which Australia became a party to in 1954.<sup>126</sup>

The department and service providers involved in the detention of, and the provision of services to children in immigration detention, owe a duty of care to protect children from sexual abuse and other forms of harm.<sup>127</sup> The department acknowledges that this duty is non-delegable in relation to those in held detention, but considers that its duty to children in community detention can be delegated to competent service providers.<sup>128</sup> We discuss this issue further in Section 4.8.1.

The department and its Australian service providers must also comply with state and territory child protection laws<sup>129</sup> and anti-discrimination laws that mandate that children regardless of their race or other attributes are treated equally. In addition, there are laws applying to institutions and individuals more generally. These include legislation concerning WWCCs; obligatory reporting to external authorities, including mandatory reporting to child protection authorities and criminal offences for failure to report child sexual abuse; and oversight of institutional responses to complaints handling, including under reportable conduct schemes.

As well, a range of mandatory and voluntary child safe approaches already exist at a national or state and territory level that aim to prevent harm to children. Volume 6, *Making institutions child safe* provides a detailed discussion of these child safe approaches. Volume 7, *Improving institutional responding and reporting* contains a detailed discussion of obligatory reporting to external authorities and oversight of institutional complaint handling.

- The National Framework for Protecting Australia's Children 2009–2020 makes it clear that the Australian and state and territory governments, and non-government institutions, must work together to protect children.<sup>130</sup> Strategy 3 of the Third Action Plan aims to improve how institutions respond to children and young people to keep them safe.
- In late 2016, the Community Service and Disability Ministers agreed to the development of a National Statement of Principles for Child Safe Organisations to 'drive implementation of a child safe culture across all sectors' and to 'be used as a benchmark for cross-sectoral jurisdictional child safety policy making, funding and investment decisions, and legislation and compliance regimes'.<sup>131</sup> The proposed principles, to be endorsed by the Council of Australian Governments, are intended to apply to a range of sectors, including detention facilities.<sup>132</sup>
- In Australia, each state and territory has its own scheme for conducting background checks for people seeking to engage in child-related work. These schemes, commonly known as WWCCs, help to ensure that appropriate people are chosen to work or volunteer with children.<sup>133</sup> They do this by preventing people from working or volunteering with children if records indicate they pose an unacceptable risk to children.

Draft policies and procedures recently developed by the department to operationalise the Child Safeguarding Framework mandate pre-employment screening of departmental staff, service providers and contractors, which include WWCCs and the signing of a Child Protection Mandatory Behaviours Declaration that outlines the standard of behaviour that must be adhered to.<sup>134</sup> With regard to the Nauru Regional Processing Centre, Nauruan employees must have a Nauruan police force check prior to employment with the department's contracted service providers, while service providers who are normally resident in Australia must have a WWCC,<sup>135</sup> including those contracted by the department to service the Nauru Regional Processing Centre.<sup>136</sup>

#### 4.2.4 Oversight of immigration detention

In the immigration detention context, existing independent monitoring and oversight bodies include the Immigration Ombudsman, the AHRC and the Australian Red Cross.<sup>137</sup> These organisations have varying mandates, legislative authority and financial capacity<sup>138</sup> to carry out regular visits to detention facilities, produce reports and raise concerns with the department. Issues of sovereignty as well as practicality may limit the oversight of immigration detention at the Nauru Regional Processing Centre.

The Immigration Ombudsman is a specialist role performed by the Commonwealth Ombudsman.<sup>139</sup> The Ombudsman is responsible for monitoring the conditions and services provided to people in immigration detention. The Ombudsman conducts regular announced and unannounced visits to immigration detention centres, including Christmas Island, and other places of immigration detention,<sup>140</sup> providing a report to the department following each visit.<sup>141</sup> In 2016, the Ombudsman visited offshore immigration detention centres and examined the administrative actions of Australian officials and contracted service providers.<sup>142</sup> These visits were conducted with the agreement of the Nauru and PNG governments.<sup>143</sup>

The Ombudsman also investigates complaints about administrative actions taken by the department.<sup>144</sup> The Ombudsman cannot investigate complaints arising from actions taken by the Minister of Immigration and Border Protection.<sup>145</sup> The Ombudsman also produces Immigration Detention Review Assessments concerning any person who has been in immigration detention for a period of two years, or totalling two years.<sup>146</sup>

The AHRC conducts periodic visits to immigration detention facilities to 'assess whether conditions of detention meet internationally-accepted human rights standards'.<sup>147</sup> It also investigates individual complaints about alleged breaches of human rights in immigration detention.<sup>148</sup> The monitoring work undertaken by the AHRC has included the development of minimum standards for the protection of human rights in immigration detention centres,<sup>149</sup> public reports and national inquiries highlighting breaches of human rights in immigration detention, including the rights of children (see Section 4.2.5).<sup>150</sup>

The Australian Red Cross also conducts regular monitoring of immigration facilities in Australia and in onshore and offshore immigration detention. This monitoring is conducted by volunteer and staff humanitarian observers, who assess the conditions and treatment of people in immigration detention and raise ‘any issues of humanitarian concern’ with the department.<sup>151</sup> Humanitarian observers also offer people in immigration detention an opportunity to discuss their concerns.<sup>152</sup>

The department states that it ensures external oversight by facilitating regular access to detention facilities by the independent external organisations described above and the Minister’s Council on Asylum Seekers and Detention.<sup>153</sup> Internal oversight of immigration detention is provided through the department’s Detention Assurance team and internal audit. This work includes seeking to ensure the care and protection of people in immigration detention and maintain the health, safety and wellbeing of all persons in detention.<sup>154</sup>

There are no independent official visitor schemes that operate in immigration detention comparable to those that operate in some jurisdictions to oversee the wellbeing of children in youth detention and out-of-home care.

#### 4.2.5 Public reports raising issues of child sexual abuse

Sexual abuse in past child migrant programs has been widely reported.<sup>155</sup> While there is little published data and research on child sexual abuse in immigration detention since 1990, various inquiries have provided insight into child sexual abuse in immigration detention during different periods. Although these inquiries, some of which are highlighted below, had their limitations, and did not focus on child sexual abuse, each examined child sexual abuse and related matters, including institutional responses. To the extent that the findings and recommendations are relevant to our work, they are addressed in this volume.

The reports fall into two distinct time spans, reflecting key changes in the immigration detention system (see Section 4.2.1). In particular, detention became a ‘measure of last resort’ for children and ‘community detention’ was introduced in 2005.<sup>156</sup> In 2012, offshore processing was re-introduced and the transfer of children to regional processing centres under the ‘no advantage principle’ commenced.<sup>157</sup>

## Human Rights Commissioner's visit to Curtin Immigration Reception Processing Centre in July 2000 (2000)

In July 2000, the Human Rights Commissioner visited the Curtin Immigration Reception and Processing Centre outside Derby in the Kimberley region of Western Australia.

In his report on the visit, the Commissioner noted that staff appeared to be doing 'whatever they could to assist' the 128 children held there at that time.<sup>158</sup> He also noted that he had been informed about allegations that two male detainees had sexually abused two children at the centre. Without commenting on the then outstanding charges, the Commissioner reported that he was 'concerned that the detention environment places children at risk of sexual and physical abuse'.<sup>159</sup> He observed that the alleged commission of sex offences against two child detainees was 'indicative of the perils inherent in the centre arrangements'.<sup>160</sup> The centre was in a remote location and had a large contingent of detained single males, many of whom had been subject to stress, deprivation and trauma.<sup>161</sup> The Commissioner also identified that the normal practice at that centre at that time was for staff to call detainees by numbers, rather than by their name.<sup>162</sup>

The department responded in relation to the allegations of abuse that: police were contacted immediately; charges had been laid and a trial was pending; and the children had received counselling.<sup>163</sup> It explained that the practice of using numbers, rather than names, for detainees was to avoid errors, but that it had instructed its service providers to use numbers as a secondary means of confirming identity.<sup>164</sup>

## Inquiry into immigration detention procedures (2001)

Philip Flood's *Report of inquiry into immigration detention procedures* (the Flood Report) investigated the processes for responding to child abuse allegations at immigration detention centres in Perth, Maribyrnong, Villawood, Curtin, Port Hedland and Woomera between 1 December 1999 and 30 November 2000.<sup>165</sup> Nine of the 35 cases of alleged child abuse examined concerned sexual abuse by another detainee.<sup>166</sup> The inquiry investigated allegations of sexual assault concerning a 12-year-old boy in Woomera and found that the main service provider at the time, Australasian Correctional Management Pty Ltd (ACM), failed to respond to the abuse appropriately.<sup>167</sup> Established policy and procedures were not followed, and staff and management failed to submit an incident report to the department.<sup>168</sup> The service provider's sexual assault policy did not adequately address the needs of victims.<sup>169</sup>

The report recommended that the department ask ACM to 'incorporate the requirements of relevant State legislation on child welfare and sexual assault' into its policy and 'issue revised policy instructions to staff' in all of its detention centres.<sup>170</sup> The report found ACM should also be obliged to provide 'adequate induction briefing and orientation to detention staff before they commenced duty at a detention centre'.<sup>171</sup>

The Australian Government supported most of the recommendations made by the Flood Report.<sup>172</sup> The then Minister stated that, in response to the report, the department was restructuring and increasing resources to its detention operations area to improve monitoring of incidents and the assessment of service provider performance.<sup>173</sup> The Minister also stated that the department was commencing negotiations with state and territory police and child protection services to establish the role and responsibilities of each in any incidents that occur in Commonwealth immigration detention facilities and that ACM was revising its policies and reviewing its staff training program.<sup>174</sup>

### Report of an own motion investigation into the Department of Immigration and Multicultural Affairs' immigration detention centres (2001)

The Commonwealth Ombudsman's 2001 'own motion' investigation into immigration detention centres<sup>175</sup> identified general themes of overcrowding, frustration over processing delays and problems arising from the collocation of large numbers of single males with families, women and children.<sup>176</sup> The Ombudsman noted that frustration and distress were reflected in reports of self-harm, suicide attempts, damage to equipment, hunger strikes and tension between different detainee groups leading to fights, assaults and threats to kill.<sup>177</sup> The Ombudsman particularly noted that 'children were not excluded from such tensions' and that children, as part of a cohort at the highest risk, had been reported to have been subject to assaults, including sexual assault, by adult male detainees.<sup>178</sup>

### A last resort? (2004)

The AHRC (then the Human Rights and Equal Opportunity Commission) report, *A last resort? National Inquiry into Children in Immigration Detention (A Last Resort)*<sup>179</sup> examined the impact of Australia's mandatory detention regime on children. It reported on evidence gathered from Australian detention centres from 1999 to 2002.<sup>180</sup> It detailed examples of allegations of physical and sexual abuse of children and self-harm by children in the aftermath of sexual abuse in detention centres, including in Curtin, Woomera and Port Hedland.<sup>181</sup> The report found that:

... the mandatory, indefinite and effectively unreviewable immigration detention of children who arrive in Australia without a visa has resulted in multiple and continuing breaches of children's fundamental human rights.<sup>182</sup>

The report determined that detention was not a safe place for children given the demonstrated difficulty of protecting children from assault.<sup>183</sup> The report also found that the standards, policies and procedures in place 'did not make the protection of children a priority'.<sup>184</sup> Children in immigration detention suffered from anxiety, distress, bed-wetting, suicidal ideation and self-destructive behaviour, including attempted and actual self-harm.<sup>185</sup>

In response to that inquiry, the department stated that many of the findings and recommendations 'relate to the legal and policy settings for immigration detention' and that 'these are matters for response by the Government'.<sup>186</sup> The department stressed that it was 'working actively to establish appropriate alternative arrangements for children' (outside of detention centres).<sup>187</sup>

## Forgotten Children report (2014)

The AHRC's Forgotten Children report<sup>188</sup> reported incidents of assault, sexual assault and self-harm involving children. It found a number of risks to child safety in the detention environment.<sup>189</sup> It also found that the prolonged mandatory detention of asylum seeker children causes significant mental and physical illness and developmental delays.<sup>190</sup> Children in immigration detention, in particular, were found to have significantly higher rates of mental health disorders compared to children living in the Australian community.<sup>191</sup> The AHRC was troubled about claims by children's welfare service providers that children could not be removed from situations of abuse, except in extreme circumstances, and only for a limited period of time.<sup>192</sup>

The department was highly critical of the report's findings and recommendations.<sup>193</sup> It said the report lacked 'objective reference' to information that was provided to the AHRC, was selective and relied on largely unverifiable, subjective statements.<sup>194</sup> The departmental secretary, Mr Pezzullo, in correspondence to the president of the AHRC, noted that 'where recommendations provided in your final report are practical and consistent with government policy, the Department will continue to work with the [AHRC] to implement these as appropriate'.<sup>195</sup>

## Taking responsibility (2015)

The Senate Select Committee on the recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, in its report entitled *Taking responsibility: Conditions and circumstances at Australia's Regional Processing Centre in Nauru* (the 2015 Senate Select Committee report), noted allegations of staff in Nauru sexually, physically and verbally assaulting children and engaging in sexual harassment and sexually exploitative behaviour involving the supply of contraband items to children.<sup>196</sup> The committee concluded that the Nauru Regional Processing Centre was 'neither a safe nor appropriate environment for children and that they should no longer be held there'.<sup>197</sup> The report recommended that the department, in consultation with the Australian Federal Police, undertake a full audit of all allegations of sexual abuse, child abuse and other criminal conduct.<sup>198</sup>

In response, the department highlighted that alleged criminal conduct is a matter for Nauruan authorities and the Nauru Police Force. The department noted that the CPP had been tasked with reviewing reported incidents of abuse, including child abuse.<sup>199</sup>



## Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (2015)

The Moss Review found there were both reported and unreported allegations of sexual and other physical assault in the Nauru Regional Processing Centre, including allegations involving children.<sup>200</sup> The review also heard reports relating to children with harmful sexual behaviours, and children exhibiting sexual behaviours with other transferees and among other children.<sup>201</sup> The review recommended that the department and Nauruan Government officials ‘review and enhance the existing policy framework for identifying, reporting, responding to, mitigating and preventing incidents of sexual and other physical assault[s] at the Centre’.<sup>202</sup>

In its submission to the 2015 Senate Select Committee Inquiry into Nauru, the department confirmed that it had accepted all 19 recommendations from the Moss Review and taken steps to implement these recommendations.<sup>203</sup>

## Making children safer (2016)

In its report, the CPP made observations to improve the wellbeing of children in immigration detention and improve the department’s responses to incidents involving children.<sup>204</sup> The CPP found that the department’s approach to risk management was inadequate – in community detention, the CPP found no risk frameworks were in place.<sup>205</sup> The CPP also identified a need to strengthen community detention service providers’ capabilities to protect children.<sup>206</sup>

The CPP recommended that service provider policies be aligned with the department’s Child Safeguarding Framework.<sup>207</sup> It also recommended reviewing the effectiveness of the new Child Safeguarding Framework within 18 months.<sup>208</sup> With regard to conducting child safeguarding inquiries and responding appropriately to reports, the CPP promoted a ‘triple-track approach’ to meet the needs of victims, manage alleged perpetrators and identify systemic issues.<sup>209</sup> It suggested improvements to incident reporting and categorisation,<sup>210</sup> and complaint management systems.<sup>211</sup> It recommended enhanced information sharing both within and outside the department,<sup>212</sup> that the department work on improving external relationships to facilitate greater cooperation with state and territory authorities<sup>213</sup> and increase its capability to deal with highly complex matters.<sup>214</sup>

The department ‘categorically accepted the majority of the CPP’s findings’.<sup>215</sup> Other recommendations were accepted partially or in principle.<sup>216</sup> The department’s responses are discussed throughout this chapter.

## Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre (2017)

The Senate Legal and Constitutional Affairs References Committee reviewed a broad range of incidents reported to non-government organisations, detailed in ‘leaked’ documents and received directly, including incidents that were ‘extremely serious’<sup>217</sup> and involved alleged sexual assaults of children.<sup>218</sup> In its report, entitled *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre* (the 2017 Senate Committee report), the committee made recommendations regarding medical management, the investigation and audit of incident reporting at the Nauru Regional Processing Centre, and building the capacity of Nauru to respond to allegations of child abuse.<sup>219</sup>

At the time of writing, the department had not published a response to this report.

### Other reports

A number of other recent public inquiries and reports about immigration detention in Australia do not raise issues of child sexual abuse, but consider related matters.<sup>220</sup> These include the effectiveness of the department’s administration of health services in onshore immigration detention.<sup>221</sup> They also assess whether the department has appropriately established and managed contracts for garrison support and welfare services at centres in Nauru and PNG.<sup>222</sup>

## 4.3 Reporting of child sexual abuse in immigration detention in inquiry reports

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### 4.3.1 Reported extent of child sexual abuse

As discussed in Volume 2, *Nature and cause*, there is a general lack of data regarding the prevalence of child sexual abuse in Australia. Similarly, there is a lack of reliable data on the extent of child sexual abuse in immigration detention. As we note earlier, various inquiries into immigration detention provide snapshots of information about allegations of child sexual abuse within particular time periods.<sup>223</sup> Often, data relating to child sexual abuse is aggregated with data relating to child abuse more broadly or is not discussed comprehensively. Classification of child sexual abuse also varies between inquiries, service providers and other information holders, which makes it difficult for numbers to be confidently compared or extrapolated. Further, very few inquiries report allegations of child sexual abuse within community detention.

## Child Protection Panel report

The CPP examined a sample of child abuse incident reports as part of its review of the department's child protection procedures in 2015–16.<sup>224</sup> This work was supported by a departmental taskforce, whose role was to 'extract all relevant incidents of child abuse from the Department's reporting databases'.<sup>225</sup>

A sample of 214 reported incidents of child abuse, neglect and exploitation was taken from a pool of 1211 cases reported between 1 January 2008 and 30 June 2015.<sup>226</sup> Of these, 148 were identified from onshore held detention, 30 were from community detention and 36 occurred in regional processing centres (32 in Nauru Regional Processing Centre and four in Manus Regional Processing Centre).<sup>227</sup>

Evidence was provided by the department that reported child sexual abuse incidents represented 27.6 per cent of the sample.<sup>228</sup> Of these child sexual abuse incidents, 37 took place in held detention, nine in community detention and 13 in regional processing centres.<sup>229</sup>

More detailed case reviews were later undertaken by the CPP of 148 cases.<sup>230</sup> These reviews provide further information about child sexual abuse in immigration detention. The CPP prioritised serious or complex instances of child abuse,<sup>231</sup> specifically those:

- 'previously of interest to the AHRC inquiry'
- inside the scope of Notices to Produce issued by the Royal Commission into Institutional Responses to Child Sexual Abuse
- rated 'critical' or 'major' and therefore selected by the Secretariat as of most concern'.<sup>232</sup>

## Other inquiries

The Flood Report examined child abuse in immigration detention between 1 December 1999 and 30 November 2000. Nine of the 35 cases of child abuse it examined involved allegations of child sexual abuse by other detained people.<sup>233</sup>

The Forgotten Children report identified 33 cases of reported sexual abuse between January 2013 and March 2014 in onshore and offshore held immigration detention – the majority of which involved children.<sup>234</sup>

The Moss Review identified a number of reports of child sexual abuse, sexual harassment of children and sexualised behaviour among children at the Nauru Regional Processing Centre between September 2013 and October 2014.<sup>235</sup> It concluded that there was a level of under-reporting of sexual and other physical assault.<sup>236</sup> The CPP reviewed a number of the cases reported by the Moss Review.<sup>237</sup>

In 2015, a Senate Select Committee received evidence of reports of child sexual abuse at the Nauru Regional Processing Centre as part of an inquiry into conditions at the centre.<sup>238</sup> Transfield Services (now Broadspectrum) – one of two major contracted security service providers at the facility at the time – gave evidence to the Committee that it had received 45 reports of alleged child abuse and sexual assault between 2012 and 2015.<sup>239</sup> The committee raised concerns about the quality of child abuse incident and reporting data held by the department and its contracted service providers, and their willingness to provide the committee with complete information.<sup>240</sup>

The allegations identified by other inquiries are not comprehensive in number and do not include key information about child sexual abuse including location, nature of abuse, frequency, substantiation of abuse, and response to it.

### 4.3.2 Reported nature of child sexual abuse

Reports from previous inquiries and reviews offer an indication of the nature of child sexual abuse in immigration detention. In particular, the CPP report provided insights into the type of sexual abuse reported, and the demographics of suspected perpetrators and victims. However, as noted by Ms Allison in our *Institutional review of Commonwealth, state and territory governments* case study, original incident reports were often illegible<sup>241</sup> and lacked sufficient detail to understand exactly what had taken place:

Sometimes, reports were very brief, or particularly in relation to sexual matters, almost coy in their expression, so it was impossible to tell what happened. You know, a report might refer to a child complaining they had been touched, but, you know, touched where? No details.<sup>242</sup>

Nevertheless, some general characteristics can be identified from reported incidents of abuse to help us understand the nature of reported child sexual abuse in immigration detention.

### Forms of abuse

As in other institutional contexts, different forms of child sexual abuse have been reported in immigration detention settings. Reported forms of abuse have involved co-occurring physical abuse,<sup>243</sup> child sexual exploitation,<sup>244</sup> and exposure to sexual acts<sup>245</sup> and material.<sup>246</sup> A combination of multiple forms of abuse has also been reported.

As discussed in Volume 2, *Nature and cause*, sexual abuse can occur in the context of violence. For example, in 2017, the Senate Legal and Constitutional Affairs References Committee noted the Nauru files contained extremely serious allegations of criminal conduct against children by staff members at the Nauru Regional Processing Centre between 2013 and 2015. The committee report states:

The reports detail troubling allegations including staff members allegedly sexually assaulting a child, choking a child, hitting a child across the face, spitting at a child, asking a child to lift their shirt and display her stomach, pulling a child's hair, otherwise physically assaulting children, and physically removing a child from a tent and then later threatening to assault the child. One incident report details a staff member having to be physically restrained by other staff members as they tried to hit a child in the RPC canteen. [References omitted].<sup>247</sup>

Allegations of inappropriate use of force against children in regional processing centres were also noted by the CPP.<sup>248</sup> Other inquiries reported that some children at the Nauru Regional Processing Centre were sexually exploited (that is, they were manipulated or coerced to participate in a sexual activity in exchange for, or on the promise of, an incentive) by locally engaged contract staff.<sup>249</sup>

The CPP particularly noted the inappropriate use of the internet and external storage devices by detainees to download, store and share pornographic material. A number of the cases the CPP reviewed involved pornographic material on USBs being used 'during serious child abuse offending or to groom children within the facility'.<sup>250</sup> As we discuss in Volume 6, *Making institutions child safe*, child exploitation material has proliferated on the internet.

## Victims

There is no authoritative data that describes the demographic features of known or suspected victims of child sexual abuse in immigration detention. However, the CPP identified that nearly 25 per cent of the cases it reviewed involved children who had previously been the victim of child abuse. It noted that these children have an increased ongoing risk of harm.<sup>251</sup> The CPP considered that there were particular groups of children with needs that required specific consideration 'including specialist service provision'.<sup>252</sup> These 'vulnerable populations' included: young children, particularly children less than six years of age;<sup>253</sup> unaccompanied children;<sup>254</sup> and children with disability.<sup>255</sup> The CPP found unaccompanied children were 'one of the most vulnerable groups'<sup>256</sup> and emphasised that 'the families of children with disability require earlier engagement with specialist disability services'.<sup>257</sup>

## Persons known or suspected to have sexually abused children

### Adult perpetrators

Children are exposed to a range of adults in immigration detention who could potentially perpetrate sexual abuse. This includes adult detainees, departmental staff and sub-contracted service providers, foster parents and carers in community detention, and any other adults who come into contact with children.

There is no authoritative data that describes the demographic features of known or suspected perpetrators of child sexual abuse in immigration detention. However, the CPP made a number of observations about the demographic profile of suspected perpetrators of child abuse generally in immigration detention, including those outlined below.

- Of the cases the CPP reviewed 77 per cent involved adult perpetrators, with males represented at twice the rate of females.<sup>258</sup>
- Twenty-two persons of interest were identified by the CPP as being involved in the abuse of children in more than one reported case.<sup>259</sup> This cohort came to notice in 53 cases, that is, in a quarter of all reviews and this trend was evident in held detention, community detention and in regional processing centres.<sup>260</sup> This group included parents and other adults with intellectual disability. The CPP did not report on what proportion of this group were themselves children.<sup>261</sup>
- More than 90 per cent of persons of interest were detainees,<sup>262</sup> a minority of whom were the children's own family in cases involving sexual abuse.<sup>263</sup>
- There was a small cohort where the person of interest was a service provider or contractor.<sup>264</sup>

Other inquiries into the Nauru Regional Processing Centre reported complaints that contracted detention staff were responsible for child sexual abuse. For example, the Moss Review identified reports involving locally engaged security personnel at the Nauru Regional Processing Centre.<sup>265</sup> The AHRC reported complaints about contracted local cleaning staff in the Forgotten Children report.<sup>266</sup>

As part of its inquiry into the conditions and operation of the Nauru Regional Processing Centre, the 2015 Senate Select Committee report raised concerns about the under-reporting of abuse perpetrated by detention staff and subcontractors, and how the department may not be aware of serious incidents occurring at the Nauru Regional Processing Centre:

The committee is deeply concerned that without this inquiry, the allegations heard and evidence received would not have been uncovered. There appears to be no other pathway for those affected by what they have seen and experienced in the Regional Processing Centre on Nauru to disclose allegations of mistreatment, abuse or to make complaints. The department has been unaware of serious acts of misconduct by staff of contractors, as those contractors have not adequately fulfilled their reporting obligations.<sup>267</sup>

## Children with harmful sexual behaviours

The CPP reported a ‘considerable’ number of cases involving either physical or sexual abuse of children by other children. Many of these incidents involved either ‘coercion of younger children by older children or sexualised behaviour involving children of a similar age’.<sup>268</sup> While children aged five to seven were more commonly involved, the CPP reported children as young as three being involved.<sup>269</sup> One child identified by the CPP as being involved in a large number of incidents including a ‘critical sexual assault’ was also recorded as a ‘victim’ in multiple incidents.<sup>270</sup>

The CPP report also described sexual abuse among unaccompanied children living together in community detention group homes.<sup>271</sup> During our *Institutional review of Commonwealth, state and territory governments* case study, Ms Allison provided an example of an adolescent boy who had allegedly been sexually assaulted by two of his housemates, also adolescent boys, and threatened with further assaults.<sup>272</sup>

For a detailed discussion of children with harmful sexual behaviours generally, see Volume 10, *Children with harmful sexual behaviours*.

## 4.4 Understanding the risk of child sexual abuse in immigration detention

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As discussed in Volume 2, *Nature and cause*, we learned that child sexual abuse is the result of the complex interaction between diverse factors related to the institution as well as to perpetrators and victims. When a perpetrator is present in immigration detention, the institution may enable opportunities for children to be sexually abused – for instance, by providing the perpetrator with unsupervised access to children. All children in immigration detention are vulnerable to abuse in these environments, but some children may be more or less vulnerable due to their exposure to certain risk or protective factors, for instance their experience of sexual abuse prior to being detained.<sup>273</sup>

To be effective in protecting children from sexual abuse in immigration detention, we need to understand the risks posed in detention facilities by potential adult perpetrators and problematic sexual behaviour among children, and the threat of sexual exploitation by adults in the broader community.<sup>274</sup> A comprehensive approach to preventing child sexual abuse in immigration detention must incorporate strategies to address all three potential sources of harm.

This section focuses on the particular risk factors in immigration detention that we learned about. Understanding these factors will help us to design interventions to prevent sexual abuse in immigration detention and to respond when it does occur. Risk factors that are common with, or unique to, other institutional contexts are detailed in Volume 2, *Nature and cause*.

#### 4.4.1 Factors that may influence a person to sexually abuse a child in immigration detention

##### Adults who sexually abuse children

As discussed in Volume 2, *Nature and cause*, there is no typical profile of an adult who sexually abuses a child, despite commonly held misconceptions and persistent stereotypes. People who sexually abuse children in institutional contexts, including in immigration detention, have diverse motivations and behaviours, which are influenced by various factors that can change over time.

Research suggests that there are a number of pre-conditions that must be met before a person will sexually abuse a child, in any setting, including motivation to sexually abuse, overcoming internal inhibitions, overcoming external barriers and overcoming the child's resistance (see Volume 2, *Nature and cause*).<sup>275</sup> The last two conditions can be more easily achieved in any setting where potential abusers have a high level of unsupervised contact with children and opportunities to carry out abuse with minimal risk of detection.<sup>276</sup> In immigration detention, other detainees and staff will already be familiar to (and sometimes in a position of power and authority over) children. Staff and adult detainees may be entrusted with caring for, and ensuring the security of children in closed residential settings.<sup>277</sup>

We are not aware of any characteristics that are unique to perpetrators of abuse in held and community detention environments. Below we discuss factors that may influence a person to sexually abuse a child, which are relevant to immigration detention settings.

##### Held immigration detention

Some of the reported cases of child sexual abuse in immigration detention involved adult detainees.<sup>278</sup> Commissioned research suggests children held in a residential environment with non-biologically related males, as can occur in immigration detention, increases the risk of child sexual abuse.<sup>279</sup>

We do not know what might lead an adult detainee in immigration detention to sexually abuse a child. We are aware of reports that individuals in held detention almost universally experience boredom, frustration, helplessness, lack of control, as well as a range of mental health issues associated with the detention experience and environment and the trauma associated with their journey, such as PTSD, depression, anxiety, self-harm and suicidal ideation.<sup>280</sup> In 2002, Mares et al. stated that in detention children were 'inevitably exposed to violence' and 'unrelieved contact with angry, hopeless, frequently suicidal adults (often their parents as well as other detainees)'.<sup>281</sup> It is possible that the conditions of detention that appear to give rise to these issues are also a risk factor for child sexual abuse.<sup>282</sup> However, as we discuss in Volume 2, *Nature and cause*, risk factors do not predict causality, and mental health issues themselves are not a cause of offending behaviour. We discuss aspects of the detention environment that may increase the risk of abuse in Section 4.4.2.



Some staff members may also present a risk to children in held immigration detention. The CPP noted several areas of concern in relation to the involvement of staff in various incidents of child abuse. These included opportunistic assaults on children, particularly at night in poorly lit areas<sup>283</sup> and when staff were reported to be under the influence of alcohol or other drugs.<sup>284</sup> It was also suggested by the CPP that the department and its service providers failed to ensure staff at the Nauru Regional Processing Centre maintain appropriate professional boundaries in their dealings with children.<sup>285</sup> This manifested in a range of potential grooming behaviours, from the exchange of personal details and attempts to ‘friend’ children on social media to making explicit and unwelcome sexual overtures.<sup>286</sup>

Research suggests that the need for power and control may be a common characteristic among perpetrators in institutional contexts.<sup>287</sup> The significant power and authority institutional perpetrators have over children can provide opportunities for abuse, prevent abuse being identified, and inhibit the child from disclosing both at the time of the abuse and in the years that follow.<sup>288</sup> In immigration detention this may particularly relate to security and garrison staff.

In the context of the Nauru Regional Processing Centre, these power dynamics may have enabled the reported abuse of children. For example, five children disclosed to the Moss Review that four local service provider staff had allegedly used their position of authority to offer them marijuana and other items in return for sexual favours. They also disclosed that these officers had been on duty while under the influence of alcohol.<sup>289</sup>

We discuss alcohol and other drug consumption in the context of abuse in Volume 2, *Nature and cause*. They may operate as a ‘trigger’ and enable perpetrators to overcome internal inhibitions about sexually abusing a child, or may be provided to children in order to overcome their resistance to abuse.

In his evidence to the Senate Select Committee in 2015, Dr Peter Young – a former medical director at IHMS – referred to the particular power dynamics between detention staff and child detainees within held detention:

Wherever there is a situation in an institution where there is a vulnerable group that is under supervision, and where there is a power differential between those who are being supervised and those who are supervising them, you create the conditions in which abuses tend to occur.<sup>290</sup>

Adults may also use their unique relationship to children to groom them for sexual abuse. In the Forgotten Children report, the AHRC concluded that social interaction provided by carers can be enormously protective and positive for children in immigration detention, particularly unaccompanied children who require higher levels of emotional and social support because they do not have a parent in the detention environment.<sup>291</sup> However, as discussed in Volume 2, *Nature and cause*, adults may also groom parents or other adults close to the child to de-sensitise them so that they perceive potentially risky behaviour as harmless,<sup>292</sup> and to increase the likelihood that they will leave the child in the perpetrator’s care unsupervised.

This was illustrated in one private session attended by a parent who told us her child was sexually abused in immigration detention by an adult male detainee who befriended her and assisted with the child's care. The man was playful and friendly to her child at first. She told us: 'I trusted him and I never thought this is his trick in order to get close to [child]'.<sup>293</sup>

We have also been told about the risk of sexual abuse of children in immigration detention by perpetrators who have been involved in similar abuse in the past. A written submission from the Australian Federal Police to us notes instances in which known offenders convicted of child sexual abuse were released from corrective service facilities in Australia and placed into immigration detention centres pending the assessment of their immigration status or awaiting deportation. At times, this detention was alongside children.<sup>294</sup>

### Community detention

Little is known about perpetrators who sexually abuse children in community detention. This is due, in part, to a lack of available information about the risk of child sexual abuse in community detention in Australia and the limited time available to the CPP to review reports of child sexual abuse in community detention.<sup>295</sup>

The same perpetrators who pose a risk to children in the broader community (see Volume 2, *Nature and cause*) may also pose a risk to children living in community detention. Children in community detention are also in regular contact with a range of adults who may use their direct access to them to perpetrate abuse. Through our series of multicultural forums, we were told that perpetrators sometimes target children from particular cultural communities or backgrounds where sexual abuse matters are less likely to be openly discussed, or children may be less likely to be believed or acknowledged if they disclose abuse.<sup>296</sup>

Unaccompanied children in community detention, however, are in a form of residential care. This is a higher risk environment. We discuss institutional factors that enable child sexual abuse in this immigration detention setting in Section 4.4.2.

### Children with harmful sexual behaviours

As discussed in Section 4.3.2, children have been reported to have been sexually abused in immigration detention by other children with harmful sexual behaviours.<sup>297</sup> This is consistent with commissioned research that suggests the risk of child sexual abuse by another child may be high for children in co-residential facilities like immigration detention, where children live in a confined or at least limited area.<sup>298</sup> These risks may be particularly great when children with heightened risk of exhibiting harmful sexual behaviours are placed with children with heightened vulnerability.<sup>299</sup>

Children with harmful sexual behaviours are a diverse group.<sup>300</sup> They vary in their age, their social and economic backgrounds, the extent to which they understand (and intend to engage in) harmful sexual behaviours, and the kinds of behaviours they exhibit. However, research suggests that specific impacts associated with the refugee experience and prior trauma can complicate the development of adult identity among adolescent refugees and may lead to acting out through sexual behaviour.<sup>301</sup> These impacts can include ‘arrested psychological development due to early trauma, deprivation and family breakdown, separation anxiety and low self-esteem, disrupted education, and lack of care for unaccompanied minors’.<sup>302</sup> Prior experiences of or witnessing rape and sexual violence is commonly reported among refugee children.<sup>303</sup> The Forgotten Children report provided examples of children allegedly witnessing violent incidents and major traumas in detention environments.<sup>304</sup> As discussed in Volume 10, *Children with harmful sexual behaviours*, prior experiences of trauma can place children at greater risk of developing harmful sexual behaviours.<sup>305</sup>

Previous inquiries have also noted the presence of ‘sexualised behaviour’ among some children in various immigration detention environments. For instance, the Moss Review examined several such cases at the Nauru Regional Processing Centre.<sup>306</sup> The review noted that lack of privacy in held detention facilities may mean children are able to observe adult sexual activity, which may have contributed to sexualised behaviour.<sup>307</sup> In submissions to the Senate Select Committee in 2015, former employees of Save the Children Australia and other contracted service providers told the committee that former workers at the Nauru Regional Processing Centre had noted instances of sexualised behaviour among very young children.<sup>308</sup>

The risk of children sexually abusing other children will be higher in institutions where there is a lack of adult supervision and where parents and carers may be unable to be actively involved in children’s lives.<sup>309</sup> The CPP report provided examples of children sexually abusing other children, enabled by a lack of supervision, particularly in high-risk areas such as recreational facilities.<sup>310</sup> Unaccompanied children in residential group homes and children whose parents may not be able to perform a protective role, because they may be depressed, emotionally unavailable or feel powerless, may be at particular risk.<sup>311</sup>

#### 4.4.2 Institutional factors that may enable child sexual abuse in immigration detention

Throughout our inquiry, we learned about a wide range of institutional factors that may enable child sexual abuse to occur. We describe these factors in detail in Volume 2, *Nature and cause*, and classify them into three broad categories: institutional culture, operational factors and physical or online environmental factors. This section discusses the specific institutional factors that, when present in held immigration detention settings or community detention, can enable opportunities for child sexual abuse to occur. Initiatives to address institutional risk factors are discussed in Section 4.8.3.

## Held immigration detention

### Institutional culture

Institutional culture broadly refers to the assumptions, values, beliefs and norms of an institution relating to appropriate and inappropriate attitudes and behaviour.<sup>312</sup> These include shared understandings about what someone should or should not think or do, and what is considered to be 'good' and 'bad' behaviour.<sup>313</sup> The importance of strong leadership in establishing and maintaining good organisational culture cannot be overstated. The nature of the institution and its purpose and physical characteristics also influence how staff understand the culture.

Features of institutional culture reported to be present within some immigration detention settings in recent years that may increase the risk of child sexual abuse include cultures:

- of secrecy and isolation that distance held detention from the broader community<sup>314</sup>
- that normalise harmful practices or dehumanise and criminalise children, including the reported practice of referring to children in held detention by their boat number,<sup>315</sup> and racist, prejudicial and discriminatory attitudes towards children in held detention<sup>316</sup>
- that prioritise the reputation of the institution over the interests of children.<sup>317</sup>

These features may make child sexual abuse in held detention more likely to occur and less likely to be noticed, disclosed, reported or responded to appropriately.<sup>318</sup>

Through research, we have learned that 'total' institutions that operate separately from the outside world with a high degree of secrecy can create their own 'alternate moral universe'.<sup>319</sup> In these 'closed' or insular environments, staff can find ways to justify certain behaviour towards children that would not be acceptable in the broader community.<sup>320</sup> As a result, they may lack the capacity to effectively monitor the safety and wellbeing of children, and scrutinise their own child protection policies and practices.<sup>321</sup> This has been described as the 'corruption of care'.<sup>322</sup> As we discuss in Chapter 2, it is more likely to occur in enclosed, inward-looking organisations.<sup>323</sup>

In this context, there is a risk that some staff will dehumanise children and that harmful practices may become normalised. This culture may be reinforced by racism and prejudicial attitudes towards asylum seekers, which are known features of an organisational culture that carries greater risk.<sup>324</sup> The Flood Report heard from 'credible witnesses' about 'derogatory remarks to detainees, humiliation of people in room searches and people sworn at in abusive manner'.<sup>325</sup> In our multicultural forums, we heard from community representatives that detainees held expectations of negative or unhelpful responses from the department and service providers, stemming from past experiences of racism and culturally inappropriate service delivery.<sup>326</sup> It has also been alleged during the contemporary period that some officers have made racist remarks towards detainees.<sup>327</sup> We were also told that the detention system itself, involving the detention of children in secure, closed facilities, was harmful and 'abusive' and made detainees feel scared.

Both the 2015 Senate Select Committee report and the 2017 Senate Select Committee report referred to descriptions of staff behaviour towards detainees that was degrading or intimidating.<sup>328</sup> The 2015 Senate Select Committee reported that former detention employees spoke of the ‘intimidating appearance and demeanour of detention staff’.<sup>329</sup> Additionally:

The use of asylum seekers’ boat identification numbers in place of their names was raised by submitters with concerns about the dehumanising impact of this, and the unwillingness of security guards in particular to learn and use asylum seekers’ names.<sup>330</sup>

The Committee noted that it was repeatedly assured by service providers that their policies did not endorse referring to asylum seekers primarily by boat number.<sup>331</sup>

Prejudicial attitudes and cultures can be legitimised by the institution itself. As discussed in Volume 2, *Nature and Cause*, even closed or insular institutions like held detention can be influenced by community attitudes and a general perception of institutions as sources of authority. We were told in our multicultural forums and in a submission to us by a service provider how broader political messages and portrayals of asylum seekers or ‘boat people’ as ‘unlawful’ and threatening to Australia can influence how institutions like held detention understand their purpose and encourage discriminatory organisational cultures.<sup>332</sup> The service provider’s submission stated that official government policies and departmental procedures that brand held detention as a deterrence measure have the potential to create or validate false perceptions among detention staff that children seeking asylum are criminals, morally inferior, in need of punishment, control and reform, and not deserving of Australia’s care and protection.<sup>333</sup>

Research also suggests that stringent policy approaches can lead to organisational cultures and practices that dehumanise children, or allow institutional workers to justify the mistreatment of children.<sup>334</sup> The same service provider submitted that the: ‘implementation of policies which are punitive and which place children in vulnerable circumstances can place children in situations where they are vulnerable to exploitation and to the risk of being sexually abused’.<sup>335</sup>

Institutions that are isolated from public and external scrutiny have also been associated with a higher risk of child sexual abuse.<sup>336</sup> Held immigration detention may often be both physically isolated and have limited public transparency and accountability.

Researchers have commented on the ‘remote’ locations in which asylum seekers have been placed<sup>337</sup> and observed that ‘detainees remained distant from advocates, information, interpreters, and legal counsel’.<sup>338</sup> The UN Special Rapporteur on the human rights of migrants has also highlighted that the geographic isolation of held immigration detention impedes the accessibility of detention centres for lawyers, civil society organisations and families.<sup>339</sup> The ‘isolation’ of detention has also been said to increase detainees’ reliance on the department.<sup>340</sup> As part of its 2015 inquiry, the Senate Select Committee expressed concern about the transparency of operations in the Nauru Regional Processing Centre (see Section 4.3.2).<sup>341</sup>

The department provides the public and media with only restricted access to held detention facilities and detainees within them.<sup>342</sup> On 1 July 2015, the *Australian Border Force Act 2015* (Cth) (Border Force Act) came into force, and made it an offence for an ‘entrusted person’, including certain current and former departmental staff and contracted service providers, to disclose, or make a record of, ‘protected information’.<sup>343</sup> In September 2016, the Border Force Act was amended to exempt ‘health practitioners’, including doctors, nurses, psychologists and other health professionals, from these provisions.<sup>344</sup> Concerns were raised with the Royal Commission and in a number of reports that the Border Force Act may silence whistleblowers from reporting child sexual abuse and other offences witnessed in held detention.<sup>345</sup> On 9 August 2017, the Minister for Immigration and Border Protection introduced a bill to Parliament to again revise the secrecy and disclosure provisions in the Border Force Act.<sup>346</sup> At the time of writing this bill had not passed into law.

Research suggests that institutions that place greater importance on protection of the organisation’s reputation than on the wellbeing and protection of children create organisational cultures that may be less safe for children<sup>347</sup> and provide inadequate protective responses.<sup>348</sup> This was described in the immigration context by Dr Peter Young who gave evidence to the Senate Select Committee:

[What] really has a very powerful effect—and we have seen this in other institutions where abuse has occurred very regularly—is when there is this overriding concern that the interests of the institution, the preservation of the institutional interests, override everything else ... We see it in this example where the policy position of stopping the boats and maintaining the offshore processing facility and its reputation is the overriding concern.<sup>349</sup>

## Operational practices and physical environments

Situational factors associated with the physical set-up, operation and composition of some held immigration detention facilities can provide opportunities for child sexual abuse and are exacerbated when the supervision of children within detention environments is inadequate. They include:

- isolated and concealed places where adults can have direct contact with children<sup>350</sup>
- inadequate supervision<sup>351</sup>
- high density accommodation, lack of privacy and mixed facilities for unrelated children and adults<sup>352</sup>
- the presence of staff and other adults who pose a risk of harm to children<sup>353</sup>
- the presence of sexualised behaviour, physical violence, psychological distress and self-harm<sup>354</sup>
- a lack of child safe spaces, such as schools, sport and recreation activities, and other activities that provide age-appropriate environments for children.<sup>355</sup>

Previous inquiries have noted the risk that can be created by the physical environment of held immigration detention, in particular because of the prevalence of poorly lit areas, isolated open spaces and inadequate use of CCTV. For example, the CPP report and Moss Review referenced a number of incidents of child abuse or attempted child sexual abuse in held detention facilities at night in dark, unsupervised and secluded locations.<sup>356</sup> In evidence provided to the Senate Select Committee in 2015, the Asylum Seeker Resource Centre told the committee that some women and children have reported feeling too scared to walk to communal bathroom facilities at night, fearing the presence of Australian and Nauruan guards.<sup>357</sup>

The AHRC found that high density shared accommodation and bathroom facilities that do not afford adequate levels of privacy and security may also create additional opportunities for child sexual abuse to occur.<sup>358</sup> This includes shared shower blocks, recreation areas, dining halls and hallways between facilities. In private sessions, we heard that accommodation in Nauru was in a tent divided into sections per family where they had no privacy and slept on mattresses on the floor.<sup>359</sup>

High density accommodation and communal residences can result in children living in close proximity to unrelated adults. Commissioned research suggests that this is another issue of concern.<sup>360</sup> The AHRC's report, *A Last Resort*, discussed families experiencing fear due to placements in compounds with single men and safety issues posed by detainees who may feel they have 'nothing to lose'.<sup>361</sup> The Inquiry documented the reported 'vulnerability of girls in particular to physical and sexual assault'.<sup>362</sup> Some women and children felt they needed to be escorted to bathrooms overnight.<sup>363</sup> At that time, separate accommodation for women and children was not provided. Women and children were also reported to feel unsafe in communal areas.<sup>364</sup> In a private session, a mother told us she was concerned about single men having access to her child in communal areas, and that some single male detainees lived in the family section for reasons which were unclear to her. She told us that her child was sexually abused by a single male detainee in a communal area.<sup>365</sup>

Commissioned research suggests that when children reside in a highly sexualised or violent environment, they may be exposed to a higher risk of sexual abuse, and abuse may be less likely to be noticed, disclosed, reported or responded to appropriately.<sup>366</sup> At different points in time, various such behaviours have been reported throughout the immigration detention system, including: demonstrations (for example, involving lip-sewing<sup>367</sup> and hunger strikes,<sup>368</sup> and the deployment of tear gas, water cannons<sup>369</sup> and batons),<sup>370</sup> riots,<sup>371</sup> fires,<sup>372</sup> and graphically violent suicide attempts and acts of self-harm,<sup>373</sup> including self-immolation.<sup>374</sup> In some cases, children have witnessed their parents' involvement in such actions.<sup>375</sup> Children have also reportedly self-harmed or expressed suicidal ideation.<sup>376</sup> Instances of sexual exploitation, sexual harassment, rape, and threats of rape within some held immigration detention facilities have also been reported, including against children.<sup>377</sup> Shared accommodation facilities also mean children may witness adult sexual behaviour.



In its evidence to the Senate Legal and Constitutional Affairs References Committee, the Royal Australasian College of Physicians stated: 'In held detention, children cannot be protected from and are exposed to physical violence and mental distress in adults, including their parents. They are likely to be at significant risk of physical and sexual abuse and maltreatment, including neglect'.<sup>378</sup>

Held immigration detention environments may also lack opportunities for children to regularly engage in structured, age-appropriate and well supervised recreation or play.<sup>379</sup> In 2015, the Senate Select Committee was told through written submissions that the location of recreational facilities at the Nauru Regional Processing Centre was 'unsafe, not child friendly [and] often unsupervised'.<sup>380</sup> The CPP reviewed a number of incidents of child abuse, including children sexually abusing other children, which occurred during unsupervised sporting and recreation activities. The CPP observed that these incidents were 'preventable through proper management and effective oversight'.<sup>381</sup>

There may also be online safety issues in some held detention environments, such as children's exposure to online pornographic material, and the lack of monitoring and regulation of computer usage and USBs in shared internet facilities, as identified by the CPP.<sup>382</sup> As discussed in Volume 6, *Making institutions child safe*, all institutions must respond to the emerging areas of risk of child sexual abuse that are facilitated through digital technologies and online platforms. Exposing children to pornographic material can also form part of a grooming process, and potentially desensitise children to sexual acts or conversations.<sup>383</sup>

## Community detention

Many of the risks inherent in held detention environments do not exist in community detention settings or are not as acute. Further, there are a number of protective factors that work to prevent abuse in settings such as community detention, including potential access to social networks, housing and access to health and some social services.<sup>384</sup> While institutional risk is likely to be both lower and more manageable through community detention, there are a number of unique institutional factors that must be understood in community detention, a number of which relate more broadly to out-of-home care environments. Volume 12, *Contemporary out-of-home care* provides additional information about the institutional factors that apply to residential out-of-home care settings.

Given the focus on placing children in community detention is only recent, the risk of child sexual abuse in this environment is not yet fully understood. In our *Institutional review of Commonwealth, state and territory governments* case study, Ms Allison told us that community detention was one of the areas of greatest concern in the CPP's review, yet 'regretfully it was the least part of [the CPP's] work'.<sup>385</sup>



### **Adequate resources, training, advice and support for carers and staff**

As in held detention, there may be incompatibility between the skills of contracted service provider staff responsible for the welfare of children in community detention and the complex therapeutic needs of children from refugee backgrounds.<sup>386</sup>

The CPP, for example, noted a lack of professional experience and expertise in child protection and trauma-informed care among community detention service providers. This may prevent carers and other staff from adequately identifying risks to children, implementing risk-mitigation strategies, and recognising and responding to signs of abuse.<sup>387</sup> The CPP also identified a lack of professional expertise and experience in dealing with specific populations within community detention, particularly unaccompanied children and children with disability.<sup>388</sup>

In our *Institutional review of Commonwealth, state and territory governments* case study, Ms Allison noted a lack of trained supervision skills among carers responsible for unaccompanied children in shared housing facilities:

We were also concerned about the capacity of [community detention] providers simply to be able to observe dynamics that were occurring in the house and respond to those as appropriate. There was one case I recall where a young man who had been sexually assaulted by two of his housemates, with threats of further sexual assaults, had essentially been locking himself in his room for about a month before he had finally made a disclosure about what had occurred, but no-one had picked up that there was anything unusual about that.<sup>389</sup>

Living arrangements for unaccompanied children in community detention are similar in nature to out-of-home care arrangements. Adult carers in these environments may have unrestricted access to children in a private setting with fewer physical barriers to overcome to perpetrate abuse. Their high degree of authority over the children in their care may also increase opportunities for abuse and reduce the resistance of a child to abuse in these settings.<sup>390</sup> In Volume 12, *Contemporary out-of-home care* we discuss the serious and systemic nature of the risks associated with living in residential care.

The increased risks of child sexual abuse in residential care settings was also detailed in an inquiry by Victoria's Commission for Children and Young People in 2015. That inquiry found that those in residential care were 'reporting an alarming level of sexual abuse and sexual exploitation'<sup>391</sup> and that the residential care system: 'creates opportunities for the sexual abuse of children and young people'<sup>392</sup> and 'does not prevent sexual abuse or offer consistent responses when it occurs'.<sup>393</sup> The inquiry report also noted the risks arising from the ability of potential perpetrators to move between sectors that provide services to different vulnerable groups – for example, between aged care, disability and children's sectors – without detection.<sup>394</sup> These are complex issues that all staff in immigration detention will require considerable assistance to address.

## Placing and supporting children with harmful sexual behaviours

Children may be exposed to a higher risk of abuse where there is a lack of institutional understanding, support and care for children with harmful sexual behaviours before and during a community detention placement.<sup>395</sup> The CPP, for example, noted the department has placed a number of children with these behaviours into community detention ‘without sufficient understanding of their background or the development of mitigation strategies to address any risk factors’.<sup>396</sup> Commissioned research suggests that the situational risk of child sexual abuse by children with harmful sexual behaviours is heightened for adolescents in immigration detention and most cases occur where the child with harmful sexual behaviours has the opportunity to be alone with another child.<sup>397</sup>

The department and its contracted service providers put other children at risk when they place children with known harmful sexual behaviours into community detention without assessing risk and providing appropriate supports, particularly in facilities that care for groups of unaccompanied children in private accommodation.<sup>398</sup>

### 4.4.3 Factors that influence a child’s vulnerability to sexual abuse in immigration detention

Some children in immigration detention are particularly vulnerable to sexual abuse when a perpetrator is present. This is because of their previous experiences of abuse and trauma,<sup>399</sup> trauma acquired in the detention environment, social isolation and the disempowerment of parents whose ability to provide protective comfort and support is compromised by the detention environment.<sup>400</sup> Very young children,<sup>401</sup> children with disability and unaccompanied children may be especially vulnerable to abuse due to their exposure to particular, additional risks, such as a lack of autonomy and parental supervision.<sup>402</sup>

#### Previous and ongoing experience of trauma

Previous experience of trauma, including maltreatment and abuse, is a known risk factor for child sexual abuse.<sup>403</sup> As discussed in Volume 2, *Nature and cause*, the association between child maltreatment and later victimisation stems from the emotional, cognitive and psychological effects of the maltreatment, which make a child vulnerable to being targeted and manipulated by perpetrators.<sup>404</sup>

Research suggests that many children in immigration detention are likely to have experienced significant trauma in their country of origin or throughout their refugee journey.<sup>405</sup> During *Case Study 46: Criminal justice*, the Victorian Multicultural Commission told us:

We know that our communities are particularly vulnerable ... Refugee girls and women, for example, are exposed to epidemic levels of sexual and gender-based violence throughout their displacement ... And we know where they're coming from – areas of extreme conflict in Syria, Iraq and African countries.<sup>406</sup>

Similarly, during our *Nature, cause and impact of child sexual abuse* case study, Dr Jatinder Kaur – a social worker specialising in the experiences of culturally and linguistically diverse children in the child protection system – told us that in looking at the risk factors that predispose multicultural communities to vulnerability she believed 'a big factor would be prior trauma':

When I say prior trauma, I particularly mean those who have come to Australia under the refugee humanitarian program or asylum seekers who will have experienced different levels of trauma relating to the persecution of war, conflict, sexual violence, rape, as part of their refugee trauma experience.<sup>407</sup>

According to the Forgotten Children report, children in held detention report significantly higher rates of mental health disorders compared with children in the Australian community as a result of prolonged mandatory detention.<sup>408</sup> Children in held detention are also likely to have experienced or witnessed violence, such as rioting, sexual and physical abuse, acts of self-harm and suicide,<sup>409</sup> and are likely to be in contact with angry, hopeless and/or suicidal adults, including their own parents.<sup>410</sup> Research suggests that cumulative exposure to multiple forms of maltreatment and trauma can exponentially increase the vulnerability of a child to sexual abuse.<sup>411</sup> This cumulative effect may also place children at greater risk of sexual abuse when they are released from held detention facilities into community detention or the community at large.

Children in immigration detention may also experience complex trauma. This form of trauma can arise from interpersonal violence resulting from 'wars, genocide, civil unrest, refugee and combatant trauma',<sup>412</sup> and is a particular risk for unaccompanied minors who 'have to process and recover from past traumatic experiences without the benefit of any parental support'.<sup>413</sup> They may have a range of vulnerabilities arising from the loss of, or separation from, their caregivers.<sup>414</sup> The violent death of parents is likely to be particularly traumatic.<sup>415</sup> We discuss complex trauma resulting from child sexual abuse in Volume 3, *Impacts*.<sup>416</sup> Complex trauma may be a particular risk factor increasing the vulnerability of children in immigration detention. As commissioned research states:

Perpetrators exploit the particular vulnerabilities of children in all sorts of ways to gain their participation or acquiescence or to overcome their resistance. Whether the heightened vulnerability arises from low self-esteem, the need for love and attention, an intellectual disability, or some other factor, perpetrators are likely to find it easier to overcome the resistance of a child with a heightened vulnerability than otherwise.<sup>417</sup>

## Social isolation and disconnection from family

The nature of detention itself means that children held in immigration detention are likely to experience high levels of social isolation – a known risk factor for child abuse and neglect.<sup>418</sup> Social isolation and family separation or stress are also commonly reported experiences among children entering immigration detention, as identified by the AHRC.<sup>419</sup> This sometimes includes loss of connection with family and community as a result of their refugee journey and detention, particularly among unaccompanied children.<sup>420</sup> This risk can be exacerbated by differences in language and culture between asylum seekers and detention staff and a lack of recreational activities and opportunities for social engagement.<sup>421</sup> Opportunities to access social support may also be limited by the remoteness of immigration detention facilities<sup>422</sup> and practical difficulties that visitors face in accessing them.<sup>423</sup>

Researchers have also identified potential post-arrival family separation as a source of great fear and distress for detained children, as this may disrupt supportive relationships.<sup>424</sup> Children in immigration detention may be temporarily separated from their parents, for example when a parent self-harms.<sup>425</sup> More prolonged separations can occur for a variety of reasons, including necessary medical transfers or male children being moved into separate accommodation when they turn 18.<sup>426</sup> Researchers reported that prolonged separations may relate to ‘operational matters’ such as ‘the complexity of remote service delivery’ including space limitations in detention facilities or seats on the plane.<sup>427</sup>

Commissioned research suggests that unaccompanied children who travel to Australia without their families and have no parent or guardian actively involved in their lives ‘may be especially vulnerable to abuse in a detention centre facility’.<sup>428</sup> Unaccompanied children comprised 15 per cent of the case files reviewed by the CPP and 35 per cent of all children in immigration detention.<sup>429</sup> The Forgotten Children report also found that the absence of guardianship and strong relationships with trusted adults for unaccompanied children create particular vulnerabilities and may limit opportunities for these children to voice concerns.<sup>430</sup> While not specifically attending to this group, the Child Protection Systems Royal Commission also noted the vulnerability of ‘unaccompanied humanitarian minors’.<sup>431</sup>

Volume 9, *Advocacy, support and therapeutic treatment services* describes the importance that victims and survivors of child sexual abuse place on safe, ongoing relationships with carers and support workers.<sup>432</sup> This may be inhibited by the number of workers involved in the care of children and young people in immigration detention. As we discuss in Volume 12, *Contemporary out-of-home care*, high staff turnover can prevent the building of trust between children and young people and their carers and support workers. In *Case Study 24: Preventing and responding to allegations of child sexual abuse occurring in out-of-home care*, Ms Bev Orr, President of the Australian Foster Care Association, described how children in care are expected to form trusting relationships with ‘a passing parade of strangers’.<sup>433</sup> The same situation is likely in immigration detention, particularly for those children in immigration detention who are not accompanied by their parents. This may further increase the vulnerability of these children.

People in held detention may experience difficulties in accessing telephone, email and internet communication, as well as visits by family, friends and support persons.<sup>434</sup> This may impact the quality of the positive relationships children in held detention have with other adults and increase their vulnerability to sexual abuse as suggested by commissioned research on children in closed residential institutional contexts, including immigration detention: ‘The children most at risk of not having these relationships are those who need them most and who often have most difficulty in establishing trustful relationships’.<sup>435</sup> We are mindful that the need for children to be able to communicate must be balanced against the need to protect children, for example, from exposure to sexually explicit material via the internet.

## Reduced capacity of parents and carers

While parents are the primary protectors of their children, researchers have found it is not uncommon in institutionalised settings to see a decline in parenting capacity.<sup>436</sup> The institutional environments of immigration detention may undermine the parental role in that parents have limited capacity to provide for their children because of the detention setting, whether this relates to children’s physical needs (including safety, nutrition, clothing and hygiene), emotional needs (such as bonding, reassurance and comfort) or developmental needs (such as age-appropriate toys and access to education).<sup>437</sup>

In addition, parents may be unable to fulfil their protective role in children’s lives because they are burdened by grief and guilt and experiencing mental health difficulties.<sup>438</sup> Reports by mental health experts indicate that, at times, because of their own ‘intense hopelessness and depression’,<sup>439</sup> parents’ ability to meet the needs of their children can become so severely compromised in immigration detention that parents may themselves become a source of trauma and anxiety for children.<sup>440</sup>

Research suggests that the protective capacity of parenting may also be impaired due to prior trauma from refugee experiences.<sup>441</sup> During our *Nature, cause and impact of child sexual abuse* case study, Dr Kaur spoke about the impact of prior trauma on the capacity of adult refugees to care for children:

If they are parents of children and young people when they come to Australia [as refugees] their protective capacity of being a parent may be impaired. When I say that, that would be around issues to do with supervision, understanding child sexual abuse, understanding sexual grooming behaviours, understanding possible potential perpetrators.<sup>442</sup>

Parents may also be separated from their children for periods of time – for example when a parent is hospitalised for mental health problems associated with the detention,<sup>443</sup> or when one parent remains in held detention while the rest of the family is released into community detention. Family breakdown may also occur in immigration detention.

## Different understanding of abuse

As discussed above, it is common for children from refugee backgrounds to have witnessed or experienced sexual or physical violence in their country of origin or throughout their refugee journey. This past exposure, when compounded by conditions of detention, could normalise abuse in the life of the child, meaning they are particularly susceptible to abuse within institutions.<sup>444</sup>

Refugee children may not have had an opportunity to learn about healthy relationships and protective behaviours. In our multicultural forums we heard that many refugee children have not had access to formal sex or relationship education in their country of origin. In the first few months after arrival a great deal of new information is provided and information about sexual abuse is often not relevant or a priority issue at that time.<sup>445</sup> We heard refugee children need access to culturally appropriate programs that teach them about sexual health and development, sexual safety and help-seeking strategies.<sup>446</sup> At the same time, we were told that taboos associated with talking about sex can impede disclosures of sexual abuse in some communities. These taboos can affect discussions within families and communities, and between communities and outsiders, including authorities.<sup>447</sup> This could increase children's vulnerability to sexual abuse.

This vulnerability can be reinforced by differences in understandings of the causes and effects of sexual violence and abuse.<sup>448</sup> As confirmed in our *Nature, cause and impact of child sexual abuse* case study, understandings of abuse and taboos around talking about sex and sexuality will differ across cultural contexts.<sup>449</sup> At times, this can influence how a child chooses to describe or disclose abuse, particularly if they are in a cultural setting that is unfamiliar to them like held detention or the broader Australian community.<sup>450</sup> As discussed in Volume 4, *Identifying and disclosing child sexual abuse*, if those responsible for caring for refugee children lack cultural awareness or access to language and cultural interpreters, a disclosure from a refugee child may go unnoticed or be misinterpreted.

Through our series of multicultural forums we were also told about concerns that perpetrators sometimes target children from particular cultural communities or backgrounds where sexual abuse matters are less likely to be openly discussed, or children are less likely to be believed or acknowledged if they disclose abuse.<sup>451</sup>

There are also factors specific to unaccompanied children that may increase their vulnerability. In our multicultural forums we heard they may face language barriers, and are likely to have few trusted adults or peers they can turn to, whether for guidance or to confide in.<sup>452</sup>

## 4.5 The impacts of child sexual abuse in immigration detention

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As Volume 3, *Impacts* describes, the effects of child sexual abuse in institutional contexts can be devastating. The effects, we were told, are different for each victim although some commonalities have been identified through our work. Some victims experience deep, complex trauma that pervades all aspects of their lives. Others do not perceive themselves to be profoundly harmed by the experience. Some impacts are immediate and temporary, while others can last into adulthood. Some emerge only after ‘trigger’ events or at different life stages, and others accumulate over time.

The effects most commonly described to us by survivors in private sessions were on their mental health. These impacts included depression, anxiety and PTSD; other symptoms of mental distress such as nightmares and sleeping difficulties; and emotional issues such as feelings of shame, guilt and low self-esteem. After mental health impacts, relationship difficulties were the long-term impacts most frequently raised by survivors in private sessions, including difficulties with trust and intimacy and lack of confidence with parenting. Education and economic impacts were also frequently raised. Survivors also commonly described to us the impacts on their physical health, social wellbeing, connection to culture, spirituality, sexual behaviour and sexual identity.

Although some survivors told us of one or two of these effects, others described a constellation of impacts, which were interconnected in complex ways. Part of the explanation for this profound and complex web of effects lies in the detrimental impact that interpersonal trauma can have on the biological, social and psychological development of the child. Child sexual abuse can result in profound trauma, affecting the chemistry, structure and function of the developing brain and potentially interrupting normal psychosocial development at every critical stage of a child’s formative years (see Volume 3, *Impacts*).

While the impacts of abuse in immigration detention and the resulting institutional responses are likely to be similar to the impacts experienced by victims in other institutional contexts (see Volume 3, *Impacts*), we heard about some particular impacts of child sexual abuse in an immigration detention environment. This section details what we learned about these particular impacts.

### 4.5.1 Experiences of cumulative harm

Children who are sexually abused in immigration detention may be vulnerable to cumulative harm; that is ‘the effects of multiple adverse or harmful circumstances and events in a child’s life’.<sup>453</sup> This is because of their experiences of multiple adversities before and throughout their refugee journey, including in their country of origin.<sup>454</sup> Unaccompanied children may be particularly vulnerable to cumulative harm and have higher rates of emotional, behavioural

and mental health problems than accompanied children when they arrive at immigration detention.<sup>455</sup> Immigration detention itself, especially where it is indefinite or prolonged or involves poor conditions and treatment, can exacerbate children's trauma. The Forgotten Children report found that children in immigration detention have significantly higher rates of reported mental health disorders compared with children in the Australian community.<sup>456</sup> As a result of their experiences, a child who is sexually abused in immigration detention is highly likely to suffer the effects of cumulative harm and complex trauma.<sup>457</sup>

These experiences can be profoundly traumatic, and they can diminish a child's sense of safety, stability and wellbeing.<sup>458</sup> A growing body of research shows the impact of cumulative harm on the developing brain,<sup>459</sup> including how chronic stress can interfere with a child's ability to monitor and regulate their emotions, behaviours and thoughts.<sup>460</sup>

Where victims have experienced cumulative harm, it may be difficult to distinguish the precise impact of sexual abuse from the other impacts related to their refugee journey and their detention. The Forgotten Children report revealed high levels of emotional distress amongst detained children and adverse mental health impacts attributable to detention itself.<sup>461</sup>

The continued detention of victims may give rise to further impacts on them, including the child:

- feeling powerless, trapped, defeated and unable to protect themselves against further abuse<sup>462</sup>
- fearing that their family or other people in detention will find out about the abuse and that they may be stigmatised and/or blamed for the abuse, a fear that may be heightened in the detention environment where there is a lack of privacy<sup>463</sup> and limited social support
- being subjected to ongoing, regular contact with the perpetrator and fearing further abuse or reprisals from the perpetrator.

Some victims at the Nauru Regional Processing Centre have reported coming into contact with the people who had sexually abused them because the perpetrators were not removed from the centre.<sup>464</sup>

Further, the nature of the immigration detention environment may deprive children of key protective factors that can promote resilience and reduce the impacts of child sexual abuse. Dr Graham Gee, a psychologist, identified these key factors in our *Nature, cause and impact of child sexual abuse* case study as being: strong social support, including connections to family members, communities and culture; self-worth; a sense of control over one's own life and processes; education; good coping skills around emotional regulation; and a sense of meaning and purpose in life.<sup>465</sup>



Even when appropriate therapeutic treatment is provided, a child's ability to recover from impacts of sexual abuse while in held detention may be impeded. A parent in a private session described what she saw as the cumulative impact of sexual abuse and trauma associated with her child's ongoing detention. This included bed wetting, loss of appetite and fear:

[Child] is really scared if [child]'s alone somewhere or if it's dark ... [child] says 'It's too dark. I can't handle the darkness'. [Child] urinates at night while [child]'s sleeping as well. Nightmares and screams at night ... When I want to change [child's] underwear, [child] says 'Don't look at me, it is ugly. Don't look at me, it's not nice'. [Child] has changed so much.<sup>466</sup>

Continuing to hold a child in a closed environment such as immigration detention after they have been sexually abused in that environment may have the potential to compound the impact of the abuse and/or the subsequent institutional response.

#### 4.5.2 Anxiety about immigration status and placement

In the immigration detention environment, child sexual abuse may lead to, or compound, feelings of anxiety and uncertainty about immigration status and placement. Even in the absence of abuse, children facing uncertainty in relation to their asylum status may experience a range of psychological problems that can have long-lasting effects.<sup>467</sup> In the context of sexual abuse, victims may also experience fear, anxiety or uncertainty related to how a disclosure of abuse might affect their placement in immigration detention.<sup>468</sup> They may worry that they will be separated from family or friends; or be transferred to a facility where they may feel more unsafe or will not have access to the same level of therapeutic treatment and support.<sup>469</sup> They may also fear that they will be transferred to an offshore processing centre or be forced to return to their country of origin.

As a result, victims of child sexual abuse in immigration detention may be less likely to disclose the abuse. Delayed disclosure can exacerbate the impacts of the abuse as children are not able to receive an appropriate institutional response, including appropriate therapeutic intervention<sup>470</sup> that may be necessary to help children to recover from the trauma of sexual abuse<sup>471</sup> (see Volume 4, *Identifying and disclosing child sexual abuse*).

#### 4.5.3 Distrust and fear of institutions and authority

In Volume 3, *Impacts* we heard from survivors who have an ongoing distrust and fear of institutions and authority as a result of child sexual abuse in an institution, and of a poor institutional response to that abuse. We were told that victims of abuse in immigration detention are especially at risk of this impact because of negative experiences with institutions and authorities in the past. For example, they are often seeking asylum because they fear persecution from authorities in their home country. They may also have previous negative experiences with institutions or people in authority on their journey to, or since arriving in, Australia.<sup>472</sup>

A service provider in the health sector submitted to us that some children in immigration detention have an overwhelming fear they will be targeted, punished or removed by persons in authority.<sup>473</sup> We are also aware of children feeling frightened of security staff, particularly in relation to their reported use of force.<sup>474</sup> Children's distrust and fear of institutions and authority may be amplified where they have been sexually abused by a staff member or feel the institution failed to protect them from being abused or to respond appropriately to their disclosure. Where the abuse was perpetrated by departmental staff or contracted service providers,<sup>475</sup> children may remain frightened of uniformed persons or the police when they are released into the community.<sup>476</sup>

Being afraid of, and having a lack of trust in, institutions and people in authority can be particularly detrimental for children and their families in immigration detention who are forced to rely on departmental staff and others in authority for their needs. They may also need assistance from lawyers, medical practitioners, victims' services, police and others while in immigration detention and on their release, should they settle in Australia.

#### 4.5.4 Ongoing impacts of abuse

We have discussed the vulnerability of children in immigration detention arising from cumulative harm and complex trauma in Section 4.4.3. Children in immigration detention who subsequently experience child sexual abuse may be at even greater risk of experiencing complex trauma. This can have profound effects on victims as they grow older.<sup>477</sup>

Research also suggests that some refugee children experience a form of secondary trauma due to discrimination and bullying they experience as new arrivals in the Australian community.<sup>478</sup> They may struggle to adjust to life, and this struggle can extend into adulthood.<sup>479</sup> Unaccompanied children who resettle in the community without a family member are more susceptible to elevated rates of PTSD.<sup>480</sup> These impacts are likely to be exacerbated where a child has been sexually abused while in detention.

Some survivors from culturally and linguistically diverse backgrounds have told us of the impact of stigmatising attitudes and taboos around sex and sexual abuse in their community.<sup>481</sup> We heard that this could lead to shame, and some survivors told us that they feared rejection, alienation or retribution from their community. We heard in our multicultural forums that some people may deny that child sexual abuse occurred in immigration detention or may attempt to minimise the severity of the abuse.<sup>482</sup> This could leave victims feeling unsupported and impede their recovery. For victims, this may result in feeling cut off from their cultural heritage and ultimately losing their language, tradition and cultural identity. In our *Nature, cause and impact of child sexual abuse* case study we were told that some social attitudes misleadingly associate child sexual abuse with entire communities and cultures and consequently community responses can become preoccupied with responding to marginalisation or racism.<sup>483</sup> This desire to protect the community as a whole can lead to shame or blame being re-cast onto the victim.<sup>484</sup>

### 4.5.5 Therapeutic treatment services and appropriate responses to trauma

As discussed in Volume 9, *Advocacy, support and therapeutic treatment services*, we know victims need appropriate support to help them heal and recover from the impacts of abuse, cumulative harm and complex trauma.<sup>485</sup> In immigration detention, mental health services are provided through IHMS. However, specific issues with the institutional structure of, and culture within, immigration detention may inhibit the provision of appropriate therapeutic responses. Researchers have described some children being unwilling to discuss their experiences and anticipating staff responding negatively to their concerns.<sup>486</sup> Stephen Brooker, former director for Mental Health Services for IHMS on Nauru, has asserted that the detention environment and expectations of the department create a problematic ‘dual loyalty’ for medical professionals. He notes that, in his experience, clinicians are expected to ‘prioritise detention operational issues over clinical considerations’ and often experience difficulty maintaining normal clinical independence and autonomy.<sup>487</sup>

We are also aware of inquiries and reviews that suggest clients and independent medical practitioners in held detention have experienced difficulty accessing medical information held by the department,<sup>488</sup> making provision of appropriate treatment more difficult.<sup>489</sup> Therapeutic treatment may also be disrupted as a result of frequent staff turnover in immigration facilities, which undermines collaboration and trust – both of which take time to establish.<sup>490</sup> Children in immigration detention need to be screened for evidence of previous, recent or ongoing abuse, including sexual abuse.<sup>491</sup> Reviews suggest that there is a lack of standardised health, mental health or developmental screening for children in immigration detention.<sup>492</sup> We discuss the need for appropriate therapeutic treatment services for victims and survivors in immigration detention in Section 4.8.3.

## 4.6 Barriers to disclosing and identifying child sexual abuse in immigration detention

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Building on Volume 4, *Identifying and disclosing child sexual abuse*, this section focuses on the commonly reported barriers to disclosing and identifying child sexual abuse in immigration detention. Some of these barriers are unique to the immigration detention context. Others are also common in at least some other institutional contexts we heard about.

We are not aware of any studies that examine the disclosure of child sexual abuse in immigration detention. However, we heard in our multicultural forums about some of the specific barriers to disclosure in the immigration detention context. Barriers to disclosure have also been raised in a number of public inquiry reports.

### 4.6.1 Shame and fear of ostracism

Some survivors from culturally and linguistically diverse backgrounds told us they feared they would be shunned by their families or communities if they disclosed at the time of abuse. Social networks for some asylum seekers and refugees are small, tight knit and a key source of social interaction and support. In our multicultural public forums, we heard that families did not trust the police with this information and were concerned that it might be disclosed to others in the community.<sup>493</sup> We were also told that the small size of recently arrived migrant communities means that survivors can fear that information about their disclosure will spread throughout the community.<sup>494</sup> This may be compounded by negative or 'stigmatising' attitudes, beliefs and cultural taboos around sex and sexual abuse.<sup>495</sup> As discussed in Volume 9, *Advocacy, support and therapeutic treatment services*, such attitudes associated with sexual abuse can present a barrier to survivors disclosing and seeking support.<sup>496</sup> The impacts of stigmatising attitudes on victims and survivors are discussed in more detail in Volume 3, *Impacts*.

As a result, victims may resist disclosing to preserve these relationships. This is particularly the case for those with limited language skills who would struggle to develop social networks outside the community.<sup>497</sup> These fears may be exacerbated for those in immigration detention, particularly in held detention, where there is little confidentiality, and where children and their families are more reliant on being accepted and supported by those within the held detention environment.

Children may also remain silent because they are ashamed, particularly when perpetrators may manipulate them into believing that they are responsible for the abuse or when they fear that others will think they deserved or encouraged the abuse or were 'willing participants'.

Participants in multicultural forums told us that victims may not disclose outside their communities because they want to avoid bringing shame to their family or cultural community, and because of their perception that disclosures would leave their community vulnerable to negative judgments and hostility from wider society, including racism.<sup>498</sup>

We also heard in public multicultural forums that in some communities there were particularly strong taboos associated with talking about sex, both within families and communities and with people outside of communities, including authorities.<sup>499</sup> The Moss Review described a number of barriers to disclosure at the Nauru Regional Processing Centre, attributing under-reporting by asylum seekers (of sexual and other physical abuse) generally to 'family and cultural reasons'.<sup>500</sup>

### 4.6.2 Fearing further abuse and retribution in immigration detention

A submission we received stated that children may not feel safe to disclose abuse until they leave held detention, due to their dependence on the department and service providers, the power imbalance between staff and children in immigration detention and the closed nature of many places of immigration detention.<sup>501</sup>

This fear may be heightened where children have been sexually abused by a staff member, or where they have experienced other forms of abuse or violence by staff within immigration detention. A former Save the Children Australia employee told the Senate Select Committee investigating allegations at the Nauru Regional Processing Centre that she believed asylum seekers were withholding information about allegations because they were fearful of retribution from security staff, both while in detention and if they were to enter the Nauruan community.<sup>502</sup>

The CPP also noted an example where a child disclosed he had been touched inappropriately by other unaccompanied children in his community detention placement. Even after his disclosure, he experienced continued harassment at home and at school as the children with harmful sexual behaviours continued to have access to his community detention residence. He felt unsafe and in danger and later withdrew his complaint.<sup>503</sup>

#### 4.6.3 Fearing a negative effect on the victim's immigration status or placement

We heard in our multicultural forums and private sessions that victims in immigration detention may fear that disclosing their experience of child sexual abuse will negatively affect their immigration status, which may already be uncertain.<sup>504</sup> Those awaiting decisions about their visas may fear their applications will be refused. Those who have residency or citizenship may fear this will be taken away.<sup>505</sup> Others in held detention may fear their disclosure could prolong their detention or affect their chances of placement in community detention. Some transferees told the Moss Review they were concerned that 'making a complaint could result in a negative impact on the resolution of their asylum claims'.<sup>506</sup>

Participants in multicultural forums told us that newly arrived migrants are often warned by others in the community not to speak out because their children may be taken away, or they may be deported.<sup>507</sup> This was a particularly common fear for those who had spent time in held detention or who were temporarily in Australia for medical treatment and feared being returned offshore:

It was really scary for me because whenever the head officers come and want to talk to you it means something is going to happen. Because we were from offshore, we thought they want to send us back to offshore.<sup>508</sup>

As a result of this fear, victims may be less likely to disclose abuse to internal health providers. We were told that, for this reason, among others, children in immigration detention should have access to independent health services, particularly child-trauma specialists.<sup>509</sup>

The control exercised over the accommodation and movement of children and families in immigration detention can operate to constrain complaints. Children in held immigration detention are dependent on the department and service provider staff for many of their everyday needs. Children in community detention are also dependent on the department and on service providers – for unaccompanied children they act as full-time carers. If a perpetrator is a staff member providing security services, a child may feel that they could be punished, removed overseas or otherwise adversely affected if they were to disclose the abuse. Alternatively, if a perpetrator is the child's carer (or a friend or relative of the carer), a child may be concerned that if they report sexual abuse they will be moved from the placement.

#### 4.6.4 Distrust of police and government authorities

We heard that distrust of authorities inhibits many victims from disclosing child sexual abuse to the police and other government bodies, such as child protection services.

People from culturally and linguistically diverse backgrounds have emphasised to us that for many recently arrived communities, especially asylum seekers and refugees, experiences of persecution and violence in their country of origin may prevent them from trusting government officials in Australia.<sup>510</sup> This may be compounded by the nature of contemporary immigration detention. As a participant in one of our multicultural forums stated: 'The first interface most asylum seekers have to deal with are border authorities which includes a military forced arm and is a hostile experience. So people are scared and coming forward is not possible as they are scared.'<sup>511</sup> We were told during our multicultural forums that asylum seekers often perceive immigration staff to be hostile, which means that victims and families of victims are afraid to approach them with allegations of abuse.<sup>512</sup>

The Moss Review found that there was a level of under-reporting of sexual abuse and other forms of abuse by asylum seekers because many had lost confidence that anything would be done about their complaints.<sup>513</sup> The chief executive officer of Save the Children Australia expressed the view to the Select Committee in 2015 that under-reporting is 'to be expected' in circumstances 'where highly vulnerable people are coming from the sorts of contexts that they are' and 'with little confidence that institutions of authority and justice' would take incidents like sexual abuse seriously and investigate them.<sup>514</sup>

#### 4.6.5 Fearing the disclosure will affect others

Some research suggests that older children are more likely to delay disclosure due to a fear of negative consequences to others.<sup>515</sup> This may be because older children have a greater ability to reflect upon and anticipate possible reactions to their disclosure.<sup>516</sup> We heard that children may be reluctant to disclose because they are concerned about the effect of that disclosure on their parents, family or community. The CPP reported that having a close relationship with

the perpetrator and not wanting to adversely affect their own or another person's immigration pathway may contribute to under-reporting.<sup>517</sup> Many children in immigration detention will have parents who suffer from serious mental health issues, including depression and anxiety.<sup>518</sup> Children in immigration detention may have a heightened awareness of a parent's poor mental health and may choose not to disclose abuse to avoid causing further distress to their parents.

#### 4.6.6 Communication barriers

Some victims do not disclose their experience of sexual abuse at the time because they cannot describe what happened to them – that is, they do not have the language to explain what happened.<sup>519</sup> We discuss this, together with associated challenges and appropriate responses, in our criminal justice work on the evidence of victims (see our *Criminal justice* report).

Children with limited English language skills will often face language barriers to disclosure, especially when access to accredited, appropriate or confidential interpreter services is limited. In some languages, there may not be vocabulary to describe sexual abuse concerns. At one of our multicultural forums, for example, we were told that concepts such as 'child protection' may not be directly translatable in some languages. In some languages and cultural contexts, that meaning may be communicated in other, less overt or less direct ways.<sup>520</sup> We were told that some victims attempted to disclose, but were misinterpreted due to their low level of proficiency in English or the lack of cultural competence of the person receiving or translating the disclosure.<sup>521</sup>

Some victims will not disclose abuse because they have confidentiality concerns arising from the use of interpreters from their own cultural community or from within immigration detention.<sup>522</sup>

Beyond the language barriers to disclosure, there may also be communication barriers arising from the past trauma of parents. As expressed by one participant at our multicultural forums:

You have parents who are survivors of torture or trauma who find it difficult to express their own feelings. If a person hasn't had the support to express themselves or to understand their own trauma ... the likelihood that they would understand and work through the technical reporting process on behalf of a child is a challenging assumption.<sup>523</sup>

## 4.7 Institutional responses to child sexual abuse in immigration detention

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### 4.7.1 Key issues relating to institutional responses

The lack of comprehensive data and other information on child sexual abuse in immigration detention means it is difficult to accurately assess the adequacy of institutional responses to abuse in this setting. Additionally many of the immigration detention services are contracted to third parties and the level and adequacy of monitoring and supervision of such services, including responses to reports of abuse, is unclear. Even so, the CPP's work in reviewing responses to child abuse (including child sexual abuse) in immigration detention is informative, as was our public hearing in our *Institutional review of Commonwealth, state and territory governments* case study.

The CPP assessed the response of the department and its service providers to be 'adequate or good' in just over half of the incidents of child abuse it reviewed.<sup>524</sup> With respect to different types of detention, the CPP assessed the responses to incidents of child abuse to be poor in:

- 42 per cent of the held detention cases reviewed<sup>525</sup>
- 53 per cent of the community detention cases reviewed, with poor responses to 62.5 per cent of community detention incidents involving unaccompanied minors<sup>526</sup>
- nearly 70 per cent of the Nauru Regional Processing Centre cases reviewed.

The CPP could not assess more than 20 per cent of incidents due to the lack of available data.<sup>527</sup>

In its report, the CPP identified a range of concerns regarding institutional responses to child sexual abuse in immigration detention. A number of these are highlighted below.

### Complaint handling

The CPP observed a lack of confidence in the integrity and efficacy of the complaints management system in immigration detention, including issues around the responsiveness of the department and its service providers to complaints.<sup>528</sup> While the CPP found that service providers generally referred matters to relevant authorities, complainants were generally not updated on the status or outcome of their complaint. This lack of visibility left complainants to believe that nothing was happening to resolve their complaint, which discourages further disclosures.<sup>529</sup>



The CPP further observed that the institutional response often appeared to be perpetrator focused, with a tendency to close matters as soon as they had been reported to police, rather than ensuring children had access to support services to deal with the impacts of the abuse.<sup>530</sup> In our *Institutional review of Commonwealth, state and territory governments* case study, we learned that the department had recently developed material to guide departmental staff and service providers to respond appropriately to disclosures of abuse, including listening to and reassuring the child, and ensuring they have access to counselling and support.<sup>531</sup>

The CPP observed many cases that lacked a timely, robust and comprehensive internal investigation.<sup>532</sup> Police investigations were often seen as the main response to abuse, with many believing internal enquiries had to await completion of police investigations.<sup>533</sup> There has also been a lack of clarity about the role and authority of staff members to respond to incidents,<sup>534</sup> which has stifled internal investigations.<sup>535</sup> This has meant that the department was unaware of what had transpired,<sup>536</sup> and sometimes instituted a response without an adequate understanding of the incident and risks of further harm.<sup>537</sup> The CPP found that the premature closure of incidents by service providers once reported to police or child protection authorities often meant there was no substantive internal investigation into the incident.<sup>538</sup> Ms Allison told us that gaps arose where matters were not taken up by external authorities. The department was unable to uncover what happened and assess any ongoing risks to children.<sup>539</sup> The CPP was also concerned about the high number of cases that were closed prematurely after complaints had been withdrawn by victims.<sup>540</sup>

## Policies and procedures of contracted service providers

In the absence of any minimum standards imposed by the department, the CPP was concerned about the complexity created by service providers devising their own child protection policies and procedures.<sup>541</sup> This creates a potential lack of consistency of responses by service providers to allegations of child sexual abuse.<sup>542</sup>

The CPP assessed these policies and processes to be inadequate, leading to ineffective responses across all detention environments.<sup>543</sup> The concerns identified by the CPP included policies varying in quality, lacking a child focus and common code of conduct, and therefore inadequate to guide effective responses to critical incidents.<sup>544</sup> There were also inconsistent and complex responses by service providers to allegations of abuse.<sup>545</sup>

Ms Moy of the department gave evidence in the *Institutional review of Commonwealth, state and territory governments* case study that while the department could not ask its service providers to change their top-level policies and procedures,<sup>546</sup> it requires them to ensure their operations align with the policies and procedures underlying the Child Safeguarding Framework.<sup>547</sup> Further, it now requires them to produce their policies and a child protection plan to the department for annual review.<sup>548</sup>

## Risk management

The CPP found that the department had an ineffective system of risk assessment overall. Their approach to risk management focused on the physical security and good order of detention facilities, rather than child wellbeing and safety.<sup>549</sup> Particular concerns were raised about the absence of frameworks to manage risks to children in community detention.<sup>550</sup> The CPP found that: 'Although it is important that the department develop strong and effective responses to incidents of child abuse, it is also critical that the Department acts in ways that better identify risk to children, and seeks to prevent the occurrence of incidents in the first place'.<sup>551</sup>

Lack of staff expertise and skills, for example, in child protection, can hinder the effective assessment and management of risk by the department and service providers. Ms Allison gave evidence in our *Institutional review of Commonwealth, state and territory governments* case study that there was a general lack of appropriate skills among departmental and service provider staff to assess and manage risks to children.<sup>552</sup> In particular, we were told that community detention service providers engaged by the department did not have the appropriate skills to identify and address emerging risks to children and families with complex needs and vulnerabilities.<sup>553</sup> The CPP identified a number of inappropriate placements in community detention that may be attributed to a lack of understanding about the risks posed by alleged perpetrators or the particular vulnerability of some children.<sup>554</sup> Ms Allison gave evidence that: '[The CPP was] concerned about a number of cases where people who had engaged in behaviour that had caused harm to children had been placed in community settings where nobody seemed to be aware of the past behaviour or particular propensities'.<sup>555</sup>

In order to effectively manage risks to children, it is necessary for a broader systemic review to take place following an incident to apply any learnings on preventing future abuse. The CPP found that responses to child abuse typically did not involve a systemic review of risks in the detention environment.<sup>556</sup> Where employees were reported to have been involved in perpetrating abuse or transgressing boundaries, the CPP found that a general lack of internal professional standards or employment reviews were undertaken by service providers to prevent future incidents.<sup>557</sup> The CPP observed that review processes following an incident were focused on compliance, such as reporting to the department on time, rather than having a risk management focus, such as remedying poor lighting that may have contributed to the occurrence of the incident.<sup>558</sup>

The CPP found that the families of children with disability require earlier engagement with specialist disability services.<sup>559</sup> Its review of cases involving intellectual disability also demonstrated that specialist disability advice was required to assess the support needs of people with intellectual disability in immigration detention. This would respond to their daily needs and result in the reduction of the risks they represent to others.<sup>560</sup> We consider it would also address aspects of vulnerability.

## Responses to children with harmful sexual behaviours

The CPP identified in its issues paper, *Initial priorities for reform*, that responses to allegations of abuse by children with harmful sexual behaviours were sometimes inappropriate. At times appropriate therapeutic treatment was lacking, or placements did not minimise risk to children.<sup>561</sup> The CPP identified that accessing specialist state and territory resources would be beneficial.<sup>562</sup> As we discuss in Volume 10, *Children with harmful sexual behaviours*, effectively managing risks of this type is an area of considerable complexity, and access to specialised support is key (see Section 4.8.3). Adequate supervision is also needed.<sup>563</sup>

## Staff training on child protection and trauma

The CPP found that the department lacked the capability to manage complex cases of child abuse effectively, including matters involving unaccompanied children with harmful sexual behaviours.<sup>564</sup> Particularly poor responses were observed where alleged perpetrators had intellectual disability.<sup>565</sup>

The CPP suggested that the inadequate training of staff may have also resulted in failures to undertake independent medical examinations following reports of abuse where no visual injuries were apparent.<sup>566</sup> Further, concerns were raised at our multicultural forums regarding poor training among counselling service providers. These providers may attribute trauma-related behaviour to prior trauma, when it may relate to child sexual abuse in immigration detention.<sup>567</sup> Poor understandings of trauma can also inhibit access to support services and lead to uncaring responses to victims, with them not being believed if they are unable to describe the abuse or past trauma in detail.<sup>568</sup> We discuss the need for training and support to implement trauma-informed care approaches in immigration detention in Section 4.8.3.

## Information about child sexual abuse

### Incident reporting

High-quality incident reports are critical for effective responses to child sexual abuse in institutional contexts, including immigration detention.<sup>569</sup> However, the CPP found substandard incident reports for various reasons, including illegible handwriting,<sup>570</sup> spelling errors, factual inaccuracies, gaps and inadequate descriptions of the incident.<sup>571</sup> There was a particular lack of detail when describing the specifics of the abuse, which was often generalised with an apparent reluctance to detail what actually happened.<sup>572</sup> Ms Allison gave evidence in the *Institutional review of Commonwealth, state and territory governments* case study that many matters reviewed by the CPP required follow-up with service providers because it was unclear from the record what response was taken to an allegation.<sup>573</sup>

The CPP noted that the quality of case reporting varied across the different environments, with inadequate reporting being a particular problem in held detention, whereas community detention reports were often extremely comprehensive.<sup>574</sup> Further, the CPP observed that reporting requirements in some service provider contracts may have encouraged the prioritisation of making a report over ensuring the accuracy of the incident details that were reported.<sup>575</sup> Similar issues were reported with regard to the categorisation of incidents.<sup>576</sup>

### **Access to information about child abuse incidents**

The CPP encountered problems accessing complete and reliable information regarding child abuse incidents in immigration detention environments.<sup>577</sup> This resulted from fragmented data holdings<sup>578</sup> and information held by various service providers.<sup>579</sup>

Ms Allison gave evidence that:

It's probably fair to say that the actual process of gaining documents, the hack work of which was done by the Secretariat on our behalf, was an extended and challenging process due to the state of the Department's information holdings ...<sup>580</sup>

We heard from Ms Allison that, at the time of the CPP's review, there was 'no single data set in relation to a particular individual or family that could be drawn on as a complete set of information'.<sup>581</sup> As the CPP observed in its issues paper, *Initial priorities for reform*, without access to complete information the department cannot 'undertake the level of analysis that is required to mitigate the risks to children held in detention'.<sup>582</sup>

Further, the CPP observed that staff lacked in-depth knowledge of the case management systems, which created difficulties in accessing comprehensive histories of people and impeded the transfer of relevant information to receiving facilities and service providers.<sup>583</sup>

### **Information sharing**

Effective information flow between the department, service providers and state and territory police and child protection agencies is critical for proper risk assessment and management.<sup>584</sup> Yet the CPP found that a comprehensive case history was rarely forwarded to the receiving facility or relevant service provider when a person was transferred within the detention network.<sup>585</sup> This appears to have resulted from weaknesses in case management systems, problems with accessing information and a lack of training.<sup>586</sup> At times, the seriousness of the incident and the person's history appeared to be downplayed, possibly to avoid a transfer being rejected by the receiving institution.<sup>587</sup> As a result, transfer documents 'often did not accurately reflect the complete behavioural history of the person being transferred'.<sup>588</sup> The CPP noted concern that important medical history was generally not provided when someone was moved from held detention to community detention. This impeded the provision of robust responses in at least one incident.<sup>589</sup> Ms Allison gave evidence that inadequate information sharing has, at times, led to inappropriate responses to allegations of child sexual abuse in immigration detention, including inappropriate decisions relating to transfer and placement.<sup>590</sup>

The CPP formed the view that privacy concerns were inappropriately used by service providers to withhold information.<sup>591</sup> In Ms Allison's opinion, limited information sharing, including problems with information holdings, was more a matter of practice than a legislative impediment.<sup>592</sup> She told us in our *Institutional review of Commonwealth, state and territory governments* case study that:

If a person had been in the system for some time and had, in fact, been in a number of centres, there might have been things that happened two or three placements back that had not found their way to the person who was managing the transfer of the individual or family into the community.<sup>593</sup>

The CPP found that greater effort needs to be made to transfer important child protection information both within the department, and between the department and external authorities and service providers (including regional processing centres and held detention and community detention contractors).<sup>594</sup>

## Cooperation between government authorities

The CPP found that ineffective engagement between the department and state and territory authorities sometimes left children without support.<sup>595</sup> In addition:

- The responses of state and territory police and child protection agencies have been inconsistent.<sup>596</sup> This is likely to have stemmed from legal uncertainty regarding how Commonwealth migration legislation intersected with state and territory child protection legislation.<sup>597</sup> This uncertainty was resolved in February 2017, following a decision by the Victorian Supreme Court, which affirmed that child protection officers have jurisdiction to intervene when children in immigration detention are in need of protection.<sup>598</sup>
- Delays in communication between the department and state and territory authorities meant that victims were denied timely and appropriate support.<sup>599</sup> The CPP observed that there were long delays in the resolution of incidents<sup>600</sup> and authorities rarely advised the department or its service providers of the outcome of their investigations, including when files had been closed.<sup>601</sup> At times, authorities withheld their incident reports from the department and, without this information, the CPP noted that it is very difficult to properly manage serious cases of child abuse and mitigate risks.<sup>602</sup> The CPP observed a lack of understanding by some state and territory authorities more generally of the role of immigration detention.<sup>603</sup> Ms Allison gave evidence that some state and territory courts thought that detention centres were jails<sup>604</sup> and this may have led to some courts believing that detention centres were the only placement option for persons exhibiting risky behaviour.<sup>605</sup>

## 4.7.2 Recent developments

Prior to 2016, the department did not have in place a child protection framework for immigration detention. This was the case even though processes for responding to child abuse allegations in immigration detention had been subject to review since the Flood Inquiry (see Section 4.2.5).

Mr Pezzullo gave evidence in our *Institutional review of Commonwealth, state and territory governments* case study that upon commencing as secretary of the department in October 2014, he was made aware of the need to review the department's child protection policies and procedures as a key priority.<sup>606</sup>

The appointment of the CPP in March 2015 was a high-level response to the allegations documented in the Moss Review and the Forgotten Children report.<sup>607</sup> In December 2015, the CPP released its issues paper, *Initial priorities for reform*, to enable the department to begin addressing 20 initial priorities for improving child safety while the CPP was finalising its report.<sup>608</sup> The subsequent development of the Child Safeguarding Framework was another key institutional response because, prior to 2016, the department did not have any overarching mechanism to guide appropriate policies and procedures and responses to child sexual abuse.<sup>609</sup>

During the tenure of the CPP, the number of children in held detention decreased significantly as a result of the department's movement of children and families into community detention, and the Government of Nauru's implementation of 'open centre' arrangements at the Nauru Regional Processing Centre.<sup>610</sup> The CPP found that:

As a result of several Australian Government policies, including the prioritisation of children for community detention and the policies of enhanced border protection, there has been a significant reduction in the number of child abuse incidents.<sup>611</sup>

Another important change observed by the CPP during this period was a shift in the role that the department played in responding to incidents of abuse in the held detention environment.<sup>612</sup> While initially the department often took a secondary role to its service providers, who tended to control responses to incidents, over time there was a greater emphasis on accountability for department officers. This improved the department's capability to respond to incidents.<sup>613</sup>

In our public hearing we received evidence about these and other recent developments in immigration detention which provide institutional responses to child sexual abuse.

As we discussed in Section 4.7.1, in March 2016 the department endorsed the Child Safeguarding Framework, which provides high-level guidance for departmental staff and service providers on providing a safe environment for children and families.<sup>614</sup> During our *Institutional review of Commonwealth, state and territory governments* case study, Ms Moy told us that the framework incorporates, individually and thematically, the recommendations that the CPP later formalised in its report to the department in May 2016.<sup>615</sup>

In October 2016, the department publicly released the current version of the Child Safeguarding Framework, which establishes principles to protect children in the care of departmental staff and contracted service providers.<sup>616</sup> The framework adopts the CPP's 'triple track' response to incidents, which involves immediate protection of children from further harm, a suitable management regime for the alleged perpetrator and learning from the incident to improve systems.<sup>617</sup> Ms Allison, in our *Institutional review of Commonwealth, state and territory governments* case study, told us that the department has developed a number of associated policies to give force and effect to the framework,<sup>618</sup> and made those available to service providers who are required to ensure their own policies and procedures are aligned.<sup>619</sup>

As the Child Safeguarding Framework is still in the early stages of implementation, at the time of writing it is somewhat unclear what impact it will have on institutional responses to child sexual abuse in immigration detention. This is particularly so in circumstances where the broader immigration detention environment is unpredictable and in a constant state of flux.<sup>620</sup>

In a statement submitted to us, Ms Moy gave evidence that in late 2017, the CPP will be reconvened to review the department's implementation of the CPP's recommendations.<sup>621</sup> Further, embedded within the Child Safeguarding Framework is a requirement that it be reviewed every 18 months to ensure that it remains contemporary and relevant.<sup>622</sup> While presently a complex and lengthy document, we were told during our public hearing that the framework will be streamlined over time.<sup>623</sup>

## 4.8 Creating safer immigration detention for children

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Section 4.8 makes recommendations to improve the safety of children, and institutional responses to abuse, in immigration detention. The recommendations seek to address the risks of child sexual abuse in both held and community detention settings and improve institutional responses, where effective safeguarding systems are not already in place.

The recommendations are informed by the work of the CPP, and build on and supplement recommendations made elsewhere in this Final Report. In particular, this includes recommendations in Volume 6, *Making institutions child safe*, Volume 7, *Improving institutional responding and reporting* and Volume 8, *Recordkeeping and information sharing*.

### 4.8.1 The Child Protection Panel recommendations

The CPP report contains 17 formal recommendations to promote the wellbeing and protection of children in immigration detention and improve departmental responses to child abuse (see Appendix B). Implementation of these recommendations will improve institutional responses to child sexual abuse in immigration detention.

In our *Institutional review of Commonwealth, state and territory governments* case study, the department gave evidence through its senior officer Ms Moy that it has accepted or accepted ‘in principle’ all but one of the CPP’s recommendations.<sup>624</sup> Ms Moy told us that the department only ‘partially accepted’ recommendation 1a. In this, the CPP recommended that the department review its operational framework to ensure that ‘current and emerging risks to children and families in the changing community detention environment are fully understood and acted upon’.<sup>625</sup> Ms Moy said, ‘it is not possible for the department to be present with families in community detention to fully identify all emerging risks’.<sup>626</sup>

We do not consider that the implementation of CPP recommendation 1a requires the department to be present in the manner described by Ms Moy. As Ms Allison stated in the evidence she gave to us during this same hearing,<sup>627</sup> there is a way to understand responsibilities towards children that does not require the department to be physically present with families in community detention. Even when not present, steps can be taken to understand and act on emerging risks, including in changing environments.

Nor is the department’s responsibility for the care and safety of children in community detention limited by the fact that it uses non-government providers to deliver services to children in the community. For example, in Volume 12, *Contemporary out-of-home care* we discuss risk management in the context of carer suitability and make recommendations about the need to document risk management plans and to review them. This was also demonstrated by the department’s actions. By the time we reviewed the response of the Commonwealth in our hearing in March 2017, the department was ‘developing a risk management framework related to child safeguarding’ in response to CPP recommendation 1a.<sup>628</sup>

The department is ultimately responsible for the care and safety of all children in immigration detention, including those in community detention. It must therefore maintain adequate supervision of its contractors, as discussed in Section 4.8.3, to ensure such proper care is provided. The department should implement this CPP recommendation as a matter of priority.

#### **Recommendation 15.11**

The Department of Immigration and Border Protection should publicly report within 12 months on how it has implemented the Child Protection Panel’s recommendations.



## 4.8.2 The Child Safe Standards

A key aspect of inquiring into what governments and institutions should do to better protect children against sexual abuse has been to examine what makes institutions ‘child safe’. In Chapter 2, we recommend that all institutions engaged in child-related work, including detention institutions and those involving detention and detention-like practices, should implement the Child Safe Standards identified by the Royal Commission. The standards are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe.

Volume 6, *Making institutions child safe* discusses the standards in more detail, and Appendix A provides practical guidance on implementing the standards.

Each of the recommendations we make in this chapter are underpinned by the Child Safe Standards, which when appropriately applied to immigration detention can improve the safety of children and institutional responses to, and reporting of, child sexual abuse.

We acknowledge that in immigration detention there may be circumstances in which the best interests of the child cannot easily be reconciled with maintaining security and the safety of others. However, we consider that institutions involved in the administration of immigration detention environments should implement our Child Safe Standards (see Recommendation 15.1). This includes both secure and open detention environments.

As discussed in Section 4.7.2, the CPP recommended that the department implement the Child Safeguarding Framework to ensure a consistent approach to child protection across immigration detention agencies and service providers. We were told in our *Institutional review of Commonwealth, state and territory governments* case study that the department had developed 17 supporting documents that give force and effect to the framework.<sup>629</sup> We were also told that the department cannot mandate the safeguarding policies of its service providers because the agencies with whom it works have a variety of other responsibilities

too (see also Section 4.7.2).<sup>630</sup> Rather, service providers are contractually required to develop and maintain their own child protection plan outlining how they will promote child safety,<sup>631</sup> and to submit these for annual review by the department.<sup>632</sup> The department reviews these child protection plans to ensure alignment with the framework and is taking legal advice regarding short-term contractual variations to facilitate this.<sup>633</sup> Training related to the framework has been developed<sup>634</sup> for departmental staff and it will also be made available to service providers.<sup>635</sup>

Consistent with implementing CPP recommendations 4a and 4b, the department should finalise the policies and procedures that underpin the framework and ensure that the child protection policies of service providers and subcontractors are amended to align with the framework.<sup>636</sup> In doing this, the department should incorporate our Child Safe Standards into these policies and procedures.

In this chapter, we have highlighted that immigration detention has been the subject of many reviews that have raised concerns about the safety of children, and that the development and implementation of the Child Safeguarding Framework is a recent initiative. In this context, a mechanism should be established to regularly audit and publicly report on the implementation of the Child Safe Standards. In addition, we consider that the department should contractually require all service providers to adopt and comply with a consistent set of minimum child protection standards, regardless of the context in which the service provider operates. This is consistent with the practice of the Department of Foreign Affairs and Trade, which has a publicly available child protection policy (known as the DFAT model) that applies to its officers and funded partners, including service providers and contractors.<sup>637</sup> The simplicity and effectiveness of the DFAT model was promoted by Ms Allison in evidence given to us in our *Institutional review of Commonwealth, state and territory governments* case study.<sup>638</sup> The department should consider adopting an approach similar to the DFAT model with respect to immigration detention as a way of achieving consistent and transparent child protection standards.

#### **Recommendation 15.12**

- a. The Australian Government should establish a mechanism to regularly audit the implementation of the Child Safe Standards in immigration detention by staff, contractors and agents of the Department of Immigration and Border Protection. The outcomes of each audit should be publicly reported.
- b. The Department of Immigration and Border Protection should contractually require its service providers to comply with the Child Safe Standards identified by the Royal Commission, as applied to immigration detention.

### 4.8.3 Improving the safety of children in immigration detention

As we discuss in Chapter 2, various characteristics of detention environments may increase the risk of child sexual abuse in these institutional settings. This means that all appropriate steps that can be taken to identify and respond to that risk should be taken.

One way to manage risk is to seek to limit the number of children in immigration detention, as acknowledged under international law and the Migration Act (see Section 4.2). Safety can also be improved through approaches that focus on addressing modifiable risks in the detention environment. The Child Safe Standards are a useful framework for immigration detention institutions to use to address modifiable risk.

#### Effectively managing emerging risks

Developing and implementing risk management strategies that focus on preventing, identifying and mitigating risks to children is a key part of ensuring that child safety is embedded in institutional leadership, governance and culture, as provided by Child Safe Standard 1.

The CPP made several recommendations to improve the department's management of risk (see Appendix B). In addition to recommendation 1a (which we discuss in Section 4.8.1), these included that:

- the department extend its risk-assessment mechanisms to ensure that they address the safety of children in immigration detention, including children in community detention,<sup>639</sup> known to be at high risk (particularly those under the age of six years<sup>640</sup> or involved in multiple incidents)<sup>641</sup>
- the department improve its responses to 'persons of interest' particularly those who repeatedly come to notice<sup>642</sup>
- the department introduce a risk-assessment process around the movement of children and their families, and extend the National Detention Placement Model to identify the needs of children and families in detention and respond to mitigate risks<sup>643</sup>
- case management standards for children in immigration detention should be developed in consultation with service providers and a 'complex-case management protocol' should be designed under the Child Safeguarding Framework.<sup>644</sup>

We heard during our *Institutional review of Commonwealth, state and territory governments* case study that, in response to these recommendations, the department undertook to:

- implement a full profile for each child and ensure that all risk assessments for children are considered for vulnerabilities related to age and other factors<sup>645</sup>
- implement an information sharing process and real time intelligence assessments between the department and service providers<sup>646</sup>
- ensure appropriate support services are available to children during placements and transfers where children are held in detention as a matter of last resort<sup>647</sup>
- incorporate – into existing case management standards for status resolution – child welfare protocols and arrangements which prioritise the detention of family members at the same facility, and simultaneous status resolution for family members.<sup>648</sup>

We also heard that the department commenced providing expert support on the management of high-risk individuals, which included analysing their child abuse history.<sup>649</sup>

During the hearing, Ms Allison identified a particular need to manage risk effectively and to ensure the adequate protection of children who have been abused on multiple occasions where the abuse falls below the level of seriousness that would result in state or territory criminal or child protection intervention.<sup>650</sup> Ms Allison said that children who have been abused multiple times also need to be a particular focus of case planning by the department.<sup>651</sup> She told us that:

the vast majority of cases ... that [the CPP] saw were not the kind that ended up before the court or, indeed, were necessarily of interest to state and territory welfare authorities ... Nevertheless, it was very clear to all who were observing the case at that time that some significant supports and arrangements needed to be put in place to lessen the risk to that child.<sup>652</sup>

To the extent that the CPP's recommendations regarding risk mitigation have not yet been implemented, this work should be prioritised.

## Ensuring appropriate placements

As with children in out-of-home care, safety and wellbeing must be the paramount consideration in all decision-making about placements for children in immigration detention. Under law, the best interests of the child are a primary consideration in relation to all official decision-making regarding a child.<sup>653</sup> As discussed in Sections 4.4.3 and 4.5, we know that children from refugee backgrounds, particularly unaccompanied children, have heightened vulnerabilities to abuse which require particular care when making placement decisions. In the course of our work we have heard that inadequate assessments and placements of children in held or community detention may increase the risk of child sexual abuse, for example due to:

- children being placed in held detention with non-familial men<sup>654</sup> or adults experiencing serious mental health concerns<sup>655</sup>
- children with harmful sexual behaviours being placed with other children without adequate supervision, support or treatment.<sup>656</sup>

We heard during our *Institutional review of Commonwealth, state and territory governments* case study that the movement of children from held detention into community detention strained service provider infrastructure to deal with the difficulties and vulnerabilities of children and families in community detention.<sup>657</sup>

The department and its service providers have a duty of care to ensure a safe physical environment for children in their care – this extends to ensuring placements are appropriate. Increasing safety in community detention is particularly important given that, at the time of writing, a significant majority of children in immigration detention are held in community detention (see Section 4.2.1). During our public hearing, and in a submission from Ms Moy, we heard that the department recognises that it is ultimately responsible for who lives with whom<sup>658</sup> and that '[t]he best interests of the child are paramount in any placement decision'.<sup>659</sup>

Appropriate placement of children in immigration detention will be key to the successful implementation of Child Safe Standard 8: Physical and online environments minimise opportunities for abuse to occur. This requires the commitment of institutional leadership and a culture that values child safety; it requires ensuring that families are informed and involved in child safety; and it requires staff to be appropriately trained, as reflected in Child Safe Standards 1, 3 and 7 respectively.

Sharing information between the department, service providers and other state and territory agencies, such as the police and child protection agencies, is also critical to effecting appropriate placement decisions. Ms Allison gave evidence that it is incumbent on the department to recognise and manage risks to children in detention, presented by both adults and children with harmful sexual behaviours.<sup>660</sup> Her evidence reinforced the observation of the CPP that case management protocols were needed to inform placement decisions and help identify the support needs of children in held and community detention.<sup>661</sup>

The CPP also identified that 'the department did not, at the time, have the capability to effectively manage complex cases of child abuse',<sup>662</sup> that 'the need for disability-specific intervention was evident' in some cases<sup>663</sup> and that 'greater use could be made of state and territory facilities' for some detainees.<sup>664</sup> It supported the department's engagement of a senior executive-level child protection expert to provide consultancy and advice to departmental decision-makers and noted that the department would be engaging with state and territory authorities.<sup>665</sup> We discuss cooperation between the Commonwealth and states and territories in Section 4.8.4. We have discussed aspects of the department's revised case management protocols in the section on managing emerging risks above. We discuss information sharing below and in Volume 8, *Recordkeeping and information sharing*.

Finally, with regard to placing unaccompanied children in community detention, we also note that written submissions from the Western Australian Commissioner for Children and Young People and others highlighted the importance of placing culturally and linguistically diverse children in culturally appropriate group homes, under the supervision of caseworkers who are trained in cultural awareness and culturally sensitive child protection practice.<sup>666</sup> We were told in our multicultural forums that placements must ensure that children are able to connect with, and express, their cultural heritage.<sup>667</sup>

This is consistent with Child Safe Standard 4: Equity is upheld and diverse needs are taken into account and Child Safe Standard 2: Children participate in decisions affecting them and are taken seriously. It involves immigration institutions anticipating and responding to the diverse circumstances of children including their cultural background and individual needs as well as their vulnerability to sexual abuse.

## Creating safer environments for children in held detention

As we discuss in Section 4.4, commissioned research suggests modifying the environment by improving surveillance and providing active supervision of both staff and people in detention can help to make detention settings safer.<sup>668</sup>

We received evidence in the *Institutional review of Commonwealth, state and territory governments* case study that the department has developed supporting material to guide staff and service providers in creating child safe environments by promoting active participation by children, informing children of the standards of treatment they are entitled to, and incorporating a range of child safeguarding strategies into immigration detention.<sup>669</sup> The Child Safeguarding Framework also outlines the department's aim to ensure infrastructure and facilities are safe and secure for children. This involves ensuring that the physical infrastructure adheres to relevant safety standards and provides secure and protective environments that help defend children from abuse and support their psycho-socio-emotional wellbeing. The department has undertaken to provide accommodation and facilities that include well-lit activity spaces, to implement passive surveillance to ensure a visual connection is maintained, and to reduce opportunities for children to be in secluded and enclosed spaces.<sup>670</sup>

### Building and design features

Creating a safer physical environment is consistent with Child Safe Standard 8: Physical and online environments minimise opportunities for abuse to occur.

Building design that impedes supervision of interactions among people in detention and between children and staff can be exploited by perpetrators and provide opportunities for abuse to occur. Ongoing vigilance is required to identify elements of the physical environment that may present risks to children. This may be strained by both the need to respond to large numbers of those arriving in immigration detention from time to time and the challenge

of maximising detainee privacy. However, where risk is identified, immigration detention institutions should consider building modifications and changes in staff practices and procedures to mitigate risk.

A response supported by the CPP in held detention was the increased use of CCTV,<sup>671</sup> which may deter certain behaviours that are harmful to children as well as provide records of any incidents that do occur. It was also the CPP's view that incidents of reported child abuse at Nauru could have been prevented by imposing a mandatory requirement for staff to supervise children's participation in sporting and recreational activities.<sup>672</sup> To the extent to which such technologies are not already in place, the department and service providers should consider how they could be used to mitigate risk within each detention facility.

### **Supervision of children**

The department's Child Safeguarding Framework acknowledges that the welfare and protection of children in immigration programs is a shared responsibility between parents/carers and the department. While parents have the primary responsibility for raising children, the department recognises its responsibility to support those needing assistance.<sup>673</sup>

Adequate supervision of children, especially young children and unaccompanied children in held detention, decreases opportunities for child sexual abuse to occur. It has been widely acknowledged that while parents are the primary protectors of their children, parenting capability can be significantly impaired as a result of the held detention environment and related factors such as poor parental mental health.<sup>674</sup>

Acknowledging the adverse impact of some detention environments on some parents' ability to protect their children from abuse,<sup>675</sup> and the need to respect the privacy of children and young people in detention, the department should also consider imposing further requirements on service providers to ensure more active supervision by staff of higher risk activities.

### **Online safety**

The CPP noted a lack of supervision, monitoring and a robust security protocol for internet use by detainees in held detention, and reviewed a number of incidents of alleged child abuse occurring in or near internet access areas.<sup>676</sup> Of particular concern were cases of alleged sexual abuse that involved pornographic material on USBs being used during the grooming or abuse of children.<sup>677</sup>

The CPP recommended that the department implement internet safeguards including:

- restricting data-transfer capability
- identifying users of departmental computers in immigration detention
- regularly reviewing data access records to identify unlawful and inappropriate usage
- limiting access to online and other digital media to age-appropriate content.<sup>678</sup>

The department gave evidence in our *Institutional review of Commonwealth, state and territory governments* case study that it is working to address the CPP's concerns by:

- restricting access to inappropriate internet sites and use of external storage devices<sup>679</sup>
- considering more robust email and USB access policies<sup>680</sup>
- addressing the restriction of data-transfer capability by ensuring that inappropriate content is not downloaded onto USBs from the department's systems<sup>681</sup>
- recognising the need to educate children about online safety risks and to best protect children by empowering them with internet safety awareness<sup>682</sup>
- guiding departmental staff and service providers on possible indicators of online grooming to help them recognise signs of child sexual abuse.<sup>683</sup>

The department should also consider expanding its internet safeguards across all detention environments, including Alternative Places of Detention, where it has control and management of facilities which may present online safety risks to children. However, steps taken to address online safety concerns should not result in children or adults having a significantly reduced level of access to the internet and electronic material. These are important in ensuring children are not isolated and are able to communicate freely with external bodies, such as complaint handling systems.

We discuss online safety issues in institutional contexts in Volume 6, *Making institutions child safe*.

## Creating safer environments for children in community detention

Families with children and unaccompanied children are among those prioritised for community detention and this is currently the primary form of detention for children awaiting determination of their immigration status in Australia (see Section 4.2.1). As highlighted in Section 4.4.2, the risk of child sexual abuse for children in community detention may be greater where service provider staff do not have expertise in child protection or the skills to respond to the complex therapeutic needs of children from refugee backgrounds. It is important that the department and contracted service providers have a complete understanding of the risk of sexual abuse for all children in community detention and develop strategies to mitigate those risks and respond effectively when allegations of abuse are made.

Commissioned research suggests that unaccompanied children may be particularly vulnerable to sexual abuse.<sup>684</sup> As we heard in our *Institutional review of Commonwealth, state and territory governments* case study, children placed in group homes and overseen by service providers are placed in a form of out-of-home care.<sup>685</sup> Through our examination of institutional responses to child sexual abuse in contemporary out-of-home care, we have learned that children in residential care require a high level of full-time care and supervision by professional, skilled out-of-home care providers (see Volume 12, *Contemporary out-of-home care*). Many of the observations made in Volume 12 are applicable to this particular cohort of children in immigration detention.



### Expertise of service providers who support children in community detention

Consistent with Child Safe Standards 5 and 7, responding to risk in community detention will necessarily require that service providers have appropriate expertise, skills and capability to deal with high support needs and vulnerabilities, and that more specialist services are accessed where necessary.

In our *Institutional review of Commonwealth, state and territory governments* case study, Ms Allison gave evidence that the existing service infrastructure in community detention was struggling with the challenges of providing services to ‘children and families where there were some difficulties or vulnerabilities in those families’.<sup>686</sup> In particular Ms Allison noted that a number of the responses to incidents involving children with intellectual and physical disability reviewed by the CPP would have been greatly improved if disability service expertise had been brought in earlier.<sup>687</sup>

Department and contracted service provider staff should be suitably qualified to care for children who have experienced trauma and with culturally and linguistically diverse backgrounds including having expertise and qualifications in child protection, social work, trauma-informed care and children’s rights.

The CPP recommended that the department work with community detention service providers to:

- strengthen the performance of service provider and subcontractor staff to identify and act upon emerging risks to the safety of children<sup>688</sup>
- improve the capability of front-line support staff to improve their capability to respond to critical incidents.<sup>689</sup>

The CPP also recommended that contractual arrangements for the care of unaccompanied minors include expertise in out-of-home care (CPP recommendation 3a).<sup>690</sup> In circumstances where community detention is effectively another form of out-of-home care, as it is for unaccompanied children, Ms Allison gave evidence that various standards applying to out-of-home care would provide a useful frame of reference for unaccompanied minor households.<sup>691</sup> The department accepted each of these recommendations.<sup>692</sup> During the *Institutional review of Commonwealth, state and territory governments* case study, Mr Pezzullo stated that service providers in community detention already ‘have access, through their own contracted arrangements, to welfare and other social worker-type advice’.<sup>693</sup> However, the department undertook to review the services provided to unaccompanied children in community detention and to seek contractual variations to incorporate the required expertise.<sup>694</sup> This work should continue.

## Accreditation of out-of-home care providers and carer authorisation

As suggested by Ms Allison in her evidence, ensuring that service providers for unaccompanied children are subject to the same regulatory regime applicable to out-of-home care providers would improve the safety of those children,<sup>695</sup> address current and emerging risks,<sup>696</sup> and ensure adequate standards for care.

In Volume 12, *Contemporary out-of-home care* we recommend that each state and territory should revise existing mandatory accreditation schemes for out-of-home care service providers to incorporate compliance with the Child Safe Standards. We also recommend that accreditation requirements be extended to both government and non-government service providers, including providers of residential care (see Recommendation 12.4). We consider that service providers delivering out-of-home care-type services in immigration detention should be accredited to the same standards as out-of-home care service providers. For further discussion of the need for a nationally consistent out-of-home care accreditation system, see Volume 12, *Contemporary out-of-home care*.

Further, all carers in the immigration detention context, whether foster carers or residential care staff, should be authorised under existing carer authorisation schemes that apply to out-of-home care.

Written submissions from the Commonwealth of Australia support the development of a national carer register to ensure designated agencies have access to information about the suitability of current and prospective carers who have previously applied or undertaken work in other jurisdictions.<sup>697</sup> As submitted by the Commonwealth of Australia:

A carer's register would allow DIBP [the department] and its service providers to better determine whether certain placements are suitable and in the best interests of the child. As children in the UHM Programme [Unaccompanied Humanitarian Minors (UHM) Programme] may at times move between states and territories, a national register would be useful and relevant.<sup>698</sup>

All jurisdictions conduct basic probity checks for all types of out-of-home care workers, including residential staff. These checks are a National Police Check, WWCCs and referee checks. Recommendations 12.6 and 12.7 in Volume 12, *Contemporary out-of-home care* recommend a nationally consistent carer authorisation and annual review assessment with processes that supplement minimum probity checks. These checks would also improve the safety of unaccompanied children placed in residential group homes and with carers.

## Supporting children in immigration detention

As highlighted above, listening to and supporting the diverse needs of vulnerable children in immigration detention is consistent with Child Safe Standards 2 and 4. A child safe organisation seeks the views of children, and takes into account their age, development, maturity, understanding and abilities. Children should have formal and informal opportunities to share their views on institutional issues. Ensuring that equity is upheld and diverse needs are taken into account includes institutions anticipating and responding to the diverse circumstances of children and recognising that some children are more vulnerable to sexual abuse and may experience additional barriers to disclosure.

### Ensuring the voices of children in immigration detention are heard

Research suggests that children feel safer when institutions acknowledge and teach children about their rights to be heard, when they are listened to, and when they are taken seriously.<sup>699</sup> Children surveyed for commissioned research felt that adults should recognise and value children's concerns, and help them to better understand risks.<sup>700</sup> Children told researchers that they wanted to be involved in identifying and dealing with safety issues and believed that, in partnership with adults and institutions, issues such as child sexual abuse can be better dealt with.<sup>701</sup>

We were told during a multicultural forum about the difficulties that children and their families in immigration detention experienced in being heard and having their concerns taken seriously, not least because of the significant power imbalances between a child and detention staff.<sup>702</sup> The existing power imbalance between a child and detention staff may be exacerbated by language barriers and any features of organisational culture that devalues child detainees. As we discuss in Chapter 2, within 'closed' and 'total institutions', like immigration detention, children's voices may not be heard.<sup>703</sup> As one forum participant explained, the reasons children may not wish to speak up are complex and embedded in the broader socio-political context:

We are asking people with trauma and refugee backgrounds to speak to government agencies. Regardless of whether they have citizenship or not they will never feel safe because of their citizenship status. It will always feel like it could be taken away. The chance of them coming forward is slim because of fear of deporting.<sup>704</sup>

As for all institutions, policies and procedures should aim to empower and support children to make disclosures or complaints. In this regard, the department has developed supporting material guiding departmental staff and contracted service providers to include children and families in decision-making, where possible, and to promote the participation of children by making them feel valued and reassuring them that their concerns will be heard.<sup>705</sup> Parallel documents guide staff on potential signs of sexual and other abuse in children and what to look for.<sup>706</sup>

In applying Child Safe Standard 2 there are many areas in which the department should increase the voices of children in immigration detention. This may be facilitated through prevention education, child-friendly complaint handling systems, and access to trusted adults such as child safety officers and independent visitors, as discussed below.

## Prevention education

Child sexual abuse prevention education aims to provide children with knowledge and skills to protect themselves from potentially abusive situations and to be aware of how to seek help in the event of abuse or attempted abuse.<sup>707</sup>

In our multicultural forums we heard that refugee children do not have access to culturally appropriate programs in immigration detention that teach children about sexual health and development, sexual safety and help-seeking strategies.<sup>708</sup> Prevention programs need to be tailored and accessible to children from culturally and linguistically diverse backgrounds, and should educate children about respectful relationships and safety strategies that respond to cultural and linguistic barriers and empower disclosures.<sup>709</sup>

As discussed in Section 4.4.3, children in immigration detention are likely to have experienced significant trauma in their country of origin or throughout their refugee journey,<sup>710</sup> including persecution, war, violence and sexual abuse.<sup>711</sup> Prior complex trauma can make a child particularly vulnerable to sexual abuse.<sup>712</sup> These experiences of prior trauma must be taken into account when developing and implementing prevention education.

As discussed in Volume 6, *Making institutions child safe*, school-based programs should be accessible and appropriate for all children, including children in immigration detention, and should be flexible enough to address the particular needs of all children. School-based programs could then be supplemented by secondary prevention education strategies, delivered by experts in immigration detention contexts. Prevention education programs should also include content to support children's online safety (see Recommendation 6.19). This aligns with Child Safe Standard 8.

We note that supporting material developed by the department to operationalise the Child Safeguarding Framework responds to the need to teach children preventative strategies and to educate children on their rights to personal safety, to prevent them becoming victims of sexual abuse.<sup>713</sup> Consistent with Child Safe Standard 4: Equity is upheld and diverse needs are taken into account, prevention education needs to be tailored to the specific needs of children in immigration detention. Educational programs must acknowledge the particular vulnerabilities of children in immigration detention (including previous experiences of sexual and other forms of abuse) and the need to be culturally sensitive and accessible to children from culturally and linguistically diverse backgrounds. To ensure accessibility, it would be essential to consider the ways in which sex and sexual abuse are discussed and understood across different religions and cultures and adapt programs for specific sub-populations and groups.<sup>714</sup>

Parents can also play a key role in preventing child sexual abuse as they are generally the most readily available source of information for their children.<sup>715</sup> While acknowledging the challenges of parenting while in detention, a focus on how parents can protect and support their children is consistent with Child Safe Standard 3: Families and communities are informed and involved.

People delivering child sexual abuse prevention education in immigration detention need to be appropriately skilled and trained.<sup>716</sup> They may be teachers or facilitators from external organisations with expertise in this field. Child sexual abuse prevention education as well as broader prevention strategies are discussed in detail in Volume 6, *Making institutions child safe*.

### **Therapeutic treatment for sexual abuse survivors in immigration detention**

While further research into the mental health of asylum seekers and refugees is required to clarify their service needs,<sup>717</sup> therapeutic treatment is essential for all children who have been sexually abused, whether in immigration detention or otherwise. As we discuss in Volume 9, *Advocacy, support and therapeutic treatment services*, victims and survivors need access to therapeutic treatment services to help them heal and recover from the impacts of abuse. These services need to be ‘acceptable’, taking into account the social and cultural context of the victim or survivor, and their cultural values, expectations and life experiences. This can be achieved by ensuring availability of effective, culturally acceptable specialist therapeutic interventions.

Research has highlighted that in order to encourage children and young people with refugee backgrounds to engage with mental health services, mental health service providers must demonstrate respect and understanding of their religious and cultural background, including differing cultural understandings of mental health.<sup>718</sup> The Royal Australasian College of Physicians also acknowledges the need to consider and integrate culture, access culture-specific expertise, and consider the refugee and asylum seeker experience when delivering healthcare.<sup>719</sup>

Best practice suggests that clinical responses to abuse and trauma be evidence-based and delivered by adequately trained, specialist child and adolescent mental health staff. It is important to ensure mental health professionals have the core knowledge and skills required to deliver culturally relevant and appropriate mental health services that refugees and asylum seekers are able to engage with.<sup>720</sup> Training should be provided for mental health clinicians working in immigration detention contexts.<sup>721</sup>

As noted in Volume 9, *Advocacy, support and therapeutic treatment services*, child sexual abuse compromises the safety of the victim, and re-establishment of safety should be a priority for services responding to children and adults who have experienced childhood sexual abuse. This is recognised in existing literature<sup>722</sup> and in guidelines on how to respond to complex trauma.<sup>723</sup> Our commissioned research supports this, noting that services should ensure that their ‘organisational, operational and direct service-provision practices and procedures promote, not undermine, the physical, psychological and emotional safety of consumers and survivors’.<sup>724</sup>

In the immigration context, safety may also be understood by detainees as involving considerations such as placements. As we have discussed in Section 4.6.3, fear of disclosure impacting on placement or immigration status is a barrier to disclosure. For similar reasons, discreet and confidential access to treatment and support is likely to be key.

Implementation of Child Safe Standard 6 requires that processes to respond to complaints are child focused. The application of Child Safe Standard 4 in immigration settings means that the children and their families need access to services in which they may feel more comfortable making disclosures and seeking help.

We recommend in Volume 9, *Advocacy, support and therapeutic treatment services* that the Australian, state and territory governments fund dedicated community support services for survivors of child sexual abuse that use case management and brokerage to coordinate and meet service needs. We also recommend that these services are trauma-informed, collaborative, available, accessible, acceptable and high quality, and that peer-led service models are supported. These recommendations are equally applicable to the immigration detention context.

The department should ensure children and their families in immigration detention have access to independent specialist services, where they may feel more comfortable disclosing abuse and seeking help. It is also important that the department consider how the held detention environment may limit the effectiveness of any treatment provided within immigration detention.

#### **Recommendation 15.13**

The Department of Immigration and Border Protection should identify the scope and nature of the need for support services for victims in immigration detention. The Department of Immigration and Border Protection should ensure that appropriate therapeutic and other specialist and support services are funded to meet the identified needs of victims in immigration detention and ensure they are linked to ongoing treatment when they leave detention.

In Volume 9, *Advocacy, support and therapeutic treatment services* we also recommend the establishment of a national centre to raise awareness and understanding of child sexual abuse and its impacts (see Recommendation 9.9). Its proposed functions include the production of training materials and other resources to assist practitioners to provide therapeutic treatment. Such a centre would be well placed to develop resources to assist immigration detention service providers to implement best practice trauma-informed approaches for use in immigration detention settings.

We also recommend in Volume 9, *Advocacy, support and therapeutic treatment services* that access to support and therapeutic treatment be enhanced by the Australian Government by addressing service gaps through increased funding to existing specialist sexual assault services in each jurisdiction (see Recommendation 9.6). Children in immigration detention may particularly benefit from enhanced access to such specialist services given their particular vulnerabilities.

## Supporting children with harmful sexual behaviours in immigration detention

As discussed earlier in this chapter, some children in immigration detention have reportedly been sexually abused by other children. Children in immigration detention who have displayed harmful sexual behaviours can benefit from receiving support and therapeutic intervention to help them cease these behaviours.

Much like our understanding of sexual abuse in detention environments, the study of harmful sexual behaviours in children is a developing field. There is only a small body of research examining therapeutic interventions that may help children to cease the behaviours and, to our knowledge, none that specifically evaluates therapeutic interventions in immigration detention.

What is clear is that the majority of children who have displayed harmful sexual behaviours have experienced prior trauma and other types of adverse childhood experiences such as exposure to family violence,<sup>725</sup> or prior physical<sup>726</sup> and sexual abuse.<sup>727</sup> As discussed in Section 4.4.3, many children in immigration detention are likely to have experienced significant trauma.<sup>728</sup> There is a need to proactively assess and respond to the trauma experienced by children in immigration detention in order to manage risk.

We consider that all children with harmful sexual behaviours, including those in immigration detention, should receive professional, expert assessment so that they can benefit from appropriate responses that match their particular circumstances and needs, including therapeutic interventions. Expert assessment is critical for children in immigration detention so that their particular background and trauma history can be understood and subsequent therapeutic interventions can respond to issues around trauma, as well as the harmful sexual behaviours they have exhibited.

Volume 10, *Children with harmful sexual behaviours* has a detailed discussion of this issue as well as our recommendations about improving the range of responses available to all children who have exhibited harmful sexual behaviours.

## Training and supporting department and service provider staff

Ensuring that people working with children are suitable, supported and receive adequate training to work with children is relevant to Child Safe Standards 5 and 7. These standards are concerned with equipping staff and volunteers with the knowledge, skills and awareness to keep children safe through continued education and training. This involves promoting child safety in staff recruitment and training and continually building staff capacity to protect children from harm.

As identified by the CPP, staff working for service providers in held and community detention would benefit from ongoing support and training to increase their capacity to create safe and supportive environments for children in immigration detention.<sup>729</sup>

The CPP recommended that the department ensure that all departmental staff (not just senior operational staff), service providers and subcontractors have access to appropriate professional services required for responding effectively to complex child protection cases,<sup>730</sup> including specialist services to meet the specific needs of people in detention, such as people with cognitive and intellectual disability.<sup>731</sup> We heard from Ms Allison that:

[The CPP] dealt with a number of cases where children or [persons of interest] had a significant intellectual or physical disability, and the bringing in earlier of specific expertise in disability services would have greatly improved the management of those cases overall.<sup>732</sup>

Evidence obtained from the department during our public hearing included that it was recruiting social workers to support key staff,<sup>733</sup> was seeking to establish a panel of child protection experts to advise on complex cases<sup>734</sup> and had devised training for departmental staff on reporting and categorising child-related incidents and response management.<sup>735</sup>

Staff in institutions, including immigration detention, can also face significant issues identifying, reacting and responding to harmful sexual behaviours in children. It can be challenging to identify these behaviours due to a range of factors including levels of professional training, experience, social attitudes and values.<sup>736</sup> We believe the Australian and state and territory governments should ensure relevant departments and agencies provide professionals in all child-related roles with clear guidance on harmful sexual behaviours in children. Guidance should provide staff with an adequate level of knowledge to distinguish between healthy and harmful sexual behaviours in children who are in their care and help equip staff to react and respond appropriately when they notice harmful sexual behaviour. The guidance should be widely distributed and accessible online. A number of resources are freely available for this purpose. We do not endorse any particular tool. However, some examples are included in Appendix B of Volume 10, *Children with harmful sexual behaviours*.

In the immigration context this is particularly significant in view of what is known about the backgrounds and trauma of many children in immigration detention. Timely access to specialist expertise for assessment and referral into therapeutic treatment could reduce the vulnerability of some children to abuse. Where a child's behaviour has the potential to be sexually harmful, early intervention could reduce the likelihood of a child abusing another child in immigration detention.



## **The need for training on trauma-informed care in immigration detention**

Trauma-informed approaches comprise trauma-informed care, which is the sensitive and systemic approach to working with survivors of trauma, and trauma-specific interventions that address specific trauma symptoms.<sup>737</sup> As we observe in other institutional contexts, a trauma-informed approach involves recognising and being responsive to the lived, social and cultural contexts of consumers which shape their needs as well as recovery and healing pathways.

A trauma-informed approach is particularly important in this context given the potentially re-traumatising nature of immigration detention and the impacts of complex, cumulative trauma on children in immigration detention.

In Volume 9, *Advocacy, support and therapeutic treatment services*, we recommend the establishment of a national centre to raise awareness and understanding of the impacts of child sexual abuse (see Recommendation 9.9). As we discussed above, its proposed functions include the production of training materials and other resources to assist workers who support victims and survivors to provide trauma-informed responses. Our proposed national centre could include in its activities the dissemination of resources appropriate to the immigration detention context. Because children in immigration detention environments are at increased risk (see Section 4.4) and the impact of child sexual abuse in the institutional context may be exacerbated by immigration detention (see Section 4.5), the national centre could target some of its activities towards immigration detention.

## **Child safety officers in immigration detention**

Under the Child Safeguarding Framework, the CPP endorsed a new, key role within the department with accountability for child protection and wellbeing outcomes – the Child Protection and Wellbeing Branch.<sup>738</sup> The CPP emphasised that in order to improve outcomes, the department would need to both build capability and strengthen performance in the branch.<sup>739</sup> Its responsibilities include:

- developing, implementing and reviewing child safeguarding policies and procedures
- establishing and monitoring standards for effective documentation of case notes and transfer reports
- devising professional training and development for officers dealing with related matters
- providing expert support and advice for departmental officers and service providers
- developing and implementing a quality assurance and reporting process that will provide a ‘whole of department’ perspective on its effectiveness in protecting children.<sup>740</sup>

In Volume 6, *Making institutions child safe*, we recommend that local governments designate child safety officer positions from existing staff profiles to assist community-based institutions in their local area to become child safe, with support from governments at the national, state and territory levels (see Recommendation 6.12).

The function of child safety officers would be to:

- develop child safe messages in relevant facilities
- assist local institutions to access child safe resources
- provide information and support to local institutions as needed
- support local institutions to work collaboratively with key services to ensure child safe approaches are culturally safe, disability aware and appropriate for children from diverse backgrounds.

Child safety officers should also be appointed within immigration detention. In the immigration detention sector, child safety officers could perform several child safety functions, including developing messaging in immigration detention facilities to improve safety in physical environments, such as amenities and accommodation blocks, recreation spaces and grounds, and in online environments, such as the appropriate use of social media and the sharing of photographs of children. They could provide information and assistance among department and service provider staff about the national child safety requirements by directing staff to applicable obligations, policies and procedures.

The child safety officers could work closely with the proposed National Office for Child Safety and with external oversight bodies. The child safety officers could also play a role with respect to monitoring and improving the safety of children in both held and community detention. Importantly, they could provide information to families and children in detention about child safety and help children voice their concerns.

In proposing the addition of child safety officers in immigration detention, our aim is that all immigration institutions be supported. Our proposal is not to duplicate pre-existing functions either in the Child Protection and Wellbeing Branch or within service provider agencies, but to expand existing roles to include a focus on child safety.

While the existing Child Protection and Wellbeing Branch fulfils some of these functions, it cannot do so on a 'local' level, that is, proximate to children in detention and the front-line staff who are responsible for their care and protection. As we have noted in Volume 14, *Sport, recreation, arts, culture, community and hobby groups*, regional and remote communities routinely miss out on resources and access to services that are available in urban centres. Given the nature of contemporary arrangements for children in immigration detention, there is a comparable need to designate child safety officers in the places where children are detained.

**Recommendation 15.14**

The Department of Immigration and Border Protection should designate appropriately qualified child safety officers for each place in which children are detained. These officers should assist and build the capacity of staff and service providers at the local level to implement the Child Safe Standards.

#### 4.8.4 Improving institutional responses to child sexual abuse in immigration detention

##### Complaint handling systems

Child safe institutions respond to complaints by immediately protecting children at risk and addressing complaints promptly, thoroughly and fairly. Child Safe Standard 6 requires that institutional complaints processes are child focused and well understood by children, families, staff and volunteers. An effective complaints handling policy should clearly outline roles, responsibilities and approaches to dealing with different types of complaints, and obligations to act and report. However, all of our Child Safe Standards should inform an institution's complaint handling process to create an environment where people feel empowered to raise complaints and trust that these complaints will be taken seriously.

As discussed in Section 4.7.1, children and families in immigration detention sometimes have little confidence in complaint handling systems, and may fear that by making a complaint they are putting their immigration status at risk.<sup>741</sup> The CPP found that complaints management systems within the department needed to be improved.<sup>742</sup>

In order to build confidence in the complaints management system, we understand the department has incorporated enhanced guidance around the implementation of child-friendly complaints mechanisms into a supporting policy.<sup>743</sup> Further, the department is developing incident response protocols to incorporate child safeguarding inquiries into standard practice. While this proposal addresses some key elements – for example, it includes informing children and their families about the outcome of investigations<sup>744</sup> – Ms Allison gave evidence that additional measures are required to build confidence in the complaints management system.<sup>745</sup>

For example, in addition to being notified of the outcome of an investigation, best practice suggests that, where possible, children and others who provide information to the department should be regularly updated about the status of their complaint. This was a particular issue highlighted by the CPP report.<sup>746</sup>

It is also important that there are a range of different mechanisms for children and their families to provide information about their safety concerns, including both internal and external mechanisms.<sup>747</sup> Complaint handling systems could be complemented by ensuring access to external bodies that receive and resolve complaints such as the Commonwealth Ombudsman, the AHRC and the Australian Red Cross.

Independence in the complaints management process, for example through the establishment of an independent visitor scheme, similar to those operating in youth detention, would also helpfully build confidence in the complaints system.<sup>748</sup>

The department has developed supporting material which:

- encourages staff and service providers to make complaints-handling procedures known and accessible to children
- provides children with multiple mediums to express their views
- provides regular feedback to children.<sup>749</sup>

We consider the department and contracted service providers should further review their current complaint handling systems<sup>750</sup> to ensure there is a clear, accessible and child-focused complaint handling policy and procedure that sets out how the department or service provider should respond to complaints of child sexual abuse, consistent with Recommendations 7.7 and 7.8 in Volume 7, *Improving institutional responding and reporting*.

A longer term issue is how the department will respond to complaints of historical abuse made by former detainees in the future, potentially many years after victims leave detention. As we discuss in Volume 4, *Identifying and disclosing child sexual abuse*, many victims do not disclose immediately. On the contrary, lengthy delay in coming forward is common. Survivors who spoke with us during a private session took, on average, 23.9 years to tell someone about the abuse and men often took longer to disclose than women.<sup>751</sup> In immigration detention, this duration may also be affected by migration status, including victims and survivors now living overseas. The department will need to ensure that avenues for making a complaint of historical abuse are accessible to former detainees.

## Inquiries and investigations

The CPP found that the department must improve its capability to effectively respond to complex allegations of child sexual abuse.<sup>752</sup> The CPP made a number of recommendations for strengthening the department's capacity to conduct child safeguarding inquiries – which necessarily requires stronger leadership and better coordination with state and territory authorities.<sup>753</sup> The CPP also recommended that the department strengthen its capacity to carry out child safeguarding inquiries to be able to respond to complaints, carry out some basic preliminary inquiries and assess risks to ensure children's safety.<sup>754</sup>

The department's evidence presented to our *Institutional review of Commonwealth, state and territory governments* case study was that it will implement child safeguarding inquiries, to occur in parallel with state or territory child protection investigations,<sup>755</sup> to determine the 'truth' of the incident from a departmental viewpoint and gather relevant information to inform immediate decisions regarding the child's welfare.<sup>756</sup> Supporting material recently developed by the department provides for a detention superintendent to undertake a child safeguarding inquiry, following the initial report of a child-related incident.<sup>757</sup> They are to receive training to help them oversee the management of child-related incidents more effectively.<sup>758</sup> We also heard that the department is seeking legal advice regarding short-term contractual variations to ensure that inquiries are not finalised until advised by the department. Further, Ms Moy gave evidence that the Child Wellbeing Branch now has oversight over the closure of child safeguarding inquiries.<sup>759</sup>

## Reporting and recordkeeping

Good recordkeeping is an important part of making and supporting institutions to be child safe. In Volume 8, *Recordkeeping and information sharing*, we recommend that all institutions that engage in child-related work implement five high-level principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse in the institution (Recommendation 8.4).

The principles for records and recordkeeping are supplementary to our recommended Child Safe Standards. Staff and volunteers' understanding of their obligations in relation to information sharing and recordkeeping is part of ensuring that child safety is embedded in institutional leadership, governance and culture, in accordance with Child Safe Standard 1.

### Incident reporting and recordkeeping

The CPP found that considerable improvement was required to incident reporting and categorisation.<sup>760</sup>

As recommended by the CPP, the department should work with service providers to develop an enhanced categorisation system which accurately identifies the number, nature and seriousness of child sexual abuse incidents.<sup>761</sup> This includes improvements to the accuracy of incident categorisation to distinguish between inappropriate but less harmful behaviour and more serious incidents.<sup>762</sup>

In her statement to our *Institutional review of Commonwealth, state and territory governments* case study, Ms Moy gave evidence that the department is currently:

- reviewing the incident categorisation system and will consult with stakeholders regarding its usage<sup>763</sup>
- developing supporting material to guide staff and service providers on the categorisation of incidents, including recognising signs of child abuse.<sup>764</sup>

As recommended by the CPP, incident reporting can be improved by improving the legibility of incident reports by requiring they be typed and not handwritten,<sup>765</sup> and putting standards in place which require incident reports to be more comprehensive in their description of what occurred.<sup>766</sup> Incident reporting guidelines have been developed for departmental and Serco staff to improve the quality of recordkeeping. These provide guidance on the preparation of incident reports and outline the various incident categories available, including sexual assault and strip searching.<sup>767</sup>

In addition to the department's reporting guidelines, service providers have their own incident reporting policies and incident management protocols.<sup>768</sup> As service providers often have the most direct interaction with children in immigration detention, they play a key role in the implementation of departmental policies and procedures and preliminary management of any incident.<sup>769</sup> As a result, it is crucial for service providers to have consistent incident reporting and categorisation policies and practices. There may be scope for further work in this area to promote the safety of children in immigration detention.

### **Mandatory reporting**

In each state and territory, certain individuals and institutions are legally obliged to report suspicions, risks and instances of child abuse and neglect, including child sexual abuse, to the police, child protection authorities and/or oversight agencies. The aim of mandatory reporting is to detect, stop and prevent child abuse and neglect by requiring certain individuals and institutions to report to an external government authority.<sup>770</sup> However, during the *Institutional review of Commonwealth, state and territory governments case study*, the Australian Government Solicitor submitted that neither the department, nor its contracted service providers, are currently covered by the reportable conduct scheme under the *Ombudsman Act 1974* (NSW) and are therefore not required to notify the NSW Ombudsman of any reportable allegations or reportable convictions.<sup>771</sup> Further information on mandatory reporting is detailed in Volume 7, *Improving institutional responding and reporting*.

Legislative inconsistencies and complexities in mandatory reporting laws across different jurisdictions can create information loopholes when transferring people across the detention network.<sup>772</sup> As a result, Ms Allison urged the Royal Commission to make recommendations regarding mandatory reporting standards and information sharing across jurisdictions.<sup>773</sup> As we recommend in Volume 7, to promote information sharing across all jurisdictions, the Australian Government should facilitate the harmonisation of state and territory mandatory reporting regimes. In Volume 7, *Improving institutional responding and reporting* we recommend that state and territory governments should establish nationally consistent legislative schemes (reportable conduct schemes). We recommend that reportable conduct schemes should cover institutions that exercise a high degree of responsibility for children; and/or engage in activities that involve a heightened risk of child sexual abuse. This includes youth detention centres and immigration detention facilities. See Recommendations 7.9–7.12 in Volume 7, *Improving institutional responding and reporting*.

## Information sharing

The CPP made a number of recommendations about improving information sharing arrangements between department and service provider staff, as well as with relevant external stakeholders.<sup>774</sup> For example, that the department should ensure that all relevant information on the history and background of a child victim and a person of interest<sup>775</sup> is communicated to all relevant stakeholders (including state and territory authorities), when the child or person of interest is moved within or outside the immigration detention network (CPP Recommendation 15a).<sup>776</sup> Crucially, relevant information should include any child protection complaints because, as explained by Ms Allison, ‘every child protection complaint that is made constitutes intelligence about a person’.<sup>777</sup>

In the *Institutional review of Commonwealth, state and territory governments* case study, a representative from the department indicated that it now fully accepted this recommendation.<sup>778</sup> It has developed supporting material to guide departmental staff in understanding when they can lawfully disclose personal information of children, including when consent is obtained and when authorised by law.<sup>779</sup> It was also standardising its procedure for ensuring an individual’s history is available to a receiving centre.<sup>780</sup>

As discussed in Volume 8, *Recordkeeping and information sharing*, Australian Government agencies such as the department are not compelled to share information with other prescribed bodies under existing state and territory laws for the exchange of information related to children’s safety and wellbeing. In our information sharing discussion paper, we canvassed whether the department should be included as a prescribed body in a proposed information exchange scheme to operate within and across Australian jurisdictions. In response, the Commonwealth of Australia submitted that some Commonwealth agencies have ‘expressed the view that relevant agencies should be included in the range of prescribed bodies and that all agencies should have equal capacity and obligations to share information’.<sup>781</sup>

In our view, state and territory governments should consider prescribing relevant Australian Government agencies – including the department – in their legislation to enable other prescribed bodies in that state or territory to directly share information with those agencies. In Volume 8, we recommend the establishment of nationally consistent legislative and administrative arrangements, in each jurisdiction, for a specified range of bodies to share information related to the safety and wellbeing of children, including information relevant to child sexual abuse in institutional contexts. This information exchange scheme would operate within and across Australian jurisdictions (Recommendation 8.6). The Australian Government and state and territory governments should consider the range of bodies, including service providers, government and non-government agencies, law enforcement agencies and regulator and oversight bodies, to be included. We discuss our recommended information exchange scheme and its potential application in immigration detention contexts in Volume 8.

The Australian Government should consider enacting corresponding legislation that gives relevant Australian Government agencies the same capacity and obligations to share information as bodies prescribed under state and territory legislation. This would enable those agencies to share information related to the safety and wellbeing of children with other bodies prescribed under Commonwealth legislation, as well as bodies prescribed in each state and territory.

The Australian Government and state and territory governments could also consider whether expanding the Information Sharing Protocol to include the department, and any other relevant Commonwealth agency, would facilitate information sharing with state and territory child protection agencies, irrespective of whether those Commonwealth agencies are included in the proposed information exchange scheme.

As noted above, the 2016 report of the CPP recommended that the department ensure that all relevant information on the history and background of a child victim and a person of interest<sup>782</sup> is communicated to all relevant stakeholders (including state and territory authorities), when the child or person of interest is moved within or outside the immigration detention network.<sup>783</sup> In the *Institutional review of Commonwealth, state and territory governments* case study, a representative of the department indicated that the department accepted this recommendation.<sup>784</sup> Inclusion of the department as a prescribed body, able to share information with bodies prescribed under state and territory legislation, would enable this to occur.

## Cooperation between the Commonwealth, states and territories

We were also told by Ms Allison that state and territory courts did not have a good understanding of the role of detention centres.<sup>785</sup> The CPP suggested they should be briefed about the role and function of detention centres, and the services available to alleged perpetrators in detention facilities.<sup>786</sup> Further, that arrangements with states and territories to accommodate asylum seekers with special needs in state and territory facilities could be enhanced.<sup>787</sup> These steps move beyond mere information sharing. They speak to a need for strong relationships between Commonwealth, state and territory agencies that will require considerable institutional leadership. However, they are areas in which collaboration could improve the safety of all children.



## Preventive monitoring and oversight

As discussed in Chapter 2, according to commissioned research, one of the reasons why ‘total’ institutions present a high cumulative risk of child sexual abuse is because their closed nature can shield these institutions from the norms and observations of broader society.<sup>788</sup> This could be mitigated by preventative monitoring and independent oversight.

External oversight, when coupled with effective internal audit systems, can have a positive impact on organisational culture, facilitate changes in policy and practice, and build the capacity of an institution to implement best practice. Professor Neil Morgan, the Inspector for Custodial Services in Western Australia, told us:

I think you can’t overstate the importance of having a regular, visible presence. Things do get fixed quite often simply because people know we’re there and they know that we will be coming.

Can I say that an inspection system prevents all abuse? Of course not ...

Do I think we help prevent systemic abuse? Yes, I believe we do. You cannot always prevent all forms of individual abuse, but we also have networks where the children talk to us, the staff talk to us, and out in the community the families talk to us. So we have quite good, interesting, intelligence networks that tend to tip us off to certain things that are happening.<sup>789</sup>

Professor Morgan also emphasised the importance of both functional and structural independence for oversight agencies:

I believe the strongest model is one where you’ve got structural independence, and I think it is one where you’ve got a robust framework that has credibility, and in my instance, I’ve got a statutory responsibility to do certain things, so it’s not even optional.<sup>790</sup>

As discussed in Chapter 2 the Australian Government has announced its intention to ratify OPCAT by December 2017 and this will have consequences for the monitoring and oversight systems in immigration detention environments.<sup>791</sup>

The ratification of OPCAT and the establishment of the NPM present an opportunity to ensure the existence of nationally consistent, independent and rigorous oversight and monitoring systems. As recommended in Chapter 2, it is important that the NPM has expertise to consider and make recommendations relating to preventing and responding to child sexual abuse as part of regularly examining the treatment of persons deprived of their liberty in places of detention. While the NPM will have a specific mandate, the National Office for Child Safety (recommended in Volume 6, *Making institutions child safe*), could provide information and build the capacity of the NPM around children's safety issues, particularly, the identification and prevention of child sexual abuse. The Child Safe Standards could be used to inform the development of child-focused inspection standards for detention environments that house children. See Chapter 2 for further discussion of OPCAT.

As mentioned above, for unaccompanied children living in group homes in community detention, akin to out-of-home care, external oversight could include independent visitor schemes, case file audit systems, and inspectorate functions in various jurisdictions, such as that conducted by the NSW Ombudsman.<sup>792</sup> There may be scope for the Commonwealth Ombudsman to take a more active role. The CPP suggested the development of an 'official visitor' type program, commonly used in psychiatric or correctional environments on a monthly basis, for immigration detention settings.<sup>793</sup>

Noting the operational and geographical challenges the department faces, an independent visitors program, much like those that operate in some jurisdictions to provide independent oversight of youth detention, prisons and mental health facilities, could improve children's safety. Such officials could frequently visit held detention as well as group homes for unaccompanied children in community detention. Of course, for regional processing centres, arrangements would need to be made for independent visitors to access immigration detention facilities and speak with children and their families. The department should consider how best to facilitate this.

#### **Recommendation 15.15**

The Department of Immigration and Border Protection should implement an independent visitors program in immigration detention.

# Endnotes

- 1 P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017, pp 7, 25, 27.
- 2 Exhibit 51-001, 'Australian Human Rights Commission, "The Forgotten Children - National Inquiry into Children in Immigration Detention"', Case Study 51, WEB.0186.001.3332.
- 3 Exhibit 51-001, 'Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (Moss Review)', Case Study 51, WEB.0186.001.2489.
- 4 N Evershed, R Liu, P Farrell & H Davidson, 'The Nauru files', *The Guardian Australia*, 2016, [www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive](http://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive) (viewed 15 September 2017); P Farrell, N Evershed & H Davidson, 'The Nauru files: Cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention', *The Guardian Australia*, 2016, [www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention](http://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention) (viewed 15 September 2017).
- 5 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0016\_R.
- 6 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0002\_R, 0017\_R; Exhibit 51-002, 'Statement of Cheryl-Anne Moy, Department of Immigration and Border Protection', Case Study 51, STAT.1309.001.0001\_R at 0001\_R, 0002\_R.
- 7 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0016\_R.
- 8 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0085\_R.
- 9 The Child Protection Panel provided the department with an 'Initial Priorities for Reform' issues paper in December 2015 for the department's preliminary consideration. See Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0089\_R–0124\_R (Appendix 4, 'Initial priorities for reform – Child Protection Panel – Issues paper'). Its final report was provided to the department in May 2016 and released in December that year: see P Dutton, Minister for Immigration and Border Protection, *Child Protection Panel*, media release, Department of Immigration and Border Protection, Canberra, 16 December 2016.
- 10 Exhibit 51-001, 'Child Safeguarding Framework', Case Study 51, AG.DIBP.02.0030.001.0068\_R.
- 11 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0056\_R.
- 12 Exhibit 51-001, 'Child Safeguarding Framework', Case Study 51, AG.DIBP.02.0030.001.0068\_R at 0073\_R; See also Transcript of M Allison, Case Study 51, 6 March 2017 at 26222:29–30; Transcript of C Moy, Case Study 51, 6 March 2017 at 26237:2–6.
- 13 This Royal Commission has no jurisdiction to investigate the response of a sovereign government, such as the Government of Nauru, to child sexual abuse in immigration detention. Our terms of reference include, however, responses to child sexual abuse in institutional contexts, where the response took place in Australia. The department's appointment of the CPP and its consideration of the CPP report, including responses to alleged incidents of child sexual abuse in the Nauru Regional Processing Centre, is an example of how the Australian Government has responded to allegations of child sexual abuse at the Nauru Regional Processing Centre and in Australia.
- 14 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0009\_R.
- 15 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0010\_R.
- 16 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0017\_R.
- 17 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0017\_R.
- 18 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0017\_R.
- 19 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0009\_R, 0027\_R.
- 20 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0027\_R.
- 21 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0024\_R.
- 22 Transcript of M Allison, Case Study 51, 6 March 2017 at 26205:43–6; Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0011\_R.
- 23 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0025\_R.
- 24 Exhibit 51-002, 'Statement of Cheryl-Anne Moy, Department of Immigration and Border Protection', Case Study 51, STAT.1309.001.0001\_R at 0015\_R; Transcript of M Allison, Case Study 51, 6 March 2017 at 26221:26–31.

25 Transcript of M Allison, Case Study 51, 6 March 2017 at 26221:45–26222:6.  
 26 *Migration Act 1958* (Cth) s 4AA(1); Exhibit 51-001, ‘Managing Cases Involving Children – Supporting Material’,  
 Case Study 51, AG.DIBP.02.0034.002.0052\_R at 0052\_R.  
 27 Exhibit 51-001, ‘Managing Cases Involving Children – Supporting Material’, Case Study 51, AG.DIBP.02.0034.002.0052\_R  
 at 0052\_R. The department’s adherence to this approach has also at times been questioned: see J Phillips & H Spinks,  
*Immigration detention in Australia*, Commonwealth Department of Parliamentary Services, Canberra, 2013, pp 12, 25.  
 28 Exhibit 51-001, ‘Making Children Safer - The wellbeing and protection of children in immigration detention and regional  
 processing centres’, Case Study 51, AG.DIBP.02.0029.001.0001\_R; Transcript of M Pezzullo, Case Study 51, 6 March 2017  
 at 26179:5–11.  
 29 Section 189(1) of the *Migration Act 1958* (Cth) requires the detention of all unlawful non-citizens in Australia’s migration zone.  
 30 For example, Transcript of M Allison, Case Study 51, 6 March 2017 at 26201:24–6, 26214:29–40; Exhibit 51-001,  
 ‘Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing  
 centres’, Case Study 51, AG.DIBP.02.0029.001.0001\_R.  
 31 *Migration Act 1958* (Cth) ss 13, 14, 189, 196.  
 32 Pursuant to s 196(1)(a) of the *Migration Act 1958* (Cth) unlawful non-citizens detained under s 189 must be kept in  
 immigration detention until removed from Australia under ss 198 or 199.  
 33 *Migration Act 1958* (Cth) ss 196(1)(aa), 198AD(3).  
 34 Section 200 of the *Migration Act 1958* (Cth) provides that the Minister may order the deportation of a person to whom  
 Part 2, Division 9 of the Act applies.  
 35 *Migration Act 1958* (Cth) s 196(1)(c).  
 36 An excised offshore place is an area falling outside Australia’s migration zone. A number of external territories and  
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*Immigration detention in Australia*, Commonwealth Department of Parliamentary Services, Canberra, 2013, pp 9–10.  
 37 Department of Immigration and Border Protection, *Immigration detention*, 2017, [www.border.gov.au/about/](http://www.border.gov.au/about/immigration-detention-in-australia/detention-facilities)  
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*Immigration detention in Australia*, Commonwealth Department of Parliamentary Services, Canberra, 2013,  
 pp 6–7; A Nethery & Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning*,  
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 39 Exhibit 51-001, ‘Australian Human Rights Commission, “The Forgotten Children - National Inquiry into Children in  
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 40 Exhibit 51-001, ‘Making Children Safer - The wellbeing and protection of children in immigration detention and regional  
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 41 Exhibit 51-001, ‘Making Children Safer - The wellbeing and protection of children in immigration detention and regional  
 processing centres’, Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0079\_R.  
 42 Exhibit 51-001, ‘Making Children Safer - The wellbeing and protection of children in immigration detention and regional  
 processing centres’, Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0020\_R–0023\_R; Australian Human Rights Commission,  
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 43 M Crock & L Berg, *Immigration, refugee and forced migration: Law, policy and practice in Australia*, Federation Press,  
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 & H Spinks, *Immigration detention in Australia*, Commonwealth Department of Parliamentary Services, Canberra,  
 2013, p 3; A Nethery & Joint Standing Committee on Migration, *Immigration detention in Australia: A new beginning*,  
 Commonwealth of Australia, Canberra, 2008, pp 3, 151.  
 45 *Migration Reform Act 1992* (Cth) (when the Act came into effect on 1 September 1994); J Phillips & H Spinks,  
*Immigration detention in Australia*, Commonwealth Department of Parliamentary Services, Canberra, 2013, pp 5–6.  
 46 J Phillips & H Spinks, *Immigration detention in Australia*, Commonwealth Department of Parliamentary Services,  
 Canberra, 2013, p 9; J Phillips, *The ‘Pacific Solution’ revisited: A statistical guide to the asylum seeker caseloads on*  
*Nauru and Manus Island*, Commonwealth Department of Parliamentary Services, Canberra, 2012, p 2.  
 47 J Phillips & H Spinks, *Immigration detention in Australia*, Commonwealth Department of Parliamentary Services,  
 Canberra, 2013, p 9.  
 48 *Migration Amendment (Detention Arrangements) Act 2005* (Cth) introducing section 195A providing the Minister with  
 discretion to grant a visa of a particular class to an individual in immigration detention when the Minister deems it in  
 the public interest to do so. A Bridging Visa E provides a person with temporary lawful status to reside in the community  
 whilst their immigration status is resolved.  
 49 *Migration Amendment (Detention Arrangements) Act 2005* (Cth) introducing section 197AB providing a non-  
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83 *Plaintiff M68/2015 v Minister for Immigration and Border Protection & Ors* (2016) 257 CLR 42 at [10] and [13] per French CJ, Kiefel and Nettle JJ.

84 These support services include the development of their status resolution processes, identifying third countries for refugees to permanently settle in and advising on the development of a child protection legal regime. See Transcript of M Pezzullo, Case Study 51, 6 March 2017 at 26182:5–16.

85 Transcript of M Pezzullo, Case Study 51, 6 March 2017 at 26183:33–45.

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95 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0022\_R.

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97 For example, they must seek permission from the department before moving residence or staying overnight at a different place, abide by a code of conduct and report to the department regularly. See Transcript of M Pezzullo, Case Study 51, 6 March 2017 at 26179:5, 26179:22–31; Department of Immigration and Border Protection, *Living in the community*, 2017, [www.border.gov.au/Trav/Refu/Illegal-maritime-arrivals/living-community](http://www.border.gov.au/Trav/Refu/Illegal-maritime-arrivals/living-community) (viewed 15 September 2017); Exhibit 51-001, 'Making Children Safer – the Wellbeing and Protection of Children in Immigration Detention and Regional Processing Centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0023\_R.

98 *Migration Act 1958* (Cth) s 197AD(1) and Note 1.

99 Transcript of M Pezzullo, Case Study 51, 6 March 2017 at 26179:5–11.

100 Transcript of C Moy, Case Study 51, 6 March 2017 at 26180:42–44.

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102 The Forgotten Children report found that almost all children in held immigration detention at the time were seeking asylum and had arrived in Australia by boat. This is consistent with the finding of the Commonwealth Ombudsman that the majority of people in detention between 2014 and 2015 were asylum seekers who arrived by boat: Exhibit 51-001, 'Australian Human Rights Commission, "The Forgotten Children - National Inquiry into Children in Immigration Detention"', Case Study 51, WEB.0186.001.3332 at 3385; Commonwealth Ombudsman, *An analysis of reports by the Ombudsman under s 4860 of the Migration Act 1958 sent to the Minister of Immigration and Border Protection 2015–16*, Commonwealth of Australia, Canberra, 2016, pp 13, 23.

- 103 Department of Immigration and Border Protection, *Immigration detention*, 2017, [www.border.gov.au/about/immigration-detention-in-australia/detention-facilities](http://www.border.gov.au/about/immigration-detention-in-australia/detention-facilities) (viewed 15 September 2017). See also Australian Human Rights Commission, *Immigration detention and human rights*, 2017, [www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights](http://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/projects/immigration-detention-and-human-rights) (viewed 15 September 2017).
- 104 L Newman AM & A Locarnini, 'Trauma and recovery – The mental health of young people from refugee backgrounds' in M Crock (ed), *Creating new futures: Settling children and youth from refugee backgrounds*, The Federation Press, Sydney, 2015, p 167; S Mares, L Newman, M Dudley & F Gale, 'Seeking refuge, losing hope: Parents and children in immigration detention', *Psychiatry and Society*, vol 10, no 2, 2002, p 96; K Zwi & S Mares, 'Stories from unaccompanied children in immigration detention: A composite account', *Journal of Paediatrics and Child Health*, vol 51, no 7, 2015, p 658; S Goosen, K Stronks & A Kunst, 'Frequent relocations between asylum-seeker centres are associated with mental distress in asylum-seeking children: A longitudinal medical record study', *International Journal of Epidemiology*, vol 43, no 1, 2014, p 95; Exhibit 51-001, 'Australian Human Rights Commission, "The Forgotten Children - National Inquiry into Children in Immigration Detention"', Case Study 51, WEB.0186.001.3332 at 3350.
- 105 *Migration Act 1958* (Cth) s 4AA(1).
- 106 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0020\_R. Department of Immigration and Citizenship, *Immigration detention statistics summary, 31 July 2013*, Commonwealth of Australia, Canberra, 2013, p 7.
- 107 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0020\_R.
- 108 Department of Immigration and Citizenship, *Immigration detention statistics summary, 31 July 2013*, Commonwealth of Australia, Canberra, 2013, p 7.
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- 114 Transcript of M Pezzullo, Case Study 51, 6 March 2017 at 26182:30–45; Transcript of M Pezzullo, Case Study 51, 6 March 2017 at 26183:28–45.
- 115 Transcript of C Moy, Case Study 51, 6 March 2017 at 26183:16.
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- 119 Exhibit 51-001, 'Making Children Safer - The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51, AG.DIBP.02.0029.001.0001\_R at 0021\_R.
- 120 For example, Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 19, 34; Exhibit 51-001, 'Australian Human Rights Commission, "The Forgotten Children - National Inquiry into Children in Immigration Detention"', Case Study 51, WEB.0186.001.3332 at 3358, 3418; Department of Immigration and Border Protection, *Submission to the Australian Human Rights Commission's national inquiry into children in immigration detention*, 2014, p 13; Commonwealth Ombudsman, *Suicide and self-harm in the immigration detention network*, Canberra, 2012, pp 27–32. In *AS v Minister for Immigration and Border Protection* [2014] VSC 593 the Commonwealth acknowledged that it owes a duty of care to provide reasonable health care to people in held immigration detention while the Minister acknowledged that it was arguable that he owed the same duty: see [24]. Section 19(2) of the *Work Health and Safety Act 2011* (Cth) provides that 'a person undertaking a business or undertaking must ensure, so far as reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking'.
- 121 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
- 122 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- 123 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 19, 34.

124 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force  
2 September 1990) arts 20(1), 22(1).

125 Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force  
22 April 1954); Protocol relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267  
(entered into force 4 October 1967); *Migration Act 1958* (Cth) s 39A.

126 United Nations High Commissioner for Refugees, *State Parties to the 1951 Convention relating to the status of Refugees  
and the 1967 Protocol*, [www.unhcr.org/en-au/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-  
protocol.html](http://www.unhcr.org/en-au/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html) (viewed 15 September 2017).

127 Exhibit 51-001, 'Australian Human Rights Commission, "The Forgotten Children - National Inquiry into Children in  
Immigration Detention"', Case Study 51, WEB.0186.001.3332 at 3418; Exhibit 51-001, 'Making Children Safer -  
The wellbeing and protection of children in immigration detention and regional processing centres', Case Study 51,  
AG.DIBP.02.0029.001.0001\_R at 0097\_R. See also our discussion of the civil liability of institutions in detail in our  
*Redress and civil litigation* report.

128 Exhibit 51-001, 'Child Safeguarding Framework', Case Study 51, AG.DIBP.02.0030.001.0068\_R at 0082\_R.

129 The key child protection legislation for each jurisdiction is as follows: *Family Law Act 1975* (Cth); *Children and Young  
People Act 2008* (ACT); *Children and Young Persons (Care and Protection) Act 1998* (NSW); *Care and Protection of  
Children Act 2007* (NT); *Child Protection Act 1999* (Qld); *Family and Community Services Act 1972* (SA) and *Children's  
Protection Act 1993* (SA); *Children, Young Persons and Their Families Act 1997* (Tas); *Child Wellbeing and Safety Act 2005*  
(Vic) and *Children, Youth and Families Act 2005* (Vic); *Family Court Act 1997* (WA), *Children and Community Services Act  
2004* (WA) and *Child Care Services (Child Care) Regulations 2006* (WA).

130 Department of Social Services, *Families and children*, 2017, [www.dss.gov.au/our-responsibilities/families-and-children/  
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years, the Secretary of the department must give the Commonwealth Ombudsman a report detailing the circumstances  
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provide the Minister with 'an assessment of the appropriateness of the arrangements for the person's detention':  
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# APPENDICES



# Appendix A Practical guidance for implementing the Child Safe Standards

This appendix describes initiatives, actions and practices to implement the Child Safe Standards. While it is a general guide for institutions, the information is not exhaustive and institutions should make their own decisions about implementing the standards. We acknowledge some actions listed below may not be practicable or necessary for some institutions.

## Standard 1: Child safety is embedded in institutional leadership, governance and culture

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A child safe institution is committed to child safety. This commitment should be supported at all levels of the institution and be embedded in an institution's leadership, governance and culture, and all aspects of the institution's business and practice.

Institutional culture consists of the collective values and practices that guide the attitudes and behaviour of staff and volunteers. It guides the way things are done and the way issues are managed, dealt with and responded to. A positive, child-focused culture could help to protect children from sexual abuse and facilitate the identification of and proper response to child sexual abuse.

### **The standard's core components**

We consider the core components of leadership, governance and culture in a child safe institution to be the following:

- a. The institution publicly commits to child safety and leaders champion a child safe culture.
- b. Child safety is a shared responsibility at all levels of the institution.
- c. Risk management strategies focus on preventing, identifying and mitigating risks to children.
- d. Staff and volunteers comply with a code of conduct that sets clear behavioural standards towards children.
- e. Staff and volunteers understand their obligations on information sharing and recordkeeping.



## Implementing the core components

### **The institution publicly commits to child safety and leaders champion a child safe culture**

The institution:

- explains in publicly available information how the institution is meeting its commitment to child safety and welcomes feedback
- addresses child safety in duty statements and performance agreements for all staff, including senior leaders and board members
- raises staff awareness about obligations to protect the safety and wellbeing of children within a broader context of supporting children's rights
- establishes and maintains a workplace culture of respect for children, regardless of their individual characteristics, cultural backgrounds and abilities
- lists child safety as a standing meeting agenda item.

### **Child safety is a shared responsibility at all levels of the institution**

To embed this responsibility in the institution's culture:

- children's cultural safety is addressed in the institution's policies and procedures
- information about child safety is accessible, regularly promoted, and staff, volunteers, children and families are encouraged to raise safety issues without fear of retribution
- staff, volunteers, children and families report that they know that child safety is everyone's responsibility and they feel empowered to have a say in and influence decisions about child safety.

Leaders of the institution:

- inform themselves about all aspects of child safety
- model and foster a commitment to child safe practices
- set accountabilities for child safe principles at all levels of the institution's governance structure
- understand the problem of child sexual abuse
- foster a culture that supports anyone to disclose safely their concerns about harm to children
- appoint to the institution's board a Child Safe Trustee or Children's Champion who is willing and able to advocate on behalf of children, and a Child Protection Coordinator who reports to the executive about the institution's child safe performance.

Staff are made aware of their responsibilities through:

- duty statements that identify roles and responsibilities (including child safety) for all positions
- an organisational chart that shows lines of authority, reporting and accountability for each position.

### **Risk management strategies focus on preventing, identifying and mitigating risks to children**

Risk management strategies support a structured approach to identifying and assessing the characteristics of an institution that may heighten the risk of child sexual abuse. They are an important tool to help keep children safe.

The institution's risk management strategy:

- is developed from a clear, evidence-informed concept of potential intentional and unintentional risks to children in an institution's specific setting. For sexual abuse, it requires knowing the characteristics of abusers and victims, and how, when and where abuse tends to occur
- has a prevention focus that addresses child safety
- has appropriate controls to identify, assess and address risks
- considers increased risk with specific roles and activities, and children with heightened vulnerability, but does not discourage positive relationships between adults and children, and healthy child development
- attends more closely to risk in situations where staff have roles that involve working alone with children or without supervision; in private settings; in intimate care routines or situations with children (for example, bathing, dressing, or counselling and guidance); and in leading or supervising others in child safety roles.

For more information, see Standard 6 below, and Volume 7, *Improving institutional responding and reporting*.

### **Staff and volunteers comply with a code of conduct that sets clear behavioural standards towards children**

A code of conduct sets out clear behavioural standards, practices or rules that are expected of individuals in an institution. This includes standards of behaviour that are expected between adults and children.

The institution's code of conduct:

- 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 acknowledgement by all staff and volunteers
- is published, accessible to everyone within 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.

For more information, see Standard 6 below, and Volume 7, *Improving institutional responding and reporting*.

### **Staff and volunteers understand their obligations on information sharing and recordkeeping**

Within the institution:

- staff and volunteers are aware of and understand their obligations in relation to data collection, information sharing and recordkeeping
- records are stored in accordance with best practice principles for access and use.

## **Standard 2: Children participate in decisions affecting them and are taken seriously**

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Children are safer when institutions acknowledge and teach them about their rights to be heard, listened to and taken seriously. Article 12 of the UNCRC details the rights of a child to express their views and participate in decisions that affect their lives. Enabling children and young people to understand, identify and raise their safety concerns with a trusted adult and to feel safe within the institution is important.

A child safe institution is one that seeks the views of children and considers their age, development, maturity, understanding, abilities and the different formats and means of communication they may use. It provides children with formal and informal opportunities to share their views on institutional issues. Children can access sexual abuse prevention programs and information, and feel confident to complain, for example, by using helplines. Staff are aware of signs of harm, including unexplained changes in behaviour, and routinely check children's wellbeing.

### **The standard's core components**

We consider the core components of children's participation and empowerment within an institution to be the following:

- a. Children are able to express their views and are provided opportunities to participate in decisions that affect their lives.
- b. The importance of friendships is recognised and support from peers is encouraged, helping children feel safe and be less isolated.
- c. Children can access sexual abuse prevention programs and information.
- d. Staff and volunteers are attuned to signs of harm and facilitate child-friendly ways for children to communicate and raise their concerns.

## Implementing the core components

### **Children are able to express their views and are provided opportunities to participate in decisions that affect their lives**

The institution:

- asks children to participate and talk about the things that affect their lives, including their safety
- embeds children's participation into institutional practices, for example, by providing opportunities for children to participate in decisions that affect their lives
- matches participation methods to the age, capabilities and cultural background of the children, and the type of institution
- creates opportunities for children to be involved in institutional governance, while also being honest with children about the extent of their involvement and giving children feedback on how their views have been actioned by the institution
- plans formal and informal times and activities for information sharing and discussion with children about broad institutional issues and/or decisions
- provides opportunities for children to give feedback to the institution, including anonymous surveys and/or suggestion boxes.

**The importance of friendships is recognised and support from peers is encouraged, helping children feel safe and be less isolated**

The institution:

- recognises the importance of children's friendships and peer support in helping children feel safe and be less isolated
- actively supports children to develop and sustain friendships (for example, a 'buddy system')
- provides children with education about safe and respectful peer relationships, including through social media.

**Children can access sexual abuse prevention programs and information**

The institution:

- provides children with access and referral to educational programs on child protection appropriate to their age, ability and level of understanding
- openly displays contact details for independent child advocacy services and child helpline telephone numbers, and explains their use to children
- arranges appropriate referrals or support for children.

**Staff and volunteers are attuned to signs of harm and facilitate child-friendly ways for children to communicate and raise their concerns**

The institution:

- establishes mechanisms that enable children to raise any complaints safely
- provides staff with resources and/or training opportunities to support children's participation
- requires staff to be vigilant to signs of harm and routinely check to see if children are okay
- provides child-focused and inclusive complaint handling processes
- allows sufficient time, opportunity and appropriate support for children with disability to raise concerns
- draws on a culturally diverse workforce to nurture and support children's diverse needs and cultural safety
- ensures sufficient time to build healthy relationships between staff, volunteers and children.

## Standard 3: Families and communities are informed and involved

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A child safe institution observes Article 18 of the UNCRC, which states that parents, carers or significant others with caring responsibilities have the primary responsibility for the upbringing and development of their child. Families and caregivers are engaged with the child safe institution's practices and are involved in decisions affecting their children. Families and caregivers are recognised as playing an important role in monitoring children's wellbeing and helping children to disclose any complaints.

A child safe institution engages with the broader community to better protect the children in its care. Institutions are more likely to foster a child safe culture if the surrounding community values children, respects their rights, and ensures that their rights are fulfilled.

### **The standard's core components**

We consider the core components of family and community involvement in a child safe institution to be the following:

- a. Families have the primary responsibility for the upbringing and development of their child and participate in decisions affecting their child.
- b. The institution engages in open, two-way communication with families and communities about its child safety approach and relevant information is accessible.
- c. Families and communities have a say in the institution's policies and practices.
- d. Families and communities are informed about the institution's operations and governance.

## Implementing the core components

### **Families have the primary responsibility for the upbringing and development of their child and participate in decisions affecting their child**

The institution:

- supports families to take an active role in monitoring children's safety across institutions
- clearly describes the roles and responsibilities of parents and carers to ensure the safe participation of children
- keeps families informed of progress and actions relating to any complaint, and discusses matters with families and carers in accordance with the law
- if it has specific expertise, may take a leadership role in raising community awareness of child sexual abuse in institutional contexts.

### **The institution engages in open, two-way communication with families and communities about its child safety approach and relevant information is accessible**

The institution:

- ensures families have seen/read information stating the institution's commitment to child safety and detailing actions it will take to meet this commitment
- ensures families know where to find the institution's code of conduct and child safe policies and procedures (these may be transmitted in fact sheets, information sessions or apps)
- ensures families know how, when and to whom complaints should be made
- uses multiple strategies and modes for communicating institutional policies and activities with families
- ensures institutional communications are publicly available, current, clear, timely, and delivered in multiple modes and formats as appropriate to a diverse stakeholder audience, taking into account cultural relevance and different levels of English language skills
- allows sufficient time to establish a rapport with families and communities, particularly for children with heightened vulnerability
- identifies barriers to communication and enacts specific strategies to overcome them.

### **Families and communities have a say in the institution's policies and practices**

The institution:

- consults families and communities on the development of institutional policies and practices
- consults families and communities on institutional decisions, where feasible and appropriate.



## Families and communities are informed about the institution's operations and governance

The institution:

- ensures families are aware of the institution's leadership team and their roles
- ensures families are aware of the roles and responsibilities of the staff delivering services directly to their children.

## Standard 4: Equity is upheld and diverse needs are taken into account

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Equity and non-discrimination are central tenets of the UNCRC. Article 2 emphasises non-discrimination and a commitment to fulfil children's rights 'irrespective of ... [their] race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. Just as the safety of children should not depend on where they live, their right to safety should not depend on their social or economic position, their cultural context or their abilities and impairments.

A child safe institution pays attention to equity by taking into account children's diverse circumstances. It recognises that some children are more vulnerable to sexual abuse than others, or find it harder to speak up and be heard, and makes the necessary adjustments to equally protect all children. A child safe institution would tailor standard procedures to ensure these children have fair access to the relationships, skills, knowledge and resources they need to be safe, in equal measure with their peers.

### The standard's core components

We consider the core components of upholding equity and meeting diverse needs of children in an institution to be the following:

- a. The institution actively anticipates children's diverse circumstances and backgrounds and responds effectively to those with additional vulnerabilities.
- b. All children have access to information, support and complaints processes.
- c. The institution pays particular attention to the needs of Aboriginal and Torres Strait Islander children, children with disability, and children from culturally and linguistically diverse backgrounds.

## Implementing the core components

### **The institution actively anticipates children's diverse circumstances and backgrounds and responds effectively to those with additional vulnerabilities**

The institution:

- learns about circumstances and experiences that increase a child's vulnerability to harm or abuse in institutional contexts
- understands barriers that prevent children from disclosing abuse or adults from recognising children's disclosures, with particular attention to children's cultural contexts, languages, cognitive capabilities and communication needs
- takes action to minimise barriers to disclosure
- focuses particular attention on safety in closed or segregated environments, such as out-of-home care, boarding schools, youth detention, some religious institutions, specialist education facilities and disability support settings
- consults with a range of stakeholders from diverse backgrounds and with the necessary expertise (including children, families and communities) in developing institutional strategies for addressing all of the Child Safe Standards.

### **All children have access to information, support and complaints processes**

The institution:

- recognises and respects diverse backgrounds, identities, needs and preferences
- provides culturally safe and culturally responsive child-friendly services
- uses translation services and bicultural workers with knowledge of child abuse issues, particularly to facilitate disclosure, reporting and complaint handling
- provides accessible information in multiple formats for individuals with different levels of English literacy and proficiency, modes of communication, languages and cognitive abilities
- accesses external expert advice when required, such as cultural advice or disability support.

### **The institution pays particular attention to the needs of Aboriginal and Torres Strait Islander children, children with disability, and children from culturally and linguistically diverse backgrounds**

The institution:

- strives for a workforce that reflects diversity of cultures, abilities and identities
- implements awareness training as part of induction and ongoing staff education, with specific content related to Aboriginal and Torres Strait Islander children, children with disability, children from culturally and linguistically diverse backgrounds, and others with particular experiences and needs

- makes clear reference in its policies and procedures to additional considerations related to Aboriginal and Torres Strait Islander cultures, disability, culturally and linguistically diverse backgrounds, and other experiences and needs
- implements and monitors the outcomes of specific strategies tailored to the needs of Aboriginal and Torres Strait Islander children, children with disability, and children from culturally and linguistically diverse backgrounds, to ensure their safety and participation in the organisation.

## Standard 5: People working with children are suitable and supported

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Human resource management, through screening, recruitment and ongoing performance review, can play an important role in protecting children from harm.

Child-focused human resource practices help screen out people unsuitable for working with children or discourage their application. Such practices make sure child safety is prioritised in advertising, recruiting, employment screening, and selecting and managing staff and volunteers. During induction processes, all staff and volunteers should be given clear conduct and behavioural guidelines, such as a code of conduct. Child safe institutions recognise that WWCCs can detect only a subset of people who are unsuitable to work with children, and that these checks should be part of a suite of screening practices.

### The standard's core components

We consider the core components of human resource management in a child safe institution to be the following:

- a. Recruitment, including advertising and screening, emphasises child safety.
- b. Relevant staff and volunteers have WWCCs.
- c. All staff and volunteers receive an appropriate induction and are aware of their child safety responsibilities, including reporting obligations.
- d. Supervision and people management have a child safety focus.

## Implementing the core components

### **Recruitment, including advertising and screening, emphasises child safety**

Employment advertising packages include:

- the organisation's statement of commitment to being a child safe institution
- the institution's code of conduct, and child safe policy and procedures
- specific selection criteria concerning attitudes to and application of child safety measures to which applicants must respond
- job descriptions and duty statements that set clear expectations about child safety, including induction and training.

Recruitment, selection and screening procedures:

- show clearly documented recruitment procedures and processes
- verify applicants' identity, qualifications and professional registration
- involve children and/or families where feasible and appropriate
- include thorough, structured interviews
  - providing clear information to applicants about the institutional commitment to child safety
  - assessing the values, motives and attitudes of job applicants who will work directly with children
  - establishing why the applicant is leaving their current job
  - thoroughly assessing the applicant's professional experience, qualifications and competence to work with children
- include stringent and careful reference checks
  - involving direct conversations with at least two professional referees
  - including the applicant's current or most recent employer
  - ascertaining, where possible, the applicant's attitudes and behaviours in previous child-related roles
  - ascertaining whether the applicant has ever been involved in any complaint processes
- check that staff have formal qualifications commensurate with their role and responsibilities, or are informed they will be expected to engage with and qualify in relevant study

- encourage a culturally diverse workforce to nurture and support children's cultural safety
- ensure human resources staff and interview panels have the appropriate education and training to dispense their obligations appropriately and effectively
- are followed by recruitment agencies, labour suppliers, contractors and volunteers.

### **Relevant staff and volunteers have WWCCs**

The institution:

- requires staff and volunteers to undertake screening procedures including criminal history checks to assess a person's fitness to work with children as specified in law (for example, WWCCs)
- builds in allowance for revalidation.

### **All staff and volunteers receive an appropriate induction and are aware of their child safety responsibilities, including reporting obligations**

The institution's induction for new staff and volunteers:

- is a documented process and tracked through a register for new staff and volunteers
- occurs immediately after appointment and, ideally, before work with children begins
- provides instruction on
  - children's rights
  - respect for children, regardless of their individual characteristics, cultural backgrounds, and abilities
  - the code of conduct and child safe policies and procedures
  - strategies that identify, assess and minimise risk to children
  - how to respond to a disclosure from a child
  - complaints processes, including how to respond to a complaint about behaviour towards children
  - reporting obligations (including mandatory reporting) and procedures including format, content and destinations for reports
  - protections for whistleblowers
- is more detailed for staff working in roles and situations with higher risk, for example, with children who may be more vulnerable to maltreatment
- is reviewed regularly.

## Supervision and people management have a child safety focus

The institution's people management includes:

- a probationary employment period for new staff and volunteers, to allow time to assess suitability to the position
- regular reviews of staff and volunteer performance, including adherence to the code of conduct and child safe policies and procedures
- opportunities to formally or informally raise concerns about harm or risk of harm to children
- appropriate responses to concerns about performance in the institution's code of conduct
- feedback on staff performance from children and/or families, where feasible and appropriate
- a structure and process for professional supervision and support.

## Standard 6: Processes to respond to complaints of child sexual abuse are child focused

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A child-focused complaints process is an important strategy for helping children and others in institutions to make complaints. Child safe institutions respond to complaints by immediately protecting children at risk and addressing complaints promptly, thoroughly and fairly.

A child safe institution has clear and detailed policies and procedures about how to respond to complaints. Staff and volunteers understand their responsibility for making a complaint promptly if they become aware of concerning behaviours, as well as their reporting obligations to external authorities. Complaint processes specify steps that need to be taken to comply with requirements of procedural fairness for affected parties, have review mechanisms, and ensure any disciplinary action that is taken withstands external scrutiny in accordance with relevant employment law and other employer responsibilities.

### The standard's core components

We consider the core components of complaint handling in a child safe institution to be the following:

- a. The institution has a child-focused complaint handling system that is understood by children, staff, volunteers and families.
- b. The institution has an effective complaint handling policy and procedure which clearly outline roles and responsibilities, approaches to dealing with different types of complaints and obligations to act and report.
- c. Complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met.

## Implementing the core components

### **The institution has a child-focused complaint handling system that is understood by children, staff, volunteers and families**

The institution:

- ensures children, staff, volunteers and families know who to talk to if they are worried or are feeling unsafe
- takes all complaints seriously and responds promptly and appropriately, as detailed in clear procedures
- has an open culture that supports safe disclosure of risks of harm to children
- provides information in accessible, age-appropriate and meaningful formats to children and families who use the service, mindful of their diverse characteristics, cultural backgrounds and abilities
- offers a variety of avenues for children to make complaints
- provides information about its complaint handling process, including how to make a complaint and what to expect.

### **The institution has an effective complaint handling policy and procedure which clearly outline roles and responsibilities, approaches to dealing with different types of complaints and obligations to act and report**

The institution's complaint handling policy includes:

- approaches to dealing with different types of complaints, including concerns, suspicions, disclosures, allegations and breaches
- links to the code of conduct and definitions of various forms of abuse, including sexual abuse and sexual misconduct
- actions to be taken where the subject of a complaint is a staff member, volunteer, parent, another child or person otherwise associated with the institution. In the case of a staff member, for example, this may include supervision, removal of contact with children or being stood down
- detailed guidance on how institutional members (including senior management, supervisors, staff and volunteers) should respond to allegations, including steps for reporting externally as required by law and/or the complaint handling policy
- communication, referral and support mechanisms for staff, volunteers, children and their families



- approaches to dealing with situations in which a child may cause abuse-related harm to another child
- a clear commitment that no one will be penalised or suffer adverse consequences for making a complaint.

**Complaints are taken seriously, responded to promptly and thoroughly, and reporting, privacy and employment law obligations are met**

When a complaint is made, the institution can show that:

- children are consulted and have input into the design of a complaint process and access to a support person at all times
- responses are quick and thorough and relevant people are kept informed of the progress, outcomes and resolution of the complaint
- cooperation occurs with investigating authorities, including police
- personal information arising from complaints is treated in accordance with the law
- effective recordkeeping practices are used in accordance with the law
- all complaints are documented regardless of whether the complaint meets statutory reporting thresholds.

Given the significant issues that we have heard regarding complaint handling, further guidance is available in Chapter 3 of Volume 7, *Improving institutional responding and reporting*.

## Standard 7: Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training

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A child safe institution promotes and provides regular ongoing development opportunities for its staff and volunteers through education and training, beginning with induction. Child safe institutions are ‘learning institutions’, where staff and volunteers at all levels are continually building their ability and capacity to protect children from harm.

This standard is premised on all staff and volunteers receiving comprehensive and regular training, including induction on the institution’s child safe strategies and practices, as well as broader training on child protection.

### **The standard's core components**

We consider the core components of staff education and training in a child safe institution to be the following:

- a. Relevant staff and volunteers receive training on the nature and indicators of child maltreatment, particularly institutional child sexual abuse.
- b. Staff and volunteers receive training on the institution's child safe practices and child protection.
- c. Relevant staff and volunteers are supported to develop practical skills in protecting children and responding to disclosures.

## Implementing the core components

### **Relevant staff and volunteers receive training on the nature and indicators of child maltreatment, particularly institutional child sexual abuse**

Training has the following features:

- Training is culturally responsive to the needs of Aboriginal and Torres Strait Islander, migrant, refugee and multi-faith communities and to the needs of people with disability; for example, by being delivered jointly by bilingual and/or bicultural workers and interpreters.
- Training is evidence based and provided by expert trainers relevant to the institutional context.
- Training resources and tools are consistent, simple, accessible and easy to use. Materials are tailored to meet the needs of the particular institution with respect to individual characteristics, cultural backgrounds and abilities, and the roles of workers and volunteers.
- Training covers specific topics including
  - children's rights and children's perceptions of what makes an institution safe
  - respect for children, regardless of their individual characteristics, cultural backgrounds and abilities
  - the indicators of child sexual abuse
  - how to respond to indicators and disclosures of child sexual abuse
  - definitions and examples of child sexual abuse and grooming/manipulation
  - the characteristics of victims, offenders, and risky environments and situations
  - combating stereotypes of both victims and offenders
  - understanding and responding to harmful behaviours by a child towards another child.

- Methods used in training include presentation of information, interactive discussion, values clarification, worked examples, role play and feedback.
- Training programs are regularly and externally reviewed including in response to the emerging evidence base.

### **Staff and volunteers receive training on the institution's child safe practices and child protection**

Training on the institution's policies and practices:

- is provided to all staff on induction and through frequent refresher training (for example, annually)
- includes records of participation to ensure all personnel attend training sessions
- covers institutional risk management, code of conduct, child safe policies and procedures, including specific information on reporting obligations, complaints mechanisms and protections
- includes examples of where, when, how, to whom and by whom child sexual abuse can occur in institutional settings.

### **Relevant staff and volunteers are supported to develop practical skills in protecting children and responding to disclosures**

The institution:

- provides more detailed training for staff working in roles and situations with higher risk, such as closed or segregated settings or with children who may be more vulnerable to maltreatment
- provides training that empowers staff with the knowledge and competencies to identify risks, prevent sexual abuse, report complaints and respond appropriately
- trains senior leaders, supervisors and staff engaged in recruitment processes to be alert to signs of unusual attitudes towards children (for example, if applicants profess to have 'special relationships' with children, disagree with the need for rules about child protection, or have a desire to work with children that seems focused on meeting their own psychological or emotional needs)
- provides advanced training for senior leaders and supervisors and children's champions
- briefs all staff and volunteers on how to respond to children who disclose through a variety of mechanisms
- provides training that prepares staff to respond to critical incidents, such as complaints of child sexual abuse.

## Standard 8: Physical and online environments minimise the opportunity for abuse to occur

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Certain physical and online environments can pose a risk to children. Institutions seeking to be child safe could improve safety by analysing and addressing these risks, reducing opportunities for harm and increasing the likelihood that perpetrators would be caught.

A child safe institution designs and adapts its physical environment to minimise opportunities for abuse to occur. The institution finds a balance between visibility and children's privacy and their capacity to engage in creative play and other activities. It consults children about physical environments and what makes them feel safe.

Child safe institutions address the potential risks posed in an online environment, educating children and adults about how to avoid harm and how to detect signs of online grooming. The institution articulates clear boundaries for online conduct, and monitors and responds to any breaches of these policies.

### The standard's core components

We consider the core components of a child safe physical and online environment to be the following:

- a. Risks in the online and physical environment are identified and mitigated without compromising a child's right to privacy and healthy development.
- b. The online environment is used in accordance with the institution's code of conduct and relevant policies.

### Implementing the core components

#### **Risks in the online and physical environment are identified and mitigated without compromising a child's right to privacy and healthy development**

To minimise risks, the institution would have the following features:

- effective natural surveillance with few out-of-the-way places, taking into account children's right to privacy
- routine movements of responsible adults to provide formal and informal line-of-sight supervision

- rooms with large, unobstructed windows or observation panels (including for sensitive places such as principals', chaplains' or counsellors' rooms).
- surveillance equipment (for example, CCTV) installed in high-risk environments where natural surveillance is not feasible, taking into account children's right to privacy and complying with sector standards
- consultation with children about physical and online environments and what makes them feel safe
- consideration of the age, gender mix and vulnerabilities of children in the setting
- random checks of obstructed and out-of-the-way locations (for example, dressing rooms, first-aid rooms or sporting grounds away from main buildings)
- open discussions of children's safety, the nature of organisational activities, the quality of equipment and the physical environment
- a strong prevention and awareness focus, by educating children, parents, staff, volunteers and the institution's stakeholder community about online safety and security.

#### **The online environment is used in accordance with the institution's code of conduct and relevant policies**

The institution:

- routinely monitors the online environment, reporting breaches of its code of conduct or child safe policies in accordance with the institution's complaint handling processes
- reports serious online offences to police in accordance with mandatory reporting obligations
- provides education and training about the online environment that is consistent with its code of conduct and child protection and other relevant policies, and addresses the use of mobile phones and social media.

## **Standard 9: Implementation of the Child Safe Standards is continuously reviewed and improved**

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Child safe institutions know it is a significant challenge to maintain a safe environment for children in a dynamic organisation. The institution's leadership maintains vigilance by putting in place systems to frequently monitor and improve performance against the Child Safe Standards. An open culture encourages people to discuss difficult issues and identify and learn from mistakes. Complaints are an opportunity to identify the root cause of a problem and improve policies and practices to reduce the risk of harm to children. Where appropriate, the institution seeks advice from independent specialist agencies to investigate failures and recommend improvements.

### **The standard's core components**

We consider the core components of continuous review and improvement of child safe practices to be the following:

- a. The institution regularly reviews and improves child safe practices.
- b. The institution analyses complaints to identify causes and systemic failures to inform continuous improvement.

## Implementing the core components

### **The institution regularly reviews and improves child safe practices**

The institution:

- regularly reviews and records its implementation of the Child Safe Standards, including improvement mechanisms
- is regularly audited for all of the Child Safe Standards, either internally or externally by an independent, specialist agency
- maintains a culture of awareness to ensure that policies and practices are implemented and routinely reviewed, even though staffing may change.

### **The institution analyses complaints to identify causes and systemic failures to inform continuous improvement**

The institution:

- undertakes a careful and thorough review to identify the root cause of the problem, any systemic issues (including failures), remaining institutional risks and improvements to institutional policies and practices. This is undertaken as soon as a complaint is made, and again when it is finalised
- may consider employing an external expert or agency to offer an independent case review, which should be underpinned by the following key features
  - a preventive, proactive and participatory approach to ensure everyone understands, and has confidence in, the institution's child safety approach
  - accountability for maintaining child safe policies and practices that are communicated, understood and accepted at all levels of the institution
- can show the ways in which policies and practices have changed, when the need for improvement is identified

- if serving children who are at risk, more vulnerable or hard to reach, gives attention to the evolving evidence base in relation to the safety of all children, being mindful of their individual characteristics, cultural backgrounds and abilities
- if employing staff in roles that involve working either alone or without supervision with children, or in intimate care situations with them, gives attention in the institution's review and continuous improvement process to the evolving evidence base in relation to effective risk management in these contexts.

## Standard 10: Policies and procedures document how the institution is child safe

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A child safe institution has localised policies and procedures that set out how it maintains a safe environment for children. Policies and procedures should address all aspects of the Child Safe Standards. The implementation of child safe policies and procedures is a crucial aspect of facilitating an institution's commitment to them.

### **The standard's core components**

We consider the core components of policies and procedures in a child safe institution to be the following:

- Policies and procedures address all Child Safe Standards.
- Policies and procedures are accessible and easy to understand.
- Best practice models and stakeholder consultation inform the development of policies and procedures.
- Leaders champion and model compliance with policies and procedures.
- Staff understand and implement the policies and procedures.

### Implementing the core components

#### **Policies and procedures address all Child Safe Standards**

The institution's policies and procedures incorporate the intent of all Child Safe Standards to ensure the best interests of children are placed at the heart of their operation and central to their purpose.



## **Policies and procedures are accessible and easy to understand**

The institution's child safe policies and procedures are:

- readily and publicly accessible (for example, there is a link to them from the institution's website home page that is no more than three clicks from the home page, or available on public noticeboards)
- downloadable or available as a single Word or PDF document
- provided to staff and volunteers at induction, and communicated further via education and training
- ideally available in multiple modes for individuals with different levels of English literacy and proficiency, modes of communication and access to digital technologies (for example, multiple languages/dialects, visual aids/posters, audio and audio visual resources)
- ideally available in child-friendly and developmentally appropriate formats that pay attention to children's diverse characteristics, cultural backgrounds and abilities
- provided to staff and volunteers at induction, and communicated further via education and training.

## **Best practice models and stakeholder consultation inform the development of policies and procedures**

In institutions working primarily or exclusively with children, policies and procedures are subject to regular external review.

Specific administrative details appear on the policies and procedures document, including:

- the effective date, review date, author(s), and executive approval details
- a list of related documents or policies that must be read in conjunction with the child safe policies and procedures (including relevant legislation, regulations).

The policies and procedures document:

- states the underlying institutional child safety values or principles
- defines terms used in the policy
- specifies to whom the policy applies and the responsibilities of staff and volunteers
- defines the different types of child maltreatment covered by the policy
- lists indicators of possible abuse and how to respond
- specifies legal reporting obligations for staff and volunteers
- includes a diagram that shows reporting chains (for example, a decision tree)
- describes what actions to take if a child is at imminent risk of harm
- clearly identifies when reports are to be made and the relevant authority to whom they should be directed (including reporting child sexual abuse to the police)
- sets out child safe education and training requirements (including frequency) for staff and volunteers.

### **Leaders champion and model compliance with policies and procedures**

Leaders in the institution:

- can access appropriate experts/mentors when dealing with complaints
- develop collaborative relationships with other relevant organisations and stakeholders to share knowledge about implementing practical child safety measures.

### **Staff understand and implement the policies and procedures**

Staff and volunteers in the institution:

- are aware of, have read, understand and intend to follow the child safe/child protection policies and procedures and can provide examples in which they have done this
- receive adequate training and education regarding the policies and procedures and how to implement them
- know that they are required to comply with reporting obligations concerning suspected or known child sexual abuse
- know who to approach with concerns or questions.

# Endnotes

- 1 D Palmer, *The role of organisational culture in child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, p 15.
- 2 K Kaufman & M Erooga, *Risk profiles for institutional child sexual abuse*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2016, pp 10–11.
- 3 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- 4 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- 5 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), art 2.
- 6 The term 'learning organisation' was developed by PM Senge, *The fifth discipline: The art and practice of the learning organization*, (A Currency paperback. ed.), Doubleday/Currency, NY, 1990, 1994, 2006.

# Appendix B Child Protection Panel’s final report and department’s response

**Table B.1 – Final Report Recommendations and Responses**  
**Source: Australian Government, Department of Immigration and Border Protection**

Item	Recommendation	Department’s response	Comments
<b>RECOMMENDATION 1</b> <b>[Section 6]</b> The Department review its operational framework for community detention to ensure that the:			
1a.	current and emerging risks to children and families in the changing community detention environment are fully understood and acted upon	Partially accepted, noting that it is not possible for the Department to be present with families in the community to fully identify all emerging risks.	The Department is developing a risk management framework related to child safeguarding which will support officers and service providers in identifying and mitigating risks where they arise. When developing policies and procedures regarding child welfare matters for children in Community Detention, the Department will take into account identified risks and require service providers to implement mitigation strategies.
1b.	services available to detainees are tailored to their needs, including enhanced support and transitional arrangements	Accepted.	

**RECOMMENDATION 2****[Section 6]**

The Department work with community detention service providers to strengthen performance around the:

2a.	capability of service provider and subcontractor staff to identify and act upon emerging risks to the safety of children	Accepted.	
2b.	capability of front-line support staff to respond to critical incidents	Accepted.	
2c.	rationalisation of reporting arrangements between the Department, service providers and subcontractors	Accepted.	

**RECOMMENDATION 3.****[Section 7]**

That the Department review the management of unaccompanied minors (UAMs) in community detention, to ensure that:

3a.	contractual arrangements for the provision of day-to-day care of unaccompanied minors (UAMs) include expertise in out-of-home care, as well as settlement services	Partially accepted as the Department does not deliver 'Settlement Services.'	Settlement Services are delivered by the Department of Social Services and are not an entitlement of UAMs in Community Detention.  The Department will review the services provided as a part of our UAM care model in Community Detention and will seek variances to SRSS contracts to specify expertise requirements.
3b.	a 'transition from care' scheme is established that extends current levels of support to UAMs beyond their 18th birthday where this is required, especially for the purpose of completing school	Accepted.	Once a minor turns 18, if deemed in their best interests, the Department can extend the support provided under the UAM Programme on a case by case basis.



**RECOMMENDATION 4****[Section 8]**

That the Department give effect to the Child Safeguarding Framework (the Framework), by:

4a.	finalising the stated policies, procedural instructions, operating procedures and supporting material, that underpin the Framework	Accepted.	
4b.	ensuring that service provider and subcontractor policies that support child wellbeing and protection are amended to align with the Framework	Accepted in principle.	The Department will work with Service Providers to ensure that their policies and procedures as they relate to the delivery of departmental services align with the Child Safeguarding Framework.
4c.	ensuring that Detention Superintendents and Field Compliance Operations Superintendents have the necessary authority and knowledge to fulfil their accountabilities under the Framework	Accepted.	Noting, the Department does not hold legislative powers relating to child protection.

**RECOMMENDATION 5.****[Section 8]**

That the Department complete a review of the implementation and effectiveness of the Framework within 18 months of its endorsement, with particular focus on the:

5a.	effective exercise of accountability and control by Detention Superintendents and Field Compliance Operations Superintendents	Accepted.	Noting control is only exercisable in a held detention environment.
5b.	quality assurance and policy roles of the Child Protection and Wellbeing Branch	Accepted.	
5c.	use of the 'triple track' approach to incident response	Accepted.	

**RECOMMENDATION 6.****[Section 8]**

That the Department continue to build sound working relations with state and territory authorities on child protection matters, to:

6a.	ensure the reciprocal flow of information about child protection matters	Accepted in principle.	Noting that the Department is not privy to all information held by Child Protection Authorities.
6b.	establish a common understanding of the processes followed by each party so that complex cases can be effectively resolved	Accepted.	Noting that each jurisdiction specifies their own processes.
6c.	seek to brief law enforcement, judicial, and mental health authorities to enhance their understanding of Australian Government immigration detention arrangements	Accepted in principle.	The Department has current relationships with law enforcement authorities who work with DIBP regarding immigration matters. The Department will brief external agencies as required regarding Immigration Detention arrangements.
6d.	seek the leave of the relevant court or tribunal to appear and make submissions relating to a held or community detention issue	Accepted in principle.	The Department seeks leave on a case by case basis on the advice of legal counsel.

**RECOMMENDATION 7.****[Section 8]**

That the Department develop an enhanced incident categorisation system, in conjunction with service providers, that accurately identifies the number, nature and seriousness of incidents, including child abuse.

7.	As above.	Accepted.	The Department is currently reviewing the incident categorisation system and will consult with stakeholders in regard to its usage.
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**RECOMMENDATION 8.****[Section 8]**

That the Department strengthen its capacity to conduct child safeguarding inquiries by:

8a.	ensuring effective leadership and management of inquiries by Detention Superintendents and Field Compliance Operations Superintendents	Accepted.	
8b.	requiring service providers to deliver accurate and complete incident reporting	Accepted.	Current requirements exist however the Department will consolidate requirements with the development of the new incident categorisation system.
8c.	establishing regular multi-agency forums to coordinate and facilitate the outcomes of child protection investigations	Accepted in principle.	The Department has regular established forums with service providers to identify, discuss and address systemic issues relating to services provided. The establishment of multi-agency forums will require the agreement and cooperation of law enforcement and child welfare authorities who already have established state based forums. The Department will discuss with each State Authority, noting that the State Authority has statutory responsibility for child protection investigations.
8d.	ensuring that inquiries are not finalised until all available facts are established and effectively responded to	Accepted.	
8e.	ensuring that any complaint withdrawals are fully documented and transparent.	Accepted.	

**RECOMMENDATION 9.****[Section 8]**

That the Department develop, in conjunction with relevant service providers, case management standards for children in immigration detention. Further, the Department should design a complex-case management protocol, in consultation with Detention Superintendents and Field Compliance Operations Superintendents, within the ambit of the Child Safeguarding Framework.

9.	As above.	Accepted in principle.	The Department has current case management standards and arrangements for status resolution. We will work with other areas in the Department to include child welfare protocols in case management so as not to develop multiple levels of case management that are disparate to the family unit or individual's status resolution. This includes consideration of child welfare case management being included in the review of Status Resolution Policy and the Detention Capability Review.
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**RECOMMENDATION 10.****[Section 8]**

That the Department ensure that Detention Superintendents and Field Compliance Operations Superintendents, service providers and subcontractors are aware of, and have access to, appropriate professional services that are required in complex child wellbeing and protection cases.

10.	As above.	Accepted.	The Department requires service providers to provide suitably qualified staff (contractors and sub-contractors) to fulfil their contract requirements. This includes their access to professional services and training. Additionally, the Department is looking to establish a panel of providers with child protection expertise who can be engaged to advise on specific cases.
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**RECOMMENDATION 11.****[Section 8]**

That the Department:

11a.	extend its risk-assessment mechanisms to ensure that they specifically address the safety of children in immigration detention, including  i. children under the age of six years and others known to be at high risk of abuse	Accepted.	The Department will ensure all risk assessments for children in Immigration Detention are considered for vulnerabilities related to age and other factors.
11a.	ii. recidivist persons of interest	Accepted.	
11b.	introduce a risk-assessment process around the movement of children and their families	Accepted.	
11c.	extend the National Detention Placement Model to include the needs of, and mitigation of the risks faced by, children and families in immigration detention	Accepted.	

**RECOMMENDATION 12.****[Section 8]**

That the Department identify, assess and effectively respond to:

12a.	children who have been the victims of abuse on multiple occasions	Accepted in principle.	The Department will respond within the bounds of our authority and influence.
12b.	persons of interest who have been involved in multiple child abuse incidents	Accepted in principle.	The Department will respond within the bounds of our authority and influence.



**RECOMMENDATION 13.****[Section 8]**

That the Department continue to implement the findings of the review of internet safeguards conducted by the Department's Detention Assurance Team, including:

13a.	the restriction of data-transfer capability	Accepted in principle.	Without interrupting an individual's capability to lodge their immigration documentation.
13b.	the capacity to identify users of departmental computers in immigration detention facilities	Accepted in principle.	Staff use is currently identified. Capacity to identify users who may share passwords will limit capability to identify individuals.
13c.	a regular review of data access records to identify unlawful and inappropriate access	Accepted in principle.	Please see 13a and 13b.
13d.	age-appropriate access to online and other digital media	Accepted.	In held detention facilities and with the guidance of parents.

**RECOMMENDATION 14.****[Section 8]**

That the Department improve its management of case-related information, including by:

14a.	developing a mechanism to ensure that officers who need this information know where it is and how to access it	Accepted.	
14b.	integrating the currently fragmented information holdings relating to children and their families in immigration detention	Accepted in principle.	The Department will identify appropriate and relevant systems that should be integrated in regard to these information holdings; and assess capability and timing to implement integration.

**RECOMMENDATION 15.****[Section 8]**

That the Department:

15a.	ensure that all relevant information on the history and background of the child and the person of interest (POI) is communicated to all relevant stakeholders (including state and territory authorities), when the child or POI is moved within or outside the immigration detention network	Partially accepted.	<p>The Department accepts this recommendation, noting the importance of distinguishing between persons of interest who have had an accusation made against them and persons of interest who have been convicted or equivalent in relation to a child protection incident.</p> <p>The Department agrees to notify the relevant state or territory child welfare authority when a person of interest moves into community detention.</p>
15b.	seek consent, where necessary, from the detainee concerned to authorise the sharing of information to enhance the services to be provided – or consider if there are other grounds to lawfully disclose the information.	Accepted in principle.	The Department undertakes to discuss with individuals the benefit of them disclosing matters to local child welfare and law enforcement authorities in order to access specific services.

**RECOMMENDATION 16.****[Section 8]**

That the Department develop its intelligence capability in the immigration detention network to address child abuse risks, in line with the findings of the Integrated Intelligence Capability Review, so that:

16a.	the incidence of child abuse is reduced	Accepted.	
16b.	intelligence products are used to inform decision making	Accepted.	

**RECOMMENDATION 17.****[Section 8]**

That the Department consider providing a copy of this (CCP Final) report to the Royal Commission into Institutional Responses to Child Sexual Abuse, drawing its attention to the enhancements that could be made to Australia's mandatory reporting arrangements

17.	As above.	Accepted.	Provided.
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**Royal Commission**  
into Institutional Responses  
to Child Sexual Abuse

Commonwealth of Australia

Royal Commission into Institutional  
Responses to Child Sexual Abuse

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