



## **CARE LEAVERS AUSTRALASIA NETWORK**

CLAN is a National, Independent, Peak Membership Body which supports, represents and advocates for people who were raised in Australian Orphanages, Children's Homes, Foster Care & Other Institutions.

### **Consultation Paper: Best Practice Principles in Responding to Complaints of Child Sexual Abuse in Institutional Contexts**

CLAN would like to thank the Royal Commission into Institutional Responses to Child Sexual Abuse for the opportunity to respond to this consultation paper. It is essential that complaints mechanisms are investigated and in many cases overhauled. Unfortunately the sheer number of child abuse victims indicates that both past and current complaints processes are not working effectively. More needs to be done to encourage children to make complaints in the first instance and also to ensure that those handling complaints are doing so in a way that serves the best interests of the child.

CLAN would like to comment on some general areas of your consultation paper.

#### **1. Best Practice Principles**

CLAN agrees with the six best practice principles published in this consultation paper. We feel that these are common sense principles when it comes to ensuring the best interests of children are at the forefront of any complaints policy that is in place. Underpinning any complaints process needs to be the protection of children within institutions, particularly those in the child welfare system who may be lacking a parent or guardian to speak for them or advocate for their rights.

There are a few points that CLAN would like to emphasise which have been raised regarding the best practice principles.

Firstly, in regards to sharing information CLAN believes that a child's best interests always need to take precedence over privacy laws. If a child's safety is at risk privacy laws need to be overridden, and workers need to have a thorough understanding of these laws and their responsibilities. CLAN has seen examples of workers ignorance of privacy laws stop them from disclosing information that they should be able to reveal. Workers need to understand that a child's wellbeing should be at the forefront of their decision making, and if they do not adhere to this there needs to be repercussions.

**Secondly, CLAN are extremely disappointed in the Royal Commission's comments regarding previous negative experience with authority being limited to those with refugee backgrounds or the indigenous population.** The Royal Commission must have heard thousands of stories by now of Care Leavers negative experiences with authority and their general mistrust of those in authoritarian positions. After hearing this evidence it astounds CLAN that Care Leavers (or those in care) were not included in a statement like this, evidencing that the Royal Commission still does not understand the needs or the plight of Care Leavers. In regards to having a child focused policy, **CLAN would like to point out that many if not all the Care Leavers we support have a mistrust of authority.** Those operating within the child welfare system need to understand the general mistrust that many vulnerable children will experience, particularly those who have spent some time within the child welfare system, or those who have had family in the child welfare system before them. **Therefore more needs to be done to help ALL children (not just those in specific cultural groups) approach those in positions of authority to disclose abuse to or make a complaint to.** As mentioned in prior submissions CLAN proposes all children should be accompanied by an independent advocate in situations such as these.

Furthermore, CLAN believes that in order for a complaints system to be accessible and understandable for all children in care, all children must be given an age appropriate information sheet when they enter care (for those old enough to read). This information sheet should be written in simple English and be explained to all children who are old enough to understand by an independent advocate. For those too young to read or understand, an independent advocate is even more vital to keep a close eye on these children and speak for them until they have a voice. Furthermore, all complaints and outcomes should be fully documented on each child's state ward file or any other record that is kept regarding that child. All information regarding investigations including full names of accused or those who have taken any complaints including police officers should also be documented. Any other identifying information like their occupation or which agency they are from should also be included. Furthermore, CLAN feel that all those who work with children especially in the child welfare system should wear badges with their full name, position and what agency they are from, in order for children to be able to easily identify either their perpetrator or who they complained to.

CLAN also strongly agrees with the Royal Commission that if for any reason the police do not choose to investigate a matter, or if charges aren't laid it is still necessary for the institution to investigate the matter. There are many reasons as your Consultation paper discusses that matters may not progress with the police. However the fact that a complaint has been made means that it needs to be thoroughly investigated and appropriate action needs to be taken.

CLAN again takes issue with the mention of child to child sexual abuse listed foremost when discussing the types of complaints. As stated in our previous response to the consultation paper regarding sexual abuse in OOHC, child to child sexual abuse does not form the majority of sexual abuse of children in care. This is a fact established in your own paper. However the Royal Commission has not yet

retracted its incorrect statement regarding child to child sexual abuse, and the fact that it is once again discussed first in this paper is worrying to our organisation. We do not want children and the public to misconstrue the prevalence of this abuse. It can lead to devastating consequences and gives paedophiles another excuse or way to manipulate parents and children and even staff and agencies. It may also lead to difficulties with children disclosing and being believed if they have been abused by an adult. We once again urge the Royal Commission to publicly retract your former statement and to give much needed focus to the majority of child sexual abuse. Whilst we understand that it is important to look into this under-investigated issue it does not need to take the prevalence it has been.

Additionally in the section 'Types of Complaints' your paper fails to discuss current substantiated complaints and how these should be dealt with. Whilst we are glad to see that historical complaints are discussed, we do feel that this is a major oversight in a paper of this sort, considering that child to child sexual abuse is mentioned, anonymous complaints, historical complaints, and unsubstantiated or false complaints are also mentioned. This Royal Commission needs to place more focus on the majority of complaints which would be current complaints which may be able to be substantiated of abuse perpetrated by adults. CLAN also looks forward to the day that the Royal Commission releases a discussion paper on female perpetrators, a topic which seems to be under-investigated, under-reported, and when it comes to sentencing an inequality between male and female perpetrator sentences.

Recently, CLAN has been supporting a 22 year old Care Leaver who endured cruelty by her foster carer along with her foster siblings. One of these former foster children had actually made a complaint to her caseworker about the cruelty she was made to endure. Her caseworker responded to her that her foster sisters and brothers would be too upset if she left them and did she want to do that? Her foster carer became aware of the complaint and coerced her into retracting it asking her if she wanted it to all go away and to end. This foster child was then taken to the department to retract the allegation. She was consequently made to sit in a room with six adults from the department and the foster carer which she was intimidated by. This case is not historical, it is still going on and complaints are still not being taken seriously.

This case exemplifies the need for an independent advocate looking out for children in the child welfare system, someone who can objectively look at the situation and advocate for the child whether it's against the foster parents or against the various Departments of Child Welfare. CLAN takes issue with so many things in this case but in regards to complaint handling this case also brings up questions such as who are handling complaints at these state departments? Why was there a need for six adults and one helpless child to be in a room together accentuating the balance of power? What is being done with these complaints afterwards? Are all of these complaints being recorded? There needs to be a register for all complaints regardless of the outcome.

On another point, CLAN would like to reiterate the importance of children in care, especially those who have been abused receiving some sort of counselling or therapy

immediately after a disclosure of abuse. Your paper while well intentioned speaks of the importance of referral to other professionals with experience in dealing with child abuse issues; more is needed to be done. Referrals are only the first step. It must be followed up on to ensure that children in the child welfare system actually get the counselling they need. In the Royal Commissions former paper on sexual abuse in OOHC CLAN did state that we endorse counselling for ALL children in state care not just those who have disclosed abuse. We feel that in this way disclosures will be made sooner and the child will be better supported from the get go. However if this process was not to occur then we would like to see some sort of process whereby counselling is mandated for children after their abuse to start them on the process of recovery to be able to function in the world.

Throughout a complaints process, as we have already advocated in this response paper, we feel strongly about children having an independent advocate. This consultation paper makes mention of offering an advocate if a child so wishes, however we would like to see this taken a step further and see an advocate enlisted for each child in the child welfare systems around Australia. This advocate is then given the responsibility of being at important events, meetings, complaints hearings or submissions and other appropriate occasions. This will help to see ALL children's rights upheld in child welfare systems.

With regards to a complaints process or an investigation which follows a complaint, we are of the belief that there needs to be constant communication between the organisation and the individual. Most if not all CLAN members experience anxiety, and this anxiety only grows whilst they are waiting to hear back about an outcome for a case. In order to minimise this, workers need to be in constant communication with the individual who has made the complaint. Training from CLAN regarding Care Leaver issues would assist and would help workers to understand the types of behaviours and emotions that Care Leavers endure and how they can work to better their interactions with both children in care and those who have left care.

## **2. Oversight of Complaints Handling**

CLAN proposes that every jurisdiction in Australia have an independent body such as an ombudsman or children's guardian office which all organisations who deal with children are reportable to. There needs to be an independent organisation conducting investigations which arise from serious complaints, separate to the organisation itself. This independent body would have a mix of people with the right qualifications as well as the lived experiences of child abuse; this would obviously include a Care Leaver also. As long as organisations are responsible for monitoring themselves children will always slip through the cracks and adults will get away with harming children. We need transparency and accountability, and when organisations handle everything internally we have neither.

Any serious complaint to an organisation should be forwarded to the independent body that then has the responsibility of liaising with the organisation and the victim. This independent body will then decide whether to investigate a situation or not,

depending on the type of allegations or to hand over investigation to the police. This independent body will have the authority to hand down sanctions and to enforce these sanctions upon organisations. This would differ to an organisation such as the ombudsman which would make recommendations for action to be taken. Having an independent body would eliminate the need or the issue with smaller organisations not having the same manpower or skills base to handle complaints to the same degree that large organisations do.

Once an investigation is over and a case is complete, we feel it is the victims right to have a copy of all documents pertaining to the investigation and the handling of the case. Releasing this information allows for further transparency but also supports victims in overcoming their trauma.

[REDACTED]

Lastly, whilst we understand the Royal Commission is focused on child sexual abuse we would like to reiterate the importance of implementing all of these sorts of changes to minimise the occurrence of all other forms of child abuse also. There are many ways to harm a child, not just sexually. There have been too many cases in years past of children being murdered or seriously injured due to physical violence. All off these changes need to be made with this in mind; you have the ability to curb all abuse against children with the right recommendations and reforms, not just sexual abuse.