

CHILD PROTECTION AND SOCIAL SERVICES SYSTEM

Organisation: Association of Children's Welfare Agencies (ACWA)

Date Received: 10 December 2020

CHILD PROTECTION AND SOCIAL SERVICES SYSTEM

Organisation: Association of Children's Welfare Agencies (ACWA)

Date Received: 10 December 2020

10 December, 2020

The Hon. Matthew Mason-Cox MLC
Chair
Committee on Children and Young People
Parliament House, Macquarie Street, Sydney NSW 2000.

Dear Mr Mason-Cox,

Re: Inquiry into the child protection and social services system

I am writing to thank you for inviting the Association of Children's Welfare Agencies (ACWA) to make a submission to the Committee on Children and Young People's Parliamentary Inquiry into the effectiveness of the NSW child protection and social services system in responding to vulnerable children and families.

As one of NSW's peak generalist bodies for the child and family sector, ACWA welcomes this opportunity to provide input into this very important Inquiry.

However, we note that we will be better placed to provide a more fulsome submission, once we have had the opportunity to review the initial submissions provided to the Committee from other key stakeholders, as well as gain a better understanding of the particular issues relating to the child protection and social services system, on which the Committee wishes to focus its attention.

In terms of this brief initial submission, we thought that it might be helpful to draw to the Committee's attention a range of matters that are outlined in our Annual Report (*Attachment 1*), which are relevant to the Inquiry's Terms of Reference:

1. Collaborative system transformation reform (ACWA Annual Report, page 12)

Driving better services and related outcomes for vulnerable children, young people and families, is ACWA's number one strategic goal. Related to this core objective, ACWA has prioritised the need for large scale system transformation reform across communities. This strategy acknowledges the growing recognition, across both the NSW government and non-government sectors, that no single entity can adequately respond to the needs of vulnerable children and families; and that, in order to consistently deliver strong outcomes for these clients, it is necessary to develop an efficient, effective and integrated system that can provide a response across the whole spectrum of need - from early intervention to action required for ROSH reports. (The fact that only around one third of all ROSH reports receive a face to face response, is but one compelling reason why both the government and non-government sectors need to join together in delivering broad system transformation).

This issue of the need for broad system transformation emerged from a Vulnerable Children and Young People Collaborative Sector Working Group that ACWA convened in March of this year, to address critical issues affecting children and young people resulting from the impact of COVID-19. The group identified that one important area for system reform for the future, was the need to build stronger connections

 02 9281 8822

 acwa@acwa.asn.au

 www.acwa.asn.au

 Level 3, 52-58 William Street, Woolloomooloo NSW 2011

PO Box 418 Darlinghurst NSW 1300



Patron: Her Excellency the Honourable Margaret Beazley AO QC Governor of New South Wales

between the community and education sector to help promote positive educational outcomes and to use data to identify and prompt action for those children and families in most need of support. In addition, the need to strengthen the service system's responses for meeting the needs of children during their first 2000 days, and the need to provide integrated and effective action in terms of the identification and response to very vulnerable older children and young people, were two areas that were identified as important areas for service reform.

The group also recognised the need for strong government/NGO governance arrangements to drive broad system transformation. In terms of proposed work with vulnerable older children and young people, our consultations with Youth Action and The Reach Foundation have highlighted the importance of ensuring that reform work in this area is informed by the voices of young people.

2. Collective responses to addressing discrete service system challenges

ACWA's focus on collaborative solutions to system challenges, is further reflected in the following initiatives that we have participated in this year (as outlined in our Annual Report):

- **COVID-19 responses (ACWA Annual Report, page 9)** – our joint work with the Australian Services Union, the Department of Communities and Justice (DCJ) and member agencies resulted in, among other things, the development of an emergency staffing framework, and related implementation guidelines, to ensure that residential care services could continue to safely deliver essential services to vulnerable children and young people living in residential care during the pandemic; the drafting of customised COVID-19 Guidelines and training resources to support frontline staff to manage infectious disease in residential out-of-home care settings; and a best practice consultation guide for managing and implementing significant workplace change.
- **Joint telepractice venture to support children and families across Australia (ACWA Annual Report page 11)** – this major collaborative initiative will boost capacity within our sector to deliver strong telepractice services to vulnerable and isolated children and families.
- **Joint Workforce Development Strategy (ACWA Annual Report, page 18)** – this initiative is aimed at developing and implementing an integrated workforce development and training strategy across major program areas of the child and family services sector in NSW. The overall purpose of an integrated workforce development and training strategy is to improve the effectiveness of services and programs offered to children and their families in key program areas.
- **Delivering better outcomes for vulnerable children and young people with disability (ACWA Annual Report, page 24)** – under this project, ACWA is engaging with a range of stakeholders, including out-of-home care and disability service providers, related government/regulatory agencies, peaks, carers, and children and young people, to identify and implement key strategies that will lead to enhanced practice in this sphere.
- **Enhancing Children's Court practice (ACWA Annual Report, pages 16/17)** – ACWA and DCJ are working together on a range of issues relating to care matters and Children's Court processes. The aim is to enhance the quality and consistency of practice in this critical area affecting the lives of vulnerable children and their families.

3. Broader sector advocacy (ACWA Annual Report, page19)

A key area of ACWA's advocacy work has been around securing adequate funding for family support and preservation programs, which play a critical role in strengthening the capacity of parents to safely care for their children. In this regard, our letter (*see Attachment 2*), which we sent to Minister for Families, Communities and Disability Services, Gareth Ward, ahead of the State Budget, presents a series of case studies to demonstrate the importance of this work, and highlights the necessity for guaranteed ongoing funding in this area. ACWA also joined calls by Fams and AbSec for the continuation of these crucial services.

Against this background, ACWA welcomes the NSW Government's Budget commitment to continue supporting evidence-based intervention programs that have demonstrated success in keeping families safely together (*see Attachment 3*). On this point, we also acknowledge the commitment of providers to rigorously evaluating these programs, in order to ensure they are achieving the best possible outcomes for the vulnerable children, young people and families who rely on them.

Other issues that ACWA has been advocating for include:

- Preparing a submission on behalf of other key peak agencies that argues for an intelligence-based approach to inform child protection responses, which includes the use of certain identifying data held on the Their Futures Matter (TFM) database, in circumstances where the use of this information would comply with the provisions in Chapter 16A of the Children and Young Persons (Care and Protection) Act (*ACWA Annual Report, page 21. See also Attachment 4*).
- Preparing a submission on behalf of other key peak agencies arguing for prompt action to be taken to implement the Royal Commission's recommendations for nationally consistent information sharing provisions (*see Attachment 5*).
- In terms of the very important 'Family is Culture' report, ACWA has been supporting AbSec's calls for further action to be taken in response to this report.
- ACWA has put forward a submission to the Children's Guardian relating to proposed changes to the Reportable Conduct Scheme; in particular, ACWA is willing to work with AbSec, its member agencies and the Guardian on measures that would be designed to strengthen the quality and consistency of responses in this area (*ACWA Annual Report, page 20*).

4. Critical issues impacting the out-of-home care sector (ACWA Annual Report, pages 13/14)

As outlined in our Annual Report, there are more than 600 children and young people living in residential care (*page 13*). This number highlights the need for targeted and creative responses, including effective strategies for recruiting more carers, and the related need to expand the availability of innovative carer models to support those children and young people with very complex needs who aren't having their needs met within the existing system.

As a related issue, ACWA has also been undertaking targeted work with DCJ and our member agencies on curbing the unacceptable number of children and young people living in Alternative Care Arrangements (ACAs) - such as in hotel or motel care arrangements or other forms of care with non-accredited providers. In terms of outcomes, the sector's efforts over the past 14 months has resulted in a significant decrease in ACA numbers, from a peak of 199 in October 2019, to 75 in December 2020.

While this significant decrease is welcome, the fact that there are still 75 children and young people in these placements, serves to illustrate the need for more innovation and creativity in the care landscape. A

related issue concerns the need to reduce the number of placement breakdowns - this is a major cause of children and young people entering ACAs. Stopping placement breakdowns - by embedding within our system response the ability to provide rapid and effective support where there is a risk of placement breakdown - and, where there is a placement breakdown, having a readily available suite of options with accredited providers, are critical issues for us to focus on in terms of our goal to continue to push down the number of children and young people in ACAs.

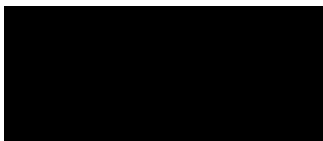
ACWA is also keen to see the establishment of a joint carer database. In order for this to be an effective business tool, there would be the need for the whole sector to have, and to uniformly and effectively utilise, a single database relating to carers and the placement of children and young people in out of home care. In our opinion, a database of this kind could provide, among other things, a broad range of critical information relating to the efficiency of the carer recruitment, assessment and support practices, as well as key placement data (including vacancy rates, and the rate of placement breakdowns across various parts of the sector).

One particular concern that ACWA has brought to Government's attention relating to out of home care, concerns our disappointment that the budget missed the mark in terms of addressing the inadequate funding for residential out of home care services that seek to support some of the most vulnerable young people in our state. This failure to provide additional funding to this area is despite the fact that we provided very detailed evidence of the very significant shortfall in the funding provided when measured against the service costs.

As mentioned above, ACWA welcomes the opportunity to contribute to the Committee on Children and Young People's Parliamentary Inquiry into the child protection and social services system. We hope that the information contained in this brief submission, along with the various attachments, provides you with useful insight into some of the critical issues that we need to tackle together to deliver better outcomes for vulnerable children, young people and their families.

ACWA looks forward to providing further information, as the key issues from the inquiry come to light.

Yours Sincerely



Steve Kinmond, OAM
CEO ACWA

Attachments

Attachment 1: ACWA Annual Report

Attachment 2: ACWA Letter to Minister Ward

Attachment 3: ACWA Media Release

Attachment 4: ACWA Joint Submission - Privacy Codes of Practice for the TFM Human Services Dataset Discussion Paper

Attachment 5: ACWA Joint Submission - National child safety and information sharing Scoping Paper

27 August 2020

The Hon. Gareth Ward, MP
52 Martin Place
SYDNEY NSW 2000

Dear Minister,

Re: Ongoing funding for Family Preservation and support programs

I am writing to you regarding the currently precarious situation regarding the ongoing funding of intensive family preservation and support programs.

I am aware of your strong commitment to ensuring the availability of effective programs of this type which are aimed at keeping families together and preventing children and young people from entering out-of-home care. As you know, the COVID-19 pandemic has significantly impacted already very vulnerable families, many of whom are likely to have endured far greater distress had it not been for the support provided by family preservation and similarly targeted programs.

It is against this background, that I'm bringing to your attention the significant concerns of my member agencies about the funding uncertainty in relation to these programs.

By way of background, on 15 July this year the Department of Communities and Justice (DCJ) wrote to providers to clarify the arrangements for extending family preservation programs. This letter highlighted previous advice to providers by DCJ on 20 March about the intention to extend their contracts, subject to final confirmation of funding availability through the 2020-21 NSW Government budget process. However, the impact of the COVID-19 pandemic has meant that the 2020-21 NSW budget process was deferred from June until October this year. As a result, DCJ indicated that it would not have a final 2020-21 budget until the budget process is completed later this year.

As you know, in June 2020 the Attorney-General endorsed an extension of a range of programs for a period of six months to 31 December 2020. The Department noted that all funded providers had only been given short-term funding extensions, and that this was not a reflection on each organisation's capacity, performance or client outcomes. However, this decision has effectively put member agencies in an invidious position due to the very limited period of guaranteed funding.

Apart from the obvious impact on providers' 2021 budgets, this decision has adversely affected providers in a number of ways. In this regard, providers have contacted me to express their significant concerns in relation to issues such as:

- **Increased client anxiety** - on the back of COVID-19 restrictions, young people particularly are experiencing increased levels of anxiety, isolation and family violence



02 9281 8822



acwa@acwa.asn.au



www.acwa.asn.au



Level 1, 191 Cleveland Street, Redfern NSW

PO Box 2107 Strawberry Hills NSW 2012



Patron: Her Excellency the Honourable Margaret Beazley AO QC Governor of New South Wales

and caseworkers are now unable to provide them with four months of guaranteed care and support.

- **Staff retention and recruitment issues** – providers have already lost quality staff due to lack of job security; while other providers are attempting to build high quality teams but are struggling to recruit good applicants due to the very limited period of funding.
- **Staff morale** – providers are seeing increased anxiety among their staff as uncertainty about how they will continue to support their clients increases, especially when they are accepting new referrals into what was supposed to be a 12-month program. There is deep concern and anxiety among committed staff, regarding what will happen to these families if the program is not funded beyond December. These concerns are compounding existing stress among staff resulting from the impact of COVID-19.
- **Unmanageable workload** – with staff leaving agencies and new referrals still coming in, providers are reporting that staff are becoming increasingly overwhelmed as they seek to juggle larger caseloads and take on extra duties.
- **Best practice service provision** – providers are concerned about fulfilling their contractual obligations given the staff retention and recruitment issues that they're currently facing.

Providers have also shared with us numerous case studies demonstrating the practical value of family preservation programs as they work with families to:

- identify and acknowledge underlying trauma
- develop and maintain essential life and parenting skills
- access suitable housing, financial assistance and appropriate support services
- overcome addiction and substance abuse problems
- engage with their own and emotions, and those of their family members
- access appropriate psychiatric assessment and treatment
- enrol their children in school and access supports for their educational needs, and
- identify and maintain support networks from within their existing circle of positive connections.

I've included several case examples below to illustrate the damage that will occur if ongoing supports to vulnerable families isn't guaranteed.

Case Study 1: An Aboriginal family whose have significant learning difficulties.

After decades of living in unstable accommodation, and facing challenges such as unemployment, substance abuse and domestic violence, the parents received specialist therapeutic support through IFP to explore their own trauma history, recognise their 'trigger points' and to "'Notice', 'Name,' and 'Neutralise' their emotions without becoming their emotions." A skilled therapist guided the family through an exploration of their values which revealed they wanted to be more connected to culture and nature. During therapy they talked of valuing loyalty, respect, commitment, love and their desire to nurture their children. Helping the parents to develop a profound connection to these values formed the foundation for behavioural change within the whole family. The family's therapist also supported the family in meetings with the children's school and other critical services. After a previous history of unproductive engagement with a range of government services, this family is now living

without intervention from services other than the NDIS, and there have been no further ROSH reports in the 12 months since they completed the IFP program.

Case Study 2: Supporting the restoration of children to their mother

A family with a single mother in her 30s and two daughters, aged 5 and 9, entered an IFP program when the children were restored to their mum. Prior to the restoration, the children had spent time in temporary foster care following an incident in which they had been found wandering alone in a theme park while their mum was sleeping off the effects of drugs and alcohol. In fact, the family had an extensive history with the Department, including domestic violence and possible sexual harm perpetrated towards the girls by their father, a known sex offender. Initial exploration of the mother's childhood revealed that she had been adopted by her grandparents; had a significant history of family violence and sexual abuse; had been detained in Juvenile Justice Centre for two years from age 12; and had given birth to a child (who was given up for adoption) at age 16. Drug addiction and prostitution followed, as well as jail time for involvement in a serious offence. While incarcerated, she was diagnosed with ADHD. She also suffered anxiety and panic attacks, 'flashbacks' and insomnia, and had no idea how to cook, clean, play with her children or be a parent. The IFP helped this mum develop her parenting skills, including teaching her to cook, clean the home, setting routines, manage her children's behaviour and engage emotionally with them. Additionally, she was supported to access a psychiatric assessment and related treatment – this resulted in a diagnosis of PTSD. She was also assisted to reconnect with positive people from her past to create a support network for the family. Her daughters were supported to access sporting activities and enrol in school with learning plans developed to address their additional needs. This family is now doing well, with both girls thriving in school, and mum receiving ongoing support for her PTSD. They continue to access services provided by the NGO.

Case Study 3: Helping a father to create a safe home for his daughter

A young father and daughter were referred to the IFP because of ongoing child protection concerns, including - drug use, homelessness (transience), neglect and family violence. The father was allocated a male IFP caseworker who was able to quickly build a rapport with him. IFP used its strong working relationship with a housing provider to have the family quickly housed in stable, social housing. The caseworker supported the father through the court process to finalise an AVO protecting him and his daughter from extended family members. The father received DV education and a safety plan to safeguard him and his daughter against further violence. He remained clean throughout the program and worked hard with his caseworker on drug relapse prevention. The daughter started pre-school to build on her social and emotional development. After completing the IFP program, this father was able to continue to develop his parenting skills with community support.

Case Study 4: Creating a network of supports for a family

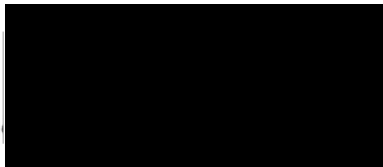
A mum and dad entered the IFP with a clear need for support to develop parenting skills and build connections with a range of services to help them on the right path. The caseworker engaged with both sets of grandparents, as well as other family members to provide 'in-home' supports to help minimise the parents' stress. Mum and dad received education on communication and conflict resolution strategies, which has had a positive impact on their communications with each other. The caseworker also engaged the children through conversation and play to identify their needs and crucially, spent time observing and

monitoring the family's progress. Mum also received training, support and guidance across a range of topics that were aimed at helping her to build a positive attachment with her children and a safe and nurturing environment. Considerable work was undertaken to identify the right mental health services for mum, including advocating via her GP to access a psychiatrist – this led to her receiving a mental health diagnosis and cognitive behavioural therapy paid for by an ongoing bulk-billing arrangement. Mum was also connected to outpatient services to deal with her substance abuse problems, and supported her to engage with antenatal services. Assistance was provided to help the family apply for long term, affordable housing with a priority housing application granted. The family was able to move into new stable accommodation and were helped with their relocation, including to furnish their new home. The caseworker also obtained financial support with bills and emergency relief from a charity and arranged financial counselling and budget assistance. Prior to their engagement with the IFP, the family had a substantial child protection history spanning a number of years, but the Department has now been able to discontinue its involvement with the family, because they now possess the necessary tools to improve their parenting independently, and access services in the future if required.

In light of the obvious practical benefits delivered by family preservation and support programs, ACWA is seeking your strong support for the Government to guarantee ongoing funding for these programs. For the reasons outlined, we would ask that you communicate to Government the urgent need for early advice along these lines.

I appreciate your consideration of this critical issue facing vulnerable children and families in NSW and look forward to receiving your early response.

Yours sincerely



Steve Kinmond
ACWA CEO

MEDIA RELEASE

NOVEMBER 18, 2020

NSW Budget: ACWA welcomes early intervention dollars

The Association of Children's Welfare Agencies (ACWA) has welcomed the NSW Government's continued investment in initiatives aimed at supporting the safety and wellbeing of vulnerable children and families, as announced in the NSW State Budget.

ACWA CEO, Steve Kinmond, said ACWA is particularly pleased to see the government maintain its ongoing commitment to funding critical family support and preservation programs that seek to strengthen the capacity of parents to safely care for their children.

Among the raft of budget measures, \$171.9 million has been earmarked over the next four years to continue supported evidence-based intervention programs that have demonstrated success in keeping families safely together.

"The drop in the numbers of NSW children entering out-of-home care of recent times stands as testament to the success and necessity of these types of programs," Mr Kinmond said.

"Early action is the best investment we can make to keep children safe and families together. In this regard, it is extremely encouraging to see the government acknowledge and act upon this, through the allocation of ongoing funds."

Mr Kinmond has also welcomed the government's focus in this year's budget on improving educational supports for students, particularly those who are most vulnerable.

"The educational inequality experienced by disadvantaged children and young people has been a longstanding concern for ACWA and our members," he said.

.... /More

 02 9281 8822

 acwa@acwa.asn.au

 www.acwa.asn.au

 Level 3, 52-58 William Street, Woolloomooloo NSW 2011

PO Box 418 Darlinghurst NSW 1300



Patron: Her Excellency the Honourable Margaret Beazley AO QC Governor of New South Wales

The Association of Children's Welfare Agencies Ltd is a company limited by guarantee registered with ASIC under the Corporations Act 2001 (ABN 24 459 406 828 ACN 629 007 727)

“On a related note, we are also encouraged to see funds channelled into delivering 100 new school-based nurses to support the health and wellbeing needs of students and their families.”

By contrast, Mr Kinmond said that ACWA is disappointed the budget has missed the mark in terms of addressing the inadequate funding for residential out-of-home care services that seek to support some of the most vulnerable young people in our state.

“Throughout the year, ACWA has provided detailed evidence that demonstrates the inadequate funding in this area,” he said.

“Despite this evidence, the funding shortfall has not been addressed in the budget.”

The Association of Children's Welfare Agencies is the NSW peak body representing non-government organisations that provide services to vulnerable children, young people and their families.

Media contact:



26 August 2020

Mr Gary Groves
Executive Director
Stronger Communities Investment Unit
Department of Communities and Justice
Level 1, 191 Cleveland St,
Redfern, NSW 2016

[REDACTED]

Dear Mr Groves,

Re: Submission from child and family peak bodies on the Discussion Paper – Privacy Codes of Practice for the TFM Human Services Dataset

Thank you for inviting the peak bodies in NSW which represent the interests of vulnerable children, young people and their families to provide feedback on your discussion paper relating to the Privacy Codes of Practice for the Their Futures Matters (TFM) Human Services Dataset (July 2020).

We note that the intention is for the Stronger Communities Investment Unit (SCIU) to initially prepare a privacy impact assessment as a precursor to developing a Privacy Code of Practice and a Health Privacy Code of Practice (Privacy Codes) to sustain the Human Services Dataset as an enduring asset for the NSW Government. The current Public Interest Direction is due to expire on 13 July 2021.

As you would be aware, Ms Cheng, Director, Investment Modelling, Research and Evaluation, along with other SCIU staff, consulted ACWA together with the following peak body representatives during a meeting on 23 July 2020:

- Julie Hourigan-Ruse, CEO, FAMS
- Pam Young, CEO, YFoundations
- Kate Munro, CEO Youth Action

Our discussions principally focused on the potential for the very valuable insights gained from the Human Services Dataset (and future iterations) to be utilised to inform decisions which promote the safety, welfare and wellbeing of certain cohorts of children and young people, in accordance with the information sharing provisions contained in Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*. It was agreed during the meeting that the peak bodies would provide the SCIU with a joint submission

regarding the above issue – along with brief additional observations regarding the future inclusion of other data sets, including from the NGO sector.

ACWA indicated that it would commission former inaugural Australian Information and Privacy Commissioner and both Commonwealth and NSW Ombudsman, Professor John McMillan, AO to review our submission. In doing so, ACWA also undertook to seek input from additional peak bodies with a relevant interest who did not participate in the July meeting – AbSec, CAPS and CREATE – all seven peak bodies are referred to as the ‘signatories’ in the remainder of this document.

Key observations

By way of an opening observation, we wish to stress that the signatories strongly support the value of the NSW Government maintaining and continuing to update the Human Services Dataset (HSD) as an enduring asset, given its critical value to ongoing system transformation work across the government and non-government sectors.

In this regard, we welcome the updates which have taken place to the first iteration of the dataset via the inclusion of data for the period ending 30 June 2019, and importantly, the addition of government school attendance and suspension data, which had been absent from the initial publication of the HSD and *Forecasting Future Outcomes – 2018 Insights Report* – commissioned by TFM.¹

Utilising the synthesised agency line data underpinning the Human Services Dataset

A primary concern for the signatories is that the discussion paper does not recognise that the Chapter 16A information sharing provisions sit alongside the proposed Privacy Codes, and that the existence of a Privacy Code would not inhibit the use of the very valuable insights gained from the analysis of the linked agency datasets, to inform targeted service interventions with the children and young people and their families, who make up the highly vulnerable cohort groups described in the Insights Report (these cohorts are discussed further on page 5). We note that to-date, the insights gained from the HSD have not been utilised to direct the type of frontline work described above.

As you are aware, the HSD was created in response to the 2015 Tune Review into out-of-home care which recommended a cross-agency database to inform the development of an investment approach to better enable the reprioritisation of cohorts with the greatest need and resource allocation for the greatest benefit.

¹ Taylor Fry, *Forecasting Future Outcomes – Stronger Communities Investment Unit – 2018 Insights Report*, 2018.

The data collected in the HSD provides a comprehensive view of service usage pathways at the individual level for all NSW residents born on or after 1 January 1990, and individuals related to them (including family members, guardians, carers). The first iteration of the dataset included the records of almost seven million individuals held by government agencies across the human services spectrum who were aged 0 to 28 at the time.

More than a decade ago, the NSW Ombudsman's Office successfully advocated for the creation of information sharing provisions of the type that are contained in Chapter 16A. Importantly, in recommending legislative amendment to permit exchange of information between human services and justice agencies, and these agencies and the NGO sector, His Honour Justice Wood specifically stated that:

...The amendments should provide, that to the extent inconsistent, the provisions of the *Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002* should not apply. Where agencies have Codes of Practice in accordance with privacy legislation their terms should be consistent with this legislative provision and consistent with each other in relation to the discharge of the functions of those agencies in the area of child protection.' [See Recommendation 24.6].²

The NSW Ombudsman also argued that the information sharing provisions of the type outlined above were necessary to underpin an intelligence-driven (or data driven) approach to child protection, that is, the systematic identification, sharing and analysis of agency information holdings to find those children and families most at risk in individual locations, and using the resulting analysis to provide the identified cohorts with better targeted and more effective services.

The value of an intelligence-driven approach to child protection was well illustrated in data presented in the NSW Ombudsman's submission to the Special Commission of Inquiry on Early Intervention and Prevention, and while it was prepared 12 years ago, it remains highly relevant to this issue of the value of cross-agency linked datasets, having highlighted the following:³

Over recent years, the department has been undertaking significant work in relation to analysing the frequency and nature of the reports it receives. For example, the department's data indicates that 11 percent of sibling groups generate close to 50 percent of the total reports received by the department. In

² **Recommendation 24.6** *The Children and Young Persons (Care and Protection) Act 1998* should be amended to permit the exchange of information between human services and justice agencies, and between such agencies and the nongovernment sector, where that exchange is for the purpose of making a decision, assessment, plan or investigation relating to the safety, welfare and well-being of a child or young person in accordance with the principles set out in Chapter 24. The amendments should provide, that to the extent inconsistent, the provisions of the *Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002* should not apply. Where agencies have Codes of Practice in accordance with privacy legislation their terms should be consistent with this legislative provision and consistent with each other in relation to the discharge of the functions of those agencies in the area of child protection.

³ NSW Ombudsman, Submission on Early Intervention and Prevention, Special Commission of Inquiry into Child Protection Services in NSW, 12 May 2008, pp11-13.

this regard, DoCS' research has shown that in 2005-06, fifty percent of the 241,003 risk of harm reports made to DoCS related to around 7,200 sibling groups.

.....

However, while we understand that local CSCs will have some idea as to the high risk families within their area, there is nothing in place to ensure that there is a systematic collection and analysis of the information obtained from child protection reports to identify these families. The department's own research demonstrates why it is essential that each CSC is fully aware of the relatively small percentage of families within their area who generate approximately half of the reports received.

By way of contrast, it is worthwhile considering the policing profession. Like DoCS, police receive hundreds of thousands of reports each year. Police data also demonstrates that there are a limited number of individuals and sub-groups within our community who commit most of the crimes.

Over the past 10 – 15 years, the policing profession has changed dramatically in terms of how it carries out its business of crime reduction and prevention. Increasingly, police have used their information holdings to drive their operational practice.

In particular, the police use their information systems to assist in identifying patterns of criminal activity and the high-risk offenders who are behind much of this activity. From the corporate level down to the local level, the data is analysed and then applied to inform the deployment of police resources.

If we take domestic violence matters as an example, police use their data holdings to develop profiles of both high-risk offenders and high-risk victims. Informed by these profiles, police can then make 'evidence based' decisions about which matters should be prioritised, and what kinds of crime prevention strategies should be employed.

This shift by police towards a much more sophisticated intelligence-based practice provides a blue-print for DoCS. Some of the excellent data analysis which DoCS has already carried out supports this proposition.

Such practice would allow the department to better utilise the vast amount of information it receives to make more informed decisions about those who are most in need of support. Intelligence driven child protection practice would also allow better identification of many of those families who require a coordinated interagency response.

.....

However, in discussing intelligence-based practice, it is important to also recognise that possessing the necessary IT capacity represents only one component of this type of practice. The other elements concern the need for ongoing sophisticated analysis of information holdings, and the ability to translate this analysis into well informed decisions about which families are most in need of a response and the nature of the response which should be provided. For these essential elements to be embedded in practice requires:

- 1. a sound intelligence policy framework;*
- 2. structural and governance arrangements capable of driving the department's intelligence practices, particularly at the corporate and local CSC levels; and*
- 3. skilled staff at the corporate and local level dedicated to use and develop the department's intelligence practices.*

While the above submission focused on 'frequently encountered families' data held by 'DoCS', in subsequent investigations and reviews carried out by the NSW Ombudsman, the need for a mechanism to pull together critical risk-related data held by other human service and justice agencies to form a more complete picture of risk was highlighted in successive Ombudsman public reports.⁴

Therefore, the announcement that the SCIU (formerly TFM) would be compiling a linked agency dataset to inform much awaited system transformation work was welcomed by the community services sector. However, the enthusiasm for this work was also predicated on an assumption that in addition to the published investment modelling contained in the 2018 Insights Report and Data Visualisation Tools, that lead human services agencies would also utilise the insights gained from the analysis of the linked agency data contained in the HSD, to undertake better targeted child protection work and related place-based service delivery reform. However, at the time that the Publication Interest Direction was sought to enable the creation of the HSD, there was no reference to the Chapter 16A information sharing provisions sitting alongside the Direction to promote the use of the resulting 'data insights' to inform operational child protection work.

The objects and principles underpinning Chapter 16A make clear that the needs and interests of children and young persons, and of their families, in receiving services, take precedence over the protection of confidentiality or of an individual's privacy.⁵ It is also important to note that s.245H of the Care Act makes clear that 'a provision of any other Act or law (whether enacted or made before or after the commencement of this section) that prohibits or restricts the disclosure of information does not operate to prevent the provision of information (or affect a duty to provide information) under this Chapter.'

⁴ See for example, *Addressing Aboriginal Disadvantage: The Need to do things differently*, August 2011; *Keep Them Safe?*, August 2011; *Responding to Child Sexual Abuse in Aboriginal Communities*, January 2013; *Review of the NSW child protection system – Are things Improving?* April 2014.

⁵ See section 245A91)(d)

In highlighting the above provision, we are not seeking to suggest that the full linked dataset underpinning the HSD should be utilised by human services agencies or other prescribed bodies 'at large'; however, we believe there would be considerable merit in the proposed Privacy Code specifically recognising the related information sharing legislation, by making clear that the Code does not inhibit the use of the insights gained from the linked dataset to promote the safety, welfare and wellbeing of particular children and young people identified in the high risk cohort groups. Nor would the Privacy Code preclude any agency that contributed information to the linked dataset from separately using that information in the normal course of agency business.

In this regard, it is clear from the 2018 Insights report commissioned by TFM – *Forecasting Future Outcomes* – that particular children and young people comprising certain (not all) cohorts, have had repeated contact with the child protection and/or criminal justice systems. This fact is best illustrated by the cohorts contained in section 6 of the report, which include:⁶

- **Vulnerable young children aged 0-5** – children aged 5 or younger as at 30 June 2017 with any of the following risk factors: one or more parental risk factors; two or more peri-natal risk factors; assessment at ROSH+.
- **Vulnerable young adolescents** – Anyone born in NSW who was aged between 10 and 14 at 30 June 2017 with any of the following risk factors in the five years prior: justice system interactions; assessment at ROSH+ or parental risk factors of interacting with the justice system, mental illness, AOD or domestic violence.
- **Vulnerable young people transitioning to adulthood** – Anyone born in NSW who was aged between 16 and 18 as at 30 June 2017 with any of the following risk factors in the five years prior: justice system interactions; or assessment at ROSH+.

It is noteworthy that a precondition for each cohort group is that the child/young person was assessed at risk of significant harm plus (ROSH+), whereas this is not necessarily the case for other vulnerable cohorts discussed in sections 7, 8 and 9 of the report, including: 'children of young mothers and 'young adolescents with mental health risk factors.' Therefore, the data relating to children and young people contained in the section 6 cohorts, would appear to be particularly relevant to our central submission.

Finally, we would submit that in undertaking the privacy impact assessment and related submission to the NSW Privacy Commissioner, the SCIU should consider recommending that the 'Statement of Objectives' (of the kind currently in clause 6 of the Privacy Commissioner's Direction) includes a statement reflecting that the existence of the Code does not inhibit the insights gained from the analysis of the linked agency dataset from being utilised for the purposes of targeted child protection work consistent with the objects of Chapter 16A. Given that the purpose of the creation and ongoing maintenance

⁶ Taylor Fry, *Forecasting Future Outcomes – Stronger Communities Investment Unit – 2018 Insights Report*, 2018.

of the HSD is to improve the long-term outcomes for vulnerable children and young people and their families, specifically recognising that both legislative instruments – the Code and the Chapter 16A – sit alongside each other and have similar objectives, is in our submission, highly beneficial to promoting effective service delivery to those most vulnerable in this state.

The potential for linkage to non-government datasets

As noted previously, we welcome the more recent inclusion of public school data relating to attendance and suspension in the HSD. However, as you are aware, given the substantial proportion of students in the non-government schools' sector, we would support the inclusion of data from the independent schools sector in future iterations, and would encourage consultation taking place with the relevant peak bodies representing the independent schools' sector to pursue this issue further.

In relation to the merits of including a broader range of non-government data in future iterations of the HSD, at this stage, we would simply note that it is difficult for the signatories to reach an informed position on this issue, given that there are a range of factors that would need to be discussed and worked through, in order to ensure that any future data provided is both reliable and consistent across the NGO sector, and in a streamlined manner given current administrative data entry and reporting burdens being experienced.

We trust this submission will be valuable in informing your privacy impact assessment and related privacy code development work. Thank you again for inviting our agencies to provide feedback and we look forward to future discussions on this important child safety issue.

Signatories:

Julie Hourigan-Ruse, **CEO FAMS**

Pam Young, **CEO, YFoundations**

Kate Munro, **CEO Youth Action**

Bill Pritchard, **A/Executive Leader, AbSec**

Reegan Barber, **CEO, CAPS**

Steve Kinmond, **CEO, ACWA**

Mohita Kapoor, **NSW State Coordinator,
CREATE**

13 November 2020

National Office for Child Safety
Department of Prime Minister and Cabinet
1 National Circuit
Barton ACT 2600

By email: NationalOfficeforChildSafety@pmc.gov.au

Submission on national child safety and wellbeing information sharing

Thank you for providing non-government organisations with an opportunity to respond to the *Scoping Paper: national child safety and information sharing* in order to assist the interjurisdictional child safety working group.

This joint submission has been prepared by ACWA, on behalf of leading peak bodies in NSW working to support vulnerable children, young people and their families.

This submission is informed by our practical knowledge and experience of the critical importance of effective information sharing provisions that promote the safety, welfare and wellbeing of children and young people, and the persistent barriers that undermine information exchange between jurisdictions. In particular, it draws on our observations about the operation and benefits of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*.

In addition, as the former NSW Community and Disability Services Commissioner and Deputy Ombudsman, my role included overseeing the reportable conduct scheme, reviewing child deaths, and monitoring and reviewing the delivery of community services for 14 years, which gave me insights into the implementation of the information sharing provisions in NSW, which the NSW Ombudsman's Office successfully advocated for during the Wood Special Commission of Inquiry into Child Protection Services in NSW (2007-2009).

The working group would be aware that the Royal Commission into Institutional Responses to Child Sexual Abuse comprehensively drew on Chapter 16A in recommending the development of a child protection information exchange scheme across Australian jurisdictions. The Commission concluded that:

*'Of the existing information exchange schemes, the New South Wales scheme appears to offer the most promise as a model for a nationally consistent scheme for intra- and inter-jurisdictional information sharing to protect children.'*¹

The *Scoping Paper: national child safety and information sharing* invites responses to a number of questions to inform 'potential approaches to national information sharing'.² Jurisdictions have been individually and collectively considering the need to address

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017, p167.

https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_8_recordkeeping_and_information_sharing.pdf

² National Office for Child Safety, *Scoping paper: national child safety and wellbeing information sharing*, 2020, p8.

limitations to existing information exchange arrangements, and the various ways this could be done, for many years.³

Almost three years have elapsed since the Royal Commission issued its final report, which examined evidence from a range of stakeholders and sources in determining the considerations that governments should take into account in the design of a national scheme.⁴ While other jurisdictions, such as Victoria, have in recent years introduced wider information sharing provisions, Chapter 16A has been in place for more than a decade in NSW – and in our view, this represents an ample period of time to ‘stress test’ its benefits and limitations. We also note that, in its comprehensive review of this issue during its inquiry, the Royal Commission has already examined the operation of the Chapter 16A provisions within NSW.

Since Chapter 16A commenced, it has been strengthened in a range of ways, including targeted work previously conducted by the NSW Ombudsman’s Office to promote the awareness and use of the legislation by prescribed bodies, and an expansion of the definition of prescribed bodies to include health workers and child protection authorities in other states and territories. In this regard, we note that the Royal Commission found that Chapter 16A has led to significantly more information being shared than was the case prior to its introduction, and that it has enabled information from a variety of sources to be easily gathered to better inform assessments of and responses to children at risk⁵

We acknowledge that multiple sectors across all jurisdictions are critical partners in the implementation of a national scheme for information sharing. However, we strongly believe that a successful legislative and practical template for such a scheme already exists, albeit with some legislative amendments needed to better clarify the coverage of certain bodies, and we would argue that implementation should be swiftly progressed. Against this background, we have not taken the approach of individually addressing the questions in the Scoping paper. Rather, our comments below emphasise the need for prompt and decisive action to be taken by governments across the nation, to introduce the necessary legislative amendments that are required to protect the safety of children and young people.

The cross-jurisdiction information sharing gap that needs to be filled

Given the ease with which alleged perpetrators can travel between jurisdictions, either physically or via social media, widely acknowledged gaps and weaknesses in the current regime for exchanging information between states and territories continue to exist – until these flaws in the system are addressed, this unacceptable situation will continue to pose significant risks to the safety of children.

The Interstate Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance is an inadequate mechanism for facilitating the exchange of child

³ In 2012, the NSW Ombudsman reported that “as part of the work plan to implement the National Framework for Protecting Australia’s Children, the Commonwealth, in partnership with the States ‘is investigating the need for changes to legislation, most likely Commonwealth legislation, to extend the national protocol for sharing information on children at risk’.” NSW Ombudsman, *Responding to child sexual assault in Aboriginal communities*, December 2012, p173. <https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/child-protection/responding-to-child-sexual-assault-in-aboriginal-communities>

⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017.

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home-care*, March 2016, p76. https://www.royalcommission.gov.au/sites/default/files/2019-07/case_study_24_-_consultation_paper_-_out_of_home_care.pdf

protection related information across borders, for the reasons well documented in reports prepared by the NSW Ombudsman's Office in 2012 (Responding to Aboriginal child sexual abuse) and in 2018 (Inquiry into the JIRT Program).⁶ In brief, the major limitations of the Protocol are that the provisions specifically related to 'information sharing,' only refer to relevant child protection agencies providing to their interstate counterparts the information that they 'hold.'

The following case study, documented by the NSW Ombudsman, illustrates how and why this is a problem:

Community Services requested that one of its interstate counterparts obtain critical information from a school within the counterpart's jurisdiction about unconfirmed allegations that a teacher had engaged in a sexual relationship with a student when they had taught at that school. (Under the reportable conduct scheme, the teacher's current employer – a NSW school – was under a legal obligation to investigate these historical allegations.)

In response to Community Services' request, its interstate child protection counterpart advised that it did not 'hold' any information about the teacher within its own records. Community Services then requested that its counterpart seek relevant information from the relevant school within that state. In response, Community Services' counterpart advised that it did not have the authority to request the critical information from the school because it did not have the power to seek information in circumstances where it was not acting pursuant to performing its child protection responsibilities in connection with a child from within its own state.

In correspondence between Community Services and its interstate counterpart, the latter noted: 'A more national approach in this area of information sharing would be useful and valuable but unfortunately we do not have it at present.'⁷

The NSW Ombudsman's Office was advised back in 2012, that work was underway between the state and the Commonwealth to 'investigate the need for changes to legislation, most likely Commonwealth legislation, to extend the national protocol for sharing information on children at risk'. At the time, the Ombudsman's Office noted the urgent need for legislative change to guarantee that any future national protocol for interstate exchange of information is able to both facilitate and promote cross-border information exchange, particularly in circumstances where children's safety is at risk. The Ombudsman's Office also noted that there was potential for this issue to be considered by the then recently announced Royal Commission into institutional child sexual abuse, and for it to support prompt action on this issue.

The following case study was also included in the Ombudsman's 2012 report to illustrate what can be achieved when quality information is exchanged across borders.

Consistent with our employment-related child protection role, an agency in NSW recently notified us of allegations of sexual misconduct by an employee in 2005 and 2009. The 2009 allegations resulted in a sustained finding of sexual misconduct and the employee was notified to the Commission for Children and Young People. In addition, the NSW Police Force and Community Services had also conducted related

⁶ NSW Ombudsman, *Responding to child sexual abuse in Aboriginal communities*, December 2012, pp171-173; *The JIRT Partnership: 20 years on*, October 2018, Appendix 2, pp316-318.
https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0013/60322/Annexure-2-The-JIRT-Partnership-20-years-on.pdf

⁷ NSW Ombudsman, *Responding to child sexual abuse in Aboriginal communities*, December 2012, Case study 23, p172.

inquiries into the employee's conduct that confirmed he posed a significant risk to children.

In 2011, the former NSW employer received an information request from an interstate employer who was currently employing the man in child-related work and had become aware that there had been serious allegations made in NSW. The NSW employer was unclear as to whether it could legally provide the information requested. Following this case being brought to our office's attention, we coordinated a review of all relevant holdings relating to the man and requested Community Services provide a summary of these holdings to its interstate child protection counterpart. The provision of this information prompted a police investigation. This then led to police promptly laying a number of charges against him in relation to the sexual abuse of children from within that state. He recently pleaded guilty.

While there have been some enhancements to interstate information sharing arrangements since the Royal Commission released its final report, these have been focused on child protection authorities -for example, progressing information sharing about foster carers -and they do not comprehensively capture the range of agencies or situations envisaged by the Commission that require information to be exchanged to protect the safety of children.

Key elements of an effective national information sharing scheme

We endorse the Royal Commission's views that an effective national information exchange scheme should be based on nationally consistent arrangements that, at a minimum:

- enable direct exchange of relevant information between a range of prescribed bodies, including service providers, government and non-government agencies, law enforcement agencies and regulatory and oversight bodies, which have responsibilities related to children's safety and wellbeing.⁸
- permit prescribed bodies to provide relevant information to other prescribed bodies without request
- require prescribed bodies to share relevant information on request from other prescribed bodies, subject to limited exceptions
- explicitly prioritise children's safety and wellbeing and override laws that might otherwise prohibit or restrict disclosure of information
- provide safeguards and other measures for oversight and accountability to prevent unauthorised sharing and improper use of information obtained under the information exchange scheme, and
- require prescribed bodies to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action against such a person, except where to do so could place another person at risk of harm.⁹

In addition, we make the following observations:

⁸ The Royal Commission recommended that "Australian governments should consider including, as prescribed bodies under our recommended information exchange scheme, government and non-government agencies responsible for the provision or supervision of the following services: accommodation and residential services for children; childcare services; child protection services and out-of-home care services; disability services and supports for children with disability; education services for children; health services for children; and justice and detention services for children." Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017, p180.

⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017, p174.

- **Principles for the operation of the scheme**

Ultimately, information sharing by organisations with responsibilities for children's safety and wellbeing should not only be for the purpose of identifying risks, but to also facilitate informed and appropriate service responses to risks. The national information sharing scheme should be based on a common requirement and commitment across all jurisdictions, for prescribed bodies to take reasonable steps to coordinate decision making and the delivery of services relating to the safety and wellbeing of children and young people, and to work collaboratively with this common goal in mind. These requirements are enshrined as principles in Chapter 16A.

- **Threshold for triggering use of the information sharing provisions**

The threshold for using the information sharing provisions should be similar to the threshold that applies to Chapter 16A. The obligation to share information under Chapter 16A arises if the prescribed body from whom information is sought reasonably believes the information may assist in the exercise of a range of functions related to the safety, welfare and wellbeing. As noted by the Royal Commission, the inclusion of these terms means that Chapter 16A 'sets a threshold which can capture low level concerns relevant to all children, whether or not they are in care and whether or not a child protection risk has been reported or identified'¹⁰ and 'may be more likely to assist earlier identification of risk based on a totality of relevant information.'¹¹

- **Definition of prescribed bodies**

A national information sharing scheme must, like Chapter 16A, '*clearly and comprehensively capture relevant organisations regardless of contractual arrangements or funding source*'.¹²

In relation to the entities that should be 'prescribed bodies', we note that for the purposes of Chapter 16A, prescribed bodies include the NSW Police Force; NSW government departments; schools; health services and practitioners; out-of-home care providers; children's services; and 'any other organisation the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services, or law enforcement, wholly or partly to children'.

The Royal Commission considered whether the definition of 'prescribed body' should specifically include religious and sporting bodies and concluded that while it may be beneficial, further consultation is needed.¹³ On this matter, we refer the working group to the NSW Ombudsman's 2016 report, *Strengthening the oversight of workplace child abuse allegations*, which examined the Solicitor General's advice about the inclusion of these bodies in the reportable conduct scheme, and why it would be beneficial to align designated agencies under that scheme with prescribed bodies under Chapter 16A.¹⁴

The 2016 report to Parliament includes several case studies highlighting the value of agencies within the reportable conduct scheme, along with the oversight body, having 'prescribed body' status to enable information sharing – the case study below provides one such example.

¹⁰ Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home-care*, March 2016, p66.

¹¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home-care*, March 2016, p71.

¹² Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation paper: Institutional responses to child sexual abuse in out-of-home-care*, March 2016, p74-77.

¹³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report, Vol. 8: Recordkeeping and information sharing*, 2017, p192.

¹⁴ NSW Ombudsman, *Strengthening the oversight of workplace child abuse allegations*, February 2016.

A social organisation made a notification to our office that a man was engaging in grooming-type behaviours with children. At the time, the man was engaged to transport children to one of the organisation's programs, and was also informally involved in some of their other youth programs. The organisation suspended the man pending investigation of the allegations. We decided to monitor the investigation into the allegations. As a result of our review of records on the NSWPF database (COPS), we identified that the man had two completely separate, unlinked police profiles under slightly different names. One profile, created a number of years earlier, contained information relating to child sexual assault allegations against the man. The Joint Investigation Response Team (JIRT) had commenced an investigation at the time, but the victim's parents were not willing to pursue the matter and it was closed.

We obtained the details of the historical matter and identified some similarities to the current allegations. We also identified that a piece of evidence had been seized by Police and sent for forensic testing as part of its investigation into the earlier allegations, but that the case had been closed before the results were returned and the results were not recorded in COPS. We wrote to the NSWPF to advise them of the unlinked profiles; the current allegations against the man; the similarities with the earlier matter; and the existence of potentially relevant forensic evidence. We also noted that the alleged victim in the earlier matter was now an adult. In addition, as information on Community Services' database suggested that other agencies which work with children may have engaged the man's services, we contacted the relevant agencies.

In response, they confirmed that the man had previously been engaged as a volunteer. We provided this information to Police. The Police investigation of the most recent allegations determined that the man's conduct did not meet the criminal threshold. However, the Police reopened their investigation into the historical matter. The Child Abuse Squad (CAS) retrieved the results of the forensic testing and discovered that unknown male DNA had been detected. The CAS then contacted the alleged victim, who indicated a willingness to pursue the matter criminally and to assist the Police investigation. We continued to liaise with the CAS throughout its investigation. After becoming aware through other sources that the man may have been actively seeking other child-related employment and had applied for a new Working With Children Check, we ensured the Office of the Children's Guardian liaised with the NSWPF. As a result of the Police investigation, the man was charged with a number of child sexual offences relating to the historical matter, and as a result, he is currently disqualified from working with children.

The NSW Ombudsman also submitted to the Royal Commission that consideration should be given to broadening the definition of 'prescribed body' to include organisations exercising management responsibilities in respect of prescribed bodies. This issue arises in the context of some religious organisations – for example, while Catholic schools or Catholic community services would fall within the definition of 'prescribed body', the Catholic Diocese responsible for those bodies might not. Management bodies of this kind possess, and should be able to readily receive and disclose, child protection-related information. In NSW, section 245B(2A) of the *Children and Young People (Care and Protection) Act 1998* states that a reference to a prescribed body is a reference to all the parts of that body (however described). However,

that may not be sufficient to extend the Chapter 16A framework to a related entity that has a separate legal identity.¹⁵¹⁶

The NSW reportable conduct scheme was recently amended (from 1 March 2020) to include religious entities and its reach will be broadened to include the sporting and recreation sector. Given the structured mentoring and leadership programs that a number of these entities deliver in the children's service and educational spheres, it can be argued that a number of these services would already meet the definition of prescribed body (see above) as a provider of 'children's services' or 'education services.' However, the meaning of these terms has been the subject of considerable debate within NSW. Against this background, any information exchange provisions that are introduced consistent with the Royal Commission's recommendations, should ensure that there is no ambiguity of this kind in the legislation.

As you would be aware, the ACT and Victoria introduced reportable conduct schemes several years ago, based on the NSW scheme which has been operating for 21 years, and other states are currently considering adopting schemes. Therefore, it is critical that these jurisdictions have the benefit of nationally consistent information sharing provisions within their own jurisdiction to facilitate the effective operation of future reportable conduct schemes, as well as access to cross-border information sharing provisions. Relevant to this issue, we are already aware of the enormous practical challenges faced by non-government bodies that have a national footprint, due to them having to navigate the different information exchange regimes that are in force across different jurisdictions across the country. Not only is this state of affairs inefficient, the practical challenges in navigating the maze of legislation in this area can inhibit the exchange of information and put children at risk.

Concluding remarks

Finally, we would submit that while it is important to consult the various sectors representing child serving bodies about their experience of and views about information sharing practice, this work should take place alongside the need to urgently develop and introduce consistent enabling legislation in each jurisdiction and nationally.

We trust that our submission assists the interjurisdictional child safety working group.

We consent to the submission being provided to members of the working group and attributed to our organisations. If further information is required, please contact: [REDACTED]

Yours sincerely,

Signatories:

Steve Kinmond, **CEO, ACWA**

Julie Hourigan-Ruse, **CEO FAMS**

Bill Pritchard, **A/Executive Leader, AbSec**

Kate Munro, **CEO Youth Action**

Pam Young, **CEO, YFoundations**

¹⁵ It is important to note that increasingly, the delivery of child safeguarding services is being viewed as children's services.

¹⁶ NSW Ombudsman, *The JIRT Partnership: 20 years on*, October 2018, Appendix 2, p318.