

Own motion investigation into Child Protection – out of home care

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LETTER TO THE LEGISLATIVE COUNCIL AND THE LEGISLATIVE ASSEMBLY

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament a report of an investigation into Child Protection – out of home care.



G E Brouwer

OMBUDSMAN

26 May 2010

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EXECUTIVE SUMMARY

1. In my recent investigation into Victoria's Child Protection Program,¹ I examined the role of the Department of Human Services (the department) in responding to reports from the community regarding children perceived to be at risk of harm. Broadly, this role involves assessing the level of risk posed and taking appropriate action to protect the child.
2. Where a child is assessed as being at risk of significant harm in the family home, Child Protection may take steps to remove the child from the care of his or her parent(s) and place them in *out of home care*. Once the state has assumed responsibility for the care of a child in this manner, it has a duty to provide that child with a safe, stable placement which ensures his or her healthy development. In 2008-09 just under 8000 Victorian children experienced an *out of home care* placement.
3. Concerns raised by witnesses during my investigation into the Child Protection Program related to those cases where the department may have been failing in its duty to provide a safe, stable placement.
4. On 16 November 2009 I commenced a separate own motion investigation into Victoria's *out of home care* system by writing to the Minister for Community Services and the Secretary of the department. In accordance with the *Ombudsman Act 1973* I provided the Secretary, Minister and Premier with a copy of my draft report for comment before finalising my investigation. The Secretary responded that:

The draft report and recommendations provide an external perspective on the out of home care [OOHC] system and discusses the many challenges in operating a system of care for traumatised children.
5. This report examines Victoria's *out of home care* system and the level of care and protection being provided to the children within it.

The *out of home care* system

6. *Out of home care* reform in Victoria has seen a move away from the large scale group homes which dominated the system of state care up until the 1980s. The historical failings of these institutions are still a source of concern within our community.
7. While small-scale group accommodation units (called '*residential care units*') are still utilised out of necessity, they are generally not the preferred placement model for children. The system has progressively become more reliant on full-time volunteers who care for children in their own homes.

¹ Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

8. More recently, placement of children with family members or other significant persons from their social network has overtaken *foster care* as the preferred placement model. This type of placement is usually called *kinship care*.
9. *Kinship care* is growing at a faster rate than any other type of placement utilised by the department. The total number of children in *kinship care* in Victoria already exceeds the combined total of all those in *foster care* and *residential care*. The department advises that there are in excess of 2000 children in statutory *kinship care* on any one day. This figure is expected to reach 2500 by the end of June 2011.
10. The decreasing number of *foster care* placements is primarily caused by a lack of supply. The department advised that over the past 12 months regions have reported an increasing difficulty in securing suitable *foster care* placements for children. This is particularly so in relation to adolescent placements and placements in rural regions.
11. Evidence emerging from research into outcomes for children in care has eroded the assumption that simply removing children at risk of harm from their homes and placing them in care will improve their well-being. The objectives of the *out of home care* system in Victoria have broadened beyond meeting a child's basic accommodation, food, healthcare and schooling needs. This broader approach has been to the benefit of many children placed in *out of home care*.
12. The system has also shifted from being one where the department is primarily responsible for service delivery, to one where the majority of services are provided by community service organisations under service agreements with the department.
13. The department has undertaken a major review of *out of home care* which led to the release of Directions for out-of-home care in May 2009. The reform initiatives outlined in that document are in the early stages of implementation.
14. The recent Budget provided further resources toward this reform agenda announcing \$34.8 million in additional funding in addition to \$135 million over four years announced in the 2009-10 Budget.
15. Despite ongoing reforms of the *out of home care* system, some children do not experience *out of home care* placements as the secure and safe environment they should be. Rather, they are subjected to further abuse and neglect.
16. In response to my draft report the Secretary stated that it is 'crucial' that her department continue to implement its reform plans with community service organisations and carers to improve the performance and capacity of the system to meet the needs of children.

The total number of children in kinship care in Victoria already exceeds the combined total of all those in foster care and residential care.

Despite ongoing reforms of the out of home care system, some children do not experience out of home care placements as the secure and safe environment they should be. Rather, they are subjected to further abuse and neglect.

Children in out of home care are among the most vulnerable in our society. They tend to do poorly at school, are prone to mental health disorders, have poor health and have to deal with the consequences of traumatic childhood experiences.

My investigation has found instances of children who have been physically and sexually assaulted.

The sexual exploitation of young people in the out of home care system has also been identified as a significant issue.

Safety for children in care

17. Children in *out of home care* are among the most vulnerable in our society. The problems for these children are well documented. They tend to do poorly at school, are prone to mental health disorders, have poor health and have to deal with the consequences of traumatic childhood experiences.² These issues are to be expected among children who have suffered abuse and neglect from parents who have betrayed the most basic of trusts.
18. My investigation considered the safety of children in *out of home care* and whether the department is providing them with adequate protection from further harm.
19. My investigation has found instances of children who have:
 - been physically and sexually assaulted by foster and kinship carers
 - had limbs broken or been knocked unconscious by residential carers
 - been physically assaulted or raped by other children
 - been placed with adult ‘friends’ who have then engaged them in sexual acts
 - engaged in prostitution while in care
 - reported their carers selling drugs to other children.
20. The sexual exploitation of young people in the *out of home care* system has also been identified as a significant issue, with incident reports identifying a group of children in *out of home care* who are involved in prostitution and sexual exploitation.
21. It should be noted that these serious incidents occur in an environment where more than 5,200 children are in *out of home care* at any given time. For a large number of these children no concerns are raised with my office. The department also reports that less than 10 per cent of children placed in *out of home care* each year are subject to a category one critical incident report. This indicates that many children do not experience the serious harm referred to above.
22. In response to my draft report the Secretary stated:

There are various case examples cited throughout the report. The department is deeply concerned about all of these matters and has taken, or is taking action to respond to how these specific failures occurred.

² Sarah Wise & Samuel Egger, *The Looking After Children Outcomes Data Project*, Final Report, Australian Institute of Family Studies, 2007.

In the majority of cases cited where an allegation of abuse is made the department had enacted an investigation and actions are taken to ensure the child is safe. Disturbingly in two cases a failure to follow procedures has resulted in a child being harmed, these cases and a third case have been referred by the Minister to the CSC [Child Safety Commissioner] for independent review. What all these cases highlight is the general prompt reaction when allegations are made and the need to continue to strengthen assessment and investigation.

23. However the many instances of children being abused or suffering harm whilst in *out of home care* referred to in this report have occurred despite significant reforms in recent years to the department's processes for detecting and dealing with such concerns. In many of these instances the department's processes have not been adhered to.
24. In my earlier report, Own motion investigation into the Department of Human Services Child Protection Program, I identified that the department was failing to consistently adhere to its carer screening and assessment policies. This was also evident in my current investigation.
25. Results from external reviews of community service organisations' compliance with registration standards indicate that there are some community service organisations inconsistently or inadequately documenting carer screening processes and reference checks. In some cases the documentation was not sufficient to establish that the required checks occurred at all.
26. In reviewing the circumstances of a number of children I have concluded that further harm may have been avoided if adequate screening and assessment of their carers had occurred. It is unacceptable that these children were harmed when there was information available to indicate that their carers posed a risk to them.
27. My investigation identified substantial differences in both practices and attitudes relating to the screening of foster carers and kinship carers. These differences have become more problematic as the department has increased its reliance on kinship placements.
28. There is evidence that a less rigorous screening process has been applied when placing children with family members which has placed some children at risk. Further, the basic screening processes that are in place are not always adhered to. It appears that Child Protection workers are often placed in the difficult position of weighing the benefits of placing a child with a family member against any concern they may have about the suitability of that family member. This difficulty is magnified by workload issues and scarce placement options.

The many instances of children being abused or suffering harm whilst in out of home care referred to in this report have occurred despite significant reforms in recent years to the department's processes for detecting and dealing with such concerns. In many of these instances the department's processes have not been adhered to.

In reviewing the circumstances of a number of children I have concluded that further harm may have been avoided if adequate screening and assessment of their carers had occurred. It is unacceptable that these children were harmed when there was information available to indicate that their carers posed a risk to them.

Instances of abuse of children in out of home care continue to come to light and the improvements I recommended in 2005 have not been adhered to in many cases.

The inadequate communication between the department, medical professionals and police evident in some instances has the potential to place children at further risk of harm.

The department's incident reporting system does not capture all relevant information and that comprehensive analysis of the available information, aimed at directing the improvement of the out of home care system, is not occurring.

29. In 2005 I made a number of recommendations to the department following my investigation into the circumstances surrounding a child who suffered serious injuries while in *out of home care*. However, instances of abuse of children in *out of home care* continue to come to light and the improvements I recommended in 2005 have not been adhered to in many cases.
30. The inadequate communication between the department, medical professionals and police evident in some instances has the potential to place children at further risk of harm.
31. Whilst noting improvements in the department's processes since 2005, many of the initiatives that arose from my investigation would appear to have been compromised by competing priorities. I also continue to have concerns that the department's incident reporting system does not capture all relevant information and that comprehensive analysis of the available information, aimed at directing the improvement of the *out of home care* system, is not occurring.
32. The department's central policy document governing how allegations of abuse and neglect should be responded to, *Guidelines for responding to quality of care concerns in out of home care*, remained in draft form between 2007 and 2010. These guidelines were only finalised following the commencement of this investigation.
33. I have reviewed a number of quality of care investigation reports conducted in accordance with these guidelines. In doing so I have identified a range of concerns, including:
 - inadequate screening of carers
 - poorly conducted investigations
 - children remaining in placements after allegations of inappropriate physical discipline have been substantiated
 - failure to take appropriate action against carers after abuse has been substantiated
 - inadequate support and training of carers
 - inadequate supervision and monitoring of staff.
34. I consider there is a lack of transparency and independent oversight in relation to the quality of care and safety being provided in the *out of home care* system. At present the department releases limited information regarding its performance in providing safe and appropriate placements. It does not report on quality of care investigations and reviews in its annual report and does not report publicly on any analysis regarding incident reports for children in *out of home care*. In my view, the community should have access to this information to assist it to understand the issues faced by the *out of home care* system.

Availability of care

35. The department is struggling to meet the demand for *out of home care* services. This demand is projected to continue growing at a substantial rate, in keeping with national trends.
36. At 30 June 2009 there were 5283 children placed in *out of home care* in Victoria. This represents an increase in excess of 20 per cent over the last four years. There has been an almost 50 per cent increase in the number of children in *out of home care* since June 1999. This increase has not been as substantial as those in some other jurisdictions, such as Queensland and New South Wales, where the numbers of children in *out of home care* grew by 173 per cent and 116 per cent respectively for the same period.
37. The department states that it has been 'experiencing significant difficulties keeping pace with the growth in demand and increasingly complex needs of children in care'. It acknowledges that the *out of home care* system in Victoria 'does not have sufficient capacity' and that demand is likely to continue to grow in the coming years.
38. The increasing demand for *out of home care* in Victoria has not been caused by increasing numbers of children entering the system. In fact, the number of admissions has been decreasing over the last five years. The increasing demand is created by a tendency for children to remain in *out of home care* for longer periods of time.
39. It is clear that the greater the complexity of factors necessitating a child's removal from their family home, the longer it may take to stabilise the family's circumstances so that it is safe for the child to return. Data provided by the department on the complex parental characteristics of children in care indicates that family violence and substance abuse remain highly prevalent. These factors are often combined with low income, mental health concerns and physical or intellectual disabilities.
40. In order to reduce demand, the department is implementing strategies designed to reduce the number of children entering *out of home care* and measures to return children to their family sooner. It also continues to seek additional funding to cover the existing gap between its resources and the placements required. However, the evidence I obtained during this investigation indicates that it is unlikely that the department will be able to meet expected demands in either the short or the long term.
41. Projections demonstrate that this year there may be 193 children in Victoria requiring care that the department cannot provide from the *out of home care* budget. Projections prior to the recent Budget showed that by 2013-14 this number is likely to have reached 1048.

I consider there is a lack of transparency and independent oversight in relation to the quality of care and safety being provided in the out of home care system.

The department is struggling to meet the demand for out of home care services. This demand is projected to continue growing at a substantial rate, in keeping with national trends.

It is unlikely that the department will be able to meet expected demands in either the short or the long term.

Children with the most complex behaviours and needs often end up in residential care. The fact that these children are often cared for by unqualified and transitory workers is problematic.

A disproportionate number of allegations of abuse in out of home care have arisen in residential care. While only seven per cent of the out of home care population were living in residential care at the time of the analysis, 35 per cent of possible abuse in care allegations related to this placement type.

42. My office has received a number of updated projections for demand from the department throughout the course of this investigation. Each of these has estimated even greater increases in demand than the last. Therefore, it seems possible that the number of children requiring placement in the coming years will be even greater than the numbers estimated above.
43. The consequence of this high level of demand has been the use of undesirable placement options for children who have been removed from their parents.
44. The deficiencies found in these arrangements include:
 - inappropriate physical environments
 - unstable care arrangements
 - use of carers who lack adequate training and experience
 - inefficient use of resources
 - vulnerable children being placed with children who have histories of sexually abusive behaviour
 - children with no history of substance misuse being placed with other who are using drugs and alcohol
 - siblings being separated
 - non-compliance with the Aboriginal Child Placement Principle
45. *Residential care* is rarely the preferred placement option for children in *out of home care* and its use in Victoria is progressively decreasing. However, a lack of options means the department is continuing to place children in *residential care* even when it is not considered the most suitable placement for them.
46. The evidence I obtained indicates that many *residential care* staff lack basic qualifications and that some do not have adequate skills in relation to critical matters such as the use of physical restraint.
47. Children with the most complex behaviours and needs often end up in *residential care*. The fact that these children are often cared for by unqualified and transitory workers is problematic. Failing to appropriately recruit and train carers is likely, in my view, to perpetuate the current issues with staff turnover and create further placement instability for the children in *residential care* units.
48. The department's *Quality of Care Data Analysis Report 1 July 2006 - 30 June 2007* demonstrates that a disproportionate number of allegations of abuse in *out of home care* have arisen in *residential care*. While only seven per cent of the *out of home care* population were living in *residential care* at the time of the analysis, 35 per cent of possible abuse in care allegations related to this placement type.

49. The department has also been required to create placements which it does not have funding for in order to meet demand. These arrangements are known as ‘contingency placements’. Evidence obtained during my investigation indicates that these arrangements can be costly, unstable and risky for the children who are placed in them. These less desirable arrangements are being provided by diverting funds away from initiatives designed to improve the experiences of children placed in *out of home care*.
50. I obtained evidence that contingency arrangements sometimes involve placing children in unsuitable physical environments such as motels and caravans, with unqualified and inexperienced carers. My investigators were told that often it is the children with the greatest need for specialised care who find themselves in these placements.
51. Even where a home based care placement can be located, I am also concerned about capacity issues leading to children with challenging behaviours being placed with foster carers who are not equipped to handle them. This can cause harm to both the children and their carers.
52. The ability to match children to appropriate placements is a function of the overall capacity of the *out of home care* system. My investigation found clear evidence of inappropriate placement matching occurring, particularly in *residential care* units. The risk of housing groups of children with complex behaviours together is well known. Cases I reviewed during this investigation also highlight the dangers of placing particularly vulnerable children, such as those who are young or have disabilities, in *residential care*.
53. In response to enquiries from my office regarding the issue of ‘matching’ children with disabilities to appropriate placements, the department advised:
- Children and young people with a disability are likely to be among the most vulnerable group of children and young people in OOHC [out of home care] with the added disadvantage of their disability on top of the trauma and loss associated with family breakdown. They are over represented in the OOHC population.
54. The inherent risks involved in *residential care* and the inappropriate matching of children to this placement type are increased by the fact that units are often staffed by carers with minimal qualifications or temporary agency staff. Some of the instances referred to in this report highlight the need for appropriate levels of supervision and the importance of providing *residential care* staff with appropriate practical training in the use of physical restraint. Failing to appropriately recruit and train carers is likely, in my view, to perpetuate the current issues with staff turnover and create further placement instability for the children in *residential care* units.

I obtained evidence that contingency arrangements sometimes involve placing children in unsuitable physical environments such as motels and caravans, with unqualified and inexperienced carers.

Failing to appropriately recruit and train carers is likely, in my view, to perpetuate the current issues with staff turnover and create further placement instability for the children in residential care units.

Overall, Victoria allocates significant resources to the provision of out of home care when compared to other states and territories. However I am concerned that arrangements for funding of the out of home care system appear to be reactive and therefore contribute to an inefficient reliance on contingency arrangements.

Young people leaving care are at risk of negative experiences in their adult lives. These include unemployment, homelessness and contact with the criminal justice system.

55. The department has informed me that it is taking steps to provide for a greater number of placement models to meet the diverse needs of children in care. New models for therapeutic care are being trialled and the initial feedback about the outcomes for children in these programs is positive. The department has stated that it hopes these placements will provide options for children who are being placed in inappropriate care arrangements because mainstream care models are ill-equipped to care for them.
56. Overall, Victoria allocates significant resources to the provision of *out of home care* when compared to other states and territories. However I am concerned that arrangements for funding of the *out of home care* system appear to be reactive and therefore contribute to an inefficient reliance on contingency arrangements. While the *out of home care* program is not funded to meet even its current demand, in my view, it will not be able to ensure that the projected growth in required capacity proceeds in a strategic and planned manner.
57. In response to my draft report the Secretary stated that the recent budget allocation, including \$25 million over four years specifically targeted at growth in the capacity of the system, has been weighted towards the first two years. Her department will now work with the departments of Premier & Cabinet and Treasury & Finance to determine the most appropriate mechanism for approaching the task of forecasting and funding demand for *out of home care* services. The Secretary has also informed me that the daily average occupancy for contingency placements has already been reduced from 123 to 50.55 children through the *out of home care* reform strategy.

Outcomes for children in care

58. When compared to the broader population, research shows that children in care achieve poorer outcomes on measures for health, education, well-being and development. As a consequence of the trauma and instability they have experienced, many of these children will require intensive support in order to grow into stable, healthy adults with positive prospects for the future.
59. Research has shown that young people leaving care are at risk of negative experiences in their adult lives. These include unemployment, homelessness and contact with the criminal justice system.³ Children in care are unlikely to have the same kind of personal support networks or financial assistance that a young person leaving the family home might have.

³ Alexandra Osborn and Leah Bromfield, *Young People Leaving Care*, Australian Institute of Family Studies, Melbourne, 2007.

60. Education can make a substantial difference to a child's future. Educational outcomes for children in care are substantially lower than those of the broader student population. Implementing effective programs to improve the educational outcomes for children in care has the potential to broaden the opportunities available to those children and significantly improve their prospects for the future. The department shares this responsibility with the Department of Education and Early Childhood Development.
61. There are some positive steps being taken by the two departments in the area of education, such as an initiative providing free kindergarten to children involved with Child Protection. However, witnesses have suggested that a more broad based approach will be needed if the departments are going to make a substantial difference to educational outcomes for these children. It does not appear that, to date, the Partnering Agreement has been effectively implemented.

Mental health

62. In the cases I reviewed, mental illness was often combined with damaging or high risk behaviours such as substance abuse, self harm and criminal activity. The vulnerability of children with mental health conditions to sexual exploitation and abuse was also evident.
63. An audit of 342 children in *residential care* in Victoria on 10 April 2006 found that 65 per cent of the children were at abnormal risk of having or developing a diagnosable mental health condition. The findings from this survey and other project work resulted in the development of therapeutic care models with the aim of ensuring more timely and comprehensive assessment and treatment for children in *out of home care*.
64. One of these initiatives is the Take Two Intensive Therapeutic Service which provides specialist therapeutic treatment to children and young people who exhibit or are at risk of developing severe emotional and behavioural disturbance. This service has been operating since 2004. The department advises that Take Two is funded to provide therapeutic services to approximately 550 children each year.
65. Despite these initiatives, the Centre for Excellence in Child and Family Welfare stated that waiting lists for mental health services for children are too long and therefore it is sometimes difficult to access timely support or intervention for children. Carers also expressed concern about the difficulty of accessing mental health services for the children in their care within reasonable timeframes.

An audit of 342 children in residential care in Victoria on 10 April 2006 found that 65 per cent of the children were at abnormal risk of having or developing a diagnosable mental health condition.

Waiting lists for mental health services for children are too long and therefore it is sometimes difficult to access timely support or intervention for children.

Case management practices utilised by the department do not always function effectively to identify and meet the professional care needs of children.

Case management

66. Effective case management is integral to improving quality of care and outcomes for individual children in *out of home care*. It is clear that the case management practices utilised by the department do not always function effectively to identify and meet the professional care needs of children.
67. My investigation identified issues with the implementation of data collection and information sharing processes, as well as evidence that a substantial number of children are not having their support needs identified or addressed with appropriate services.
68. This is concerning given that children in *out of home care* have histories which are likely to mean that they have substantial need for professional assistance such as health care and mental health services.
69. 'Looking After Children' is a best practice framework used in Victoria for caring for children placed away from their family as a result of Child Protection intervention. My investigation has identified that record keeping and information exchange components of 'Looking After Children' are not being practised consistently and this may be impacting on effective case management. It would also appear that demand and capacity issues in the system have prevented the implementation of the Initial Health Assessment Tool, an initiative that has the potential to improve case planning and health outcomes for children in care.
70. There is also evidence that home based carers are concerned that they are being provided with inadequate placement support. Appropriate supports have the potential to improve the quality of care provided to children and minimise the chance of placement breakdown. It is crucial that carers feel supported if the department is going to increase its carer numbers.
71. As in a number of other areas of the *out of home care* system, the policies and processes around supporting kinship placements differ from those applied to *foster care* placements. While the same issues in relation to caring for traumatised children arise in kinship placements as in *foster care* placements, there does not appear to be the same level of training and support offered to kinship carers.
72. There is an inherent tension in the current system between minimising intervention to 'normalise' kinship placements and providing adequate oversight and support to those placements. It appears that the department tends to withdraw its involvement from children in *kinship care* once a modicum of stability has been established. This is driven in part by the pressure on the Child Protection system which I described in my previous report.⁴

Home based carers are concerned that they are being provided with inadequate placement support.

As in a number of other areas of the out of home care system, the policies and processes around supporting kinship placements differ from those applied to foster care placements. While the same issues in relation to caring for traumatised children arise in kinship placements as in foster care placements, there does not appear to be the same level of training and support offered to kinship carers.

⁴ Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

73. My investigators spoke to kinship carers and other witnesses involved with *kinship care*. These witnesses confirmed that they considered that insufficient support was being provided to kinship carers. A common theme which emerged from these discussions was one of kinship carers feeling powerless and voiceless in a system that is controlled by the department, community service organisations and courts.
74. 'A new *kinship care* program model for Victoria' is being implemented by the department. It is expected that this new model will address some of the 'gaps' in the current system of *kinship care*. The key feature of this model is greater contracting of case management and support services to community service organisations.
75. Evidence obtained during my investigation indicates that there is support among carers for the formation of a peak body for kinship carers in Victoria. I consider this to be a logical step in a system that intends to continue to increase its reliance on *kinship care* as it would replicate arrangements that are in place to support the interests of foster carers.
76. Research has shown that young people leaving care are at risk of experiencing poor outcomes and negative experiences in their adult lives, including unemployment, homelessness and contact with the criminal justice system.
77. Evidence obtained during my investigation indicated that there are children in Victoria leaving care at 18 years of age with insufficient preparation and little or no ongoing support. I consider the department needs to provide greater support to children both in preparing them to leave care and in the crucial phase after they have left care so that they can successfully achieve independence.

Financial support for children and carers

78. The financial reimbursement received by Victorian carers amount to significantly less than what it is estimated to cost to care for a child. While some carers have the independent financial resources to ensure that this does not impact on the quality of care and services the children in their care receive, others do not.
79. I note that unlike foster carers, kinship carers are not automatically assessed on the basis of case complexity when the department determines the level of reimbursement they will receive. As a consequence, almost all kinship carers receive the lowest rate of payment available.
80. In terms of foster carers, the department advises that 60 per cent of all foster carers receive the lowest amount of reimbursement payable. When the challenge of caring for damaged children is considered, it is likely that the financial impost of inadequate carer payments is contributing to the difficulty in recruiting foster carers.

There is support among carers for the formation of a peak body for kinship carers in Victoria.

There are children in Victoria leaving care at 18 years of age with insufficient preparation and little or no ongoing support.

The financial reimbursement received by Victorian carers amount to significantly less than what it is estimated to cost to care for a child.

Overall, the system of financial reimbursement lacks transparency and is difficult for carers to navigate.

Evidence obtained during my investigation indicates that some children are not being adequately protected by the department once they enter out of home care.

The Victorian Government has become increasingly reliant on contracted community service organisations to fulfil its statutory responsibilities in relation to the provision of out of home care services.

These developments have positioned the department in the conflicting roles of customer, regulator and partner of community service organisations in the provision of out of home care services.

81. A variety of other forms of financial assistance are available to carers in addition to regular fortnightly allowances. In response to my concerns, the Secretary intends to review all forms of financial support available within the *out of home care* system with a view to better meet the needs of children and their carers.
82. Overall, the system of financial reimbursement lacks transparency and is difficult for carers to navigate. Not only is this a source of frustration to carers, but those spoken to during my investigation stated it is hindering their ability to acquire the goods and services the children in their care need.

Charter of Human Rights and Responsibilities Act 2006

83. Many of the issues raised in this report have also been considered from a human rights perspective. The *Charter of Human Rights and Responsibilities Act 2006* (the Charter) came into effect in Victoria on 1 January 2008. The Charter recognises that children are vulnerable members of the community with the right to protection.
84. Most children, before being placed in *out of home care* in Victoria, had suffered abuse and neglect which led to Child Protection and Children's Court intervention in their families. In all cases, a determination was made that it was necessary for the state to assume responsibility for the children's care, in either the short or long term, in order to protect them from harm. The state has a duty to ensure that the trauma already suffered by these children is not compounded by further abuse.
85. Section 17 of the Charter provides that 'every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child'. Evidence obtained during my investigation indicates that some children are not being adequately protected by the department once they enter *out of home care*. There are a number of instances in this report of children who have been abused and mistreated in care, in some instances, by the very persons the department has chosen to provide them with care and protection.
86. I consider that in some of these cases, the department's actions in placing children in unsafe situations constitute breaches of the Charter.
87. In response to this issue the Secretary stated:

The department takes its human rights obligations very seriously and the reforms in OOHHC [out of home care] outlined in ... your report are illustrative of the department's commitment to ensuring the best possible outcomes for children.

Community service organisations

88. The Victorian Government has become increasingly reliant on contracted community service organisations to fulfil its statutory responsibilities in relation to the provision of *out of home care* services. More recently, it has implemented a structured registration and quality assurance process for these agencies.
89. These developments have positioned the department in the conflicting roles of customer, regulator and partner of community service organisations in the provision of *out of home care* services. The current arrangements are not compatible with ensuring a robust system of regulation and quality assurance in *out of home care*. The New South Wales model of regulation provides an example of structural separation of these conflicting roles and it is my view that this model should be considered in Victoria.

Alternative approaches

90. The *out of home care* system is struggling to meet demand. Advocacy on behalf of every child in the *out of home care* system is therefore crucial to ensure that their best interests are met and their right to a safe and secure placement is not compromised by systemic pressures. Advocacy and scrutiny of the *out of home care* system is paramount in ensuring protection of the best interests of every child in *out of home care*.
91. The department provides limited information regarding its performance in providing safe and appropriate *out of home care* placements for children. The department does not report on quality of care investigations and reviews in its annual report and does not report publicly on any analysis regarding incident reports for children in *out of home care*. In my view, the community should have access to this information to assist it to understand the issues faced by the *out of home care* system.
92. While the Child Safety Commissioner is often considered to be a scrutineer of the *out of home care* system, there are limitations to his role and independence. The Commissioner does not have a formal role in respect to advocating on behalf of individual children. Also, the Child Safety Commissioner has no coercive powers, reports directly to the responsible Minister and is the only such body in Australia unable to table a special report to Parliament on issues arising from his functions.⁵
93. Approaches adopted by other jurisdictions which include community visitor schemes, independent advocates and regular surveying of children in *out of home care* placements would provide a level of scrutiny not presently evident in the Victorian *out of home care* system.

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⁵ See Appendix 1.

94. I consider that it would be appropriate for the Minister for Community Services to examine mechanisms which would provide a greater level of scrutiny and transparency of the *out of home care* system while also ensuring advocacy for children in *out of home care*.
95. Many of the issues I identify in this report are largely as a consequence of the department not being adequately resourced to carry out its functions. I note that the department has recently become proactive in identifying deficiencies in the *out of home care* system and that it is taking positive steps in the area of policy reform. However, it is too early to form an opinion on the effectiveness of the new policies and processes being implemented, particularly in light of resourcing issues.
96. I intend to continue monitoring the progress of the department's reforms and the impact of additional resources announced in the recent Budget to ascertain whether there is evidence of improving outcomes for children in *out of home care*.

Recommendations

97. I have made 21 recommendations designed to improve processes, increase scrutiny and introduce better planning in the *out of home care* system. The Secretary has accepted all but one of these recommendations.
98. The recommendations accepted by the Secretary will lead to:
- an examination of how greater transparency and scrutiny can be introduced to the *out of home care* system
 - a review of all forms of financial support for children and carers
 - the reconsideration of how demand for *out of home care* services is projected and funded
 - the inclusion of a wider range of data in the department's annual report
 - closer monitoring of the planning being undertaken for children who are leaving *out of home care*.
99. The Secretary has not accepted my recommendation to transfer the registration of community service organisations from her department to an independent Office. I made this recommendation as I consider Victoria's system for registering community service organisations is flawed due to the conflicting roles undertaken by the department in the system. The approach that I recommended exists in other jurisdictions. The Secretary does not accept that her department has a conflict of interest nor does she consider that such a measure would be a cost efficient strategy. While she has indicated some minor steps she intends to take to address my concerns, it remains my view that the current arrangements are not appropriate.

BACKGROUND

Concerns expressed to my office

100. During my own motion investigation into the Department of Human Services (the department) Child Protection Program,⁶ witnesses repeatedly raised concerns about Victoria's *out of home care* system. Many of these concerns centred on the safety of children in care and the quality of care being provided. Some of the issues raised included:
- inadequate oversight mechanisms
 - abuse of children in care
 - flawed screening processes
 - placement of children with inappropriate carers
 - insufficient training and support for carers
 - a shortage of carers
 - unsatisfactory and costly contingency placements
 - inadequate stability planning
 - a growing gap between the demand for *out of home care* services and the department's capacity to provide them
 - placement of Aboriginal children outside their communities
 - widespread failure to adequately prepare young people leaving care for independent living.
101. A number of witnesses from the department provided evidence indicating the *out of home care* system was under significant pressure and that this was having an impact on quality of care. For example, a regional manager described the system as being 'in crisis' and expressed concern about children being placed in 'completely unsatisfactory' placements.
102. Further evidence gathered by my officers during that investigation lent weight to these allegations and I decided that a separate own motion investigation into the *out of home care* system in Victoria was warranted. I commenced my investigation by writing to the Minister for Community Services and the Secretary of the department on 16 November 2009.

Investigative methodology

103. My investigation involved:
- interviewing staff from the department
 - interviewing witnesses from relevant peak bodies and community service organisations
 - examining departmental files
 - speaking to carers
 - reviewing relevant policy documents, legislation and research

⁶ Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

- visiting regional areas
 - speaking to children who have experienced living in *out of home care*.
104. My officers also reviewed the complaints concerning Child Protection services submitted to my office between 1 July 2007 and 30 June 2009. A significant proportion of the 838 complaints during this period concerned children and adolescents in *out of home care* placements. Some of the issues raised were:
- failure of the department to adhere to reporting responsibilities for serious incidents
 - allegations that children had been abused by their carers
 - failure to adequately determine suitability of carers
 - non-compliance with policies concerning criminal record checks
 - non-compliance with the Aboriginal Child Placement Principle
 - inadequate payments to carers and delays in payments being made.
105. Over the last decade, annual reports from my office have commented on the *out of home care* system numerous times. The issues have included:
- outsourcing services
 - complaint handling processes
 - case planning
 - inadequate responses to children at risk
 - staffing
 - health and well-being of children in care
 - legislative reform in the area of Child Protection
 - access to information and information sharing
 - policies in relation to Indigenous children
 - conflict of interest policies
 - abuse in care
 - privacy breaches
 - inconsistent Best Interests case planning
 - poor coordination between support agencies
 - inadequate staff knowledge of internal practice standards.

THE OUT OF HOME CARE SYSTEM

Changes in *out of home care*

106. The last 50 years have seen significant changes in the state's approach to the provision of *out of home care*. Between the 1960s and 1980s, the *out of home care* system in Victoria was dominated by large, state-run institutions housing groups of children who had criminally offended or whose parents were unable to care for them. A move towards community based *residential care* and 'de-institutionalisation' saw these larger institutions progressively closed throughout the 1980s. The *Children and Young Persons Act 1989* provided for the separation of services for children who were detained for committing criminal offences from those for children who required placement because their families could not care for them.⁷
107. The introduction of mandatory reporting in 1993 led to a rise in the number of children being placed in *out of home care*. Throughout the 1990s, the preferred model of care became home based arrangements such as *foster care* or kinship placements. Today, *kinship care* is the preferred placement model.⁸
108. Evidence emerging from research into outcomes for children in care has eroded the assumption that simply removing children at risk of harm from their homes and placing them in care will improve their well-being. International studies have consistently found that children in *out of home care* achieve poorer outcomes than those in the broader community.⁹
109. In response to this, the objectives of the *out of home care* system in Victoria have broadened beyond meeting a child's basic accommodation, food, healthcare and schooling needs. Legislation and policy direction has begun to acknowledge the complex and differing needs of at risk children and children in *out of home care* arising from common experiences of trauma and neglect.
110. Greater resources are being directed towards improving individual outcomes. The last decade has seen the introduction of the *Children, Youth and Families Act 2005* (the Children, Youth and Families Act), which places the child's best interests at the centre of decision-making processes. At present, policy is focused on directing resources towards intensive family support services to reduce the number of children placed in *out of home care*. Where removal of children cannot be avoided, there is now a clear preference for *kinship care*. There are also a number of new models of therapeutic care being developed and trialled to assist children recovering from trauma and abuse.
111. The other change which has progressively occurred in recent decades is in the nature of the relationship between the government and community service organisations. The charity and not-for-profit sector has a long history in the provision of services to vulnerable children and families in the community. Increasingly, the Victorian Government has come to rely on community service organisations to provide these services and has moved towards formalised tendering and contracting processes to fund them.

7 Department of Human Services, *Directions for out-of-home-care*, May 2009.

8 *ibid.*

9 Sarah Wise & Samuel Egger, *The Looking After Children Outcomes Data Project, Final Report*, Australian Institute of Family Studies, 2007.

112. More recently, it has implemented a structured registration and quality assurance process.¹⁰ These developments have positioned the department in the somewhat conflicting roles of customer, regulator and partner of community service organisations, in the provision of *out of home care* services.
113. I recognise that there have been many children who have suffered serious harm in the *out of home care* system in the last century, both in Victoria, and in other Australian states. I note that the Senate Community Affairs and References Committee commenced an inquiry in 2003 into Australians who experienced institutional or *out of home care* as children.
114. The resulting report, *Forgotten Australians*¹¹, details the traumatic experiences of many children in care and the impact that those experiences have had on their lives as adults. I note that inquiries with a similar focus have been conducted in a number of states. The care environment experienced by the Forgotten Australians from the beginning of the 1920s until the emergence of modern community service systems in the 1970s and 1980s was vastly different to *out of home care* arrangements in place now. There was little monitoring of institutions and no standards of care required.
115. My office has been approached by a number of care leavers who are still experiencing substantial hardship in their lives as a result of their experiences in orphanages, children's homes and *foster care*. These persons highlighted the ongoing impact their experiences in care have on their lives and the need to ensure that appropriate services are available to assist them. This report however, focuses on current conditions and circumstances in relation to *out of home care*.
116. The purpose of the *out of home care* system is to provide children who are unable to live at home because they are at significant risk of harm with a stable placement which ensures their safety and healthy development. The majority of children placed in *out of home care* are the subject of Children's Court Protection Orders obtained through Child Protection intervention.
117. However, it should be noted that a proportion of children are placed in care with their parents' consent through voluntary child care agreements.¹² I note that the Children Youth and Families Act requires the department to publish details regarding the number of voluntary child care agreements in existence annually on its website.¹³ In response to enquiries made by my office during this investigation, the department has acknowledged that it failed to comply with this requirement last year. It has advised that it now intends to publish both the 2008 and 2009 data on 31 March 2010.
118. The Children, Youth and Families Division of the department is responsible for the *out of home care* system in Victoria. However, community service organisations are responsible for the direct provision and management of the majority of *out of home care* services.¹⁴

10 See chapter titled 'Community Service Organisations'.

11 Senate Community Affairs References Committee, 2004, *Forgotten Australians: A report on Australians who experienced institutional or out-of-home-care as children*, SCARC, Canberra.

12 The department advises that 110 such agreements were in place at 31 December 2007 and that a further 919 agreements were entered into between 31 December 2007 and 31 December 2008.

13 Section 160, *Children Youth and Families Act 2005*.

14 Community service organisations are non-government organisations (generally not-for-profit) funded by the department to deliver designated services to the community. Community service organisations vary in size and may have multiple government contracts to provide different types of services such as family, disability and out of home care.

119. The department purchases those services through contracts (called 'service agreements') with individual community service organisations. It retains responsibility for setting and monitoring standards of care provided to children in the system. At February 2010 the department had service agreements for *out of home care* services with 40 community service organisations.
120. The system provides a range of placement types which can be divided into two basic categories – *residential care* or home based care.

Residential care

121. *Residential care* involves the child residing in a facility where care is provided by paid staff working in shifts. A number of children usually reside in each facility. *Residential care* units may be classified according to the level of case complexity and challenging behaviour the unit is equipped to accommodate. The department advised that at December 2009, the total number of *residential care* units it had operated for that year (including contingency placements) was 486.
122. In addition to the basic *residential care* model, there are also:
- Therapeutic pilots – designed to respond to children's trauma and attachment disruption arising from prior abuse and neglect. The department is trialling 12 therapeutic *residential care* models.
 - The Lead Tenant program – designed to provide semi-independent accommodation options for young people aged 13 to 17 years to assist with preparing them for the transition to independent living.

Home based care

123. Home based care involves a child living with a full-time carer in the carer's home. The department generally provides reimbursement for the child's everyday living expenses with fortnightly payments. There are three main types of home based care:
1. *Kinship care* – placement with a family member or a person from the child's social network. The department has direct responsibility for management of most kinship placements. However, it is in the process of transferring management of a greater proportion of kinship placements to community service organisations.
 2. *Foster care* – placement based in a volunteer caregiver's home. *Foster care* placements may be short or long term depending on the child's circumstances. Community service organisations are responsible for recruiting, training and supporting foster carers.
 3. Permanent care (via a Permanent Care Order) – Under the Children, Youth and Families Act, the Children's Court may grant permanent custody and guardianship of a child to suitable persons.

Secure Welfare Service

124. There is another type of placement, (known as 'secure welfare',) which is only used in limited circumstances. The Secure Welfare Service provides short term *residential care* placements for children who are assessed as being substantially and immediately at risk of harm, where existing services cannot manage that risk.
125. The department retains direct responsibility for the provision of secure welfare services. It runs two gender specific units, each with a ten-bed capacity. It advises that usage of secure welfare has increased by 65 per cent since 2000-01.

126. Secure welfare involves containment and is the most extreme form of protective intervention. It is intended to be a temporary measure (placements do not usually exceed 21 days) which provides protection for the child until a suitable Best Interests Plan can be developed to return them to the community. The department states that it is considered an option of last resort.
127. If a child is subject to a Custody to the Secretary or Guardianship to the Secretary Order, the Secretary may make an administrative decision to place them in a secure welfare unit. I note that the department's manual for Child Protection staff indicates that in practice, this decision would be made by the responsible Community Care Manager.¹⁵ In all other instances, the decision to place a child in secure welfare would need to be made by the Children's Court. I note that any administrative decision to detain a person must be considered in the context of the department's obligations under section 21 of the Charter, which provides that every person has a right to liberty and a right not to be subjected to arbitrary detention.
128. In response to this issue the Secretary stated:

I am confident that based on the statutory framework and policy information, the processes for admitting a child to Secure Welfare is compatible with section 21 of the Charter.

Family and Placement Services Sector Development Plan

129. In March 2004 a steering committee was established to identify challenges facing the family and placement services sector in Victoria and develop a plan to meet those challenges. Representatives from community service organisations, peak bodies, community health, local government and the department were involved in the planning process. The 'Family and Placement Services Sector Development Plan' was presented to the Minister for Children and Community Services in mid-2006.
130. The plan identified the vision and objectives for the sector and emphasised the importance of a whole of sector approach to planning. Key challenges identified by the plan were:
- the inadequately defined relationship between government, service providers and service users
 - inadequate service coordination and leadership
 - a system that was reactive rather than driven by research and best practice
 - outdated service models
 - a declining volunteer workforce in *out of home care*
 - under-representation of Aboriginal people in family services
 - over-representation of Aboriginal people in placement services
 - insufficient community understanding of the sector
 - irregular revision of funding models.

¹⁵ Department of Human Services, *Protecting Victoria's Children-Child Protection Practice Manual*, April 2007.

Reform directions

131. Since the launch of the 'Family and Placement Services Sector Development Plan', I understand that the department has undertaken further policy development work to address deficiencies in the *out of home care* system. In May 2009 the Minister for Community Services announced a new reform package for *out of home care* services titled 'Directions for out-of-home care'. It involves \$135 million in expenditure over four years, commencing from the 2009-10 Budget and outlines seven specific reform directions:
1. support children to remain at home with their families
 2. a better choice of care placement
 3. promote well-being
 4. prepare young people who are leaving care to make the transition into adult life
 5. improve the education of children in care
 6. develop effective and culturally appropriate responses for the high numbers of Aboriginal children in our care
 7. a child-focused system and processes.
132. 'Directions for out-of-home care' outlines the following priorities for 2009-10:
- recruiting expert practitioners to provide intensive care in their homes
 - giving priority to children under 12 years who are in *residential care*
 - enabling placement services to better meet the needs of the complex and challenging young people now entering general *residential care* services
 - piloting new models of intensive family based interventions to prevent children needing to come into care and to resettle them with their families after being in care
 - reshaping the care system to deliver greater placement choice and better meet the diverse needs of adolescents
 - increasing the number of caregiver reimbursements to meet growth in home based care
 - enhancing the quality and cultural competency of *out of home care* services, including:
 - o additional therapeutic treatment services to help children recover from trauma and past experiences
 - o a new volunteer mentoring program to facilitate access to positive activities and community support for children in *residential care*
 - o cultural competence training for placement services to better meet the needs of Aboriginal children
 - redesigning *residential care* facilities, drawing on building design principles which emphasise home-like environments and enhance therapeutic care.

Conclusions – the *out of home care* system

133. The department is taking positive steps in the area of policy reform. In particular, I note the focus on placement prevention and early reunification strategies and the preference for kinship or permanent care placements to promote stability of care.
134. I made similar observations in relation to reforms being undertaken in the report, *Own motion investigation into the Department of Human Services Child Protection Program*. In the following chapters I will outline my concerns regarding how the *out of home care* system is functioning and the steps the department has advised it is taking to address the issues which have been identified.
135. It is too early to form an opinion on the effectiveness of the new policies and processes being implemented, particularly in light of resourcing issues. However, I intend to continue monitoring the progress of these reforms and the impact of additional resources allocated in the recent State Budget to ascertain whether there is evidence of improving outcomes for children in *out of home care*.
136. In addition to the issues I have examined in relation to the current state of the *out of home care* system, there is still concern within our community regarding the historical failings of the system.

SAFETY FOR CHILDREN IN CARE

137. Children in *out of home care* are among the most vulnerable in our society. The problems for these children are well documented. They tend to do poorly at school, are prone to mental health disorders, have poor health and have to deal with the consequences of traumatic childhood experiences.¹⁶ These issues are to be expected among children who have suffered abuse and neglect from parents who have betrayed the most basic of trusts.
138. When dealing with such a vulnerable and traumatised population, the minimum that could be expected from the *out of home care* system is that it not add to this trauma.
139. Unfortunately my investigation has found many instances of children who have been subject to abuse and neglect in *out of home care*, including children who have:
- been physically and sexually assaulted by foster and kinship carers
 - had limbs broken or been knocked unconscious by residential carers
 - been physically assaulted or raped by other children
 - been placed with adult 'friends' who have then engaged them in sexual acts
 - engaged in prostitution
 - made allegations regarding carers selling drugs to children in *residential care* units.
140. It should be noted that these serious incidents occur in an environment where more than 5,200 children are in *out of home care* at any given time. For a large number of these children no concerns have been raised with my office. It should also be noted that the department reports that more than 90 per cent of children placed in *out of home care* each year are not subject to a category one critical incident report indicating that many children do not experience the serious harm referred to above.
141. The significance of children in *out of home care* being subjected to further harm by the system which is supposed to protect them has been summarised by the department as follows:
- Children who are removed from the care of their parents because of abuse or neglect need the best care society can provide. The safety and wellbeing of these children should be the paramount consideration for everyone involved in their care. When children are placed in out of home care, it is the shared responsibility of out of home carers, community service organisations and the Department of Human Services to ensure their safety, stability and wellbeing. ...The Department has a duty of care to all children in out of home care...
142. It is notable that in many of the cases I reviewed, the children concerned did not have the benefit of competent adults who were able to advocate in their interests to ensure they received appropriate care. In my view this is critical to ensuring the best interests of every child are protected in a system that is under significant strain. This issue is discussed further in the chapter of this report titled 'Alternative Approaches'.

16 Sarah Wise & Samuel Egger, *The Looking After Children Outcomes Data Project, Final Report*, Australian Institute of Family Studies, 2007.

The development of improved processes in *out of home care*

143. The many instances of children being abused or suffering harm whilst in *out of home care* referred to in this report have occurred despite significant reforms in recent years to the department's processes for detecting and dealing with such concerns.
144. In 2005 I investigated a matter involving serious harm to a young child in *out of home care* and the department adopted several recommendations I made to improve its processes. Since that time, I have noted a more coordinated response to allegations regarding children being abused in *out of home care*.
145. However, instances of abuse of children in *out of home care* continue to come to light and my investigation has established that these improved processes are not adhered to in many cases.
146. My investigation in 2005 established deficiencies in the department's supervision of its contract with the responsible community service organisation and the assessment process it followed to accredit the carers.
147. At the completion of the investigation I made a range of recommendations which were accepted by the department. A number of these are relevant to my current investigation. I recommended that the department:
- Refer all allegations or concerns regarding abuse in care to the Child Safety Commissioner.
 - Review its incident reporting system to ensure it centrally collects data regarding allegations of abuse in care.
 - Ensure comprehensive reports regarding service quality are prepared prior to new Service Agreements being entered into.
 - Provides advice to government regarding the resources necessary to ensure all child protection clients requiring active case management have an allocated case worker.
148. I requested a progress report on the implementation of my recommendations in August 2006 and the then Secretary of the department advised that:
- \$75 million over four and a half years was allocated to support the implementation of the new legislation and a further \$150.7 million was provided in the Budget to bring the total amount available to \$226 million.
 - \$2.2 million was allocated to enhance the review and monitoring of child protection standards and quality of care.
 - a project was underway to develop an electronic incident reporting system to enable the analysis of incident data and identify trends and risks for the department.
149. My current investigation, while noting improvements in the department's processes since 2005, has identified that the initiatives described above would appear to have been compromised by competing priorities. I also continue to have concerns that the department's incident reporting system does not capture all relevant information and that comprehensive analysis of the available information, aimed at directing the improvement of the *out of home care* system, is not occurring.

Responding to quality of care concerns

150. The department responds to allegations about the safety of children in care using a broad framework designed to deal with 'quality of care' concerns. It summarises this approach as follows:

There is a broad range of issues considered to be quality of care concerns. The concerns can range from minor quality issues through to possible physical or sexual abuse. These guidelines are designed for use when responding to all issues that may be reported as quality of care concerns.

151. The harm experienced by children in *out of home care* that has come to my attention can generally be categorised as follows:
- abuse by other children
 - sexual exploitation
 - self harm
 - engagement in high risk behaviour
 - abuse by carers or their associates.

Resources allocated to responding to quality of care concerns

152. In November 2005, following an investigation by my office, the government allocated resources for a new quality of care program. The program was to consist of two central and eight regional positions to oversee the investigation of allegations regarding quality of care, including collation and analysis of data.
153. Each region of the department now has a quality of care coordinator who is responsible for ensuring that quality of care concerns are effectively and consistently managed. Quality of care databases have also been operating in each region since July 2006.
154. The two central quality of care program positions have responsibility for:
- state-wide policy and practice regarding the management of quality of care issues
 - collection and management of data regarding quality of care issues
 - lead responsibility for management of 'complex' quality of care issues
 - support of regions regarding incident management issues
 - monitoring of regional compliance with relevant policy and procedures
 - case, systemic and thematic analysis to inform reviews of practice and identification of causal factors underlying performance in decision-making and case management; and
 - assisting organisational learning and service improvement.
155. I have been informed by the department that staff from the central quality of care program have recently been diverted to assist with other operational priorities and that they have therefore been unable to fulfil the unit's work plan.

Guidelines for responding to quality of care concerns in out of home care

156. In 2007 the department introduced a working draft of the *Guidelines for responding to quality of care concerns in out of home care* (the guidelines). These guidelines remained in draft form until March 2010 despite continued reliance upon them as the definitive guide for managing serious allegations of abuse of children in *out of home care*.
157. The guidelines list the following principles for managing quality of care concerns:
- the best interests of the child will always be paramount
 - children and young people will be listened to and heard
 - carers will be treated fairly, honestly and with respect
 - parents will be told about concerns for the welfare of their child
 - the community service organisations and Child Protection will work together in a spirit of partnership, collaboration and cooperation
 - decision-making, investigation and formal care review processes will be well informed, clearly communicated and timely.
158. They specify that all allegations of possible physical or sexual abuse, neglect or other quality of care concerns must initially be screened by the department in consultation with the responsible community service organisations to determine the exact nature of the concern and the most appropriate response.
159. The guidelines outline four possible responses to quality of care concerns:
- take no further action
 - manage concerns through support and supervision
 - commence a formal care review
 - commence an investigation into the concerns.
160. At the conclusion of a quality of care concern investigation involving an allegation of abuse or neglect, the department must determine whether the concern is substantiated or not substantiated. This decision must be endorsed by the regional Child Protection Manager.
161. If the abuse or neglect concern is not substantiated the department may take no further action. However, if the investigation identifies serious issues in relation to the carer's capacity to provide an appropriate standard of care for the child, a formal care review may be instigated, even when the specific allegations have not been substantiated.
162. Examples of issues identified by the department which may result in a formal care review include:
- hygiene in the carer's home
 - quality of diet provided to a child
 - inappropriate clothing
 - inappropriate levels of supervision or behaviour management
 - methods of discipline (already determined not to be abuse or neglect)
 - allegations that the carer or member of their household has been engaged in criminal behaviour

- inappropriate behaviour by carers, such as:
 - o not cooperating with reasonable access arrangements
 - o making derogatory comments about a child or their family or culture
 - o actively allowing or encouraging a child to engage in appropriate or dangerous behaviour
 - o not accepting reasonable visits from the community service organisation worker
 - o treating a child in a discriminatory manner.
163. The guidelines state that the objective of a formal care review is to address quality of care concerns so that placements are not disrupted and carers continue in their role. However, the guidelines provide that in some circumstances the review may recommend that a carer does not continue in their role because it is not possible to ensure the safety, stability and development of children in their care.
164. During the course of my investigation, my officers interviewed the Chairperson and Chief Executive Officer of the Foster Care Association of Victoria. The executives stated that there was anxiety among foster carers about the process for investigating quality of care concerns.
165. They also stated that they were aware of a number of instances in which carers had left the system because of the investigative process, as opposed to allegations made against them being substantiated. One witness described a particular carer's experience of the process as 'just a disaster from the foster carer's point of view'.
166. The Chief Executive Officer and Deputy Chairperson from the Centre for Excellence in Child and Family Welfare repeated those concerns at interview. They stated that some quality of care processes were disadvantageous to volunteer carers, who were sometimes left 'hanging out to dry' with a lack of information and inadequate support.
167. An example was provided where a regional departmental officer informed the Foster Care Association of Victoria that a matter had not progressed to investigation but that they wished to speak with the carer to inform the initial screening process. The departmental officer subsequently announced the 'outcome' of the investigation, despite repeated advice provided to the Foster Care Association of Victoria that no investigation was occurring. The witness stated that the carer described the process as 'outrageous' and said they would not be continuing as a foster carer. When the issue was subsequently raised with the department's central office, the Foster Care Association of Victoria was informed that any contact with carers would indicate that an investigation was occurring.
168. The witnesses from the Foster Care Association of Victoria stated that adequate resources should be provided to ensure that foster carers are able to access independent support when attending meetings and interviews regarding quality of care issues.
169. One witness from the Foster Care Association of Victoria also stated that their experiences indicated there was 'great inconsistency across regions about how the guidelines are interpreted'. This was supported by a witness from the Centre for Excellence in Child and Family Welfare, who stated:

I think that's an issue generally that there is inconsistency in the way the regional offices of DHS [the department] act in relation to a whole range of things.

170. In response to my recent investigation into the Child Protection Program the Secretary committed her department to a variety of actions to reduce the variation in the way the department delivers services across its regions. The Secretary responded to my *out of home care* report by noting that the initiatives that are most relevant to reducing regional variations in the delivery of *out of home care* include the:

- creation of the new Department of Human Services
- establishment of a Child Protection Practice Standards and Compliance Committee
- review of the department's governance arrangements
- creation of a new Service Development and Performance Division within the department
- funding of a Specialist Intervention Team.

Incident Reporting System

171. A significant element of the guidelines is a requirement that all departmental and community service organisation staff comply with the 'Incident Reporting-Departmental Instruction March 2008'. The importance of incident reporting was explained by one regional manager interviewed by my officers. They stated that it was 'absolutely necessary', as it can be the first indicator or signal of abuse in care.

172. The department's incident reporting system provides for matters of concern to be reported as category one, two or three incidents. The categorisation reflects the seriousness of the matter and dictates the seniority of the officer to whom the matter must be reported.

173. The most serious of matters, **category one** incidents, are defined as involving:

- the most serious outcomes such as a client death or serious injury to a client or staff member
- allegations of sexual or physical assault to a client or staff member
- any event that has the potential to involve the Minister or be subject to a high level of public or legal scrutiny.

174. **Category two** incidents are defined as:

- events that seriously threaten clients or staff but do not meet the category one definition
- serious threats made against clients or staff
- client behaviour that could result in potential risk to others.

175. **Category three** incidents are defined as:

- an event where normal work and routine is interrupted, but the significance of the incident does not extend beyond the work place or facility
- a minor neighbourhood complaint
- an injury not requiring medical attention.

176. The 'Incident Reporting Departmental Practice Instruction September 2005' states that category one incident reports are to be completed for children and young people in *out of home care* when:
- there is an allegation of, or actual, physical abuse by a carer or member of the carer's household; or
 - there is an allegation of, or actual, sexual abuse whether the alleged perpetrator is the carer or a member of the carer's household; and
 - there are neglect or quality of care concerns where these result in a requirement for medical attention or otherwise constitute a serious negative impact on the safety, stability and developmental needs of the child or young person in care.
177. Category one incident reports are required to be completed as soon as possible, but no later than the next working day.
178. The 'Incident Reporting Departmental Practice Instruction September 2005' also states that copies of all category one incident reports relating to children in *out of home care* and an initial briefing are to be provided to the Office of the Child Safety Commissioner.
179. During my investigation I identified many instances of non-compliance with incident reporting guidelines. For instance, I reviewed the department's documentation regarding an allegation made by a teenage girl that she had been sexually assaulted by another child living with her in a *residential care* unit. I identified two key deficiencies in the incident reporting procedures followed by staff:
- Staff initially incorrectly identified the allegation as a category two incident instead of a category one incident
 - The incident report was forwarded to the Regional Director three days after the report was made. This breached departmental policy which required category one incident reports to be provided to the Regional Director within 24 hours.
180. In another case involving similar allegations, staff also initially failed to correctly identify the incident as a category one and, in this case, the incident report was forwarded to the Regional Director 14 days after the incident occurred. The documentation also shows that a briefing for the Regional Director was drafted but never registered or actioned.
181. I made several recommendations in relation to incident reporting during my investigation into the Child Protection Program¹⁷ including that the department:
- Ensure the systematic regional analysis of incident reports occurs.
 - Provide an analysis of incident reports specific to the child protection program to the Minister and the Child Safety Commissioner on a quarterly basis.
 - Provide training to all relevant departmental and community organisation staff regarding critical incident reporting requirements.
182. These recommendations were accepted by the department and I intend to monitor its implementation of them. I note that they are particularly relevant to the safety of children in the *out of home care* system.

¹⁷ Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

Outcomes from quality of care investigations

183. I have reviewed a number of quality of care investigation reports. In doing so I have identified a range of concerns, including:
- inadequate screening of carers
 - poorly conducted investigations
 - children remaining in placements after allegations of inappropriate physical discipline were substantiated
 - failure to take appropriate action against carers after abuse was substantiated
 - inadequate support and training of carers
 - inadequate supervision and monitoring of staff.
184. As a result of my investigation, the Minister for Community Services has formally referred three of the cases examined by my investigators to the Child Safety Commissioner for further review.

Quality of Care Data Analysis Report

185. In 2007 the department completed the 'Quality of Care Data Analysis Report 1 July 2006 – 30 June 2007'. The purpose of the analysis was to provide information about quality of care concerns relating to children in *out of home care*. The report is not publicly available.
186. The 'Quality of Care Data Analysis Report 1 July 2006 – 30 June 2007' considered 170 reported incidents concerning allegations of abuse in care involving 201 children (multiple children were involved in some incidents). It also considered 143 quality of care reviews of other concerns such as inappropriate discipline, behaviour management and carer compliance with minimum standards.
187. Of the 201 abuse in care allegations, 60 per cent related to home based carers, 35 per cent related to *residential care* staff and four per cent of allegations were made against kinship carers.

Table 1. Allegations of possible abuse in care according to placement type and proportion of children in that placement type

	Allegations of Possible Abuse in Care		Numbers of Children in Out of Home Care 2005-06*	
	Number of Allegations	% of Allegations	Total No. of Children in Care Type	% of Children in Care Type
Home- based Care	121	60.2%	2801	58.8%
Kinship Care	7	3.5%	1616	33.9%
Residential Care	71	35.3%	347	7.3%
Other	2	1.0%	0	0.0%
Total	201	100.0%	4764	100.0%

*Numbers of Children in Out of Home Care sourced from Australian Institute of Health and Welfare (2007)

188. In comparison to the overall number of children who reside in each placement type, *kinship care* appeared to be under-represented and *residential care* over-represented in terms of allegations of abuse in care. The percentage of allegations made against home based carers closely correlated with the number of children who were residing in home based care.
189. In relation to the under-representation of quality of care concerns in *kinship care*, I note that an analysis of quality of care reports produced by Loddon Mallee Region also showed a relatively low number of reports in relation to kinship placements. This was despite kinship placements accounting for over 50 per cent of the total placements in the region. The analysis identified that possible factors contributing to the low level of reporting may include:
- a decreased level of supervision, monitoring, direct contact and information provision to carers and clients in *kinship care*
 - Child Protection failing to report incidents in spite of involvement
 - geographical spread of placements affecting the capacity to conduct comprehensive assessments and provide supervision and support in line with the Child Protection Practice Manual.
190. At the time 'Quality of Care Data Analysis Report 1 July 2006 – 30 June 2007' was published, 119 of the 201 investigations into allegations of abuse in care had been completed. An analysis of the 119 outcomes from those investigations shows that 30 allegations (25 per cent) were substantiated. Of the 89 remaining allegations which were found not to be substantiated, 44 (37 per cent) required no further action, 28 (24 per cent) resulted in recommendations and 17 (14 per cent) were referred to a quality of care review.
191. Fourteen of the investigations which substantiated allegations of abuse in care resulted in the carer's approval to provide care being withdrawn. Another eight carers had their approvals withdrawn because other serious quality of care issues were revealed by the investigation. Ninety- seven (81.5 per cent) of the investigations resulted in the carer being approved to continue in their role.
192. Of the 143 quality of care reviews (involving concerns other than allegations of abuse) referred to in the 'Quality of Care Data Analysis Report 1 July 2006 – 30 June 2007', 98 had been completed at the time of publication and quality of care concerns were found in 70 per cent of these. The outcome from the majority of reviews (84 per cent) was that the quality of care concern was addressed and the carer continued in the role. Sixteen carers had their approval withdrawn or employment ended (nine home based carers, five residential carers, one kinship carer and one lead tenant).
193. The 'Quality of Care Data Analysis Report 1 July 2006 – 30 June 2007' noted that to the knowledge of the Child Protection and Family Services Branch, Victoria was the only state collecting and analysing such data to the degree contained in the report. It stated that it intended to conduct such analysis every six months. However, when my investigators requested advice from the department regarding the status of this further analysis, they were informed that reports regarding the 2007-08 and 2008-09 quality of care data had not been completed because of 'a range of tasks of high priority'.
194. I was subsequently provided with a draft copy of the 2007-08 report. The department advised that the data in the report was yet to be confirmed. However I note that this preliminary data indicates a substantial increase in both the number of allegations of abuse in care investigated and the number of those allegations that were substantiated. The number of quality of care reviews conducted and the number of those reviews which found evidence of quality of care concerns does not appear to differ substantially from the data for the previous year.

Timeliness of quality of care investigations

195. According to the *Guidelines for responding to quality of care concerns in out of home care* (the guidelines) the following timelines apply for quality of care investigations:
- an investigation into an allegation of possible abuse in care must commence within 24 hours of receiving the report of the allegation
 - within 28 working days of receiving a quality of care concern that constitutes an allegation of possible abuse or neglect, the investigation must be completed
 - formation of a quality of care review panel must occur within 5 days from the decision to undertake a quality of care review.
196. Investigations were not completed within 28 days in 28 per cent of cases, however the department noted the timeline was probably affected by Victoria Police investigations in one third of these cases.
197. I requested that the department inform me of any strategies to improve the timeliness of quality of care investigations. The department responded:
- The regional quality of care coordinators meet monthly with the central coordinators and the need to ensure investigations commence in a timely manner is a regular topic of discussion.
 - The training schedule for the final quality of care guidelines will be implemented during 2010.
 - The timeliness of investigations will be analysed in both the 2007-08 and 2008-09 data reports. Should this analysis identify significant and ongoing issues with compliance with the timeliness measures, the Branch will focus on timeliness in a statewide coordinators' meeting in early 2010 to determine the issues with compliance.
198. The department also advised that in 2010 it would provide the Office of the Child Safety Commissioner with copies of all investigation outcomes reports. At interview on 24 February 2010, the Child Safety Commissioner confirmed that he has recently begun receiving these reports, but advised that it was too early to provide analysis or comment on them.

Investigations undertaken by Victoria Police

199. In cases of alleged sexual or physical abuse or serious neglect, the department must immediately report the information to Victoria Police in accordance with Child Protection guidelines and the Protecting Children Protocol with Victoria Police. Victoria Police is responsible for the criminal investigation of such matters.
200. I noted that the Department's 'Quality of Care Data Analysis Report 1 July 2006 – 30 June 2007' states that only 88 per cent of allegations were reported to Victoria Police, who commenced an investigation in relation to 32 per cent of the reported allegations. It should be noted that the standard of proof for Victoria Police to mount a criminal prosecution is higher than the standard of proof required by the department to substantiate allegations.
201. I requested information from the department as to whether any analysis had been undertaken of the Victoria Police response to allegations referred by the department. The department advised that further analysis would be provided when the 2007-08 and 2008-09 data reports were completed and that liaison regarding results would occur with Victoria Police.

Abuse by carers

202. The Child Safety Commissioner's 'Annual Report of Out of Home Care Incident Reports 1/7/08 – 30/6/09' details that over 30 per cent of incident reports reviewed identify the carer, the carer's child or a staff member as the alleged perpetrator of abuse.
203. It should be noted however that the majority of carers do not harm or mistreat the children in their care. Carers interviewed by my investigators were deeply concerned with ensuring the best interests of the children who had been placed in their care. In this regard, the Secretary also stated:

The majority of carers are highly committed people, working diligently and professionally with some of the most vulnerable children and young people in our state.

204. However my investigation has reviewed a significant number of cases involving allegations that children have been abused by their carers. A number of these cases have been referred to in this report. In reviewing the circumstances of these children, I concluded that further harm to a number of them may have been prevented if adequate screening and assessment of their carers had occurred. It is unacceptable that these children were harmed when there was information available to indicate that the carer posed a risk to the child.
205. I consider that vigilant supervision of carers is necessary owing to the vulnerability of children in *out of home care*. I reviewed a case which involved a *residential care* worker sexually abusing a child in their care. In this case, other staff raised concerns about the lack of professional boundaries between the child and the worker and observed conduct which indicated that the worker had been making inappropriate contact with the child outside the *residential care* unit. Consequently, a quality of care investigation was commenced by the department and the child revealed that she had been involved in a sexual relationship with the worker.
206. Appropriate supervision facilitates the prompt detection and investigation of any concerns regarding carer suitability or conduct and has the potential to prevent situations such as this occurring.

Inadequate investigations

207. Some departmental quality of care investigations I reviewed were not conducted as thoroughly as I would have expected. In a number of investigations, it was difficult to detect the logic of the enquiries pursued.
208. I reviewed one case where two children in a *foster care* placement made allegations of abuse against their carers, including that they had been hit, spat on and sworn at. The quality of care investigation undertaken by the department partially substantiated concerns regarding the quality of care being provided on the basis of 'lack of quality in areas such as discipline measures, and smoking in the home'.
209. The two children who made the allegations were removed from the placement. However, three other children, who were not interviewed during the investigation, remained in the placement. In response to my enquiries about this case the department acknowledged that:
- the recorded rationale for not interviewing the three other children was 'significantly flawed'
 - the other three children in the placement should have been included in the incident report and possibly been the subject of a quality of care investigation

- the investigation involved poor information gathering and decision-making in relation to the safety of the three children remaining in the placement
 - the response to the allegations was poorly documented
 - the requirement of seeking approval from the Community Care Manager to continue a placement following the substantiation of an allegation of abuse or neglect had not been adhered to.
210. As a result of my enquiries regarding this case the department has commenced a formal care review. It has also advised that it will be meeting with regional staff to discuss relevant practice issues and that it will conduct a broader review of the management of this case.
211. In another case, the inadequacy of the investigation process involved problems with information exchange between the department and medical professionals.
212. The case involved an allegation that a four year old child had been struck in the face by her carer. The quality of care investigation panel concluded that there had been 'some form of inappropriate physical discipline'. However, the outcome of the investigation was that the allegations were unsubstantiated.
213. Two of the reasons provided for the non-substantiation of the allegations were that:
- Departmental staff had been informed orally by the forensic medical examiner that there was no conclusive physical evidence to support the allegations of physical assault.
 - Victoria Police had informed departmental staff that the child had not made any 'usable statements' at interview and that they would be recommending no further action be taken.
214. Some months later the department was informed that the carer had been charged by Victoria Police in relation to the incident. In response to this, the quality of care panel was reconvened and the allegations were substantiated. The panel completed a second investigation report which stated that the forensic medical report produced at the time of the incident concluded that the child had injuries consistent with the alleged assault and further, that the child and her sibling had disclosed the assault during the police interviews.
215. The inadequate communication between the department, medical professionals and police, which is evident in this case, has the potential to place children at further risk of harm.
216. In another example, the department failed to undertake a quality of care investigation in relation to a serious case of inappropriate physical restraint of a child. The investigation was not undertaken because the worker had been immediately dismissed as a result of the incident. Consequently, no further consideration was given to the worker's ongoing suitability for carer registration. In response to my enquiries, the department now acknowledges that the failure to proceed with the investigation was inappropriate and it has informed me that the matter has been re-opened.

Productivity Commission

217. At the outset of my investigation, I understood that the Productivity Commission had sought data from all states and territories on the numbers of children who were the subject of substantiated sexual and physical abuse by carers in *out of home care*. As Victoria did not contribute to this data I asked the department for an explanation. The department stated it had not provided the requested data as it has concerns about the comparability of the data, the definitions and the counting rules applied.

Abuse by other children

218. As detailed in the Child Safety Commissioner's 'Annual Report of Out of Home Care Incident Reports 1/7/08 – 30/6/09', approximately 14 per cent of category one incident reports involved incidents between children in care.
219. Several incidents have come to my attention involving allegations of children being abused by other children in placements. These included a stabbing, a number of sexual assaults (some of which were ongoing over a number of months and perpetrated by multiple children) and serious threats and intimidation. These cases illustrated the level of risk posed by some children to others in the *out of home care* system and highlighted the importance of diligent supervision. Further discussion of the risks of child against child abuse can be found in the section of this report titled 'Suitability of care'.
220. Witnesses from the Centre for Excellence in Child and Family Welfare were asked to comment on how the issue of risks posed by other children in placements is managed in the field. One witness stated:
- There isn't anywhere else to place these kids. ... The expectation is that we be more vigilant in our management of the dynamics...which I think reasonable families in the community would find abhorrent.
221. I note that the 'Quality of Care Data Analysis Report 1 July 2006 – 30 June 2007' states that child against child abuse was not addressed in that analysis, but that it would be the subject of a separate analysis at a future date. I therefore requested advice from the department as to whether such analysis had been undertaken. I was informed that the department 'has not yet been able to progress this work given the volume and complexity of the important policy and program development activity arising in recent months'.

Sexual exploitation of young people in *out of home care*

222. The sexual exploitation of young people in the *out of home care* system has been identified as a significant issue with incident reports identifying a group of children in *out of home care* who are involved in prostitution and sexual exploitation.
223. The following instances of children engaging in prostitution came to my attention.
- A 16 year old girl involved herself in prostitution and drug and alcohol use following disclosures of sexual abuse by her father. In a 12 month period 25 incident reports were completed in response to her exposure to harm.
 - A 17 year old girl has what is described as a 'strong and committed care team and family' however she continues to engage in prostitution. There are significant concerns regarding her health, drug use and lack of cooperation with mental health, youth justice and education services.
 - A 15 year old girl had been engaging in high risk behaviour including prostitution, drug and alcohol use and criminal activity. However, for a period of time the girl was stable and there were no incident reports received regarding her behaviour. The girl's parents then stated that they did not want further contact with her and, following this rejection, she again began engaging in prostitution and drinking alcohol daily with the result that her mental health deteriorated.

224. The above instances show the complex and differing nature of cases of children involved in prostitution. Protecting children in circumstances such as those outlined above requires a coordinated response involving planning and communication between the department, drug treatment services, mental health services, police and family members.
225. In 2006 I tabled my report, *Improving responses to allegations involving sexual assault*.¹⁸ The investigation involved broad community consultation and I made a number of recommendations to improve outcomes in the following areas:
- reporting incidents of sexual assault
 - protecting against sexual assault
 - inter-agency liaison
 - workforce issues
 - police investigation processes
 - community education about sexual assault.
226. The Child Protection Principal Practitioner undertook an analysis of data concerning children at risk of sexual exploitation which formed the basis of two state-wide forums relating to children in *out of home care*.
227. I reviewed a 2008 presentation by the Principal Practitioner and note that it identified the following deficits in the response provided to these children:
- In some cases the threat posed by paedophiles actively targeting children in care did not appear to be adequately noted and planned for in case management practices
 - Variable liaison with police ranging from poor to excellent
 - Treatment service not equipped to manage the complexity.
228. The department informed my office that the first forum was held in July 2008 and provided an opportunity for the department and the *out of home care* sector to acknowledge the scope of concerns for these children and begin to identify opportunities to work therapeutically with them.
229. The most recent forum, titled *Young People and Sexual Exploitation – Collaborative solutions to prevention and response* was held on 7 December 2009 and was co-convened by the department, Victoria Police and the Office of the Child Safety Commissioner. The forum aimed to strengthen relationships across the sector for those involved in responding to the complexities and challenges of sexual exploitation of children. It presented collaborative practice responses and provided an opportunity for the 100 or more attendees to explore practical prevention strategies for professionals engaged in working with these children.
230. In response to these issues the Secretary stated:
- This small group of young people are some of the most traumatised and disturbed in the OOHC [out of home care] system who require persistent and coordinated effort across the sectors. The state's Principal Child Protection Practitioner has played a key leadership role to facilitate significant cross sectorial work to strengthen and develop more integrated and coordinated responses to this small but vulnerable group of young women.

18 Ombudsman Victoria, *Improving responses to allegations involving sexual assault*, Melbourne, March 2006.

231. The department has also expanded the operation of its Streetwork Outreach Service to provide a presence in St Kilda and the Central Business District seven nights a week until 4:00 am. The Secretary considers the expansion of this service provides an improved capacity for strategic intervention in relation to sexual exploitation of this highly vulnerable group of children.
232. The department also reports a recent decline in the number of category one Critical Incident Reports relating to children in *out of home care* who are being sexually exploited. Ten such reports were received in the last three months of 2009 compared with 24 reports in the preceding quarter.

Self harm and high risk behaviour

233. Children who are placed in *out of home care* have often experienced significant trauma and have complex needs and emotional and behavioural difficulties. At times this can lead to children placing themselves and others in situations of high risk.
234. 'The Looking After Children Outcomes Data Project Final Report' commissioned by the department reported that experiences of abuse and neglect suffered by children in *out of home care* are known to result 'in a range of physical and psychological problems'. Forty per cent of the sample for that study were found to have either already seen a mental health professional or were on a waiting list.
235. The Child Safety Commissioner's 'Annual Report of Out of home care Incident Reports 1/7/08 – 30/6/09' stated that over 25 per cent of incident reports reviewed involved children harming themselves.
236. In response to enquiries from my office regarding children who engage in self harm, the department stated that its efforts to address the needs of these children focus on 'support, containment and, where appropriate, behaviour change'. The department further advised that it advocated a 'team approach' to risk management and crisis prevention with these children.
237. The department advised its incident reporting system is crucial to providing accurate and timely recording of incidents of self harm and high risk behaviour. This data assists in developing and reviewing the risk management plans for the children involved in such behaviour.
238. The department stated that the incident reporting requirements protect children and that subsequent analysis assists in understanding the cause of incidents and leads to improvements in staff training and care. The department also advised that available data is analysed and considered on a number of levels and that the department is working with the Office of the Child Safety Commissioner to identify the key issues requiring further analysis. The department stated that imperatives for analysis of incident reporting relate to sexual exploitation, sexual assault and child against child assault.
239. I have concerns regarding compliance with incident reporting requirements. During the course of my investigation I reviewed a draft paper from the department titled Incident Reporting Issues Paper. This paper reinforced my concerns as it confirmed that the department does not routinely undertake state-wide analysis of incident reports. The paper referred to 'current database systems and resource implications' which limit the department's capacity to review and analyse incident reports. The paper also confirmed that category two incident reports are not reviewed or analysed, which diminishes the department's ability to identify and act in response to issues or children who are escalating in their behaviour.

Mental health issues

240. Self harm occurs in the context of a significant proportion of children in *out of home care* having complex mental health needs. I reviewed a number of cases which illustrated the intensive and sustained response required to assist children in *out of home care* with mental health conditions to achieve stability and well-being. Children requiring treatment are sometimes unwilling to engage with mental health services and may move in and out of placements, psychiatric facilities and secure welfare, resulting in increased instability.
241. In the cases I reviewed, mental illness was often combined with damaging or high risk behaviours such as substance abuse, self harm and criminal activity. The vulnerability of children with mental health conditions to sexual exploitation and abuse was also evident.
242. An audit of 342 children in *residential care* in Victoria on 10 April 2006 found that 65 per cent of the children were at abnormal risk of having or developing a diagnosable mental health condition. The findings from this survey and other project work had resulted in the development of therapeutic care models with the aim of ensuring more timely and comprehensive assessment and treatment for children in *out of home care*.
243. Despite these initiatives, the Centre for Excellence in Child and Family Welfare stated that waiting lists for mental health services for children are too long and therefore it is sometimes difficult to access timely support or intervention for children. Carers also expressed concern about the difficulty of accessing mental health services for the children in their care within reasonable timeframes.
244. I asked the Department of Human Services what it was doing to strengthen the connection between mental health services and *out of home care* services. In August 2009 the government announced the creation of the Department of Health, which has now taken over responsibility for mental health services from the department. DHS has advised that it is taking steps to develop an Interdepartmental Agreement and Regional Partnership Plans with the Mental Health, Drugs and Regions Division of the Department of Health. It stated that it is continuing to work with the Department of Health and community service organisations to ‘strengthen therapeutic/mental health supports across the service system’.
245. It has also advised that the government’s Mental Health Reform Strategy, ‘Because Mental Health Matters’, involves a number of initiatives targeted at youth. It states that children in *out of home care* will be given priority for a number of these services as they are considered a highly vulnerable group.

Conclusions – safety for children in care

246. Children in *out of home care* have suffered abuse and neglect leading to their placement in care. The state has a responsibility to ensure that the trauma already suffered by these children is not compounded by further abuse.
247. The poor outcomes for children in *out of home care* are well documented. I elaborate further on this issue in the chapter of this report titled ‘Outcomes for children in care’. With this knowledge, when children are unable to live with their families, the state has a responsibility to provide them with safe and secure environments in which their best interests are met.
248. My investigation has revealed that despite ongoing reforms of the *out of home care* system, an unacceptable number of children do not experience *out of home care* placements as the secure and safe environment they should be. Rather, they are subjected to further abuse and neglect.

249. In 2005 I made a number of recommendations following my investigation into the circumstances surrounding a young child who suffered serious injuries while in *out of home care*. While my recommendations led to improvements in the department's processes for dealing with concerns about children in *out of home care*, I am concerned that many of these processes are not being consistently adhered to and that resources initially allocated to them have been redirected elsewhere.
250. For example, following my investigation resources were provided by government for two central positions to oversee the management of quality of care concern investigations in the regions and undertake data analysis. I have learned that recently these resources have been redirected as a result of competing priorities and workload issues.
251. In 2007 the department introduced a working draft of the *Guidelines for responding to quality of care concerns in out of home care*. These guidelines remained in draft form until March 2010. I consider these guidelines should have been finalised earlier and training should be provided as a priority to departmental and community service organisation staff to ensure understanding and consistency in the application of the guidelines.
252. While analysis of compliance with these guidelines was to occur on a six monthly basis, no such analysis has been completed since 2007. At that time non-compliance was noted with basic requirements such as the timeframes for the commencement and completion of investigations and requirements to report allegations to Victoria Police.
253. Child on child abuse was highlighted as an issue which required analysis in 2007 and yet no such analysis has been undertaken. It is apparent that owing to demand pressures in the *out of home care* system, children have at times been placed in inappropriate placements with, for example, older children exhibiting violent or sexualised behaviours. Available data suggests that 14 per cent of incident reports involve child on child abuse. As the cases referred to in this report demonstrate, the consequences for the children involved are severe and include children being assaulted or raped.
254. I consider that analysis of compliance with the guidelines should be completed as a matter of priority to assist the department monitor whether it is effectively responding to allegations of abuse in care. This analysis would help the department plan how it can minimise the risk of harm to children in *out of home care*.
255. The results of such analysis should be made available to relevant organisations such as the Child Safety Commissioner, community service organisations, the Foster Care Association of Victoria and the Victoria Aboriginal Child Care Agency. Such information would inform the practices of these bodies as well as assist them to improve the screening, training and support of carers.
256. At present, the department provides limited information regarding its performance in providing safe and appropriate *out of home care* placements for children. The department does not report on quality of care investigations and reviews in its annual report and does not report publicly on any analysis regarding incident reports for children in *out of home care*. In my view, the community should have access to this information to assist it to understand the issues faced by the *out of home care* system.

257. In response to this issue the Secretary stated:

Your recent Own Motion investigation into the Department of Human Services Child Protection Program made a number of recommendations regarding improvements to the scrutiny and accountability of the child protection system. The department accepted all these recommendations and is currently implementing a range of associated measures...

I believe the best and most effective course of action to improve the transparency and accountability of the system is to consider options that build upon these arrangements. I continue to strive for the right balance between the creation of additional mechanisms to oversee the activities of child protection and care services and the provision of direct services to clients.

258. I consider that the department should provide data to the Productivity Commission regarding the number of children who are the subject of substantiated sexual and physical abuse while in *out of home care*. The provision of such data would allow a level of comparison against other states as to Victoria's performance in providing quality *out of home care*.

259. During the course of my investigation I have reviewed a number of quality of care investigation reports. I have been concerned by obvious lines of enquiry not being pursued during the course of investigations, such as other children in the subject placement not being interviewed. I also consider there to be a lack of consistency regarding the outcomes of such investigations.

260. I believe this lack of consistency may be compounded by central unit resources being redirected to other duties and therefore not providing adequate oversight of regional activities and data analysis in accordance with work unit responsibilities.

261. In reviewing the circumstances of some children I have concluded that further harm may have been avoided if adequate screening and assessment of their carers had occurred. It is unacceptable that these children were harmed when there was information available to indicate that the carer posed a risk to the child.

262. Earlier in this report and in the report on my investigation into the Child Protection Program, I expressed concern regarding the adequacy of screening processes for kinship carers. I believe the screening of kinship carers and the supervision of such placements continues to be an area of high risk and should have a dedicated focus by the department.

263. In this report I highlight repeated instances where there has been non-compliance with incident reporting requirements. This is consistent with my earlier investigation into the Department of Human Services Child Protection Program when I made recommendations regarding the department's incident reporting practices. Those recommendations included the provision of training to community service organisation staff regarding incident reporting requirements.

264. In response the Secretary stated:

The department is undertaking further work on the conduct and timeliness of quality of care investigations, regular review of the quality of care guidelines, regular analysis of quality of care reviews, ensuring compliance with incident reporting requirements and more detailed guidance on child on child abuse.

Recommendations – safety for children in care

I recommend that:

Recommendation 1

The department publish the analysis of quality of care data in the Department of Human Services Annual Report.

The department's response

The department supports this recommendation.

Recommendation 2

The department complete an analysis of child against child abuse as was foreshadowed in 2007.

The department's response

The department supports this recommendation and stated:

The analysis of child against child abuse will be undertaken on an annual basis for data collected 2008, 2009. The analysis has commenced and will be completed by the end of September 2010. Subsequent data analysis will be undertaken on a half yearly basis.

Recommendation 3

The department incorporate allegations of child against child abuse into the *Guidelines for responding to quality of care concerns in out of home care*.

The department's response

The department supports this recommendation.

Recommendation 4

The department regularly review the new *Guidelines for responding to quality of care concerns in out of home care* and provide training to Child Protection and community service organisation staff on the finalised guidelines.

The department's response

The department supports this recommendation and stated:

This involves a considerable new training effort across state. Consideration will be given to current training opportunities across the field and how this training could be incorporated into existing training structures.

Recommendation 5

The department ensure that the Principal Child Protection Practitioner receives the analysis of Critical Incident Reports relating to children in *out of home care* on a quarterly basis for review. A copy of the review and analysis to be forwarded to the Office of the Child Safety Commissioner.

The department's response

The department supports this recommendation.

Recommendation 6

The Central Quality of Care Unit regularly review outcomes of quality of care investigations and reviews to ensure consistency across regions. The outcomes of such analysis should be made available to the Child Safety Commissioner.

The department's response

The department supports this recommendation.

Recommendation 7

The department should ensure compliance with the *Guidelines for responding to quality of care concerns in out of home care* is subject to scrutiny by the Child Protection Standards and Compliance Committee. The activities of the committee should be published in the Department of Human Services Annual Report.

The department's response

The department supports this recommendation.

COMMUNITY SERVICE ORGANISATIONS

265. Victoria's *out of home care* system has gradually shifted from a model where the department is directly responsible for service provision, to a model where the bulk of services are outsourced to community service organisations (CSOs).
266. This progression has produced a complex and sometimes conflicting relationship between the department and service providers. Although it is fundamentally a contractual relationship, a discourse of 'partnership' has emerged which connotes a sense of shared responsibility and accountability beyond the basic purchase of services.
267. The outsourcing of service provision for vulnerable clients such as children in the *out of home care* system has also necessitated the development of more structured monitoring and quality assurance processes. Thus, in the context of this already complex relationship, the department has now taken on the additional role of regulator.
268. Registration standards and formal review processes for community service organisations were introduced by the department over two years ago. My examination of the reviews conducted to date has highlighted problem areas in community service organisation performance and a lack of clarity in relation to the department's relationship with community service organisations and its approach to performance management.

Registration standards

269. The Children, Youth and Families Act requires all community service organisations providing *out of home care* services to be registered. There is also provision for registration of community service organisations providing community based child and family services. Registration lasts for a period of three years, at which point the community service organisation must undertake a re-registration process. At present 40 community service organisations are registered to provide *out of home care* services.
270. The Children, Youth and Families Act also allows the Minister for Community Services to set registration standards. The current standards were gazetted in April 2007 and are intended to ensure consistency in service quality, guide best practice and create a system for ongoing monitoring and review. The Children, Youth and Families Act states that community service organisations must comply with the standards.
271. Community service organisations are required to complete an annual internal review of their compliance with registration standards. I note that the department provides the Internal Review Performance Summary Report and Action Plan Report to the Office of the Child Safety Commissioner for his consideration.
272. An external review is also conducted every three years as part of the re-registration process. No internal review is required in a year a community service organisation is externally reviewed. The department completed the first external review of every registered community service organisation and determined all re-registrations in April 2010. The department had planned to complete approximately one third of external reviews and re-registrations each year, rather than completing all re-registrations in the third year. However by February 2010, with only two months remaining in the tri-annual review cycle, only 25 of the 40 community service organisations providing *out of home care* services had completed their external review and provided a report to the department. The remaining reviews were therefore completed in the final two months of the tri-annual review cycle.

External review results

273. The Evidence Guide for registered community service organisations is a document developed to assist community service organisations in understanding what will be required of them in order to meet registration standards. It details minimum requirements that must be met for each standard. For example:

3.6 Occupational Health and Safety

a. The CSO provides a safe working environment for staff, carers and volunteers.

Requirements

To meet this standard you **MUST** fulfil the following requirements:

The CSO has policies and procedures governing occupational health and safety, which comply with the Occupational Health and Safety Act 2004.

274. The guide then goes on to provide specific examples of how a community service organisation might demonstrate that it has met this standard. The external review process requires the reviewer to assess whether each registration standard has been 'met', 'part met' or 'not met' by the community service organisation.

275. The department has stated that, 'it is not anticipated in this first round of external reviews following implementation of the standards that any community service organisation will fully meet all of the standards'.

276. I was provided with the results of the external reviews for 19 *out of home care* agencies. These reviews showed that while there were only two instances of a community service organisation failing to meet a standard, there were a substantial number of standards that were only 'part met'.

277. The results showed lower rates of full compliance in relation to the following standards:

- 2.1 Culturally competent and inclusive services (10 per cent fully compliant)¹⁹
- 3.4 Training and Development (58 per cent fully compliant)
- 3.5 Supervision, performance monitoring and review (47 per cent fully compliant)
- 5.2 Promoting development (53 per cent fully compliant)
- 7.2 Assessment (63 per cent fully compliant)
- 7.3 Planning (53 per cent fully compliant)
- 7.6 Aboriginal children and youth's cultural identity (42 per cent fully compliant).

278. Six community service organisations were only partially compliant in relation to over 40 per cent of standards, with one community service organisation failing to fully comply with over 56 per cent of the standards.

279. External reviewers found community service organisations that:

- had no formal carer supervision processes in place
- inconsistently or inadequately documented carer screening processes and reference checks to the extent that it could not be established that some checks had occurred
- were inconsistent in their implementation of health and safety policies in *residential care* units

¹⁹ I note that the department states that it has only recently rolled out the *Aboriginal Cultural Competency Framework* (Victorian Aboriginal Child Care Agency, 2008) therefore CSO's have not had the opportunity to fully implement it in order meet the standard.

- were inconsistent in conducting environmental risk assessments of carers' homes and *residential care* units
 - had staff who reported relying on oral advice instead of reading children's files.
280. Witnesses interviewed from community service organisations said that the burdens associated with the administration of compliance with registration standards had not been appropriately funded. One witness stated:
- the main issue is that the compliance was placing too much administrative burden on organisations and what it ended up resulting in is people meeting compliance as opposed to people being able to focus on doing work in the best interests of children. They tended just to have to make sure the boxes were ticked as opposed to being able to have deeper discussions around its relevance.
281. Witnesses from the sector also stated that the separate compliance regimes imposed on community service organisations in relation to various services they were funded by government to provide often overlapped and that this resulted in unnecessary burden.
282. Once the tri-annual review cycle is complete, the department has advised that it intends to analyse all data obtained from the external reviews and prepare an evaluation report. The department has stated that a state-wide action plan based upon the reviews will also be developed to identify priorities for community service organisations to focus on and action required to support community service organisations. The department stated that the report will also identify ways it can assist agencies to better meet the standards.
283. In response to this issue the Secretary stated:
- The registration of CSOs [community service organisations] is a mechanism to transparently drive improvements in service quality and accountability. The introduction of the new approach has been challenging for the service providers however it has also created a systematic approach to assessment of standards of care and quality improvement. This is a new process and the results will identify opportunities to strengthen the process.

Non-compliance with the 'Looking After Children' framework

284. The registration standards require community service organisations to ensure that certain records are created and completed for each child whose placement they are responsible for. These records and the processes associated with them are derived from the 'Looking After Children' framework. As these are significant processes for ensuring quality of care, I have examined community service organisation performance against the relevant standards carefully.
285. 'Looking After Children' is a best practice framework for caring for children placed away from their families as a result of Child Protection intervention. It is based on a model developed in the United Kingdom and has been implemented in Victoria since 2002.
286. 'Looking After Children' provides a set of practice tools and records to assist in planning and implementing a child's care. When completed, the 'Looking After Children' records become the community service organisation's main client records for the child. They serve the dual purposes of assisting with 'good corporate parenting' for individual children and functioning as a means for collecting data on outcomes for children in care.

287. The 'Looking After Children' records and processes a community service organisation must complete in order to comply with minimum registration standards are:
1. Compilation of an Essential Information Record. The Essential Information Record contains information about the child which the carer is likely to require immediately, such as personal details, relevant professional and personal contacts and health information.
 2. Completion of a Care and Placement Plan within the first two weeks of a child coming into care. A Care and Placement Plan outlines overall objectives for care and particular day-to-day needs of the child. It contains detailed information about how these needs will be met and who will be responsible for various tasks.
 3. Completion of a Review of the Care and Placement Plan at least every six months.
 4. Completion of an Assessment and Action Record for every child in care for six months and thereafter annually for school students and bi-annually for children under school age. Assessment and Action Records are age group specific records. They contain questions and discussion points aimed at assessing a child's progress and the care it is receiving with a view to planning improvements.
 5. Documentation, necessary information, assessments and strategies within the relevant 'Looking After Children' records that indicate that the care team is addressing the child's safety, stability and developmental needs while in care.
288. The 'Looking After Children Implementation Monitoring Project Highlights Report 1 October 2008 – 31 March 2009' indicates significant non-compliance with the minimum registration standards required of community service organisations in relation to 'Looking After Children' processes. The project focused on 2853 children and young people in full time *out of home care* for some or all of the specified period. From this group, 2016 were in home based care and 797 were in *residential care*.
289. Of the 2016 children in home based care, approximately:
- 1655 children had been in care for two weeks or longer
 - 1) 1430 had an Essential Information Record
 - 2) 1350 had a Care and Placement Plan
 - 1170 children had been in care for six months or longer
 - 3) 1010 had completed their first Care and Placement Plan review
 - 4) 970 had an Assessment and Action Record.
290. Of the 797 children in *residential care*, approximately:
- 670 children had been in care for two weeks or longer
 - 1) 575 had an Essential Information Record
 - 2) 500 had a Care and Placement Plan
 - 355 children had been in care for six months or longer
 - 3) 350 had completed their first Care and Placement Plan Review
 - 4) 255 had an Assessment and Action Record.

291. Witnesses from the community service organisation sector stated that poor compliance with 'Looking After Children' processes related to the training system. One witness stated:

I think that the original process put in place around the introduction of the LAC [Looking After Children] system was such that once key staff were trained they were then expected to go back into their work places and train other staff. And the problem with that over a period of time is that bad habits get passed on or people don't necessarily give things the sort of level of attention perhaps they should.

292. They went on to suggest that the 'train the trainer' model may be inadequate in a sector which has substantial difficulty retaining staff.

Performance management

293. In cases where the review process identifies that a community service organisation is failing to meet registration standards, the community service organisation and the department must jointly complete an action plan to overcome performance issues. Other actions that are open to the department to take in response to performance issues are:

- placement of conditions on registration
- revocation of registration
- renegotiation of funding
- appointment of an administrator (where all other options have been exhausted).

294. To date, all community service organisations identified as 'not fully meeting' all registration standards have been re-registered on the basis of Quality Action Plans being developed and agreed upon. The department has stated that the Quality Action Plans address the areas identified as 'not fully met' by the external review. According to the department, if a community service organisation is found to have 'not met' any of the standards (compared to 'met' or 'part met'), its re-registration will be conditional on the completion of the required action to meet the standard. It further stated that the implementation of the Quality Action Plans will be supported and monitored at the regional level by the Regional Quality Enhancement Workers and Program and Service Advisors.

295. I note that under the current system, a decision to refuse a community service organisation re-registration on the basis of poor external review performance would have significant consequences for the department. Given the current resource demands on the *out of home care* system (see chapter titled 'Availability of Care'), it may also put the children placed with that agency at risk. This clearly creates a conflict for the department as a regulator.

296. I obtained evidence indicating that there was a level of scepticism within the community service organisation sector about the value of the registration process. Witnesses from the sector interviewed by my investigators did not have the impression that there would be any substantial repercussions for community service organisations from the review process and questioned whether the department and the assessors were 'taking it seriously'.

297. In response to this issue the Secretary stated:

In my view the department has undertaken the introduction of the registration of CSOs [community service organisations] seriously and with diligence. The creation of legislation, the allocation of funds and the introduction of powers to appoint an administrator underscore this intent.

Alternative models

298. I note that in New South Wales another approach is taken to the regulation of the *out of home care* system. That jurisdiction has established a regulatory framework that provides a structural separation between the accreditation of *out of home care* agencies and the department with responsibilities to fund agencies and which takes overall responsibility for case management issues.
299. In New South Wales, the Office of the Children’s Guardian is a government department set up to promote the interests and rights of children and young people in *out of home care* in that jurisdiction. While the Children’s Guardian reports to the Minister for Community Services, the Children’s Guardian can make special reports to the Minister or direct to Parliament. In order to be able to provide *out of home care* agencies are required to be accredited by the Children’s Guardian or a participant in its quality improvement program.
300. The principal functions of the Children’s Guardian include developing criteria for the accreditation of ‘designated agencies’ and administering the accreditation regime. The Children’s Guardian publishes guidelines and benchmark policies in relation to what agencies are required to demonstrate in order to achieve and maintain their accreditation.
301. The Children’s Guardian reports annually to Parliament and these reports include analysis of the issues identified in the *out of home care* system through its monitoring and accreditation activities.

Conclusions – community service organisations

302. In my report *Conflict of interest in the public sector* tabled in March 2008,²⁰ I referred to the problems that can arise where officers may have an incentive to protect the reputation of their employer but where the public interest may be better served by dealing with the problem more assertively:

Conflicts of interest can arise when a public officer favours the protection of the reputation of the public body, or of the government itself, over the fair treatment of a member of the public. For example, an officer may not acknowledge and remedy maladministration if such an admission or action has the potential to affect the reputation of the public sector entity.²¹

303. I consider that there is a conflict between the department’s role in regulating community service organisations and its reliance on those same community service organisations to meet its own statutory responsibilities. The department has a regulatory role to determine whether a community service organisation is providing an adequate standard of care to children in *out of home care*. Any finding of an inadequate standard of care may also reflect that the department has failed to meet its statutory obligations, or fulfil community expectations, in respect to children for whom the Secretary has personal statutory responsibility. Any finding would also raise issues regarding the department’s contract management and resource allocation in respect to the *out of home care* service concerned.
304. In my view the extension of the partnership approach to incorporate the role of regulator is not compatible with ensuring a robust system of regulation and quality assurance for the *out of home care* system.

²⁰ Ombudsman Victoria, *Conflict of interest in the public sector*, Melbourne, March 2008.

²¹ *ibid.*

305. The New South Wales model of regulation provides an example of structural separation of these conflicting roles. In my view this model should be considered for Victoria.
306. In response to my preliminary conclusions on this issue, the Secretary disagreed that there was a conflict between her department's role in funding community service organisations, regulating these services and having statutory responsibilities for the care of the children her department places with these services. In her view:

A conflict of interest can arise if the department has competing objectives in funding a service provider and regulating it. The department does not have such competing objectives. The objective of the department in regulating CSOs [community service organisations] through the registration process and the funded process is to achieve quality services for children, youth and families. Funded bodies must comply with the service and performance standards in funding agreements. Failure to comply with service and performance standards may result in termination of funding.

I do not believe the creation of a new regulatory body to be a cost effective strategy for the small OOHC [out of home care] provider group (40 agencies) and while I am satisfied that to continue this function within the department is appropriate, I am persuaded by the general principle that a separation of this role from the division responsible for the program has merit. I have already commenced a detailed examination of registration processes across my portfolios with the view of streamlining and integrating some elements of standards across the sectors. In light of this work and your comments with respect to OOHC I have decided to have a fresh look at where this function sits within the new structural arrangements for the department.

307. I note the Secretary's acceptance that action is required to deal with my concerns. However I do not agree with her view that a conflict of interest does not arise for her department, and for its Secretary, from the current arrangements.

Recommendation – community service organisations

I recommend that the department:

Recommendation 8

Transfer the function of registering community service organisations to an independent Office which has no reliance on the services being provided by the agency being registered.

The department's response

The department has not accepted this recommendation.

SCREENING OF CARERS

308. A review of complaints made to my office between July 2007 and June 2009 found a number of cases involving allegations that children had been placed in home based care without adequately assessing the suitability and capacity of carers. My earlier investigation into the Child Protection Program also identified cases where the department had failed to comply with carer screening policies, particularly in *kinship care* arrangements.
309. The description of the foster carer and kinship carer screening processes provided below shows a substantial difference in both practices and attitudes relating to the two types of placement. The evidence gathered during my investigation indicates weaknesses in the policies and practices for kinship carer screening, which have become more problematic as the department has increased its reliance on kinship placements.

Foster carer accreditation

310. Foster carers must complete a training and accreditation process which is described as taking approximately six months before they are allowed to have children placed in their care. However, I identified significant variation in the timeframes for accreditation. One community service organisation stated that their accreditation process generally took between two and four months. In contrast to this, other witnesses from the sector stated that in their experience, the accreditation process usually took somewhere between eight and 12 months.
311. Following an initial expression of interest and attendance of information sessions, potential foster carers are required to complete 16 hours of compulsory training aimed at developing their skills and understanding of children who have come from difficult family circumstances.
312. The recruiting community service organisation then conducts a screening process involving:
- a criminal record check
 - a medical assessment
 - a Working with Children check
 - a series of interviews
 - reference checks
 - a home and environment assessment
 - the carer providing a written account of their life history.
313. The community service organisation then submits a report to an accreditation panel. If the panel grants approval, the carer is formally accredited and placed on the register for out of home carers. This accreditation is then reviewed annually.
314. In response to my draft report the Secretary advised she was disappointed that there continues to be variation in approaches and timeframes for foster carer accreditation. The Secretary stated the department will continue to work with the sector through the existing *foster care* training and accreditation committee to '... embed a more consistent application of the *foster care* recruitment, assessment and training processes'.

315. Foster carers can be disqualified from being placed on the register for out of home carers if the Suitability Panel determines that they pose an unacceptable risk of harm to children. The Suitability Panel is established under the Children Youth and Families Act and consists of members with qualifications in law, social work, psychology or other relevant disciplines. Matters arising from misconduct notifications made to the department may be referred to a Suitability Panel by the Secretary.
316. Results from external reviews of community service organisation compliance with registration standards indicate that there are some community service organisations inconsistently or inadequately documenting carer screening processes and reference checks. In some cases the documentation was not sufficient to establish that the required checks had occurred at all.
317. An audit of criminal record checks conducted by the department following my investigation into the Child Protection Program,²² found that 149 of the 3859 community service organisations' contracted home based care placements were not fully compliant with criminal record check policies. The department stated that all non-compliant placements involved carers who had either failed to update their criminal record check every three years or had a new adult living in their household who had not completed a record criminal check. The department stated that all criminal record checks have now been completed and that no placements were terminated as a result of the outcomes of those checks.

Screening of kinship carers

318. Kinship placements are the department's preferred placement option for *out of home care*. This preference is based on the premise that a child will be less traumatised by placement away from their parent/s if they have a pre-existing connection or relationship with their new carer. Where child and carer are not familiar with each other prior to placement, it is still accepted that a shared family history is likely to promote the child's sense of identity and retention of family and community ties.
319. Unlike foster carers, kinship carers are not required to be formally registered. They are also screened and assessed using a different process. Rather than being a general accreditation process, the kinship carer assessment takes account of the fact that the assessment of the carer is specific to their appropriateness as a carer for a particular child. It encompasses an understanding that 'the expectations of carers and standards accepted may be different than those for carers who are unknown to the child'.²³
320. The department's practice manual for Child Protection workers²⁴ states that the minimum screening and assessment requirements that must be conducted before a child is placed with a kinship carer are:
- a criminal record check on the potential carers and all other household members aged 17 years or older who reside in the household or sleep there overnight
 - checks on the suitability and fitness of the proposed carer to care for the child
 - checks on whether any person in the carer's household has been a client of Child Protection

22 Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

23 Department of Human Services, *Protecting Victoria's Children – Child Protection Practice Manual*, September 2007.

24 *ibid.*

- discussion with the carer about whether the child will be safe living with them, and whether they are willing to cooperate with the department to help the child and their parents
 - where the child is under two years of age, a discussion of SIDS factors.²⁵
321. Witness evidence indicated that it was ‘not uncommon’ to establish that carers had criminal records during the assessment of kinship placements. Where a carer’s criminal record check returns an adverse outcome and the Child Protection worker still considers the carer should be approved, the worker must seek written approval from their Regional Director to engage the carer. The placement cannot commence until this approval has been provided.
322. Following the preliminary screening and placement of a child with a kinship carer, the Child Protection worker must conduct a home visit in the first week to identify:
- the suitability of the accommodation available for the child
 - the carer’s capacity to provide the child with adequate day-to-day care
 - the carer’s understanding of the child’s needs including access with their natural family
 - supports required by the carer
 - any health and safety issues in the carer’s home.
323. In a planned placement which is likely to exceed three weeks, or in an emergency placement which develops into a long term placement, a more comprehensive assessment must be conducted. A comprehensive assessment should involve multiple visits to the carer’s home for discussions with members of the carer’s household about family life, background and care giving issues. During my investigation into the Child Protection Program witnesses informed my investigators that comprehensive assessments were not always being conducted following the initial screening and placement in accordance with departmental policy.
324. Witnesses from the department and the sector also expressed concern about the level of rigour involved in kinship carer screening generally and the tendency for Child Protection to ‘default’ to approving kinship placements. It was suggested that risky kinship placements were sometimes approved because the benefits of placing a child with family members were given disproportionate weight in the decision-making process.
325. My investigation found evidence that kinship carer assessments are not always conducted or recorded in accordance with Child Protection policy. The following are examples:
- Two children disclosed sexual abuse perpetrated by their kinship carer. The department could not locate any evidence on the children’s file that a *kinship care* assessment had been undertaken prior to the children’s placement.
 - A group of siblings was removed from a placement with relatives following the substantiation of allegations of sexual abuse against one of the carers. The department’s pre-placement assessment documentation indicates that a police check was conducted but does not record the carer’s relevant convictions or show that the placement was approved by the Regional Director, as required by departmental policy.

²⁵ Sudden Infant Death Syndrome.

- A child was placed with family friends even though police checks revealed the carers had numerous charges and convictions which included serious violent crimes. The kinship carer assessment also found that the carers had been the subject of 19 previous reports to Child Protection in relation to their own children. Approval was not sought from the Regional Director for the continuation of this placement following the adverse police check results. An investigation prompted by complaints from the child's family members led to the child disclosing that he had been sexually abused by both carers while in the placement.
326. In many instances *kinship care* provides safe, stable and nurturing environments for children. The department provided me with the following examples to demonstrate the good outcomes that can be achieved in *kinship care* including:
- A two year old boy was placed in *foster care* due to his parents' mental health and substance use. Over time his parents' whereabouts became unknown and the department began exploring long term options for him. The department located the boy's grandparents who had not been aware of his existence. Once convinced that he was their grandchild, the couple were committed to his care. Following assessment and planning, the child moved in with his grandparents and has been reported to thrive in their care. The process of obtaining a Permanent Care Order in favour of the grandparents is now underway.
 - The Children's Court decided that a 14 month old girl should not be returned to her parents care and, as a result, she went to live with her aunt, uncle and two cousins. Her parents were believed to have been involved in drug dealing activity. The girl is now reported to be thriving with her extended family and she knows she is welcome to live with them for as long as she needs - just like the other children in the household. The girl has siblings who live with other family members and her extended family ensures contact occurs regularly. Now at school, she is reportedly performing adequately despite difficulties earlier in her life due to developmental delay in her speech and problems with anxiety.
327. In response to my draft report the Secretary noted that the department has previously acknowledged, in response to my investigation into Victoria's Child Protection Program, the need for improvement in the screening of carers. The department's response to my earlier investigation has included the introduction of new kinship carer screening processes, modifications to the department's information system (the Client Relationship Information System - CRIS) and completing training in relation to these new processes across the state.
328. During my investigation into the Child Protection Program, the department accepted my recommendation that it conduct an audit of its compliance with criminal record check procedures for kinship placements. The audit revealed that 274 of the 2052 kinship carer placements audited (13 per cent) were not fully compliant with criminal record check policies. The department advised that regional criminal checks have now been conducted for each of the 274 non-compliant placements and that it did not terminate any placements as a result of the outcomes of those checks.

329. The screening and assessment system for kinship placements does not contain any training requirements. In comparison, I have considered the *kinship care* assessment process used by Child and Youth Services, Government of Alberta, Canada. While similar to the assessment process used in Victoria in a number of respects, the Alberta process requires kinship carers to participate in 'Orientation to Caregiver Training' which consists of eight three-hour modules which give an overview of some of the parenting issues they may encounter. This training must be completed within 60 days of the placement being made. Beyond this, carers in Alberta are encouraged to voluntarily participate in further *foster care* training to assist them in their role.²⁶
330. A recent review conducted by the Government of Alberta recommended that this system could be further improved by modifying training to address *kinship care* specific issues such as the impact of emotional ties between kinship caregivers, birth parents and the children placed.²⁷
331. The department developed a new kinship carer screening process in 2008. However, during my investigation into the Child Protection Program witnesses told my investigators they did not think adequate resources had been allocated to the implementation of new assessment models and that it was largely expected that the assessment process would be undertaken by existing Child Protection staff. Witnesses stated that workload demands on Child Protection staff may undermine the quality of the new approach to assessment unless it was appropriately resourced.
332. While acknowledging concerns expressed to my investigators regarding the adequacy of resources provided for undertaking assessments of kinship carers, the Secretary stated:

I believe strongly that assessment at the initial stages of establishing a kinship placement is the core responsibility of child protection staff. Child protection staff will be better supported to undertake this function through the introduction of new kinship care assessment tools and the commencement of the Kinship Care Support Model which has capacity for some dedicated establishment support of new kinship placements.

Conclusions – screening of carers

333. The processes for screening and assessing of foster carers are rigorous, however there is evidence that compliance with criminal record checking procedures can break down at times because of limited resources and/or failure to follow procedures.
334. The screening of kinship placements is more problematic. There is evidence that a less rigorous screening process has been applied to family members which has placed children at risk. The basic screening processes that are in place are not always adhered to. It appears that Child Protection workers are often placed in the difficult position of weighing the benefits of placing a child with a family member against any concerns they may have about the suitability of that family member. This difficulty is magnified by workload issues and scarce placement options.

²⁶ Government of Alberta Children and Youth Services, *Kinship Care Review Report*, November 2009.

²⁷ *ibid.*

335. There are oversight processes in place to assist workers with this type of decision. However, management approval processes for placements involving carers who have criminal records are not always being followed. The department has acknowledged that it needs to improve practice in this area.
336. In comparison to *foster care*, there is less formal post-placement monitoring and support of kinship placements. It appears that the department tends to withdraw its involvement from children in *kinship care* once a modicum of stability has been established. This is driven in part by the pressure on the Child Protection Program which I described in my previous report.²⁸ There also appears to be an understanding that minimising intervention in a placement will assist in the process of normalising the relationship between carer and child.
337. The combination of weaker screening processes and less ongoing monitoring appears to be creating vulnerability in the oversight of children placed in *kinship care*. As the case studies indicate, children can remain in dangerous placements for lengthy periods of time where the system fails to adequately identify and assess the risk of a kinship placement. The department will need to address assessment, ongoing monitoring and support issues if the safety of children in home based care is to be assured.

²⁸ Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

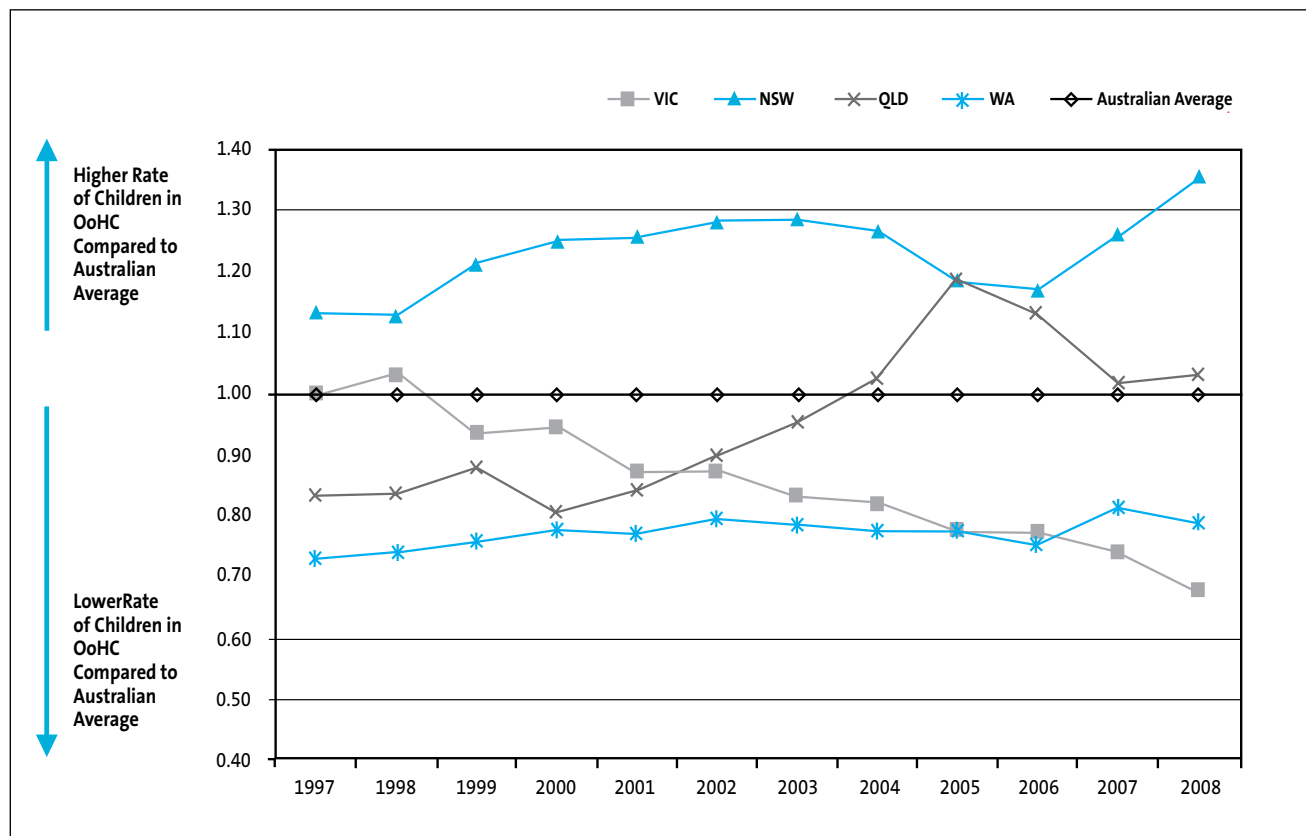
AVAILABILITY OF CARE

Demand for *out of home care*

338. The demand for *out of home care* services is steadily growing across Australia. In Victoria, the short to medium term impact of this growing demand will be a significant challenge for the department.
339. Figure 1 below shows that the percentage of children in care in Victoria has remained lower than the national average for the last decade. The reasons for this are not clear. However, the Australian Institute of Health and Welfare, which collated this data, considers that the reasons for variation in the rates between jurisdictions are likely to include:

Differences in the policies and practices of the relevant departments in relation to early intervention and out-of-home care, as well as variations in the availability of appropriate care options for children who are regarded as being in need of this service.²⁹

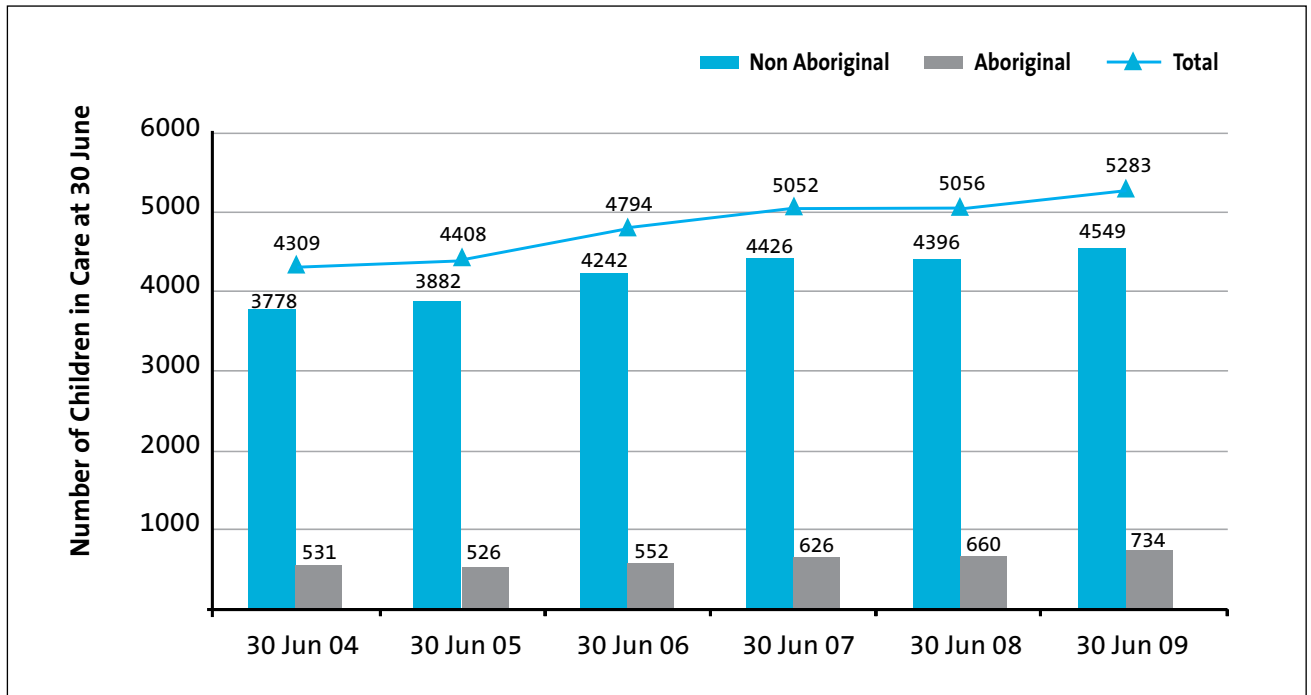
Figure 1. Relative Rates of Children in Out of Home Care (per 1,000 children)



340. In 2008 Victoria had the lowest percentage of children in care of all the Australian states. However, the number of children in care in Victoria is still growing at a significant rate. At 30 June 2009 there were 5283 children placed in *out of home care* in Victoria. This represents an increase in excess of 20 per cent over the last four years.

²⁹ Australian Institute of Health and Welfare *Child Protection Australia 2008-09, Child Welfare Services Number 47*, January 2010, page 38.

Figure 2. Number of children in care at 30 June 2004 – 30 June 2009



341. The increasing demand for *out of home care* in Victoria has not been caused by increasing numbers of children entering the system. In fact, the number of children entering care has been decreasing over the last five years. The increasing demand is created because those children who do enter *out of home care* are tending to remain in care for longer periods of time (See figure 2). Between 2001 and 2008, the average length of time a child spent in *out of home care* nearly doubled from approximately 300 days to almost 600. For the last two years, the reduction in the number of children entering care has been eclipsed by a greater reduction in the number of children leaving care.
342. The Aboriginal population is an exception to the trend of reducing numbers of children entering care in Victoria. Aboriginal children are significantly over-represented in dealings with Child Protection and the *out of home care* system in comparison with non-Aboriginal children. An increasing number of Aboriginal children are entering care, while the number exiting remains steady.
343. The department states that it has been 'experiencing significant difficulties keeping pace with the growth in demand and increasingly complex needs of children in care'. It acknowledges that at present the *out of home care* system in Victoria 'does not have sufficient capacity' and that demand is likely to continue to grow in the coming years.

Reducing the demand

344. The department has developed projections for future demand for *out of home care* in Victoria which estimate growth of approximately five per cent per annum up to 2014.
345. Given that the department has acknowledged its current lack of capacity, it considers that it will need to do more than simply seek extra funding if it is going to reduce the growing gap between supply and demand. Various factors such as increasing funding for diversionary programs and additional Child Protection workers may affect demand, however the department advises that it is difficult to estimate these effects.

346. The department attributes the trend of decreasing admissions to care to its strategic approach to the integration of Family Services, Child Protection and Out of Home Care. Supporting children to remain at home with their families is one of the seven directions outlined in the 'Directions for out-of-home care' reform package. The department has increasingly focused on early intervention strategies to intensify support for families identified as being at risk of contact with the *out of home care* system. I note that \$19.04 million has been allocated over four years to pilot new family based interventions aimed at preventing the removal of children from their families or achieving their earlier return home if they are removed.
347. The department has provided data which indicates that more than half the children who entered *out of home care* in Victoria in 2004-05 exited again within six months. This is despite the average length of time in care increasing as described previously. It has stated that it believes that this data suggests that many of these children could have avoided entry into the *out of home care* system if their families had been provided with greater support.
348. Consequently, the department has stated that it intends to put \$23.76 million towards programs associated with placement prevention over the next four years. These initiatives include: a pilot for an intensive placement prevention program; enhancement of the early parenting program for families with children under two years; and increasing the capacity of Child FIRST. The department has said that it expects these initiatives to assist in minimising the growth in demand for *out of home care* services over the coming years.
349. In relation to the increasing average length of stay for children placed in *out of home care*, data provided by the department on the complex parental characteristics of children in care indicates that family violence and substance abuse remain highly prevalent. These factors are often combined with low income, mental health concerns and physical or intellectual disabilities. It is clear that the greater the complexity of factors necessitating a child's removal from their family home, the longer it may take to stabilise that family so that the child can return.
350. The department contends that in order for placement prevention and early reunification strategies to be successful, 'a skilled, multidisciplinary approach is required' to target the underlying problems impacting on parents' ability to care for their children. The department has highlighted the links between adequate resourcing and development of family support services and the demand for *out of home care*. For example, it notes that while substance abuse is the most predominant parental characteristic of children in care, funding for drug treatment services has remained static since 2001.
351. In response to enquiries regarding the advice from the Department of Human Services that funding for drug treatment services has remained static since 2001, the Department of Health has advised that:

Since 2001 the AOD [Alcohol and Other Drugs] budget has increased by \$74.4m, this includes the transfer of the Community Support Fund budget of \$32.3m from DPC [Department of Premier & Cabinet] in 2003-04.

...

Since 2008-09 the government invested an additional \$14.4m over four years as part of the Victorian Alcohol Action Plan.

352. I note the recent Budget announced an additional \$20.8 million in funding for alcohol and drug services.
353. In 2008 the department released a new policy document providing a framework for reform priorities and investment decisions for alcohol and drug services for the next five years.³⁰ One of the key principles of the policy titled 'A new blueprint for alcohol and other drug treatment services 2009 – 2013' is that, 'interventions must reduce the harmful impact of alcohol and other drug use on children and families'. The document states that the government already funds a number of family-specific services for parents wanting to address their substance misuse, such as a dedicated helpline; counselling services; residential rehabilitation for parents and children; support groups; access to parenting programs and pre- and post-natal support for mothers.
354. The following actions are outlined for the next three years to support the principle:
- prioritise the interests of children whose parents are engaged with alcohol and other drug treatment in accordance with the Children, Youth and Families Act
 - improve access to family therapeutic interventions for clients of treatment services and promote earlier intervention for at-risk parents presenting in other health and welfare services
 - improve information about the range of treatment options and support for families to improve early intervention
 - improve clinical and workforce skills in engaging families in treatment.

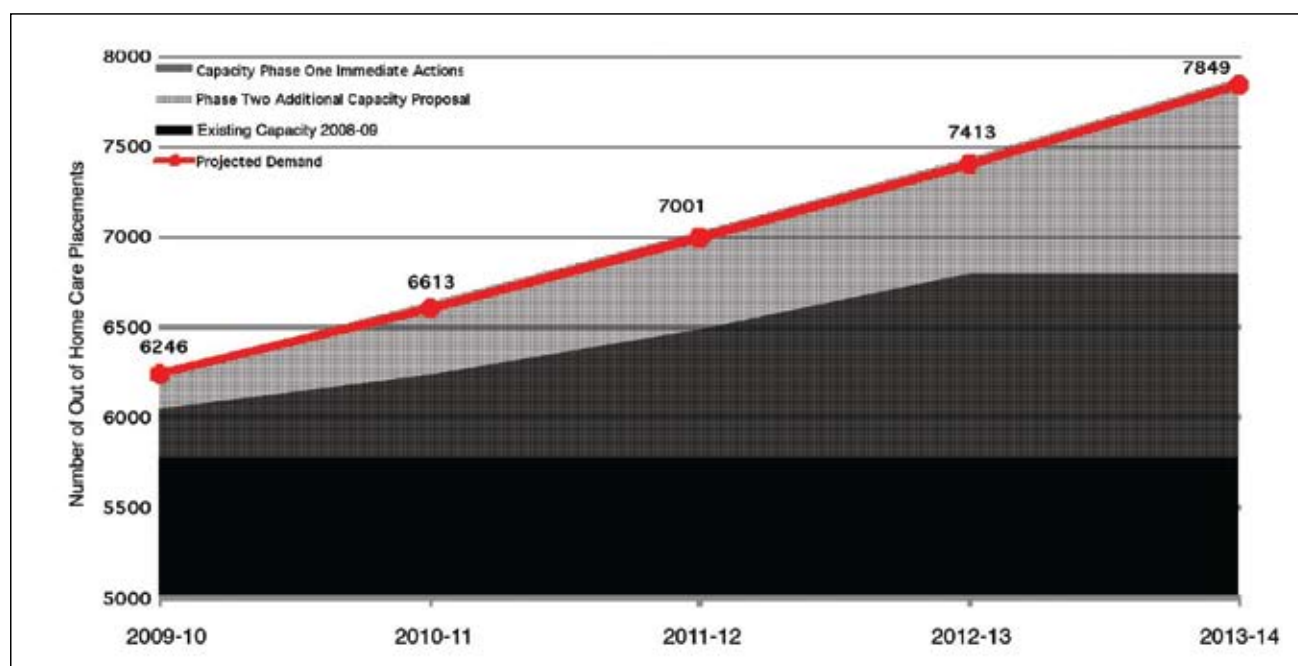
Adequacy of projected supply

355. The department has advised that it is taking steps it believes will increase capacity and reduce demand within the *out of home care* system. In the short term, it has recently made a successful bid for extra funding which it states will cover the previously projected shortfall for the year. In the long term, it is intending to reduce the demand through placement prevention and improvement of reunification processes. It has advised that it is difficult to quantify the impact these long term strategies will have at this stage.
356. The evidence I have obtained during this investigation indicates that it is unlikely that the department will be able to meet expected demands in either the short or the long term. The department's projections for future growth in demand for *out of home care* services were updated in February 2010. The department says that it intends to continue to update these projections annually.

³⁰ At the time this document was produced, alcohol and drug treatment services were the responsibility of the Department of Human Services. Responsibility for these services was transferred to the newly created Department of Health in 2009.

357. The February 2010 projections up to 2013-14 are shown in figure 3 below.

Figure 3. Projected demand for of out of home care placements 2009-10 to 2013-14



Note: The red points on the graph above represent a daily average number of placements throughout the financial year. The difference between two points on the graph can be interpreted as a difference between financial year averages.

Out of Home Care Projections (number of placements)	2009-10	2010-11	2011-12	2012-13	2013-14
Projected Demand (red)	6246	6613	7001	7413	7849
Existing Capacity 2009-10 (black)	5781	5781	5781	5781	5781
Capacity Phase One Immediate Actions (dark grey shaded area)	6052	6246	6491	6801	6801
Estimated projection of additional capacity required	193	367	510	612	1048
Phase Two Additional Capacity Proposal (light grey shaded area)	193	399	542	644	1081

358. The black section shows the number of placements the system can provide at the 2009-10 funding level. The dark grey area shows the increased placement capacity provided by the \$135 million funding boost for *out of home care* over four years in the 2009-10 State Budget.

359. The light grey area represents the gap between funded capacity and the projected demand prior to the 2010 State Budget. Coverage of this gap is subject to the department successfully bidding for more funds. I asked the department whether sufficient funding is committed to the *out of home care* program to meet projected growth. The department responded:

Funding committed in the current Budget does not fully cover projected growth. There is an opportunity each year to present growth projections in the usual budget cycle.

360. The recent State Budget announced an additional \$23.3 million over four years to increase the capacity of *out of home care* services.
361. The above projections demonstrate that this year there may be 193 children in Victoria requiring care that the department cannot provide from the *out of home care* budget. Prior to the recent budget announcements, this figure was projected to reach 1048 by 2013-14.
362. While I note the recent budget announcements, my office received a number of updated projections for demand from the department throughout the course of this investigation. Each of these has estimated even greater increases in demand than the last. Therefore, it seems possible that the number of children requiring placement in the coming years will be even greater than the numbers estimated in the table above.

Trends in types of placements

363. Analysis of the number of children in the various types of placements in Victoria between 30 June 2001 and 30 June 2009 shows a nine per cent increase in permanent care placements and an 11 per cent increase in *kinship care* placements. By contrast, the percentage of children in *foster care* has decreased by 16 per cent and the number in *residential care* has fallen by four per cent.
364. *Kinship care* is growing at a faster rate than any other type of *out of home care* utilised by the department. The total number of children in *kinship care* in Victoria already exceeds the combined total of all those in *foster care* and *residential care*. The department advises that there are 2000+ children in statutory *kinship care* on any one day. This figure is expected to reach 2,500 by end June 2011.
365. It should be noted that data regarding kinship placements refers only to 'statutory' placements where the department is involved with the children concerned. The department has no means of identifying how many children are being cared for by family members in arrangements that have been organised without departmental intervention.
366. The decreasing number of *foster care* placements is primarily caused by a lack of supply. The department advised that over the past 12 months regions have reported an increasing difficulty in securing suitable *foster care* placements for children. This is particularly so in relation to adolescent placements and placements in rural regions.
367. The department attributes the diminishing number of foster carers in Victoria to a decrease in the level of 'volunteerism' in the community and the changing nature of modern family structures. The *foster care* system has always tended to rely heavily on women who are not in the paid workforce as volunteers. However, dual income families are becoming increasingly common and this is reducing the number of available foster carers from that demographic.
368. The increasing complexity and challenging behaviours of children entering care may also be contributing to the diminishing number of *foster care* volunteers. A national study conducted by the University of South Australia in 2005 found that carers had difficulty obtaining basic training, support and advice in relation to caring for children with complex needs and challenging behaviours. It also found that carers were vulnerable to threats and violence and that there was a lack of counselling and assistance available in relation to these incidents.³¹

³¹ Briggs, F. & Broadhurst, D. (2005), 'The abuse of foster carers in Australia', *Journal of the Home Economics Institute of Australia*, 12(1), 25-35.

369. Witnesses from the Foster Care Association of Victoria suggested that ‘bad press’ associated with *foster care* was having an impact on recruitment. Representatives interviewed suggested that negative stories about *foster care* experiences tend to dominate community perceptions about *foster care* and that publicising positive real life stories was one strategy that appeared to be effective in foster carer recruitment.
370. The Foster Care Association of Victoria also suggested that although the foster carer recruitment process is thorough, the length of time involved may be a deterrent for some volunteers. Representatives suggested that the process can take up to twelve months and that making sure the process is as streamlined as possible without sacrificing rigour may be of assistance in recruiting foster carers.
371. Other witnesses from the sector pointed out that significant attention has been given to foster carer recruitment in recent years. They suggested that it was unrealistic to hope that improved foster carer recruitment strategies would have a substantial impact on the demand and capacity issues in the *out of home care* system, particularly given the special qualities and skills required in volunteers. One witness stated:
- I think one of the things we have to question is whether it’s realistic to expect members of the community, Mr and Mrs Average, to come forward in the numbers we need to respond to the level of demand that we see...in truth we’re looking for some pretty skilled people.
372. The department states that issues with recruitment and retention of foster carers are prevalent throughout Australia and internationally. It advises that it has been aware of the need to grow its foster carer numbers for some time. It states that it is attempting to address the problem with the Foster Care Communication and Recruitment Strategy.

Conclusion – availability of care

373. Unlike many government programs there is, in practice, little discretion that can be exercised to limit expenditure on *out of home care*. The above projections clearly demonstrate the rising costs that will be incurred by the state to care for the growing numbers of children who are in *out of home care*.
374. If adequate funding is not allocated to the out of home care system to meet demand in a planned way then, as I will outline in the following section, *ad hoc* arrangements which provide a lower quality of care at a greater cost will be required. These less desirable arrangements are being provided by diverting funds away from initiatives designed to improve the experiences of children placed in *out of home care*. The allocation of resources to this program should, in my view, take into account the complexity of the *out of home care* system and lengthy lead times required to attract, recruit and train sufficient numbers of carers to ensure the growth of the system’s capacity keeps pace with demand.
375. In response to this issue the Secretary stated:
- Managing demand and continued investment in capacity are interrelated strategies that my department is implementing to reduce the level of emergency placement creation and improve the outcomes for children placed in OOHC [out of home care]. I believe these activities and the joint departmental work on forecasting and funding demand will achieve a more sustainable level of capacity. These combined approaches are aimed at developing new types of care as well addressing [sic] demand and improving quality in OOHC.

Recommendation – availability of care

I recommend that:

Recommendation 9

The department liaise with the Government to develop models for projecting future resource demands for the *out of home care* system that provide greater opportunities for ensuring demand is met through planned capacity increases rather than *ad hoc* arrangements.

The department's response

The department supports this recommendation and stated:

The department will work with DTF and DPC to undertake further work to determine the most appropriate mechanism to forecast and fund demand in the OOHC system.

SUITABILITY OF CARE

376. As described in the previous section of this report, the lack of adequate funding for *out of home care* has led to *ad hoc* arrangements that do not provide quality care and are relatively costly to implement.
377. The deficiencies found in these arrangements include:
- inappropriate physical environments
 - unstable care arrangements
 - use of carers who lack adequate training and experience
 - inefficient use of resources
 - vulnerable children being placed with children who have histories of sexually abusive behaviour
 - children with no history of substance misuse being placed with other who are using drugs and alcohol
 - siblings being separated
 - non-compliance with the Aboriginal Child Placement Principle.

Contingency placements

378. A significant issue arising from the inability of the *out of home care* system to meet demand is the use of contingency placements. Evidence obtained during my investigation indicates that these arrangements can be costly, unstable and risky for the children who are placed in them.
379. Senior staff interviewed during my earlier investigation into the Child Protection system³² stated that children requiring *out of home care* were being placed in undesirable emergency accommodation because insufficient placement options were available. One witness described the situation confronting Child Protection workers as follows:
- You're removing a child from a home where there's sexual or physical abuse or extreme violence or whatever else, and then you're – you either haven't got a placement for a child, so you're running around like a mad thing trying to find anything. And then if you find it, it's likely to be highly unsatisfactory.
380. A 2008 consultant's report³³ commissioned by the department found that there were approximately 130 children in emergency accommodation in Victoria each night. This included children placed in motels and caravans.
381. These types of fixed term, non-recurrently funded accommodation arrangements are referred to as contingency placements. Generally, contingency placements are created within the *out of home care* system for one of two reasons:
- Lack of capacity: Where all existing and appropriately funded targets have been filled and there are children who still require placement, short term emergency arrangements must be established to accommodate them until a funded placement can be found.

32 Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

33 Deloitte, *Department of Human Services Indicative cost benefit framework for Out of Home Care*, March 2008.

- Special placement requirements: Where a child has complex needs, it may be difficult or unsuitable to place that child in any pre-existing funded placement model. A special placement may need to be created in order to meet that child's needs. These placements are often used for longer periods of time where suitable funded alternatives do not exist.
382. The department advised that in the first quarter of 2009-10, 62 per cent of contingency placements were created because of lack of capacity and 29 per cent were related to special placement requirements. A further nine per cent were placements for sibling groups who could not otherwise be placed together.
383. The department stated that most contingency placements are in houses in the community that are established to meet the short or medium excess placement demand. However, one regional manager reported that lack of capacity forced the region to place up to ten children in motels, serviced apartments and cabins in any given week. They stated that it was often difficult to rent residential properties in the area to use for placements as property owners were generally uncomfortable with renting properties for that purpose.
384. The department has stated that demands on capacity are even more pronounced in rural locations where lack of infrastructure can make it difficult to establish emergency placements close to a child's community.
385. Another regional manager recalled three occasions in the last few months when it had been necessary to place a child in a motel or caravan. The regional manager further stated that at times the department has required protective workers to stay in motels with children for a number of days until more appropriate placements could be found. The existence of such practices in the region was further evidenced by a regional reporting document which includes a regular report of how many children were funded 'to reside in a youth hostel / caravan'.
386. The Child Safety Commissioner has expressed concern about the lack of stability provided by contingency placements:
- So contingency care in itself is almost cruel to young people because it doesn't give them any security, you know, it's an incredible lack of security. At least if they go into a resi [residential] care they can be sure they'll be there this time next week but who knows, with a motel, I can't think of anything more impersonal than being in a motel room, probably more comfortable than a caravan, but I just think it's incredibly demeaning.
387. One witness from the department described the case of a ten year old child placed in a caravan park stating that the child had moved through approximately sixteen placements in the preceding two months as a result of challenging behaviours. The witness stated that the caravan is staffed 24 hours and that it is effectively a 'pseudo-residential unit', with the child being taken out for activities by carers during the day.
388. In relation to the minimum standards applied to contingency placements such as motel rooms and caravans, one manager stated, 'we do the best we can to make them compliant'. For example, she advised that they ensure that motel placements have two separate rooms and that placements are monitored by regional fire-risk management processes. In summary, she stated, 'we meet minimum standards. Whether they're good enough is another thing'.

389. The ad hoc or 'last resort' nature of contingency placements may also mean that in addition to being placed in unsuitable physical environments, children are also being left with inappropriate carers. One witness from the department described the issues associated with workers having to place children at short notice, in emergency situations, sometimes after hours, in a system where there are simply no placements available. She stated for the last 12 to 18 months her region had been resorting to putting children in caravan parks and motels with 'rostered staff who are not really qualified to do the job'.
390. The department has acknowledged that the number of contingencies established over the last two years in response to demand pressures is 'extremely concerning'. It states that it will develop a quarterly report on the numbers and locations of children living in contingency placements which will be monitored by the interdepartmental committee overseeing the current reform process.
391. It also acknowledges that 'a small number' of children have been placed in caravan and motel accommodation with community service organisation carers because of the increase in demand for placements and that these arrangements are 'unsatisfactory' and an 'option of last resort'.
392. The Secretary, in response to this issue, has informed me that the daily average occupancy for contingency placements has been reduced from 123 to 50.55 children through the *out of home care* reform strategy. I understand this has been achieved through:
- creating additional home based care, lead tenant and other tailored placements
 - converting 79 placements from contingency to funded arrangements
 - closing residential units categorised as contingency placements with planning underway to close more units by the end of the financial year.
393. As a result of these activities, the Secretary believes the department is on track to meet its target of reducing the level of contingencies by 70 per cent.

Funding for contingency placements

394. Contingency placements can be very costly. No specific funding is allocated for them and witnesses have stated that costs are often funded from other program areas. Witnesses interviewed during my investigation into the Child Protection Program stated that in some regions, the overall expenditure on contingency placements has exceeded the total expenditure on funded placements.
395. Expenditure on contingency placements in the Gippsland region alone was estimated at \$11 million between June 2007 and April 2008. Information examined during my investigation stated Gippsland had 19.3 funded residential placements but that there had been the equivalent of a further 10 placements (average daily occupancy) in contingency units for the two preceding years.
396. Another region reported that the average daily occupancy for contingency arrangements in that region has risen from 7.33 placements in 2008-09 to 9.5 placements in the year to date.

397. A Victorian Council of Social Service State Budget Submission obtained during my investigation stated:

Funding is currently based on full occupancy and this results in cost implications for government, which has to fund contingency places at approximately \$550,000 per placement per year due to the system's inability to respond to demand pressures.³⁴

398. The department has provided data indicating that expenditure on contingency placements for the first quarter of the 2009-10 financial year totalled \$6.152 million. This equates to an average annual cost per placement of \$189,000. This is considerably higher than the cost of an intermediate *residential care* placement (\$143,489) and only slightly lower than the cost of a complex *residential care* placement (\$205,382).
399. The following table provides details of contingency placement expenditure by region:

Region	1st Qtr 2009-10
Barwon	\$217,836
Eastern	\$705,026
Gippsland	\$1,272,311
Grampians	\$254,762
Hume	\$1,222,993
Loddon	\$1,286,000
North and West	\$489,371
Southern	\$703,949
Total	\$6,152,248

400. Witnesses have stated that a number of programs aimed at improving the quality of service delivery in the *out of home care* system have been delayed or indefinitely suspended prior to implementation because the allocated funding was used to cover the cost of contingency placements.³⁵
401. The department has advised that it estimates that the additional funding provided in the 2009-10 State Budget will translate into a 70 per cent reduction in daily average occupancy in contingency accommodation. It expects that at least 30 contingency placements will still be needed to respond to demand and place large sibling groups and children with extremely complex needs. The department states that as at 28 February 2010, the daily average occupancy of contingency placements from the beginning of the 2009-10 financial year has been reduced to 50 as a result of 2009-10 State Budget funding for placement capacity.
402. Senior practitioners interviewed during my investigations were of the opinion that given how far over budget some regions were already, the extra funding would do little more than reduce the existing overspend. They indicated that the amount invested would not be sufficient to meet the demand at present, let alone address the issue of the expected growth in demand in the coming years.

³⁴ Victorian Council of Social Service, *VCOSS State Budget Submission 2009-10*, 2008.

³⁵ The Initial Health Assessment tool; the Aboriginal Kinship Care Program. Pages 142 and 111 of this report.

403. It is imperative that any initiatives aimed at reducing reliance on contingency placements are focused on improving quality of care and not simply approached as a cost cutting exercise. Witnesses expressed concern that pressure being placed on the sector to reduce contingency spending was resulting in 'a less discriminating approach' being taken to placement choice. One large provider of *out of home care* services advised that the pressure to avoid creating contingency placements was driving decisions to place children 'in traditional residential units with others who place them at risk'.

Matching children to appropriate placements

404. Capacity in the *out of home care* system is closely linked to the ability to match children to a placement that will suit their needs. Data from the department shows that 29 per cent of contingency placements for the first quarter of 2009-10 were created for children with special placement requirements that could not be accommodated by established care models. Particular issues have been identified in relation to the department's:
- ability to place sibling groups together
 - placement of Aboriginal children with non-Aboriginal carers
 - placement of young children in *residential care*
 - placement of children with intellectual disabilities in inappropriate care arrangements.
405. Data provided by one region shows that from a total of 464 children placed in *out of home care* between December 2008 and November 2009, 173 were not placed in the 'preferred' placement type. This means that while the department may, for example, have assessed that a child should be in home based care, owing to placement shortages the child has been placed in a residential unit.
406. Children with complex individual needs and behaviours are also being placed in unsatisfactory placements because of the lack of availability of appropriate placement options. One witness from the department described the case of a young girl who had been the only child in a *residential care* unit for two years because her aggressive behaviour presented a risk to other children. The witness expressed concern that such an arrangement was not an appropriate way to raise a child in the long term. She stressed the need for a greater variety of placement models to be developed so that children (such as the young girl she had referred to) could grow up in a suitable environment.
407. Providing for 'a better choice of placement' is one of the seven key reform directions outlined in *Directions for out-of-home care*. The specific actions to be undertaken by the department are as follows:
- provide \$47 million over the next four years to reshape the *out of home care* system to better meet the diverse needs of adolescents
 - provide \$23 million over the next four years to recruit expert practitioners to provide intensive care in their homes, initially focusing on children under 12 who are in *residential care*
 - provide \$14 million over four years to enable placement services to better meet the complex needs of the young people in general *residential care*
 - provide \$19 million over the next four years to fund caregiver reimbursements for home based care placements

- continue the development and evaluation of therapeutic *residential care* through piloting of various models across the state
 - expand training for *residential care* workers in dealing with trauma
 - implement a support system aimed at improving the stability and quality of *kinship care*.
408. These reform directions are aimed at addressing some of the issues with placement matching I have outlined below.

Placement of siblings

409. Where more than one child from a family is placed in *out of home care*, there are often significant benefits in keeping those children together so that they have some continuity in their family relationships and living arrangements. The separation of siblings in *out of home care* may also be considered in the context of the state's obligation to protect family unity provided for in the Charter of Human Rights and Responsibilities Act.
410. Evidence from the sector was that many siblings are separated when they enter the *out of home care* system because of the difficulties in accommodating multiple children together. Observations were that sibling groups of two or three can usually be placed in home based care if they are young or do not have demanding behavioural needs but that foster carers rarely have the capacity to take more than three children at a time. Usually, the only option for housing larger sibling groups is *residential care*.
411. Nine per cent of the department's contingency placements for the first quarter of 2009-10 were used to house sibling groups. One regional manager stated that in her region, the proportion of contingency placements allocated for sibling groups was closer to 30 per cent.
412. Use of contingency placements to house sibling groups can be a costly exercise which can adversely impact on stability planning. As part of the approach to improving placement choice described in *Directions for out-of-home care*, the department proposes to 'develop a broader range of options within *out of home care* in order to maximise the potential for placing sibling groups together where this is deemed to be appropriate and in their best interests'. The department has not yet provided any further details regarding this proposal.

The Aboriginal Child Placement Principle

413. Currently, there are approximately 660 Aboriginal children in out of home care in Victoria. The department has implemented a number of policies and practices aimed at assisting Aboriginal children in care to remain connected to their families, communities and culture. One of these is the Aboriginal Child Placement Principle (the Placement Principle).
414. The Placement Principle is a nationally agreed standard which obliges the department to consider a hierarchy of placement options when placing an Aboriginal child in *out of home care*. The Children Youth and Families Act includes provisions that reflect the principle. Section 13 of the Act states:
- (2) (a) as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;

(b) if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with –

- (i) an Aboriginal family from the local community and within close geographical proximity to the child's natural family;
- (ii) an Aboriginal family from another Aboriginal community;
- (iii) as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;

(c) any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.

415. I have received complaints alleging that the department has been failing to comply with the Placement Principle. A number of complaints concerned decisions to place a child with a non-Aboriginal carer where an Aboriginal carer had been identified as being suitable and available.
416. In response to my concerns about its compliance with the Placement Principle, the department stated that *kinship care* represents almost 50 per cent of all placements for Aboriginal children in *out of home care*. It also stated that since 2005, there has been a 9.1 per cent increase in Aboriginal children placed with an Aboriginal carer or relative, with 68 per cent of Aboriginal children in *out of home care* placed with an Aboriginal relative or carer in 2008.
417. However, I note that the 'Productivity Commission Report on Government Services for 2009' shows Victoria as performing below the national average for Aboriginal children being placed within Aboriginal care arrangements. The report states that nationally, 26 per cent of Aboriginal children were not placed with relatives/kin or an Indigenous carer. In Victoria, this figure was 32 per cent.³⁶
418. An August 2009 evaluation report prepared for the department on the implementation of Child and Family Services reforms states that progress on the implementation of Placement Principle is mixed. The report concludes the increase in the percentage of Aboriginal placements reported since the reforms is unlikely to represent an actual increase, but rather, improved recording of the Aboriginal status of the carer.
419. Witnesses from the department also raised concerns about the way the Placement Principle was applied by the department in some cases. They indicated that compliance with the Placement Principle was sometimes prioritised at the expense of other screening and assessment processes. They provided examples of:
- cases where no formal carer screening or assessment had been undertaken before placing an Aboriginal child with a carer on the basis that a worker from the Aboriginal Child Specialist Advice and Support Service had said that they knew the carer and that 'they were ok'.
 - Aboriginal children being placed in *kinship care* with families who were already struggling with other issues and required a level of placement support that the department simply could not provide.

³⁶ Australian Government Productivity Commission, *Report on Government Services 2009*, 30 July 2009.

420. The 'Family and Placement Services Sector Development Plan' (June 2006) proposed that the following actions for improving the sector's responsiveness to the needs of the Aboriginal community be taken within 12 – 24 months:

- undertake an Aboriginal service capacity building strategy
- develop an Office for Children Plan for Aboriginal Children
- pilot and evaluate a model of *kinship care* service delivery within an Aboriginal organisation
- develop an Aboriginal *foster care* recruitment strategy.

421. My office has been provided with documentation regarding the Aboriginal service capacity building strategy, the Office for Children Plan for Aboriginal Children and the Aboriginal *foster care* recruitment strategy. However, in relation to the commitment to pilot and evaluate a model of *kinship care* service delivery, the department initially responded:

The Child Protection, Placement and Family Services branch of the department is not aware of any evaluation of a pilot model of *kinship care* service delivery within an Aboriginal organisation.

422. The Victorian Aboriginal Child Care Agency advised my officers that it has developed an Aboriginal *kinship care* program. It advised that while the mainstream *kinship care* programs were funded for implementation in 2009, the Aboriginal model did not receive any funding. The Victorian Aboriginal Child Care Agency stated that it was told that the funds set aside for implementation were used to pay for contingency placements. It said that it has not been told when funding might become available to implement the program.

423. The department has now advised that the 'current status of the proposed Aboriginal *kinship care* model is that it is with the sector for final consultation before it is submitted to the department'. It states that it intends to pilot the new model in metropolitan and rural locations 'as soon as additional funding can be identified'.

424. In response to this issue the Secretary stated:

In the 2010-11 State Budget, the government has allocated \$4.3 million for a new Aboriginal Kinship Care Model ... This builds on the recent allocation of \$1.1 million to Aboriginal Community Control Organisation (ACCOs) to case manage 120 Aboriginal children and young people placed on Custody and Guardianship Orders.

Placement of vulnerable children in *residential care*

425. *Residential care* is rarely the preferred placement option for children in *out of home care* and its use in Victoria is progressively decreasing. However, a lack of appropriate home based care options means the department is continuing to place children in *residential care* even when it is not considered the most suitable placement model for them.

426. There are a number of reasons why *residential care* is often a 'last resort' placement option. The first is that in terms of stability, having a full-time carer with whom the child can form an ongoing relationship is generally preferable to having multiple carers working in shifts.

427. There is also the potential for harm to be caused by placing groups of children in accommodation together. Often, it is the children with the most difficult behaviours or care needs who end up in *residential care*. This means that *residential care* units can be highly volatile environments presenting a range of risks to the children housed in them. Failing to appropriately manage the mix of children in a *residential care* unit places those children at significant risk of harm.
428. A large community service organisation provided evidence that the level of demand for placements in the system meant that there was 'little opportunity for workers to make placements in a thoughtful individualised manner'. It observed that children with no history of substance misuse were being placed in units with children engaged in drug and alcohol use and that children with histories of sexually abusive behaviour were being placed in units with victims of sexual abuse. Evidence obtained from other witnesses and departmental documentation supported these allegations.
429. My investigators spoke to young people who had experienced living in *residential care*. They expressed concern about the negative effect *residential care* can have on children who are exposed to other children's harmful behaviours. One young person explained that she had only become involved with drugs and alcohol after being placed in a *residential care* unit with other children who drank and took drugs.
430. Witnesses have also raised specific concerns regarding the placement of particularly vulnerable children in *residential care* units. These vulnerable groups, such as those who are young or have an intellectual disability, may be put at risk by the behaviour of older or more capable children in group accommodation.
431. The Productivity Commission reports on the performance of each state and territory against certain national performance measures for the *out of home care* system in its Annual Report on Government Services. In its 2009 report, the Commission stated that Victoria's rate of placement of children aged less than 12 years in home based placements was 96.6 per cent of children. This was below the national average of 97.8 per cent. Only Western Australia and the Northern Territory had lower rates.
432. The department has informed me that its preliminary data for 2008-09 shows that Victoria had 97.3 per cent of all children in *out of home care* aged less than 12 years in home based care. If confirmed, this data represents an improvement of 0.7 per cent from 2007-08.
433. One of the priorities for 2009-10 outlined in *Directions for out-of-home-care* is recruiting expert practitioners to provide intensive home based care. The department advises that priority for entry to this model of care will be given to children under 12 years who are in *residential care*. This is discussed further in the section titled 'The changing profile of care provision'.

Children with disabilities in *residential care*

434. In relation to children with disabilities placed in *residential care*, the Child Safety Commissioner has previously stated:

The atmosphere and the dynamics in a residential care unit are extraordinarily and exaggeratingly sort of robust, exactly the sort of atmosphere that a young disabled child shouldn't be subject to.

435. Data generated for the 'Looking After Children Data Outcomes Project Report' suggests an over-representation in the number of children in *out of home care* with 'a condition likely to have [a] profound impact on his or her cognitive and socio-emotional development'. More than one half of the study sample (aged three to 17 years) were identified as having a developmental delay or learning difficulty.
436. A 2008 report titled 'Educational Characteristics of Children and Young People in the DHS Out of Home Care Caseload' found 12.4 per cent of the sample of school aged children were receiving funding from programs for students with a disability or attending a specialist school setting.
437. I requested data from the department as to the number of children with intellectual or physical disabilities in *out of home care*. The department could not provide me with any recent data in response to my request and informed me that it:
- has not routinely run reports from CRIS in relation to children in OOHC [out of home care] who have a disability.
438. In response to enquiries from my office regarding the issue of 'matching' children with disabilities to appropriate placements, the department advised:
- Children and young people with a disability are likely to be among the most vulnerable group of children and young people in OOHC [out of home care] with the added disadvantage of their disability on top of the trauma and loss associated with family breakdown. They are over represented in the OOHC population (less than one per cent of children and young people in the general population have an intellectual disability).
- The safety of children in OOHC [out of home care] is important and their disability is actively considered when planning a placement. Where possible, clients are assessed for compatibility, achieving the optimal placement match is not always possible due to the demands placed on the out of home care system, where optimal placement matching decisions cannot be achieved, additional support measures are implemented to ensure safety and stability for all children.
439. I reviewed a number of cases in which appropriate placement matching did not occur and children involved were not provided with the level of supervision necessary to ensure their safety.
440. In one instance, a five year old child with autism was sexually assaulted in a *residential care* unit by a 16 year old boy. The five year old was in the unit under a contingency arrangement because the region lacked funded placement options that were able to meet his specialised care needs. The department was aware that the 16 year old had Asperger syndrome and a history of challenging and sexualised behaviour at the time the placement was made.
441. I reviewed a similar case involving allegations that a child living in a department-managed *residential care* unit had sexually assaulted an eight year old child with autism living in the same placement. The child against whom the allegations were made had been the subject of 109 critical incident reports in the preceding seven-month period as a result of his challenging behaviours. The investigation found that there were no staff 'actively supervising' the children at the time the incident occurred.

442. The department advised me that it has taken a number of steps to address the issues raised by this case, including:
- the development of standards regarding the active supervision of children living in departmental *residential care* units
 - completion and implementation of the House Policy and Practice Manual
 - provision of training on the House Policy and Practice Manual to staff
 - development of a formal induction program for DHS Residential Child Care Workers
 - development of new procedures in relation to discussion, monitoring and planning in response to critical incident reports.
443. The department has also provided me with information regarding several initiatives designed to support children with disabilities in *out of home care*. These include:
- a protocol between Child Protection and Disability Services
 - specialist placement options
 - piloting a model of Therapeutic Residential Care for children with disabilities
 - individualised discretionary funding to provide specialised services.
444. I note that allowing incidents such as those outlined above to occur is not compatible with section 17(2) of the Charter of Human Rights and Responsibilities Act. The department has a responsibility to actively protect the individual children in its care.
445. In response to this issue the Secretary stated:

One of the benefits of the new department is the stronger focus on working across program areas to achieve better outcomes for children and families. I have requested the development of a regular report from the CRIS IT system about numbers of children with a disability and the nature of their disabilities, in the OOHC [out of home care] system and reports from the Children, Youth and Families and Disability Services Divisions on progress of the protocol in achieving improved outcomes for clients.

In addition to these measures, I am aware that a joint meeting between the Disability Services Commissioner (DSC) and the CSC [Child Safety Commissioner] and the department was held in 2009 to discuss children in care with disabilities. I propose to regularise this joint approach between the Commissioners and the department to form an oversight committee to continue to provide the necessary focus and regular advice on ways to improve responses to disabled children in the OOHC system.

Training and qualifications of *residential care* staff

446. During my investigation, witnesses expressed concern about the appropriateness of the training and qualifications of *residential care* staff given the complexity of the children in their care. For example, one witness stated:

We're not talking about a staff group in resi care, for instance, who have highly sophisticated therapeutic skills. And these kids need it.

447. In addition to concerns about the need for a more therapeutic approach to *residential care*, the evidence I obtained indicates that many *residential care* staff lack even basic qualifications and that some do not have adequate skills in relation to practical matters such as the use of physical restraint.
448. The following are instances from cases I reviewed which illustrate the importance of appropriate supervision and practical training of *residential care* staff, including in responding to difficult behaviour and the use of physical restraint:
- A quality of care investigation substantiated allegations that a *residential care* worker pinned a child against a wall by the neck and spoke abusively to him following an oral altercation between the worker and the child.
 - A child alleged that a *residential care* worker had physically assaulted her by pulling her hair and pushing her into a kitchen bench. The child sustained an injury to her head. The worker stated that the child had been the aggressor in the incident and that she had fallen when he attempted to defend himself. The report stated that the allegation of physical abuse was not substantiated because there was insufficient information available to determine whether the injuries were accidental or deliberate. However, the department substantiated the quality of care concern of misconduct.
 - A worker in a *residential care* unit fractured a child's arm by using excessive force to physically restrain the child after the child struck him. These actions breached the unit's 'zero tolerance' policy on the use of physical restraint. The investigation report noted that all the staff rostered on at the time of the incident were agency staff and that there was, 'no lead worker or coordinated approach to the decision-making on that shift'.
 - A young boy in a *residential care* unit was placed in an arm hold by a staff member that caused the child to have a seizure. When the child regained consciousness, the worker told the boy not to tell anyone about the incident because he 'might get in trouble'. The child was not provided with medical attention until the following day when other staff at the unit became aware of the incident.
449. I note that the above incidents also raise issues under the following sections of the Charter of Human Rights and Responsibilities Act:
- section 17(2) – every child has a right to such protection as is in his or her best interests and is needed by him or her by reason of being a child
- section 22(1) – all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person
- section 10(b) – a person must not be treated or punished in a cruel, inhumane or degrading way.
450. The department's Quality of Care Data Analysis Report 1 July 2006 - 30 June 2007 demonstrates that a disproportionate number of allegations of abuse in *out of home care* have arisen in *residential care*. While only seven per cent of the *out of home care* population were living in *residential care* at the time of the analysis, 35 per cent of possible abuse in care allegations related to this placement type.
451. It is also notable that a high proportion of allegations of abuse in *residential care* arise in relation to temporary staff members. The above analysis found that 23 per cent of the allegations against *residential care* workers related to external or temporary agency workers.

452. One young person my investigators spoke to described *residential care* workers in the unit where she had previously lived selling drugs to the children in their care and engaging in sexual relations with other workers during their shifts.
453. The Deputy Chief Executive Officer of one large community service organisation told my investigators that the organisation had previously undertaken research in relation to its provision of residential services. The witness advised that it found that many of its employees lacked basic qualifications and that its high staff turnover had led to a high level of dependency on temporary agency staff. The witness stated:
- we often had new faces manning these services and they didn't know the kids, the kids didn't know them, they didn't know anything about the backgrounds of these kids we felt we were falling short in terms of our duty of care.
454. As a result of the research, the community service organisation designed a new model which it is in the process of implementing. The model requires its residential staff to have a baseline Certificate IV qualification. The community service organisation is also in partnership with RMIT to provide a tertiary level qualification with a view to residential staff receiving credits and entry to a masters program upon completion. The witness explained that while it is an accepted view that staff working in residential facilities should have a Certificate IV qualification, the community service organisation had not always been able to recruit staff with the necessary qualifications.
455. Another large community service organisation confirmed the need for highly qualified staff in *residential care*. It commented that the Certificate IV qualification was insufficient, given the level of professional support required by children in *residential care*, and acknowledged that:
- day to day situations within residential care settings are often not handled as well as they could be given the lack of qualification, expertise and sophistication of a poorly paid workforce.
456. My office sought clarification from the department as to whether there were any minimum qualifications required of *residential care* workers in order for them to provide care for children. I was informed by the department that there are no minimum qualification standards for residential workers. The department stated that setting such standards may disadvantage Aboriginal-controlled community organisation staff who do not have formal qualifications but are highly experienced and valued in terms of cultural competence.
457. The department further elaborated that the Certificate IV in Child Youth and Family Services – Out of Home Care is a basic qualification funded by the department and delivered through the *Residential Care* Learning and Development Strategy. The department noted that this qualification is not compulsory but is considered by the sector to be 'a fundamental requirement' and therefore community service organisations have committed to supporting staff to undertake the course.

The changing profile of care provision

458. As case complexity increases, it is becoming evident that standard models of *foster care* and *residential care* are not sufficient to address the needs of many children within the *out of home care* population.

459. Even experienced volunteer carers may not have the required skills or resources to deal with children exhibiting more difficult behaviours. A witness described a recent placement breakdown she had handled. She stated that the placement broke down after three hours when the children assaulted the carer and caused damage to her home. She stated, 'she's a really experienced carer, usually deals with disability and she's just fantastic. And she wasn't able to deal with these children'.
460. During my earlier investigation into the Child Protection Program, one senior manager from the department commented on the need for the system to adapt to meet the changing needs of children. She stated that the increasing complexity of Child Protection cases meant that it was 'probably no longer appropriate to have people providing *foster care* and *residential care* that aren't actually trained' and that she believed there needed to be 'a much more professionalised *foster care* system'.

Therapeutic care

461. Studies undertaken in the last decade have consistently shown that a substantial proportion of children in *out of home care* suffer from emotional and behavioural disturbance and are at abnormal risk of developing a diagnosable mental health condition. These issues can have a significant impact on a child's developmental outcomes and ability to form relationships.
462. Therapeutic care models seek to address the mental and emotional health issues children in *out of home care* are suffering as a result of their experiences of trauma and neglect. Witnesses interviewed during my investigation were optimistic that the move towards increasing capacity for therapeutic care would improve outcomes for children in the *out of home care* system.
463. The department has provided details of the following therapeutic programs it is trialling:
- Take Two Intensive Therapeutic Service
This service provides specialist therapeutic treatment to children and young people who exhibit or are at risk of developing severe emotional and behavioural disturbance. This service has been operating since 2004. The department advises that Take Two is providing therapeutic services to approximately 285 clients at any one time.
 - Therapeutic Foster Care (or CIRCLE) program
This program focuses on early intervention for children coming into care for the first time. The program involves the carer providing skilled therapeutic parenting and applying techniques designed to provide the child with opportunities to heal from the effects of abuse related trauma. This program was introduced in 2006. At March 2010, there were 56 children in Victoria in therapeutic *foster care* placements. The department has advised that it is consulting with the Victorian Aboriginal Child Care Agency regarding the development of a Therapeutic Foster Care model specifically tailored to meet the needs of Aboriginal children.
 - Specialist in home care
The department intends to spend \$23 million over the next four years to recruit expert practitioners to provide intensive therapeutic home based care. This new 'professional *foster care*' model involves paying carers with relevant qualifications or expertise a salary to care for children with complex needs in their homes. The new model will be piloted in 2010. The department then intends to prioritise moving children under 12 years who are in *residential care* to the new model in 2012-13. It advises that the first year of the pilot is likely to involve 10 children and that the number will increase to 100 over the four-year period.

- Therapeutic Residential Care Services

As I have previously stated, children with the most complex needs and challenging behaviours tend to end up in *residential care* as a result of placement difficulties. The department received \$5.2 million in the 2008-09 Budget to establish pilots for therapeutic *residential care* over a two-year period. The department is trialling 12 therapeutic *residential care* programs to test approaches to respond to a young person's trauma and attachment disruption arising from prior abuse and neglect. In March 2010, 39 children were placed in these programs. A further five *residential care* agencies have been supported to employ part-time therapeutic specialists to enhance service provision. The Secretary has since advised me that the Government has extended the funding of Therapeutic Residential Care for an additional two years.

464. I requested that the department provide details of any formal evaluations it had conducted regarding the effectiveness of the therapeutic care models it was piloting. The department stated that it commenced a two-year evaluation of therapeutic *residential care* pilots in August 2009. No results were available at the time of my request. The department advised that the final report on the evaluation project would be available in 2011.
465. In relation to the Therapeutic Foster Care program, the department advised that it had intended to roll out an evaluation program in conjunction with the initial program in 2006. However, this did not proceed because insufficient funding was available. The department could not provide details of when the evaluation might proceed as it is reliant on funding availability.
466. I note that the Take Two service produced evaluation reports for its first two years of operation. The second report found that 'early trends of positive change for the children in their internal and external worlds were seen to some degree through all the outcome measures, although there is not yet sufficient data to be more conclusive'.³⁷ No further reports appear to have been produced since 2005.
467. Witnesses interviewed during my investigation provided evidence that carers involved in therapeutic care programs are reporting positive outcomes. The Child Safety Commissioner also informed my investigators that he has received positive feedback from carers and children regarding the therapeutic care programs. He also noted that carers reported feeling safer as a result of therapeutic care methods improving the behaviour of the children in their care.
468. The department has provided me with case studies which demonstrate the potential of a therapeutic approach to care in both home based care and *residential care*:
- A 15 year old girl has been in care since a very young age following sexual abuse by a sibling and her mother's partner. After a period of time in *foster care* her behaviour became very difficult to manage with her exhibiting sexualised behaviour and harming herself. Through consistent support to the child and her carers, including her carers participating in training in therapeutic care, she is now very attached to her carers, her behaviour has settled and she is performing well at school. The child has been with her current carers since 2003 providing important stability in her life.

³⁷ Frederico, M., et. al. (2006). "Give Sorrow Words" – A Language for Healing, *Take Two – Second Evaluation Report 2004 - 2005*, School of Social Work and Social Policy, La Trobe University, Bundoora, Australia.

- A 14 year old boy was placed in residential care because his mother could not manage his violence toward her. He had been expelled from a Special School due to his violent behaviour. The child was developmentally delayed and epileptic. With assistance from a specialist in the provision of Therapeutic Residential Care, staff in the residential unit were trained to work effectively with the child. Specialist medical assistance was arranged for him and his mother was provided with guidance on how to manage his behaviour. Ultimately the boy was returned to the care of his mother and subsequent monitoring by the department has found that his return home is continuing to be successful.
469. While witnesses were positive about the new ‘specialised in home care’ model, there were concerns expressed about the model being ‘rushed’ through the development process and that the expected pilot implementation date of July 2010 would not leave enough time to thoroughly consider all the issues involved.
470. There were also concerns expressed that the prioritisation of children under 12 years in *residential care* for the specialised in home care program would mean that some children identified as being appropriate for the program, would not be able to access it until they had been placed into *residential care* through placement breakdown or inability to find another appropriate placement. As discussed in the sections titled ‘Placement Stability’ and ‘Matching children to appropriate placements’, minimal placement changes and avoidance of *residential care* are generally understood to have beneficial impacts on a child’s development.
471. Given the current proliferation of therapeutic care services, some witnesses from the sector also stressed the need to monitor the professional standards and clinical expertise being applied within these services. They highlighted the danger of simply ‘tagging’ a wide variety of services as ‘therapeutic’ without appropriate rigour being applied to ensure they were genuinely providing therapeutic care.

Conclusions – suitability of care

472. I consider that the department is struggling to meet the demand for *out of home care* services. This demand is projected to continue growing at a substantial rate, in keeping with national trends.
473. The department is implementing placement prevention and early reunification strategies in an attempt to reduce demand and it continues to seek additional funding to cover the gap between demand and capacity. However, even if these preventative strategies are successful, it is clear that the supply of *out of home care* services will still not be sufficient to meet demand.
474. Contingency placements are amongst the most costly models of care and yet their ad hoc nature has the potential to put children at substantial risk. A reduction in the number of contingency placements created by insufficient supply can only be brought about by addressing the broader system capacity issues. The department should ensure that even ‘last resort’ emergency placements meet basic environmental standards and that the carers staffing them are qualified.
475. It is of concern to me that arrangements for funding of the *out of home care* system appear to be reactive and therefore contribute to an inefficient reliance on contingency arrangements. While the *out of home care* program is not funded to meet even its current demand, in my view, it will not be able to ensure that the projected growth in required capacity proceeds in a strategic and planned manner. The complexity of the *out of home care* system and the difficulties in recruiting and training skilled carers also indicate that lengthy lead times are required to ensure the growth of the system’s capacity keeps pace with demand.

476. I am also concerned that, owing to inadequate forward provision of placements for children, funding intended for important government policy initiatives is being redirected to meet short term capacity shortfalls.
477. In my opinion, better forward planning would provide higher quality care with a similar level of resources to that which is being expended on inadequate ad hoc arrangements. One step toward improved forward planning would be to ensure that funding of the program operates over a longer term than the annual opportunities to seek additional funding described by the department. I note that the Secretary's response to my draft report committed the department to working with the departments of Premier & Cabinet and Treasury & Finance to address this issue.
478. The ability to match children to appropriate placements is intimately connected to the overall capacity of the *out of home care* system. There is clear evidence that the department's inability to provide a sufficient number of placements to accommodate the number of children requiring *out of home care* is causing many children to be put into placements which are not considered to be the most suitable model for their needs. Inappropriate placement matching is likely to contribute to instability as it increases the likelihood of placement breakdown.
479. The department acknowledges that there will always be children with special needs who are not appropriate for placement in the mainstream *out of home care* system. Given that this will be an ongoing issue, the department needs a planned approach to accommodate these children.
480. I am concerned that on occasions traumatised and disadvantaged children are ending up in caravan parks and motels for lengthy periods of time because there are no options available to meet their needs.
481. In some cases, special care requirements are related to an identified physical or intellectual disability. The department has advised me that it does not routinely monitor data on children in *out of home care* who have a disability. It could not provide me with any recent figures on the number of children in *out of home care* in Victoria identified as having a disability. Inadequate data collection and analysis undermines effective planning and policy development in relation to a group of children which the department acknowledges are highly vulnerable in *out of home care*.
482. Children with the most complex behaviours and needs often end up in *residential care*. The fact that these children are often cared for by unqualified and transitory workers is not satisfactory. Failing to appropriately recruit and train carers is likely, in my view, to perpetuate the current issues with staff turnover and create further placement instability for the children in *residential care* units.
483. Some of the cases referred to highlight the importance of appropriate practical training being provided for *residential care* staff, including in the use of physical restraint, as well as the need for appropriate levels of supervision. They also highlight the particular vulnerability of young children and children with disabilities in the *residential care* environment.
484. It is the responsibility of community service organisations to determine minimum qualifications for residential staff providing care for children. As the department has developed standards for registration, I consider minimum qualifications for residential staff should be one of these standards.

485. In response to my draft report the Secretary, expressed the view that the issue of minimum qualifications should be linked to the continued development of therapeutic approaches to care. I agree with the Secretary's view that this is a first step in improving standards. However I consider that this approach should be the first step toward minimum qualification for all carers.
486. I am also concerned about children with challenging behaviours being placed with foster carers who are not equipped to handle them. This can cause harm to both the children and their carers. Ultimately, if adequate training and support are not provided and children are not appropriately matched to carers, negative experiences will drive carers out of the system.

Recommendations – suitability of care

I recommend that:

Recommendation 10

The department include data relating to the proportion of children less than 12 years of age who are placed in *residential care* and the proportion of children placed in home based care in its annual report.

The department's response

The department supports this recommendation.

Recommendation 11

The department instigate a program of regular data collection and analysis in relation to children with a disability in *out of home care*.

The department's response

The department supports this recommendation.

Recommendation 12

The department develop specific procedures for monitoring the welfare and progress of individual children with intellectual disabilities who are placed in *out of home care*.

The department's response

The department supports this recommendation and stated it will:

... formally establish a committee with OCSC, Disability Services Commissioner, Disability Services Division, Children, Youth and Families Division to oversight the development of procedures to monitor the welfare and progress of children with an Intellectual Disability placed in OOHC.

Recommendation 13

The department continue to pursue initiatives to improve the quality of *out of home care* including training and qualifications of *residential care* staff.

The department's response

The department has accepted this recommendation.

OUTCOMES FOR CHILDREN IN CARE

487. International research has shown that outcomes for children in *out of home care* relating to well-being, development and future opportunities are significantly lower than those for children who grow up in the family home.³⁸
488. There is no doubt that the experiences children have prior to entering the *out of home care* system have a significant impact on these outcomes. Most children placed in care have suffered considerable adversity and trauma. However, the experience of being placed in care and the experience of being in care itself can also be contributing factors.
489. The 'Looking After Children' framework referred to in other chapters of this report aims to improve case management practices in *out of home care* with a view to improving outcomes for children. The production of key records and associated communication and planning processes focused on the child's needs are central to the framework's objectives.
490. 'Looking After Children' looks at a child's needs and outcomes in terms of seven critical developmental areas:
- health
 - emotional and behavioural development
 - education
 - family and social relationships
 - identity
 - social presentation
 - self-care skills.
491. The data collected from 'Looking After Children' records to date provides some insight into the operation of the *out of home care* system in Victoria. The 'Looking After Children' Outcomes Data Project was undertaken to make use of the data produced in the course of everyday 'Looking After Children' processes.
492. 'The Looking After Children Outcomes Data Project Final Report',³⁹ prepared for the department by the Australian Institute of Family Studies, found that in Victoria:
- Education outcomes were poor across all age groups and particularly for children aged 15 years and above. The data suggested 42 children (7.14 per cent) aged 10 years and above did not attend school at all.
 - There were some poor outcomes in relation to family and social relationships, for example, only one-fifth (22 per cent) of school age children frequently saw their friends outside school.
 - Only 41.4 per cent of the sample always had suitable clothes to wear.
 - 21 per cent of children aged 10 years and above had been cautioned or warned by the police, or charged with a criminal offence within the last six months.

38 Sarah Wise, *The UK Looking After Children approach in Australia*, Australian Institute of Family Studies, 1999.

39 Sarah Wise & Samuel Egger, *The Looking After Children Outcomes Data Project, Final Report*, Australian Institute of Family Studies, 2007.

- Only one-third (35.6 per cent) of the children were considered to manage self-care independently at a level appropriate to their age and ability.
 - Approximately one-quarter of children did not have contact with any member of their birth family.
 - Only approximately half the children were considered to be free of serious emotional and behavioural problems.
493. The other clear trend is that children and young people in *residential care* generally achieved poorer outcomes in most areas in comparison to children in home based care. Particularly, in relation to the likelihood of being involved with police and being able to meet social and relationship objectives.⁴⁰
494. Until recently the department did not have a process for systematically monitoring the outcomes for children in care. It states that the Child Protection, Placement and Family Services Outcomes Framework has now been developed to provide a system for tracking outcomes. The framework builds on the Victorian Outcomes Framework for Children which has been endorsed by government as the basis for monitoring how children in Victoria are faring in terms of their health, development, learning, safety and well-being. This linkage will provide an opportunity to compare outcomes for children in *out of home care* with those for the general population.
495. This framework was endorsed in 2009 and the department advises that it is now being implemented. Longitudinal surveys will be conducted by a consultant as part of this process and the department advises that a final report on the survey results will be published in December 2012. The department states that the results will be incorporated into 'departmental quality improvement and quality assurance systems'. These measures will complement other approaches to tracking the circumstances of children in *out of home care* including the finalisation of national *out of home care* standards which the Secretary expects to be accompanied by the regular performance reporting.

Educational attainment for children in care

496. Educational outcomes for children in *out of home care* are generally lower on average than outcomes for the broader Victorian student population. The most recent comparative data the department could provide was from 2004. The following figures show the percentage of children in *out of home care* achieving expected academic performance levels in comparison to the whole Victorian student population in the areas of literacy and numeracy.

40 Sarah Wise & Samuel Egger, *The Looking After Children Outcomes Data Project, Final Report*, Australian Institute of Family Studies, 2007.

Figure 4. Children in out of home care – literacy performance

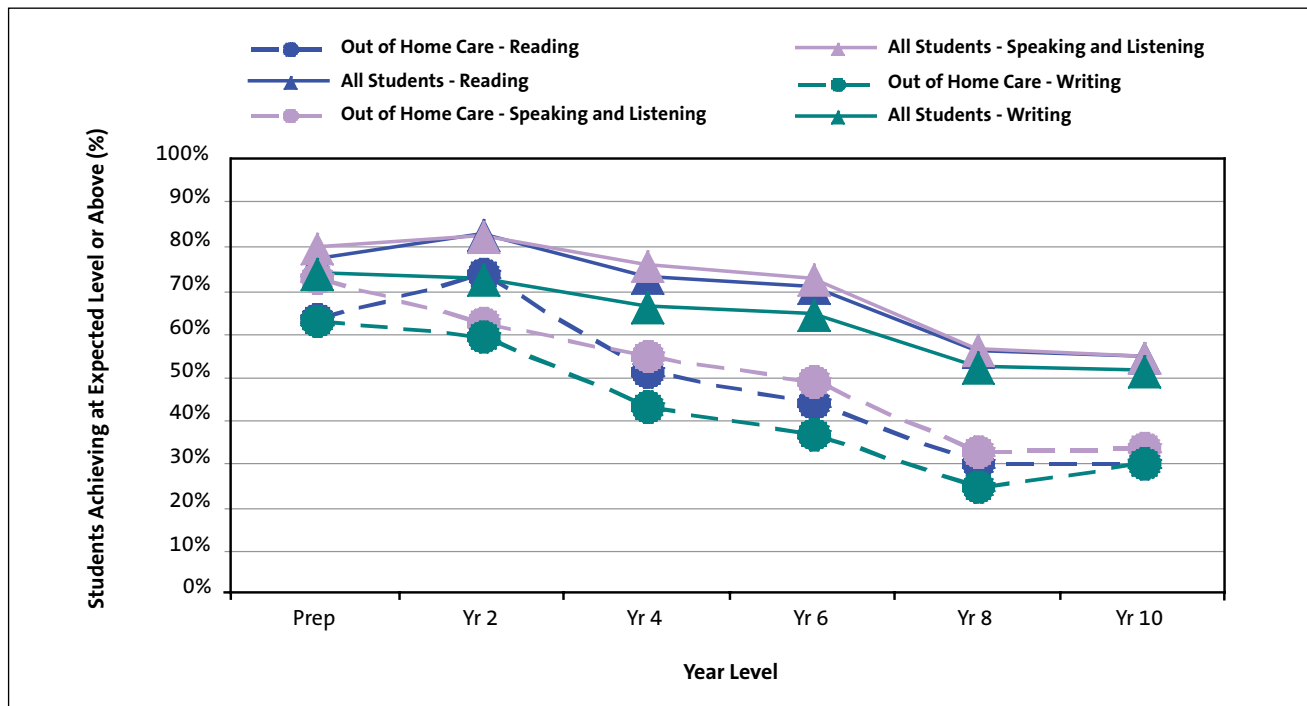
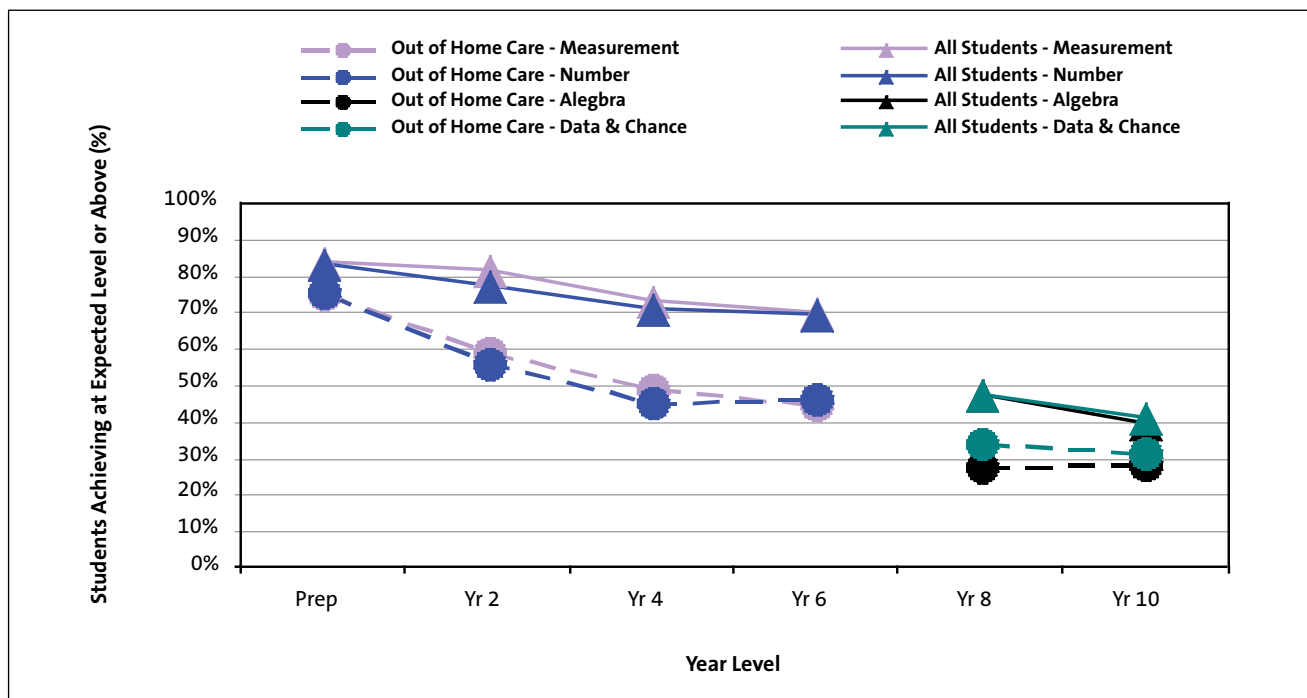


Figure 5. Children in out of home care – numeracy performance



497. The department has said that it recognises that the traumatic life experiences of children in *out of home care* mean they will need special consideration and support to reach their full educational and social potential. In 2003 the Department of Education and Early Childhood Development (DEECD) and the department produced a partnering agreement (the Partnering Agreement) to facilitate projects and initiatives to improve educational outcomes for children in *out of home care*.

498. The two key requirements of the Partnering Agreement are that every student in *out of home care* must have a Student Support Group and an Individual Education Plan established for them. The school principal is ultimately responsible for ensuring these requirements are met, however it is also intended that the care team be involved in the process.
499. The departments have nominated Partnering Agreement Contact Officers in every regional office of both departments to implement and monitor the agreement. Central office staff of both departments also meet with the Contact Officers to identify and address implementation issues and consistency of approach across the state. DEECD and DHS have supported the Partnering Agreement through the creation of a website providing information, guidance, templates, contact details and links to other useful resources.
500. The Department of Human Services has reported some positive outcomes from the implementation of the Partnering Agreement. In particular, it states that the average number of days students in *out of home care* are absent from school has halved since 2003. It also states that it has received positive feedback about the usefulness of Student Support Groups and Individual Education Plans. However, the Department of Human Services contends that the lack of dedicated resources allocated to the Partnering Agreement is limiting its full implementation.
501. Data collected by the department in 2008 shows that only 60.5 per cent of government school students in *out of home care* had a Student Support Group and only 54.2 per cent had an Individual Education Plan, despite these being the two key requirements of the Partnering Agreement. This data also found that 88 per cent of school age children in *out of home care* were enrolled in formal education. Although there is no more recent data comparing outcomes with the broader student population, data collected by DEECD in 2008 indicates that a substantial proportion of children in *out of home care* are still not achieving the expected standards in numeracy and literacy.
502. I note that a recent survey of 161 children in *out of home care* conducted by the CREATE Foundation and the Office of the Child Safety Commissioner found that 27 per cent of children surveyed expressed the need for extra help with their schoolwork.
503. The department and DEECD have been working to revise the Partnering Agreement and the department anticipates that it will be re-launched in early 2010. New proposals for initiatives under the revised agreement include the:
- inclusion of Catholic and Independent schools in the Partnering Agreement
 - inclusion of kindergartens in the Partnering Agreement
 - investigation of private boarding schools as an option for some children and young people at risk of being placed in *residential care*
 - establishment of a sub group to the Interdepartmental Committee for Care and Protection of Children and Young People to develop a targeted and sustained response to the education and training needs of children in *out of home care*
 - appointment of regional Partnering Agreement Officers from the department and DEECD to assist in the implementation of the Partnering Agreement and in improving outcomes for students in *out of home care*.
 - strengthening the role of regionally based implementation groups to oversee the education issue for children in *out of home care* including developing, monitoring and reviewing Regional Education Plans which facilitate the implementation of the Partnering Agreement.

- a robust communication and implementation strategy.

504. At interview, the Child Safety Commissioner advised that he visited many *residential care* units where some children were not attending school at all. He stated:

Any systems that are meant to keep these kids in school are failing, because we are failing to see that they need to be treated a particular way in the school system.

505. The Commissioner indicated that he considers that projects such as Berry Street Victoria's BEST independent schools are a positive step because it is impossible for some children to fit into the classical school system. He further stated, 'it takes more than an agreement to make sure that these kids are able to attend school and that school is meaningful for them'.

506. I note that the department has advised of an initiative providing free kindergarten for all three and four year old children known to Child Protection. The Early Start Kindergarten program was rolled out state wide in October 2009. In January 2010, the department advised that there had been six enrolments in the program so far.

507. The Secretary of DEECD in responding to my draft report referred to the intention to outline the importance of early childhood education and care in the revised Partnering Agreement. The Secretary stated that he anticipates the Agreement will provide information to support the transition from early childhood education and care programs to school education. However kindergartens will not be a formal party to the Agreement.

508. Carer reimbursements are provided to home based carers until the child in their care turns 18. If the child is studying full-time in secondary school or other vocational training the year he/she turn 18, payments are extended until the end of that school year. Witnesses from the Foster Care Association of Victoria stated that the department informed them that it intends to extend caregiver reimbursements for children studying full-time in secondary school until the end of the year the child turns 19. The witnesses were positive about this initiative, but noted that it would only benefit a very small number of children in *out of home care*.

509. Representatives suggested that consideration should be given to extending this initiative to children in any kind of full-time education. They expressed the view that given the comparatively lower numbers of children in *out of home care* who are finishing secondary school or going on to TAFE or university, the department should be doing its best to help those who wanted to continue their education to do so.

510. In response to this issue the Secretary stated:

In March 2010 a provisional change was made to the policy that endorsed carer reimbursements for an additional calendar year following the young person turning 18 years; if the young person is engaged in secondary education ... this change will be formalised through the caregiver reimbursement policy review which will examine a range of caregiver reimbursement policy and process issues.

...

The definition of secondary education will be a qualification at the senior secondary level including the Victorian Certificate of Education (VCE), the Victorian Certificate of Applied Learning (VCAL) at Intermediate level or higher, VET qualifications at Certificate II level or higher or International Baccalaureate Diploma program

Conclusions – outcomes for children in care

511. Children in *out of home care* experience poorer outcomes in many areas of their lives than the general population. This is particularly evident in the area of education.
512. Educational outcomes for children in care are substantially lower than those of the broader student population. Implementing effective programs to improve the educational outcomes for children in care has the potential to broaden the opportunities available to those children and significantly improve their prospects for the future. The department shares this responsibility with the Department of Education and Early Childhood Development.
513. While formal collaboration between the department and DEECD is a positive step towards facilitating improvement of educational outcomes, it does not appear that the Partnering Agreement has been effectively implemented.
514. There is very poor compliance with the two key requirements of the Partnering Agreement, which has now been in place for over six years. The department states that this is partially the result of insufficient resources being allocated. It is unclear how the revised Partnering Agreement will overcome these obstacles. However, proposals for dedicated Partnering Officers may improve compliance rates.
515. I note that the Early Start kindergarten program and the extension of carer payments for children in secondary school to the end of their nineteenth year are also positive initiatives, but at present they are only being utilised by a very small number of children.
516. In response to my draft report the Secretary stated:

One of the key underpinnings of the reform of OOHC [out of home care] was the clear recognition that outcomes for children in care were substantially behind those of their peers in the general community. This reform has received considerable financial support in recent budgets and we are tracking the progress made in this area.

Improving the educational outcomes of children in care ... is central to the future life choices and significant joined up work continues to be undertaken by the Department of Education and Early Childhood Development (DEECD) and the Department of Human Services. This formal partnership has been operational since 2003 and aims to improve the educational outcomes for children in OOHC. Whilst there has been some improvement in this area as you have noted, both my department and the DEECD need to continue to actively work together to improve the educational outcomes for children in care.

I am committed to working with my counterpart in DEECD to alter the trajectory ... for children in care who are not currently adequately supported to remain in school.

517. In response to my draft report the Secretary of the Department of Education and Early Childhood Development also responded:

DEECD agrees that children and young people in out of home care experience poorer educational outcomes than the general population. DEECD also agrees with the recognition by DHS that due to the traumatic life experiences of children in out of home care, they will need special consideration and support to reach their full educational and social potential.

In addition to the Partnering Agreement, DEECD has recognised and responded to the needs of children and young people in out of home care within other initiatives.⁴¹

DEECD agrees that there have been some positive outcomes from the implementation of the Partnering Agreement, particularly the halving of the average days students in out of home care are absent from school. DEECD also accepts that the amount of dedicated resources allocated to the partnering agreement does impose a limit on the scale of the implementation and compliance by schools and case managers.

It is acknowledged that there has not been full compliance with the requirements of the Partnering Agreement for a Student Support Group and an Individual Education Plan to be established for all students in out of home care. The launch of the revised Partnering Agreement and associated professional learning / training will present an opportunity to ensure all schools and case managers are aware of their responsibilities and to increase compliance. Regional Implementation Groups will also be responsible for monitoring compliance and implementing strategies to address any compliance issues.

Both departments and the Catholic and independent school sectors will provide ongoing support to staff to understand their responsibilities in relation to this Agreement.

Recommendations – outcomes for children in care

I recommend that:

Recommendation 14

The department ensure that home based carers continue to receive the caregiver reimbursement allowance for the calendar year beyond which the child turns 18 years and where the child is enrolled and participating in secondary education as per the definition prescribed by DEECD

The department's response

The department supports this recommendation.

Recommendation 15

The Department of Human Services and the Department of Education and Early Childhood Development provide me with a report on compliance with the key elements of the revised Partnering Agreement within six months of its commencement.

The department's response

Both departments support this recommendation.

⁴¹ The Secretary referred to the *Effective Schools are Engaging Schools: Student Engagement Policy Guidelines 2009, Supporting children, young people and their families affected by homelessness – Guidelines for Victorian schools and Pathways to re-engagement through flexible learning options: A policy direction for consultation.*

CASE MANAGEMENT

518. Effective case management is integral to improving quality of care and outcomes for individual children in *out of home care*. Current case management and support systems are focused on identifying and meeting a child's needs through effective record keeping, information sharing and communication between persons involved in a child's care. My investigation identified issues with the implementation of data collection and information sharing processes, as well as evidence that a substantial number of children are not having their support needs identified or addressed with appropriate services.

Identifying and meeting need – care teams

519. 'Looking After Children' provides that when a child is placed in *out of home care*, a 'care team' should be formed for the child. The care team is responsible for assessing and fulfilling the needs of a child that would normally be met by their parents if they resided in the family home.

520. The persons who make up a child's care team will differ depending on the child's circumstances. However, teams generally include the placement agency caseworker, the carers (foster carers/*residential care* workers), the Child Protection worker and the child's parents or other adult family members. The team meets at regular intervals for assessment, review and planning.

521. When I asked the department for advice as to how it assesses unmet need for professional support services amongst the *out of home care* population, it identified the care team as being instrumental in this process. It advised that regular assessments of a child's needs are made by their care team and that a key tool in this process is the Assessment and Action Record⁴², which aims to assess the progress of a child across the seven developmental domains identified by the 'Looking After Children' framework.⁴³

522. It is recommended as good practice for an Assessment and Action Record to be completed within three months of a child coming into care. In addition to this, the completion of an Assessment and Action Record for children who have been in care for six months or more is one of the minimum registration standards required of community service organisations.

523. However, it appears that in many cases, Assessment and Action Records are not being completed within the timeframe recommended for good practice. The *Looking After Children Implementation Monitoring Project Highlights report 1 October 2008 – 31 March 2009* found the following:

- In *residential care*, 61 per cent of children had been in care for three months or longer and 45 per cent had been in care for six months or longer. Only 32 per cent had completed an Assessment and Action Record.
- In home based care, 69 per cent of children had been in care for three months or longer and 58 per cent of children had been in care for six months or longer. Only 48 per cent had completed an Assessment and Action Record.

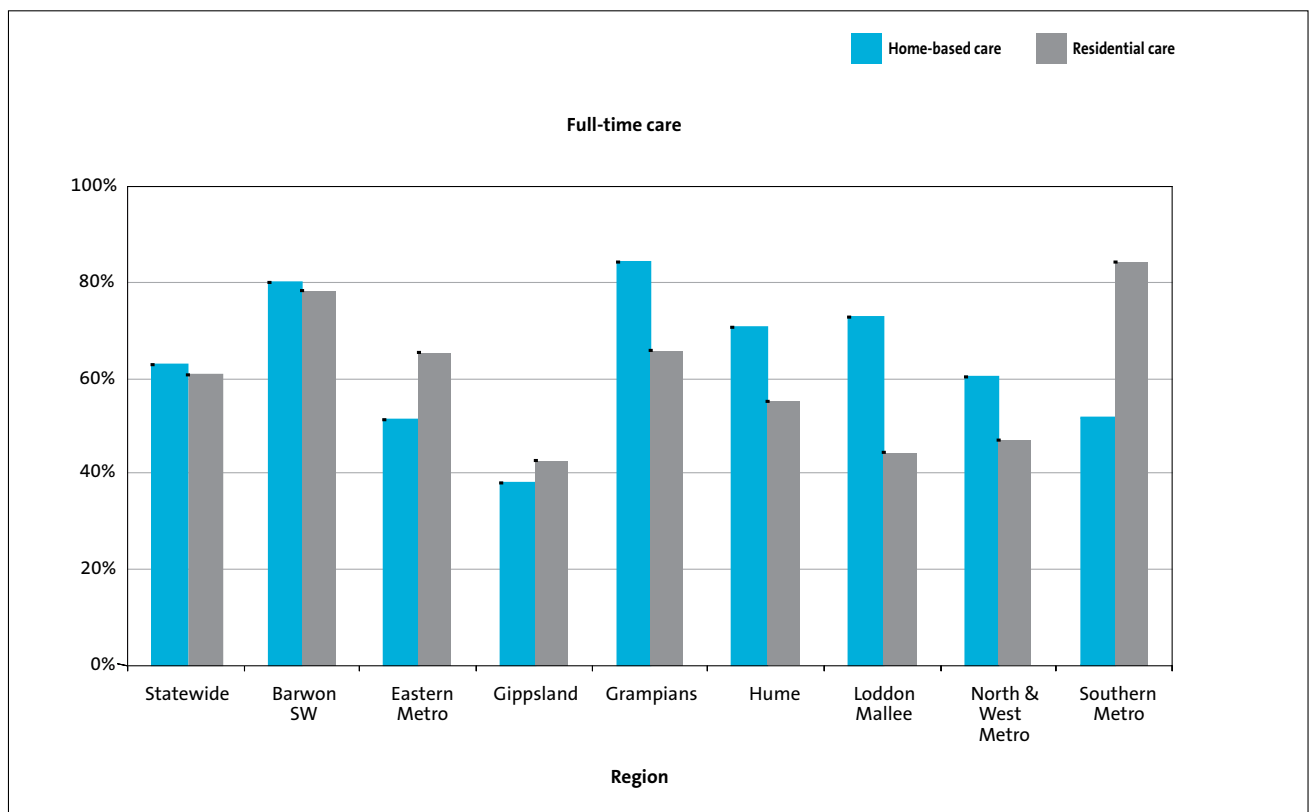
42 The title of this form has recently been changed by the department. It is now known as an 'Assessment and Progress Record'.

43 Health, education, emotional and behavioural development, family and social relationships, identity, social presentation, self care skills.

524. Inconsistent usage of the Assessment and Action record is concerning, given that the department has informed me that it is a key tool for identifying the unmet professional needs of children in care. The department has stated that it continues to focus on compliance with 'Looking After Children' and care team attendance. It has also stated that processes relating to Assessment and Action records and the use of care teams are being redeveloped 'to ensure more streamlined and useful processes are in place'.
525. Some carers interviewed during my investigation did not consider that 'Looking After Children' processes were particularly useful in the identification of unmet professional needs. They suggested that it was the carers themselves who identified needs and that the more problematic issue was how to ensure those needs were met. They stated that it was often difficult to ascertain who would pay for services and that the waiting lists for service providers approved by the department were very long.
526. It is clear that case management practices aimed at identifying and meeting the professional needs of children in care are not ensuring these needs are being met.
527. Two 'Looking After Children' emotional and behavioural functioning objectives are: 'The child is free of serious emotional and behavioural problems' and 'The child is receiving effective treatment for all persistent problems'. The Looking After Children Outcomes Data Project Final Report found that in approximately one-quarter of the sample cases, neither of these objectives were met. This means that approximately one-quarter of these children had serious emotional and behavioural problems which were not receiving effective treatment.
528. My investigators spoke to a young person who had not received any dental treatment during the five years they were in *out of home care*. The young person explained that it was only once they left care that they had begun to see a dentist. The young person also described receiving little support from the department or *residential care* staff in seeking medical treatment while in care. They stated that staff were generally only willing to take children to the doctor when they exhibited overt symptoms such as vomiting. I note that a recent survey of children in *out of home care* conducted by CREATE and the Office of the Child Safety Commissioner found that 'dental health care appeared inadequate for a significant proportion of the sample'.
529. The department formed a multidisciplinary advisory group to develop an Initial Health Assessment Tool to assist health practitioners with making an early assessment of a child's physical and mental health needs and providing an integrated report with recommendations to the care team for implementation.
530. I understand that the department had intended to commence implementation of the Initial Health Assessment Tool in all regions from 2008, however it discontinued this project because increased demand on the *out of home care* system, particularly in relation to meeting the costs of contingency placements, had left it with insufficient funds. Instead, it commenced a pilot for the Initial Health Assessment Tool in the Eastern Metropolitan Region in October 2008.
531. The department states that the pilot has identified unexpected complexities in the implementation of Initial Health Assessments. Specifically, that it had difficulty engaging and training medical practitioners and embedding the new practices into Child Protection and Placement Services to ensure the necessary consents are obtained before health assessments occur. It states that it has not had the opportunity to identify any trends or areas of need from the data collected by the pilot so far.

532. Information sharing is also critical to case management processes. The ‘Looking After Children’ framework facilitates the exchange of information through processes of record keeping and provision of records to relevant parties at designated stages in the case planning process.
533. ‘Looking After Children Implementation Monitoring Project Highlights Report 1 October 2008 – 31 March 2009’ indicates that there is not always compliance with mandatory information sharing processes. For example:
- For home based care, placement referral information was provided to the relevant community service organisation by the department in approximately 84 per cent of cases. The carer was provided with placement referral information in 79 per cent of cases.
 - In *residential care*, the placement referral information was passed on to community service organisations by the department in 87 per cent of cases. The carer was provided with placement referral information in 79 per cent of cases.
 - Essential Information Records were provided to the department for 39 per cent of children in home based care and 31 per cent of children in *residential care*.
534. One of the most important exchanges of information in the ‘Looking After Children’ framework is the provision of ‘Looking After Children’ records to the Child Protection worker once the processes have occurred. Figure 6 shows the percentage of Care and Placement Plans provided to Child Protection workers (in instances where a Care and Placement Plan was completed) for the October 2008 to March 2009 data collection period.

Figure 6. Exchange of C&PP information to child protection workers where the process has occurred



535. The figure shows variation between regions in compliance with the process of providing Care and Placement Plans to Child Protection workers. However, I note that only three out of the eight regions exceeded 80 per cent of compliance.

Placement stability

536. Maintaining continuity and stability in care arrangements and relationships has been identified as an important factor in a child's development. Research has consistently found that uncertainty and disruption, particularly in early childhood, can be harmful to a child's well-being and progress. Stability planning is focused on maximising an individual child's opportunities to form stable relationships. Connections to family, carers, friends, culture, community, school and employment all contribute to a child's stability.
537. 'Stability planning' is a statutory requirement for some children in *out of home care*. It forms part of the Best Interests case planning process. A stability plan must contain a plan for the long term care of the child which includes identification of a preferred carer or placement type, appropriate legal arrangements to support stability, any special care needs the child has, plans for access arrangements with family members and steps to be taken to meet the child's developmental needs.
538. Section 170 of the Children, Youth and Families Act provides required timeframes for preparation of stability plans:
- (a) in the case of a child who is under 2 years of age at the date of the order, once that child has been in out of home care for one or more periods totalling 12 months;
 - (b) in the case of a child who is 2 years of age but under 7 years of age at the date of the order, once that child has been in out of home care for a period or periods totalling 18 months;
 - (c) in the case of a child who is 7 years of age or over at the date of the order, once that child has been in out of home care, for a period or periods totalling 2 years within a period of 3 years from the date of the order.
539. My 'Own motion investigation into the Department of Human Services Child Protection Program' identified that the department failed to consistently comply with its statutory obligations to complete a Best Interests Plan for children on Protection Orders. The failure to complete stability plans was specifically referred to by some witnesses.
540. In *out of home care*, stability planning is often initially focused on child-parent reunification. However, where a decision has been made that reunification is unlikely, planning will be focused on finding a suitable long term care option for the child.
541. Irrespective of whether an *out of home care* placement is intended to be temporary or long term, a lower number of placements for a continuous period in care is seen as desirable to promote stability. The department states that 'disrupted and multiple placements can damage the healthy development of children in *out of home care*'. It advised that it works hard to minimise the number of placement changes experienced by children. Where a placement is identified as unstable, care team members are generally responsible for taking steps to stabilise it before a move is considered.

542. The *Looking After Children Outcomes Data Project Final Report* found that the mean number of main carers children in *out of home care* had experienced since they were babies was 4.6. However the report also stated:
- In the 201 cases where the actual number of main carers children had had during the child's lifetime was not recorded, approximately 40 per cent reported in the follow-up question that they could not quantify the number of carers because the number was too high to record accurately. For example, some of the responses to this open-ended item were 'Too many', 'Lots' and 'More than 20'. This suggests that findings based on valid responses to this question may actually under-represent the true number of carers that children in OOHHC [out of home care] have in their lifetime.
543. My investigators spoke to a young person who had experienced approximately 10 placement changes over one and a half years in care. When asked what the reasons for the placement changes were, she said that sometimes the department decided to move her; sometimes she was told the agency or carer did not want her; and sometimes the department did not provide any explanation at all. Another young person described having 27 placement changes over a two and a half year period. The young person stated that more than 24 hours notice was never received before a placement change occurred and that the number of placement changes experienced during time in care had made it difficult to maintain friendships and have a stable life.
544. The department has stressed the importance of the need to balance minimising placement changes with other placement quality indicators such as compliance with the Aboriginal Child Placement Principle, local placements and placements with siblings.
545. The department stated that there may be good reasons for a child having multiple placement changes, such as:
- an initial emergency placement followed by a longer term placement
 - changes in the carer's circumstances (e.g. abuse in care or carer health/ death)
 - older children voluntarily seeking alternative placements as they move towards independence
 - the carer being unable to cope with complex behaviours of a child or young person, even when extra support services are provided.
546. The department has informed me that the number of Permanent Care orders has grown by 6.5 per cent per annum since 1999-2000. The department considers that achieving the stability afforded by permanent care arrangements is critical to ensuring children reach their full potential. The department considers this trend demonstrates the impact of a focus in the legislation on children's stability.

Support provided to *foster care* placements

547. *Foster care* can be stressful and demanding on volunteers. Children placed with a foster carer are likely to be in a state of crisis and may display challenging behaviours. Placements may be required at short notice and the length of placement may be uncertain or subject to change, making planning and preparation difficult.

548. The core roles and responsibilities of foster carers are outlined in the Home-based care handbook produced by the department and the Foster Care Association of Victoria. These responsibilities are:
- Provide day-to-day care and engage with the child or young person.
 - Provide a stable, safe and nurturing home environment that addresses all aspects of healthy development for children and young people, including their physical, social, emotional, cognitive, cultural and spiritual needs.
 - Promote and support the relationship of children and young people with their family and their connectedness with their social networks and community.
 - Engage parents and families in a manner that is accepting and respectful of their primary role, cultural identity and spiritual beliefs and promote positive relationships where possible.
 - Be an active member of the child or young person's care team.
 - Contribute to the development and fulfilment of the child or young person's Care and Placement Plan.
 - Contribute to the development and fulfilment of the child or young person's Best Interests Plan.
 - Ensure, via the community service organisation in the first instance, that the care team is informed of the child or young person's progress, any relevant issues and concerns. In particular, concerns about ongoing placement stability must be communicated as soon as they arise.
 - Maintain confidentiality and privacy and not disclose personal and confidential information in an inappropriate manner.
 - Maintain contact with the child or young person post-placement where appropriate.
 - Continue to develop their competencies as carers by participating in carer development opportunities.
549. The department implemented a common foster carer training and assessment package for community service organisations to use in 2006. There is also an additional training program for carers providing therapeutic *foster care*. The department has advised that it is in the process of publishing a new training package on therapeutic care which will be rolled out to all foster carers, rather than only those involved in the Circle Program.
550. Beyond training, there is a need to ensure that foster carers are made aware of supports available to them and that case managers are maintaining sufficient contact with foster carers to enable them to identify the need for particular supports. I reviewed a number of cases which demonstrated this.
551. In one instance a foster carer made a disclosure to the department that she had struck a five year old child in her care. The carer had originally taken the placement on the understanding that it would not be full-time and that the child would also be cared for part-time by family members. Despite this, she gradually became the full-time carer. The department states that it was unaware of the mounting pressure being placed on the carer because the carer did not seek additional support.

552. This was not the only case I reviewed which involved carers being violent towards children or threatening them with violence in response to challenging behaviour. Children who have been removed from their family may display difficult behaviour as a result of trauma they have suffered. It is therefore imperative that carers are adequately supported and equipped to appropriately manage such behaviour.

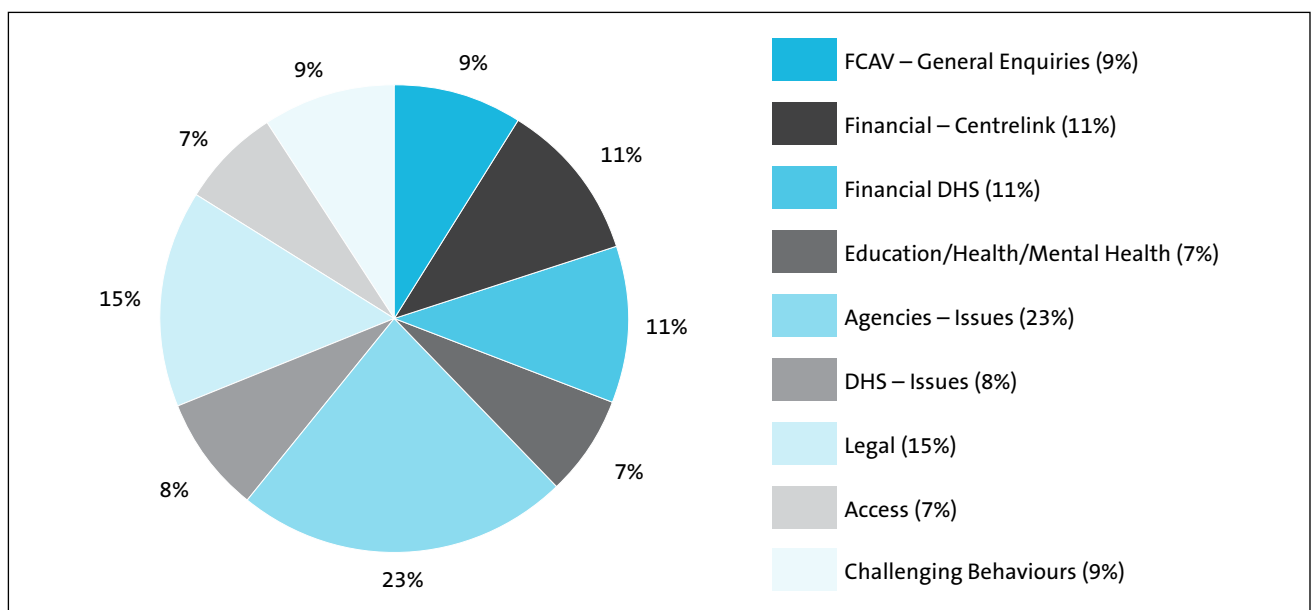
553. In 2008 the Foster Care Association of Victoria and the Post Placement Support Service established a helpline for carers called the FCAV / PPSS Carer Help Line. The helpline provides information, support, referrals and advocacy for foster carers. The helpline defines its main aims as:

- provision of accurate and clear information via phone calls, both organisations' websites, newsletters and fact sheets
- referrals to appropriate agencies for specialised and targeted support and assistance
- phone conversations, one on one meetings and (occasional) attendance at meetings for support
- advocacy with community service organisations and government on themes and serious issues impacting carers and children and young people in home based care.

554. The project is jointly funded between the Foster Care Association of Victoria and the Post Placement Support Service. The department has advised that \$45,000 has been committed to the project for 2009-10 and that the Foster Care Association of Victoria is continuing to seek ongoing funding for the project through external organisations. The Foster Care Association of Victoria advises that its current funding will only allow for the operation of the helpline to continue until the end of 2010. It also advises that while it had initially commenced provision of services to kinship carers as well as foster carers, funding constraints led to a decision to limit service provision to foster carers. The Foster Care Association of Victoria further advised that while it informally provides advocacy and support to individual foster carers where necessary, it is not resourced to do so.

555. Figure 7 shows a breakdown of carer concerns expressed in the 237 contacts made to the Carer Help Line in 2008-09 by category:

Figure 7. Breakdown of caller concerns – 476 concerns identified in 2008-09



Lack of support provided to kinship placements

556. There are no automatic training or support requirements for kinship carers. The level and type of support provided to kinship placements is assessed on a case by case basis. At present Child Protection practitioners are generally responsible for case management and ensuring placements are adequately monitored and supported.
557. The Child Protection Practice Manual states that case managers should make regular contact with kinship carers to ensure that they are receiving adequate support. The department considers that ideally, kinship placements receive intensive support in the early stages and only limited ongoing support once the placement has stabilised. The aim is to work towards a self managing placement and withdrawing departmental involvement.
558. During my investigation into the Child Protection Program,⁴⁴ the Medical Director of the Victorian Forensic Paediatric Medical Service expressed concern about the level of support being provided to kinship carers. She stated:
- The support that's given to kinship carers is obviously less than the support that's given to non-kinship carers in terms of financial support and how the department maintains contact really.
- ...
- It's very difficult for some kinship carers to then obtain enough financial help, respite care, locally to ensure that the placement is safe.
559. While the same issues in relation to caring for traumatised children arise in kinship placements as in *foster care* placements, there does not appear to be the same level of training and support offered to kinship carers.
560. The department has stated that it recognises that more support and monitoring is required for statutory kinship carers and that this has 'been a gap in the service system'. It states that *A new kinship care program model for Victoria*, introduced in June 2009, seeks to address issues relating to kinship carer support.
561. The new model is intended to recognise the growing use of statutory *kinship care* in Victoria in the last decade. The department stated that 'currently most kinship carers depend solely on their own resources, informal support from family and friends and their capacity to access mainstream services in order to manage the unexpected and ongoing demands of *kinship care*'. The department also stated that mainstream family and community support services have very limited capacity to provide support to kinship families with issues specific to *kinship care*.
562. Some of the specific issues identified in *A new kinship care program model for Victoria* were the need to:
- ensure that no child is placed or allowed to remain in a kinship placement that is unable to provide safety, stability and healthy development
 - ensure that high priority needs and risks for the most vulnerable children in *kinship care* are properly addressed
 - facilitate equitable access to resources and support services for children in *kinship care* on the basis of individual need enhance the capacity of kinship carers to provide good care with minimum professional intervention.

⁴⁴ Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

563. I understand that the government has also allocated funding to enable the transfer of case management of stable, long term kinship placements to community service organisations in order to provide dedicated support to carers and children.
564. There is a tension between minimising intervention in kinship placements and providing greater support and supervision to carers. I reviewed one case of a young girl who committed suicide while in the care of her grandmother. In this case, both the child and the carer were resistant to departmental intervention. However, the file indicates that in spite of the department being aware of several risk indicators, insufficient support was provided to the placement to protect the child from harm. These indicators included reports to the department over a number of years that the carer was not coping in her role, two previous suicide attempts made by the child in the three months prior to her death and other reports regarding the volatile nature of the placement.
565. The department's documentation showed that:
- the child's file lacked detail regarding intended case direction
 - the child had been referred to a mental health service a number of times prior to her death, however a formal psychiatric assessment was never completed
 - the absence of professional mental health assessments and support impeded the department in its case planning for the child and its ability to assess the risk of suicide and the ongoing appropriateness of the kinship placement.
566. The new *kinship care* model will support a daily average of 999 children in statutory kinship placements. The key feature of the model is the development of a community service organisation based *kinship care* service to provide the following program components:
- a regional kinship information and advice service
 - a kinship family service providing occasional and short term support; and
 - a kinship placement support service for some statutory kinship placements, which will offer three kinds of support will be offered:
 - i) placement support for up to the first six months of new placements to assist in facilitating self-management
 - ii) case contracted ongoing placement support for a small proportion of highly vulnerable placements which are unlikely to achieve self-management
 - iii) case contracted transitional support for long term placements likely to move to permanent care.
567. One hundred and twenty of the 999 contracted cases will be for Aboriginal children in long term kinship placements. These cases will be contracted to Aboriginal community controlled organisations.
568. The department advised that less intensive short to medium term support will also be available from these new services to both statutory and private kinship placements not accessing the support described above.
569. The department states that the new model also:
- supports the involvement of extended family in care and encourages the use of informal family care teams and 'Looking After Children' processes in non-statutory placements

- focuses on improving kinship carers' knowledge of and access to community services
 - encourages use of kinship carer groups to provide support and skill sharing.
570. One community service organisation expressed concern about the level of funding being provided for the new kinship service. For example, they advised that while funding had been provided for workers to deliver the program, no funding had been provided for a team leader for those staff. The community service organisation states that it has had to fund the team leader position from its own resources.
571. My investigators spoke to kinship carers and other witnesses involved with *kinship care*. These witnesses confirmed that they considered that insufficient support was being provided to kinship carers. A common theme which emerged from these discussions was one of kinship carers feeling powerless and voiceless in a system that is controlled by the department, community service organisations and courts. Kinship carers described feeling 'used and abused' by the department. For instance, while the department considered they were 'good enough' to take care of a child at short notice, when they attempted to raise concerns about the child's safety in relation to reunification or access planning, they felt that they were ignored.
572. A witness from a kinship carer support group stated that they believed cultural change in the department was fundamental to the success of the *kinship care* program. The witness stated that departmental officers were often 'rude and dismissive' in their interactions with kinship carers and that carers felt they had to 'battle' to get help. The following examples were provided:
- A grandmother was asked by the department to take on care of her grandchild at short notice and without the provision of necessities such as clothing, bottles or dummies. The carer later approached the department about obtaining a clothing allowance because she could not continue to afford to purchase new clothing for the child. In response to this request, a departmental officer reportedly told her that they would have thought she would be more interested in loving her grandchild than she would be in the money.
 - A kinship carer sought support from the department to find services to help her care for a child with a disability for a number of years without success. Rather than providing assistance, departmental officers gave the carer the impression that if she could not manage to care for the child on her own, the child would be taken from her and placed elsewhere. Ultimately the carer paid for the services herself.
573. Kinship carers also commented on the need for a peak body to be formed to provide *kinship care* specific advocacy and advice for both statutory and non-statutory placements. At present, no such body exists. However, strong opinions were expressed about the need for open consultation with kinship carers in the development of that body or any other *kinship care* related programs if they are to be effective.
574. The Child Safety Commissioner advised my investigators that he is involved in the early stages of a process aimed at developing a representative body for kinship carers.
575. Other suggestions made by kinship carers regarding services they believe are required include in-home support; training and advice on caring for children affected by trauma; and greater support and advice in relation to Children's Court processes.

576. In addition to concerns about whether the model had been sufficiently funded, I note that a number of carers and other witnesses from the sector questioned the appropriateness of particular features of the new *kinship care* model. Some suggested that the six-month timeframe for supporting new placements was unrealistic and that many placements would require greater support for stabilisation. Others perceived the move towards contracting out case management to community service organisations as the department distancing itself from service provision and accountability.
577. In response to this issue the Secretary stated:

The six months referred to ... relates to the establishment support component of the new Kinship Care Support Service ... At the end of the establishment intervention, an assessment regarding the type of support the family needs will be made. This will be determined in consultation with the family, the CSO [community service organisation] and child protection.

Leaving care

578. Research has shown that young people leaving care are at risk of experiencing poor outcomes and negative experiences in their adult lives, including unemployment, homelessness and contact with the criminal justice system.⁴⁵ Young people who have been in care are unlikely to have the same kinds of personal support networks or financial assistance that a young person leaving the family home might have.
579. The CREATE Foundation's Transitioning From Care Report Card identifies seven important areas in which young people require support when they are transitioning out of care:
- 1) Relationships
Networking and social support systems need to be established and maintained for care leavers to maximise their likelihood of success in all areas of their lives. This can be achieved through the formal relationships with carers and case workers, and also enhanced with specialised programs such as those involving mentors.
 - 2) Education
Children in care tend to achieve poorer education outcomes than the broader population and this in turn can affect their future education and employment opportunities when they leave care.
 - 3) Life Skills
Young people generally learn life skills through observation when they grow up in a stable environment. The tendency towards instability in the *out of home care* system can be an impediment to young people developing these skills naturally. Further training and assistance may be required prior to leaving care in order to ensure that young people have the life skills necessary for independent living.
 - 4) Identity, Youth Engagement, Emotional Healing
Adequate time and resources must be spent on services aimed at improving mental and emotional well-being to reduce the impact of past experiences on a young person's future development when they do leave care.

⁴⁵ Alexandra Osborn and Leah Bromfield, *Young People Leaving Care*, Australian Institute of Family Studies, Melbourne, 2007.

5) Financial Support

Provision of adequate financial resources to fund services will be necessary in order for transition to be successful.

580. The department has a statutory responsibility to provide assistance to children who have been raised in the *out of home care* system when they reach an age where it is appropriate for them to make the transition to independent living. While support services of this nature are intended to be provided up to 21 years of age, evidence obtained during my investigation indicated that there are children in Victoria leaving care at 18 years of age with insufficient preparation and little or no ongoing support.
581. A large *out of home care* service provider commented that, 'given the high levels of intellectual disability, cognitive impairment and social and emotional adjustment difficulties of young people in care it is not surprising that at 18 they are ill-equipped for autonomy'.
582. The CREATE Foundation considers that supports should be provided until a young person reaches 25 years of age. South Australia, Western Australia and the Northern Territory generally provide transition support services up to 25 years. Queensland does not set a specific age limit for services and relies on Ministerial discretion. The CREATE Foundation considers that:
- Leavers from state care are vulnerable young people who need the same ongoing support effective parents would give their children. For a child in the general population, leaving home is a process of transition; it takes time, with many false starts and recoveries, but with the continuing support of family and friends, a level of "independence" can be achieved. Why would we expect it to be different for those transitioning from care, young people who, almost by definition, already have experienced disadvantage?
583. The department stated that by the time a child leaves care, he/she should have been provided with opportunities to develop independent living skills. It advises that every young person should be involved in his/her own leaving care planning and that the plan should provide for after care support. It also states that when the young person leaves care it should be in a 'planned and supported manner' and he/she should have all necessary documentation, possessions and life record he/she needs for the transition.
584. Planning for leaving care is intended to commence two years prior to the child's planned leaving date. It is a minimum requirement that a leaving care plan be developed at least six months prior to transition. The young person's care team is involved in the leaving care planning process but primary responsibility for this process rests with the young person's case manager.
585. My investigators obtained evidence indicating that there are young people who are receiving little or no preparation for leaving care. One young person said that they had no leaving care plan and was not even aware that they would have to leave care when they turned 18. The young person explained that when they did leave, they did not have the basic life skills necessary to live independently, such as knowing how to pay a bill or use a washing machine.
586. Another young person my officers spoke to also stated that they did not have any leaving care plan in place. They described being called to a meeting and told that they would need to leave their *residential care* unit the next week. One carer described the experience of a child they had previously provided *foster care* for, who was in *residential care* when he turned 18 as, 'he got a laptop and an electric shaver and a handshake. It was awful'.

587. The *CREATE Report Card 2008: Transitioning from Care* project found that although considerable attention has been given to formulating policies and processes to assist children with leaving care in recent years, it appears that, 'requirements are not being translated into actions that will assist the relevant young people'.
588. I asked the department what steps it is taking to improve leaving care planning and post-placement support. The department advised that the following initiatives will be implemented in 2010:
- devising and delivering further training for carers and staff
 - developing a checklist to incorporate the views of young people, and how they wish their case manager, and carers to engage with them regarding transition from care support and planning
 - developing new transitional accommodation programs by Housing and Children Youth and Families aimed at assisting young people to live independently in affordable, supported accommodation during their transitions, which include:
 - o groups of two-bed semi-independent units with on-site support and dedicated outreach for young people, and
 - o small self-contained flats with a strong focus on on-site support, case management and education and employment support.
 - encouraging regions to develop clear structures that identify and plan for young people who will be in care from 16 years of age
 - allocating additional funds to Melbourne City Mission (MCM) Melbourne Youth Support Service to provide a state-wide 1300 Info Line for young people and community agencies which assists young people with identifying and connecting to post-care support services and brokerage.

Conclusions – case management

589. There is evidence to suggest that the case management practices utilised by the department are not functioning effectively to identify and meet the professional care needs of all children in care. This is concerning given that children in *out of home care* have histories which are likely to mean that they have a substantial need for professional assistance such as healthcare and mental health services.
590. Record keeping and information exchange components of 'Looking After Children' are not being practised consistently and this may be having an impact on effective case management. It would also appear that demand and capacity issues in the system have prevented the implementation of the Initial Health Assessment Tool, a program that has the potential to improve outcomes for children in care through early identification of health needs which can assist in effective case planning from the outset.

591. In response to this issue the Secretary stated:

I note your concerns regarding the effectiveness of systems and processes in how children's needs in OOHC [out of home care] are identified and met. I believe significant progress has been made in this area over the last five years. The introduction of the Looking After Children (LAC) framework, Care Team structures and the direct engagement of carers in decision making processes have been implemented to achieve more informed and integrated planning and action for children in OOHC. The draft report provides examples where difficulties and gaps in implementation have been identified, however embedding these important elements and other quality and support initiatives in the system continue to be a key priority for my department.

592. Some carers perceive the department as an obstacle to obtaining necessary support for the children in their care. The relationship between the department and carers is critical in improving outcomes for children in care.

593. Both foster carers and kinship carers face significant challenges and the department needs to ensure that adequate support is provided to these placements. Appropriate support has the potential to improve the quality of care provided and minimise the chance of placement breakdown. It is crucial that carers feel supported if the department is going to retain existing carers.

594. In response to this issue the Secretary stated:

Communication with and support and training of our carers is critical in ensuring that all parts of the system are working together to achieve effective outcomes for children in OOHC [out of home care]. This is an area requiring further development, to enable the department to use the existing mechanisms more effectively for good communication with our carers that acknowledge carer contribution and views, and clearly communicates reasons for decisions where there is disagreement.

595. There is no compelling reason to consider kinship carers should have less support available to them by virtue of their pre-existing relationship with the child in their care. As discussed elsewhere in this report, I am concerned that there is insufficient training provided to kinship carers in comparison to foster carers.

596. In response to this issue the Secretary stated:

The provision of therapeutic training has been largely focussed on foster carers as a carer cohort that is recruited, trained, organised and supported through CSOs [community service organisations]. Foster carers make a deliberate decision to be assessed and trained as volunteer carers.

Kinship carers assume the care of related children typically at a time of family crisis and are offering to help based on family bonds and ties. The fundamental premise is that being placed away from home with family members during this type of crisis reduces the trauma to the child. There are also a different range of issues to navigate in kinship placements such as family history, culture, family dynamics and the prospect of how family members wish the family to be in the future.

Foster care and kinship care are different forms of care and in my view it is appropriate both groups receive support but that the nature of that support differs.

I believe that the provision of education to kinship carers regarding the needs of children affected by trauma is more effectively delivered as a voluntary educational option through the new Kinship Care Support Services rather than [sic] compulsory attendance at training. We will work with the kinship services and kinship carers to consult on the most appropriate way to provide this input to kinship carers across the state.

597. There is an inherent tension in the current system between minimising intervention to 'normalise' kinship placements and providing adequate oversight and support to those placements. These tensions manifest themselves in the screening, support and responses to quality of care concerns regarding kinship placements.
598. Given the growing reliance on *kinship care* as the preferred placement option for children in the *out of home care* system, evidence of adversarial relationships between carers and the department is concerning. While the department's primary responsibility is to act in the best interests of the child, a system where carers perceive the department as unhelpful or obstructive is unlikely to be conducive to open communication in case planning and care.
599. It is possible that the increased case contracting of kinship placements to community service organisations will improve relationships between carers and case managers. However, this transition will need to be well managed to ensure community service organisations are not perceived by carers as simply another obstruction in a system within which they are already struggling to obtain assistance.
600. Evidence obtained during my investigation indicates that there is support among carers for the formation of a peak body for kinship carers in Victoria. I consider this to be a logical step in a system that intends to continue to increase its reliance on *kinship care* as it replicates arrangements that have been in place to support the interests of foster carers. In this regard, I consider the department should assist the Child Safety Commissioner with developing a representative body for kinship carers.
601. In response to this issue the Secretary stated:

Providing kinship carers with a voice is vital given the importance of this form of care. During the past year my officers have been working with a number of stakeholder groups including the OCSC [Office of the Child Safety Commissioner] regarding the creation of a representative body.

602. Although the department has substantial leaving care policies in place, there is evidence that these policies are not being effectively implemented and that there are children leaving care with little or no planning and/or preparation. Support in this transition can have a significant impact on the direction a young person's life takes following his/her time in care. While I note that the department intends to conduct further training on leaving care processes for its staff this year, I consider that it also needs to monitor the level of compliance with these processes.
603. In response the Secretary stated:

My officers have been working with CSOs [community service organisations] child protection, CREATE and the Centre for Excellence to develop and implement a dedicated leaving care training strategy to ensure that robust plans are developed for all young people due to transition from care. This training strategy will be implemented across the state over the next nine months.

The department will conduct an audit twice a year, of compliance with procedures for leaving care planning. The focus will be on identifying young people six months prior to their planned exit from the system to ensure transition planning is occurring which support effective outcomes for young people.

Recommendations – case management

I recommend that:

Recommendation 16

The department ensure that it has appropriate policies and assessment processes in place to ensure that new kinship placements contracted to community service organisations under the new kinship model do not have support withdrawn after six months in circumstances where the placement requires ongoing support.

The department's response

The department supports this recommendation and stated:

The aim is to fund sufficient activity to put in place the relevant services and interventions the family needs. At the end of the 6 month establishment intervention, an assessment regarding the ongoing support needs of the family will be made. This will be determined in consultation with the family, the CSO, and Child Protection.

Recommendation 17

The department develop a therapeutic training program to be made available to home based carers to assist with understanding and caring for children affected by trauma.

The department's response

The department supports this recommendation and stated:

The department has focussed the provision of therapeutic training to foster carers and will continue to provide this whilst examining the delivery of such training to kinship carers. The department will undertake a dual track focus to providing therapeutic training to kinship carers and foster carers.

Recommendation 18

The department regularly audit compliance with procedures for leaving care planning for young people exiting care, six months prior to their planned exit from *out of home care*. The first audit should take place by 30 September 2010.

The department's response

The department supports this recommendation.

FINANCIAL SUPPORT TO CHILDREN AND CARERS

604. Caring for children is a costly exercise. It can only be expected that the issues arising from a history of abuse or neglect will add to that expense as a consequence of more complex needs emerging. I was therefore interested to examine whether the financial support provided to carers makes adequate provision for these needs to be met. I was prompted to do so by statements made during my investigation of the Child Protection Program⁴⁶ and from complaints made to my office regarding the inadequacy of financial support.
605. Overall, Victoria allocates significant resources to the provision of *out of home care* when compared to other states and territories. The Productivity Commission's 'Report on Government Services 2009' states that Victoria spent \$43,822 per child on *out of home care* services in 2007-08. This is higher than the sums spent by New South Wales (\$34,195) and Queensland (\$43,631), but is exceeded by spending in Western Australia, South Australia and the Northern Territory.⁴⁷
606. On an individual level, foster, kinship and permanent carers are entitled to receive fortnightly payments to reimburse them for the costs of caring for the children placed with them.
607. In Victoria, the level of reimbursement a carer receives varies depending on the child's age and an assessment of the complexity involved in caring for that child. The three main levels of reimbursement are known as general, intensive and complex.
608. The reimbursements received by Victorian carers amount to significantly less than the estimated cost to care for a child. The department acknowledges that these payments are only intended to partially compensate carers.
609. The department also acknowledged that a credible cost of care estimate was undertaken by the Social Policy Research Centre (SPRC) of the University of New South Wales in 2002. The SPRC estimated costs in a manner that made allowances for the higher costs incurred when caring for an abused and/or neglected child. The SPRC estimated that it cost \$9828 per annum to care for a boy aged six in 2002. In 2009-10 the general reimbursement being paid annually to carers of a six year old in Victoria is \$6,681. By comparison, the New South Wales rate is the highest nationally at \$11,752 per annum.
610. The department confirmed that the above illustration of the circumstances for a six year old boy is indicative of the level of payments for caregivers generally, stating:
- The great majority of carers in Victoria receive somewhere between 40 per cent to 66 per cent of the estimated costs to care for a child... [F]or most age groups, the Victorian rate is somewhere between the fifth and eighth lowest rate [across Australian jurisdictions].
611. Another published estimate of the cost of raising children indicates a larger gap between costs and the general rate of reimbursement payable to carers. The Family Law Courts website⁴⁸ includes the 'Lee table' of cost estimates for raising children across the ages from birth to thirteen years. The Lee table, which has been updated to the August 2006 quarter, estimates the annual cost of raising a six year old child to be \$13,566.

46 Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

47 I note that the department urges caution in comparing these figures because data collection methods varied between jurisdictions.

48 <<http://www.familylawcourts.gov.au>>

612. At interview, representatives from the Foster Care Association of Victoria expressed concern about the lack of transparency in the financial reimbursement system for foster carers. They advised that there was little explanation provided to carers regarding the reasons why children in their care were classified as general, intensive or complex.
613. The department provided my office with an internal paper titled, Determination of General, Intensive and Complex cases. This document provides a 'general description of the characteristics, experiences and behavioural traits' of children within each classification. However, the paper warns that it 'does not provide a definitive tool for "classifying" children according to the three levels of complexity'. It states that no such tool exists and that classifications should be assessed on a case by case basis.
614. The department advises that 60 per cent of all foster carers and almost 100 per cent of kinship and permanent carers receive the general rate, which is the lowest amount payable. Witnesses from the Foster Care Association of Victoria suggested that there needed to be an examination of the current reimbursement system. They considered that given the level of complexity of the cases proceeding through Child Protection into *out of home care*, the 'general' rate of payment was largely redundant. I note that the department's renewed focus on placement prevention is likely to mean that a larger number of those cases that might be considered 'general' are diverted away from *out of home care*.
615. Thirty per cent of foster carers in Victoria receive the 'intensive' level of reimbursement for children whose needs and behaviours are such that the challenges and costs of caring for them are greater than those associated with the 'general' child in state care. The department advises that intensive rates for a child aged 0–7 range from \$8,072.28 to \$10,807.92 in the 2009-10 financial year. The department advises that at the higher end, these rates are similar to the SPRC rates. I note however, that the intensive reimbursement rate still falls significantly short of the costs indicated by the Lee table.
616. The department advises that a further 10 per cent of foster carers, caring for the most complex children in the home based care system, receive reimbursements of between \$21,000 and \$33,000. I understand that only around 120 carers out of the 5000+ home based carers receiving reimbursements across the state receive this level of reimbursement.
617. A large community service organisation which provided evidence to my investigation described the above policy approach for allocating general, intensive and complex reimbursements as the '30/60/20 Rule'. In the community service organisation's view this distribution of funding:

Has no methodological or rational basis. Further it is at odds with current DHS, national and international literature which consistently notes increased levels of complexity and co-morbidity in children and young people entering care.

618. Additional assistance is available for circumstances where expenses are incurred that are beyond what is considered the ordinary cost of care. This assistance can be provided through the following schemes:
- Family Support Grants
 - Placement Support Grants
 - Client Expenses
 - High risk infant brokerage
 - High risk adolescent brokerage.

619. It should also be noted that a fortnightly new placement loading is paid to caregivers for up to the first six months of a new placement. In 2009-10, the loading is \$51.84 per fortnight. It is only available to caregivers in receipt of the home based care general reimbursement.
620. In addition to the fortnightly caregiver reimbursement, carers are entitled to receive a quarterly Educational and Medical payment, which is intended to assist in meeting the health and education needs of children in care. The current rate per annum is \$913.31. Carers and other witnesses interviewed during my investigation indicated that this was often insufficient to cover the cost of medical and educational expenses. They particularly referred to costs associated with dental and mental health services, school books, school uniforms, excursions and school camps.
621. Witnesses from the Foster Care Association of Victoria also stated that it was often unclear for which expenses exactly carers would be reimbursed. For example, if the child had medical expenses which exceeded the standard Educational and Medical payment, the process of seeking approval for reimbursement for additional services could often be unnecessarily lengthy or complex. One kinship carer interviewed explained to my investigators that the process of obtaining the department's approval for reimbursement for orthodontic work for the child in his care had taken approximately two years.
622. Carers also repeatedly described having to 'fight' or 'lobby' the department for reimbursement. They expressed concern that those carers who were less able to articulate their cases may not be receiving reimbursements, or worse, may not be obtaining necessary services because they could not afford to pay up front and carry the risk that the department might refuse reimbursement.
623. My investigation obtained evidence which indicated that there were notable differences in financial supports offered to carers in some regions, such as the availability of High Risk Adolescent brokerage funds. One regional manager provided evidence that carers were concerned about being financially disadvantaged by their regional location.
624. I note that carers are no longer automatically entitled to the above financial supports in the event that a Permanent Care Order is made in relation to a child in their care.
625. At interview, the Child Safety Commissioner described the financial reimbursements provided to home based carers in Victoria as, 'entirely inadequate'.

Conclusions – financial support to children and carers

626. The financial reimbursements provided to home based carers in Victoria are insufficient to cover the full cost of caring for a child. While some carers will have sufficient personal financial resources to ensure that this does not impact on the quality of care and services the child receives, others may not. When the challenge of caring for damaged children is considered, it is likely that the financial impost of inadequate carer payments is likely to be contributing to the difficulty in recruiting foster carers.
627. In response to this issue the Secretary stated:

The current policy settings for fostering come from an altruistic tradition of volunteering. In line with this policy ... the department is currently provided with resources to make a contribution to the care of the child. This is a complex area of policy as the motivation of carers is extremely important and care must be exercised so as not to create a perverse incentive to take on the care of these children.

To date I am not aware of any material that establishes a link between rates of reimbursement and improved child outcomes or improved recruitment and retention rates of carers.

628. The evidence provided by the department in relation to carer reimbursements indicates that the default reimbursement rate for kinship carers is 'general', the lowest rate payable. While the department has advised that there are means for kinship carers to apply for an increase to the intensive or complex level of reimbursement, it also advised that almost all kinship carers in Victoria were being reimbursed at the general rate.
629. As is the case in a number of other areas of the *out of home care* system, a different standard is applied to the assessment of kinship placements. There appears to be an assumption that carers with a familial relationship to the child are less entitled to be reimbursed for the care provided on the basis of the child's needs.
630. This assumption does not take into account that the carer may not have the financial means to pay for the extra expenses. I note that many kinship carers are asked to take on children at short notice, without having the opportunity to fully consider the financial implications of the placement. Further, unlike foster carers, kinship carers are likely to have a complex set of family pressures and emotional factors operating on them when they make the decision to take a child into their home.
631. Given these factors, I do not consider that it is reasonable for the department's carer reimbursement assessment process to set the default rate for kinship carers as 'general', while each *foster care* placement is automatically assessed on the basis of needs.
632. The complexity and lack of transparency around reimbursement rates and entitlements is a source of frustration for some carers. There is also evidence to suggest that it may be making it difficult for children in care to access necessary items and services. Poor communication about financial entitlements should not be a barrier to children in care accessing the things they need.
633. In response to this issue the Secretary stated:

The contemporary approach to the provision of additional funds to support children in care has been to provide targeted specific purpose payments that have a demonstrable direct benefit to the child such as medical / dental payments. The department also manages discrete funds that have been allocated to meet individual client expenses which are allocated on a case by case basis. Child care fees for carers who are in full time employment account for significant use of this resource. Other uses of these funds include school excursions, uniforms and extra curricular activities.

In addition Australian families receive support and assistance from the Commonwealth Government ... the department has advocated with the Commonwealth Government for many years to also improve carer access to various Commonwealth financial supports such as family benefits. Financial and non-financial support for carers is also one of the key priority outcomes in the National Framework for Protecting Australia's Children.

Children in care present with quite different needs and it is a challenge for the system to structure payments to tailor responses and target a child's individual needs. How best to provide funds to meet the needs of children in care is an important discussion. In my opinion, systems can operate in the future to tailor responses for children in care with different needs. It is my intention to undertake a review of the all forms of financial support for young people in care with a view to identifying the options to tailor responses to meet the variety of different needs of children in care and their carers.

Recommendations – financial support to children and carers

I recommend that:

Recommendation 19

The department review all forms of financial support for children in care with a view to identifying the options to tailor responses to meet the variety of different needs of children in care.

The department's response

The department supports this recommendation.

Recommendation 20

The department publish guidance regarding financial support following the completion of the review outlined in Recommendation 19.

The department's response

The department supports this recommendation.

THE ROLE OF THE CHILD SAFETY COMMISSIONER

634. Under section 29 of the *Child Wellbeing and Safety Act 2005*, the Child Safety Commissioner has the following responsibilities in relation to children in *out of home care*:

- (a) to promote the provision of out of home care services that encourage the active participation of those children in the making of decisions that affect them;
- (b) to advise the Minister and the Secretary on the performance of out of home care services;
- (c) at the request of the Minister, to investigate and report on an out of home care service.

635. The Child Safety Commissioner states on his website that he has an important role to play with children who have been removed from their families. He describes this role as follows:

to ensure the state acts as a good parent to these children while they are in care.

The office monitors how well out-of-home care services are delivered by the Department of Human Services and by contracted community service organisations who provide this day-to-day care. Listening to children about their direct experiences of out-of-home care is seen as critical in undertaking this role.

636. In my report on the Child Protection Program, I commented on the limitations of the role of the Child Safety Commissioner including that the role:

- has no coercive powers to investigate matters
- relies on the cooperation of the department and other agencies to perform its functions
- is only able to report to Parliament in the annual report.

637. The Office of the Child Safety Commissioner is the only such body in Australia unable to table a special report to Parliament on issues arising from its functions.⁴⁹

638. The Chief Executive Officer from the Centre for Excellence in Child and Family Welfare stated that the Centre believed the role of the Child Safety Commissioner should be independent and stated:

It just seems incongruous that his role is to report on issues and he reports to the Minister. ... He's not actually in a position to be independent and to actually call it as it is. Everything he says has to be guarded by the fact that he's a government employee.

639. In accordance with the recommendations I made in an investigation I conducted in 2005, and in order for the Child Safety Commissioner to perform his functions, the department is required to provide his office with copies of all category one incident reports involving children and young people who reside in *out of home care*.

640. During my investigation I reviewed the Child Safety Commissioner's 'Report of Out of Home Care Incident Reports 1/7/08 – 30/6/09'. This report is provided to the department and Minister for Community Services annually and is not publicly available. The report details that the Child Safety Commissioner received 467 category one incident reports in 2008-09 compared with 288 in 2007-08. The report notes this discrepancy can be explained by confusion in the regions about the process of notifying the Child Safety Commissioner about category one incidents. The report states that this issue has been rectified.

⁴⁹ See Appendix 1.

641. The Child Safety Commissioner notes in his report that he is only provided with a limited amount of information in the category one incident report and accompanying briefing. He therefore states that it is important to critically evaluate what may appear to be recurrent themes or patterns regarding *out of home care*.
642. The Child Safety Commissioner also observed that there were 73 incidents regarding prostitution in 2008-09 involving 21 children. He further notes that the female to male ratio of clients generating incident reports in the period was 61 per cent female and 39 per cent male.
643. The Child Safety Commissioner’s report notes that a total of 593 clients were involved in incidents which resulted in category one incident reports in 2008-09, some as victims and some as perpetrators. Some clients were involved in more than one incident and have therefore been counted more than once.
644. An analysis of clients involved in incident reports by placement type shows that 61 per cent were in *residential care* compared with 25 per cent in home based care.
645. The Child Safety Commissioner also provided statistics on the relationship between the alleged victim and the alleged perpetrator. It should be noted that the incident reporting system only records the primary abuse type. In a scenario such as a child assaulting a carer and the carer then harming the child when trying to restrain them, only the assault on the child will be recorded.
646. The table below shows a breakdown of the number of category one incidents based on the relationship between victim and perpetrator.

Table 10. Relationship between alleged victim and perpetrator	
Relationship	Grand Total
carer > client	105
carer’s child > client	14
client to self*	151
client > staff	11
client > client	83
client > other	16
client > carer’s child	1
other > staff	1
other>client	86
staff>client	61
N/A / Unknown / blank	64
Grand Total of clients	593
* The client to self definition includes cases of children prostituting, engaging in self harming behaviour and attempting suicide.	

Conclusions – the role of the Child Safety Commissioner

647. While the Child Safety Commissioner is often considered to be a scrutineer of the *out of home care* system, there are limitations to his role and independence. These include that the Child Safety Commissioner:
- has no coercive powers to investigate matters and relies on the cooperation of the department and other agencies to perform his functions
 - is the only such body in Australia unable to table a special report to Parliament on issues arising from his functions
 - reports direct to the responsible Minister.
648. I believe such limitations to the role do not provide for the necessary independent scrutiny of the *out of home care* system. It should also be noted that the Child Safety Commissioner does not have a formal role in respect to advocating on behalf of individual children.

ALTERNATIVE APPROACHES

Scrutiny of the *out of home care* system

649. In my report on my investigation into the Child Protection Program⁵⁰, I concluded that:

The accountability framework that has developed around the child protection system lacks sufficient rigour and transparency or the proactive elements required to ensure the state's response to children meets community expectations.

650. This conclusion is also relevant to the *out of home care* system. I have previously discussed the limitations to the role of the Child Safety Commissioner and also the limited external audience who receive information regarding the performance of the *out of home care* system in Victoria.

651. Mechanisms used by other jurisdictions to provide advocacy for children in *out of home care* and independent scrutiny of the system therefore provide a useful comparison to Victoria's current *out of home care* system.

652. Some jurisdictions for example have community visitor schemes. Such schemes involve children being visited by independent people who monitor whether their needs are being met. Such a scheme would provide an additional safety mechanism and a level of transparency which is lacking in Victoria's *out of home care* system.

653. During interview the Child Safety Commissioner noted that the *out of home care* system lacks a community visitor scheme. He said that he had been funded to develop a community integration scheme pilot which will operate in a region for three years. He stated that the pilot would involve the recruitment of volunteers who would be matched to a residential unit and would link individual children with social activities such as football. The department has confirmed that \$1.2 million has been made available over four years for this scheme which will soon be launched.

654. Some jurisdictions conduct regular surveys of children on their views of the quality of care being provided and their sense of safety in residential settings. Other jurisdictions appoint independent guardians to ensure that children's best interests are met. I have considered a number of approaches applied by other jurisdictions to provide advocacy and scrutiny and believe the following two approaches may warrant consideration in the Victorian context.

Queensland Commissioner for Children and Young People and Child Guardian

655. The Queensland Commissioner for Children and Young People and Child Guardian is an independent statutory officer appointed by the Queensland Governor. The Commissioner has a mandate to protect and promote the rights, interests and well-being of children and young people in Queensland, particularly those who:

- are in care or detention
- have no one to act on their behalf
- are not able to protect themselves, or
- are disadvantaged because of a disability, geographic isolation, homelessness or poverty.

⁵⁰ Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program*, Melbourne, November 2009.

656. The Commissioner has a mandate to report publicly on the Queensland child safety system's performance. Unlike commissioners in many other states, the Queensland Commissioner does not report to the Minister responsible for child protection services, but rather to a joint Parliamentary Committee. Further, unlike the Victorian Child Safety Commissioner, the Queensland Commissioner, along with all other state commissioners, is able to report to Parliament in annual reports as well as having the capacity to table special reports.
657. The Queensland Commissioner has more than 200 Community Visitors who regularly visit children and young people throughout Queensland in foster homes, residential services, mental health facilities and detention centres to monitor their safety and well-being. Job descriptions state that prospective Community Visitors must have 'an understanding and knowledge of, and commitment to resolving child protection issues'. The role of the Community Visitor is to assess if the children feel safe and have access to services appropriate to their needs.
658. After each visit the Community Visitor prepares a written report relating to the Standards of Care within the Child Protection Act 1999. In 2008-09, over 55,000 child reports were submitted following visits to foster homes and other locations and another 3191 site reports were generated from visits to residential and other visitable sites. Serious or high priority issues were identified in 1.2 per cent of these visits. When such issues are identified the Commissioner takes action with appropriate authorities to facilitate a response.
659. The Queensland Commissioner also conducts biennial surveys with children in *out of home care*. In September 2009 the Commissioner released findings of her second survey of children and young people in *out of home care*. The Commissioner detailed the importance of the survey as follows:
- The survey provides an opportunity for the community and government to hear directly from young people. Supporting these young vulnerable people to have their say ensures greater systems transparency and assists us all to learn about how we can better target and improve our support services. ... We need to learn from past history when children were seen but not heard. Such secrecy allowed abuse and poor service to go undetected for too long, causing untold damage to far too many people reliant on protection.
660. The survey revealed that nine out of 10 children who took part in the survey reported that they felt safe and were well treated in their residential placement. The results also indicated that for children on protection orders in *residential care* the main request was to have greater contact with their caseworker and be more involved or informed about decisions being made about their care.
661. The 'Child Guardian Annual Report 2007-08' identified that following a survey in which 1861 children and young people in *foster care* and *residential care* responded, the number of substantiated 'Matters of Concern' dropped from 509 in 2004-05 to 184 in 2007-08. This translates to three per cent of children in *out of home care* experiencing a substantiated matter of concern in 2007-08 as opposed to nine per cent in 2004-05.
662. I note that the Child Safety Commissioner, in partnership with the CREATE Foundation, has recently completed a survey of 161 children living in *out of home care* across two regions in Victoria. The Child Safety Commissioner has advised that the children were interviewed about their experiences in *out of home care* and that his office is now in the process of discussing the survey results with the department with a view to 'enhancing practice'.

663. I note that the reports resulting from these surveys are not available on either the CREATE Foundation or the Office of the Child Safety Commissioner websites. However, the Commissioner's office advised that the report was widely disseminated within the sector and copies were provided to the children involved. The Commissioner indicated at interview that he did not have plans for an ongoing survey program.

Child and Youth Advocate, Alberta, Canada

664. In 1989 advocacy on behalf of children and young people became a distinct feature of Alberta's Children's Services system. The Office of the Child and Youth Advocate provides individual and systemic advocacy for children. It also provides training and support to individuals and organisations who are interested in advocating for vulnerable children and their families.

665. The Child and Youth Advocate recognises that when children live away from their parents, parents and extended family are less able to advocate for the children. Under legislation children are entitled to seek assistance from the Child and Youth Advocate.

666. The Child and Youth Advocate states the following:

Children and youth have rights as individuals, separate from the right to be protected from abuse and neglect, including:

- The right to know about and to access procedural rights specifically provided in legislation and policy;
- The right to be told about decisions which affect their lives and to be given an opportunity to give their own opinions and to be heard on such matters;
- The right to privacy and confidentiality;
- The right to have access to personal and system information;
- The right to a plan of care and access to services which address their specific needs;
- The right to experience continuous and stable familiar relationships in a permanent setting whenever possible, and where this is not possible, in the least restrictive placement capable of meeting their specific needs; and
- The right to know and maintain connections with their biological, cultural, religious and linguistic heritage.

667. The role of the Child and Youth Advocate is to assist children to understand their interests and rights and help them to be 'active participants on their own behalf when decisions are being made that will affect their lives'. For children who are not able to understand, the Child and Youth Advocate's work is focused on 'interests-based inquiry and activities'. This may for example involve examining how decision-makers have considered the child's interest when making decisions.

668. In order to perform their duties to children who are receiving services under the *Protection of Sexually Exploited Children Act* or *Children, Youth and Family Enhancement Act*, the Child and Youth Advocate may:

- communicate with and visit a child who is receiving services, a guardian or other person who represents the child
- have access to information in relation to a child that is in the possession of services

- at the request of a child, the Minister or any person acting on the child's behalf, make recommendations regarding any matter relating to the provision of services to a child
 - provide information relating to, speak on behalf of and otherwise represent a child who is receiving services
 - assist in appealing or reviewing decisions made by services
 - provide assistance and advice to an Appeal Panel or a Court with respect to a child who is receiving services.
669. The Child and Youth Advocate also receives and reviews complaints or concerns that come to his attention and advises the Minister on matters relating to the welfare and interest of children receiving services.

Conclusions – alternative approaches

670. The *out of home care* system is struggling to meet demand. Advocacy on behalf of every child in the *out of home care* system is therefore required to ensure that their best interests are met and their right to a safe and secure placement is not compromised by systemic pressures. Advocacy and scrutiny of the *out of home care* system is paramount in ensuring protection of the best interests of every child in *out of home care*.
671. In many of the cases referred to in the chapter titled 'Safety in Care', the children concerned lacked adults willing and able to independently advocate on their behalf. I believe this lack of advocacy is at times compounded by the department's multiple roles as service provider, contract manager and regulator of the *out of home care* system.
672. Mechanisms such as Community Visitor schemes and the appointment of independent advocates for individual children would provide a level of scrutiny not evident in the Victorian *out of home care* system at present. They have the capacity to improve safety and risk identification in relation to individual children as well as shedding light on whether the best interests of children are being met by the department and community service organisations.
673. The surveys recently conducted by the CREATE foundation and the Office of the Child Safety Commissioner are a positive step and have the potential to benefit the *out of home care* system on a number of levels. Such processes provide for additional scrutiny and serve the crucial function of allowing the children for whom the system exists to provide direct feedback and contribute to system improvement. I consider that the approach of regularly surveying children in *out of home care* and publishing survey results which has been adopted by some other jurisdictions should be considered in Victoria.
674. I consider that it would be appropriate for the Minister for Community Services to examine mechanisms which would provide a greater level of scrutiny and transparency of the *out of home care* system while also ensuring advocacy for children in *out of home care*.
675. In my *Own motion investigation into the Department of Human Services Child Protection Program* report I made a number of recommendations to ensure compliance with practice standards and key statutory obligations such as Best Interests Case Plans. I recommended that the department's obligations be subject to scrutiny and regular auditing by an independent body. I believe the *out of home care* program should also be subject to this same level of scrutiny to ensure a consistent approach is adopted in respect to quality of care investigations and reviews.

676. In response to this issue the Secretary stated:

Over recent years the role and functions of the CSC [Child Safety Commissioner] in Victoria has been strengthened to increase his oversight of children in the child protection and care system. These are important changes to the system and indicate a willingness to seek to strengthen the CSC role for children in OOHC [out of home care].

Recommendation – alternative approaches

I recommend that:

Recommendation 21

The Minister for Community Services examines mechanisms which would provide a greater level of scrutiny and transparency to the *out of home care* program.

The Secretary responded that:

The principle of appropriate scrutiny and transparency of the OOHC [out of home care] system is supported. The Minister for Community Services will consider the report in detail and the department will scope options and mechanisms for enhancing appropriate levels of scrutiny and transparency in OOHC.

SUMMARY OF RECOMMENDATIONS

Safety for children in care

Recommendation 1

The department publish the analysis of quality of care data in the Department of Human Services Annual Report.

The department's response

The department supports this recommendation.

Recommendation 2

The department complete an analysis of child against child abuse as was foreshadowed in 2007.

The department's response

The department supports this recommendation and stated:

The analysis of child against child abuse will be undertaken on an annual basis for data collected 2008, 2009. The analysis has commenced and will be completed by the end of September 2010. Subsequent data analysis will be undertaken on a half yearly basis.

Recommendation 3

The department incorporate allegations of child against child abuse into the *Guidelines for responding to quality of care concerns in out of home care*.

The department's response

The department supports this recommendation.

Recommendation 4

The department regularly review the new *Guidelines for responding to quality of care concerns in out of home care* and provide training to Child Protection and community service organisation staff on the finalised guidelines.

The department's response

The department supports this recommendation and stated:

This involves a considerable new training effort across state. Consideration will be given to current training opportunities across the field and how this training could be incorporated into existing training structures.

Recommendation 5

The department ensure that the Principal Child Protection Practitioner receives the analysis of Critical Incident Reports relating to children in *out of home care* on a quarterly basis for review. A copy of the review and analysis to be forwarded to the Office of the Child Safety Commissioner.

The department's response

The department supports this recommendation.

Recommendation 6

The Central Quality of Care Unit regularly review outcomes of quality of care investigations and reviews to ensure consistency across regions. The outcomes of such analysis should be made available to the Child Safety Commissioner.

The department's response

The department supports this recommendation.

Recommendation 7

The department should ensure compliance with the *Guidelines for responding to quality of care concerns in out of home care* is subject to scrutiny by the Child Protection Standards and Compliance Committee. The activities of the committee should be published in the Department of Human Services Annual Report.

The department's response

The department supports this recommendation

Community service organisations

Recommendation 8

Transfer the function of registering community service organisations to an independent Office which has no reliance on the services being provided by the agency being registered.

The department's response

The department has not accepted this recommendation

Availability of care

Recommendation 9

The department liaise with the Government to develop models for projecting future resource demands for the *out of home care* system that provide greater opportunities for ensuring demand is met through planned capacity increases rather than ad hoc arrangements.

The department's response

The department supports this recommendation and stated:

The department will work with DTF and DPC to undertake further work to determine the most appropriate mechanism to forecast and fund demand in the OOHC system.

Suitability of care

Recommendation 10

The department include data relating to the proportion of children less than 12 years of age who are placed in *residential care* and the proportion of children placed in home based care in its annual report.

The department's response

The department supports this recommendation.

Recommendation 11

The department instigate a program of regular data collection and analysis in relation to children with a disability in *out of home care*.

The department's response

The department supports this recommendation.

Recommendation 12

The department develop specific procedures for monitoring the welfare and progress of individual children with intellectual disabilities who are placed in *out of home care*.

The department's response

The department supports this recommendation and stated it will:

... formally establish a committee with OCSC, Disability Services Commissioner, Disability Services Division, Children, Youth and Families Division to oversight the development of procedures to monitor the welfare and progress of children with an Intellectual Disability placed in OOHC.

Recommendation 13

The department continue to pursue initiatives to improve the quality of *out of home care* including training and qualifications of *residential care* staff.

The department's response

The department has accepted this recommendation.

Outcomes for children in care

Recommendation 14

The department ensure that home based carers continue to receive the caregiver reimbursement allowance for the calendar year beyond which the child turns 18 years and where the child is enrolled and participating in secondary education as per the definition prescribed by DEECD

The department's response

The department supports this recommendation.

Recommendation 15

The Department of Human Services and the Department of Education and Early Childhood Development provide me with a report on compliance with the key elements of the revised Partnering Agreement within six months of its commencement.

The department's response

Both departments support this recommendation.

Case management

Recommendation 16

The department ensure that it has appropriate policies and assessment processes in place to ensure that new kinship placements contracted to community service organisations under the new kinship model do not have support withdrawn after six months in circumstances where the placement requires ongoing support.

The department's response

The department supports this recommendation and stated:

The aim is to fund sufficient activity to put in place the relevant services and interventions the family needs. At the end of the 6 month establishment intervention, an assessment regarding the ongoing support needs of the family will be made. This will be determined in consultation with the family, the CSO, and Child Protection.

Recommendation 17

The department develop a therapeutic training program to be made available to home based carers to assist with understanding and caring for children affected by trauma.

The department's response

The department supports this recommendation and stated:

The department has focussed the provision of therapeutic training to foster carers and will continue to provide this whilst examining the delivery of such training to kinship carers. The department will undertake a dual track focus to providing therapeutic training to kinship carers and foster carers.

Recommendation 18

The department regularly audit compliance with procedures for leaving care planning for young people exiting care, six months prior to their planned exit from *out of home care*. The first audit should take place by 30 September 2010.

The department's response

The department supports this recommendation.

Financial support to children and carers

Recommendation 19

The department review all forms of financial support for children in care with a view to identifying the options to tailor responses to meet the variety of different needs of children in care.

The department's response

The department supports this recommendation.

Recommendation 20

The department publish guidance regarding financial support following the completion of the review outlined in Recommendation 19.

The department's response

The department supports this recommendation.

Alternative approaches

Recommendation 21

The Minister for Community Services examines mechanisms which would provide a greater level of scrutiny and transparency to the *out of home care* program.

The Secretary responded that:

The principle of appropriate scrutiny and transparency of the OOHC [out of home care] system is supported. The Minister for Community Services will consider the report in detail and the department will scope options and mechanisms for enhancing appropriate levels of scrutiny and transparency in OOHC.

APPENDIX 1

Appendix 1		Western Australia (WA)	Victoria	Tasmania	South Australia	Queensland	Northern Territory	New South Wales (NSW)	Australian Capital Territory	State/Territory
Name		WA Commissioner for Children and Young People	Child Safety Commissioner Victoria	Commissioner for Children Tasmania	Guardian for Children and Young People	Queensland Commission for Children and Young People and Child Guardian	Children's Commissioner	NSW Office for Children – the Children's Guardian	ACT Children & Young People Commissioner	
Legislative base		<i>Commissioner for Children and Young People Act 2006</i>	<i>Child Wellbeing and Safety Act 2005</i>	<i>Children, Young Persons and Their Families Act 1997</i>	<i>Children's Protection Act 1993</i>	<i>Commission for Children and Young People and Child Guardian Act 2000</i>	<i>Care and Protection of Children Act 2007</i>	<i>Children and Young Persons (Care and Protection Act) 1998</i>	<i>Human Rights Commission Act 2005, and Human Rights Act 2004</i>	
Independence		Reports to a Parliamentary Joint Committee	Reports to the Minister	Reports to the Minister	Reports to the Minister	Reports to a Parliamentary Joint Committee	Reports to the Minister	Reports to the Minister	Reports to the Minister	
Reporting to Parliament		Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	
Appointment		The Commissioner is an independent statutory officer appointed by the Governor of Western Australia	The Commissioner is appointed by the Premier	The Commissioner is an independent statutory officer appointed by the Governor of Tasmania	The Guardian is an independent officer appointed by the Governor of South Australia	The Commissioner/Guardian is an independent statutory officer appointed by the Queensland Governor	The Commissioner is an independent statutory officer appointed by the Administrator	The Children's Guardian is an independent statutory officer appointed by the NSW Governor	The Commissioner is an independent statutory officer appointed by the Executive	

Source: House Standing Committee on Education and Training, *Enquiry into combining school and work: supporting successful youth transitions*, November 2009.

OMBUDSMAN'S REPORTS 2004-10

2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman's recommendations – Report on their implementation
February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009

Brookland Greens Estate – Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing
July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool Shire Council
April 2009

Crime statistics and police numbers
March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

2007

Investigation into VicRoads' driver licensing arrangements
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the Freedom of Information Act 1982
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving sexual assault
March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the *Freedom of Information Act 1982*
Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

2004

Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of Victoria
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria
June 2004