



Commission of Inquiry into
the Tasmanian Government's
Responses to Child Sexual
Abuse in Institutional Settings

WITNESS STATEMENT OF KIM MARIE BACKHOUSE

I, Kim Marie Backhouse of [REDACTED] in the State of Tasmania Chief Executive Officer, Foster and Kinship Carers Association Tasmania, do solemnly and sincerely declare that:

- 1 I am authorised by the Foster and Kinship Carers Association Tasmania (FKAT) to make this statement on its behalf.
- 2 I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

BACKGROUND AND QUALIFICATIONS

- 3 I have the following qualifications:
 - (a) Bachelor of Laws (1994) from the University of Tasmania;
 - (b) Master of Business Administration (2000) from the University of Tasmania;
 - (c) Diploma from the Australian Institute of Company Directors (2000);
 - (d) Doctor of Philosophy in Corporate Governance, Innovation and Superannuation (2014) from the University of Tasmania; and
 - (e) Master of Employment and Labour Law (2022) from the University of Melbourne.

Current role

- 4 I am currently the Chief Executive Officer (CEO) of FKAT. I was appointed to this role part-time in August 2014.
- 5 In this role I am responsible for driving FKAT's mission and vision, and for accountability to the funding body. The Board delegates responsibility for management and day-to-day operations to the CEO, and I have the authority to carry out these responsibilities in accordance with the direction and policies established by the Board. I provide direction and information to the Board to carry out its governance functions.

- 6 I am responsible for accountability and reporting compliance to the funding body, through:
- (a) overseeing the maintenance and development of current and potential sources of funding including planning and implementation;
 - (b) ensuring the filling of all required and regulatory documents;
 - (c) establishing and maintaining an effective reporting framework for FKAT; and
 - (d) identifying resource requirements, researching funding sources, and establishing strategies to approach funders and networking.
- 7 I assist the Board to:
- (a) determine FKAT's mission, vision, short and long-term goals; and
 - (b) monitor and evaluate effectiveness of FKAT's programs and activities.
- 8 With respect to governance of FKAT, it is my role to:
- (a) represent the Board's general philosophy;
 - (b) help the Board articulate its role and accountabilities and that of its committees and individual members;
 - (c) help the Board evaluate its own performance;
 - (d) works with the Board President/Chair to enable the Board to fulfil its governance functions and facilitate the optimum performance by the Board and individual Board members;
 - (e) keep the Board fully informed on the condition of FKAT and on all the important factors influencing it;
 - (f) identify problems and opportunities and address them; bring those which are appropriate to the Board and/executive and, facilitate discussion and deliberation;
 - (g) inform the Board about trends, issues, problems and activities in order to facilitate policy-making.
 - (h) work with the Board to build consensus in decision making;

- (i) work with the Board President to resolve conflicts between Board officers, and Board members;
- (j) work with the Board President to maintain a positive and productive culture on the Board;
- (k) work with the executive to prepare agendas for board meetings.

9 With respect to the management and administration of FKAT it is my role to:

- (a) provide general oversight of all FKAT activities, manage the day-to-day operations, and assure a smoothly functioning, efficient association.
- (b) motivate and evaluate staff and volunteers.

10 I liaise with the Treasurer and President of FKAT to ensure all accounts are up to date.

11 I promote FKAT's member and community relations by:

- (a) acting as an advocate for issues relevant to FKAT's services, members, and the compliance community;
- (b) listening to members and volunteers to improve services and generate involvement; and
- (c) serving as chief spokesperson for FKAT and assuring proper representation of the association in the community and other stakeholders.
- (d) initiating, developing, and maintaining productive relationships with key stakeholders in the sector.

Previous roles

12 Since January 2007 until 2020 I was a lecturer at the University of Tasmania. I was a full-time lecturer between 2007 and 2014. From 2015 until 2020 I was a sessional lecturer.

13 At the University of Tasmania, I was the Unit Co-ordinator for Law and Organisational Behaviour Units in the Master of Business Administration program.

- 14 Between 2018 and 2020 I took a leave of absence from my FKAT role and was employed as the Executive General Manager and subsequently took a part-time role as Royal Commission Lead at Possability, a disability services provider.
- 15 Between 1999 and 2006, I was Assistant Ombudsman at Ombudsman Tasmania.
- 16 Between 1995 and 1997, I was employed as a solicitor in two commercial law firms in Melbourne, where I practised in the areas of superannuation and corporate law

FKAT

The role of FKAT

- 17 FKAT provides support and assistance for foster carers, kinship carers and people interested in becoming carers within Tasmania. FKAT was formerly known as the Foster Carers Association of Tasmania and was established in 1986 to be a voice for foster carers. In 2015, the name of the association was changed to include kinship carers. FKAT is now recognised as the professional voice of foster care in Tasmania.
- 18 FKAT aims to:
- (a) provide supportive services to all foster and kinship carers;
 - (b) keep members informed of new ideas and change to policy and law relating to children in care;
 - (c) give members an opportunity to present their ideas to State and national policy makers;
 - (d) safeguard and promote the best interests of children in care;
 - (e) keep members up to date on foster care allowances and benefits; and
 - (f) work with the Department of Communities Tasmania (**Department**) to ensure the best outcomes for children in care.

Types of foster and kinship care¹

- 19 **Short-term foster care:** Short-term care is provided for children or young people while their family situation is assessed. The length of stay can be from a few nights through to 12 months. At the end of short-term care the child may return to their family or be placed in long-term care. Sometimes a family who takes a child on as a short-term placement becomes their long-term placement family.
- 20 **Long-term foster care:** Long-term care is provided for children who need a stable, supportive home until the circumstances of their family change, or they reach adulthood.
- 21 **Respite care:** Respite care is provided for children for short periods to give their long-term carers a break on a regular basis, for example one weekend a month. Wherever possible respite carers give a commitment to be regular respite carers for the same children for 12 months.
- 22 **Kinship care:** Kinship care is a formal arrangement where foster care is provided by a member of the child's family. In the Tasmanian child protection system, kinship care must be explored before other placement options are considered.
- 23 **Specialised care:** There are three types of specialised care: sibling group care, residential care and therapeutic services.
- (a) **Sibling groups:** when siblings are removed, Child Safety Services tries to keep them together. As few foster carers have the capacity in their own home to take sibling groups, the government has homes that the children are placed in and the carers move into. If siblings cannot stay together, then contact plans will be developed with the children's Child Safety Officers (**CSOs**), agency workers and the different foster and kinship carers to ensure the children have regular visits with their siblings.

¹ The following definitions are provided in *The Foster and Kinship Carers Association Handbook: Information for Families Caring for Children and Young People in Out-of-Home Care* (Foster and Kinship Carers Association of Tasmania, 3rd ed, May 2018) at page 28.

- (b) **Residential care:** Where older children and young people have high or challenging needs and where foster or kinship care is not available or appropriate, they may go in to residential care. Their carers are paid social workers who are rostered on to care for the children 24/7.
- (c) **Therapeutic services:** Children with more complex or higher needs require carers with a different level of skill and understanding. These children have often experienced significant trauma, grief and loss. As a result, they will often have complex needs and behaviours, attachment disorders, developmental delays or learning difficulties. These children therefore may require carers with more skills.

24 In this statement, I refer to foster carers and kinship carers collectively as 'carers'.

FKAT membership base

25 FKAT provides support and advocacy to all carers in Tasmania. This means we represent carers who are both within the out of home care system and those who operate outside of that system. FKAT's membership therefore encompasses carers who are either:

- (a) engaged by the Department directly;
- (b) engaged by non-government agency out of home care providers (**agencies**); or
- (c) providing care in an informal kinship care arrangement.

26 The Department provides FKAT with funding to ensure that all Department carers are members of FKAT.

27 FKAT also has an arrangement with the majority of the agencies operating in the out of home care sector in Tasmania whereby each agency provides us with a list of its carers. These carers then automatically become members of FKAT.

FKAT funding

28 FKAT is funded by the Department.

OUT OF HOME CARE SYSTEM

The carers

Entering the system as a carer

- 29 When carers enter the system through an agency, typically that agency will run a two-day training course for potential carers called 'Shared Stories'. 'Shared Stories' is a program that was developed with the assistance of the Association of Children's Welfare Agencies and the New South Wales Department of Human Services. It was originally published in September 2000.
- 30 During the 'Shared Stories' training course, the potential carers and agency share stories with one another. The agencies use this story-sharing process as a way to build rapport with and determine the dynamics of the new carers.
- 31 In my view, the 'Shared Stories course' is an outdated model for determining whether a person is capable of caring for a child. The Trust-Based Relational Intervention model that is currently being developed by FKAT and the Department appears to be a more contemporary, comprehensive and trauma informed approach.
- 32 After the 'Shared Stories' program, some of the agencies, such as Life Without Barriers, will then conduct follow-up meetings and assessments with potential carers, followed by Police and Working with Vulnerable People Checks.

The need for a registration system

- 33 In general, the entry of new carers into the Tasmanian out of home care system is under-regulated and needs to be much more rigorous. There is no robust selection criteria that all new carers must meet. Nor is there a uniform screening process that is required to take place before a person can become a carer. The selection or screening process, if any, is dependent upon the policies and practices of the particular agency.
- 34 I firmly believe that we need to establish a regulated registration system for all carers in Tasmania. The registration system should require all carers to hold some form of registration card. To hold that registration card, the carer should be required to meet a number of conditions, including that they have:
- (a) a current Working with Vulnerable People Check;

- (b) a current National Police Check;
- (c) a current drivers licence; and
- (d) completed ongoing mandatory training (I discuss training for carers from paragraph 40 below).

35 The registration system should also centrally record any issues or incidents where the carer may have been in breach of a Code of Conduct for carers. This would ensure that we are capturing systemic evidence of any risks presented by carers. I discuss a Code of Conduct for carers from paragraph 37 below.

36 I am aware that the Department has been developing a carer's registration model internally. FKAT has not been consulted regarding this model.

Code of Conduct for carers

37 As part of a registration model, I am of the view that we also need to establish a Code of Conduct for carers in Tasmania. I have requested that the Department create a Code of Conduct but this has never surfaced. I spoke with Tony Kemp, a previous Deputy Secretary of Child Youth Services about the development and implementation of a code of conduct on carers' rights and responsibilities and later with Sonya Enkelmann. It was a well- received request from both Tony Kemp and Sonya Enkelmann.

38 I am aware that Sonya Enkelmann in her capacity as Project Manager of Out of Home Care Reform at the Department between 2017 to 2020 was working on the development of draft out of home care standards but I am unaware of the outcome of her report or where it ended up within the Department.

39 FKAT was also consulted by the Department regarding the development of draft standards for out of home care and attended one consultation with approximately thirteen other stakeholders at the Hobart Convention Centre. I have not received any further information about these standards. FKAT has recently raised this with Lionel Walters, Statewide Manager of Out of Home Care in the Department, through the Family Based Care Providers Group.

Training for carers

40 The ongoing training that agency carers receive varies significantly between each agency.

- 41 To my knowledge, the only mandatory training that carers must complete is first aid training.
- 42 Some agencies then provide additional training to their carers. For example, Life Without Barriers run a series of training programs relating to topics such as medication, trauma and sexualised behaviours. Across the agencies, there are approximately 10 to 20 different training packages that carers could be exposed to. But while there is a wide range of training, its availability for a particular carer will depend on their agency. Furthermore, none of this additional training is compulsory.
- 43 I understand one agency requires carers to do two training sessions annually. There is no centralisation of the training modules offered by the agencies or of their training schedules. FKAT has been pushing for all agencies to publish their training schedules. I understand that agencies are provided with an adequate training budget by the government. However, if an agency does not publish its training schedule, carers (especially new carers) may be none the wiser as to the training requirements. If training schedules are not provided this creates a lack of openness and transparency around the level of training for carers in each agency.
- 44 FKAT itself offers a significant amount of training to carers but our capacity to do so is limited by our budget. Our training tends to focus on issues such as dealing with trauma, self-care for carers and dealing with challenging child behaviours. The training provided by FKAT is offered as optional training.
- 45 There appears to be insufficient oversight of carers, particularly in more remote areas of Tasmania. Neither FKAT nor the Department have a direct line of sight to these carers and I do not know if the agencies are visiting remote areas on a regular basis, if at all.
- 46 While there is a large cohort of carers who want to complete training, equally there is a similar amount of carers who do not. I believe that we need a robust and ongoing training and accreditation system for carers, and that this should form part of the carer's registration model.
- 47 One body should be tasked with the responsibility of putting together a schedule of training packages that are compulsory for every carer to complete within a given year to maintain their registration. It might be that some training

packages have to be renewed every year while others are renewed less frequently. For example, a first aid training package might need to be renewed every 12 months and trauma training is only renewed every three years. The schedule might also include a further suite of training packages that are optional. FKAT submits that they would be best placed to co-ordinate the registration of carers

Accessing Allied Health support services

- 48 In relation to children with disability in out of home care, access to additional supports and 'wraparound services' will, again, depend upon the agency. For example, the core competency of Life Without Barriers in Tasmania was caring for children with disability, so they provide a number of wraparound services to support these children. Because of the limited number of carers in Tasmania, however, many children with disability have been placed with other agencies who may not provide the same level of wraparound services.
- 49 In general, there are not enough services for children with disability in Tasmania and we have a problem with access to Allied Health services. This is particularly the case for children with mental health care needs. There appears to be only two private child psychiatrists in the State and none in the public system. It should be noted that it is also extremely difficult to access clinical psychologists due to higher demands placed on them since the pandemic and the costs associated with these services.
- 50 This scarcity of specialists creates a 'pecking order' for children with disability and children in out of home care do not appear to be at the top of that order.
- 51 FKAT currently engages as a contractor a clinical psychologist, Dr Julian Watchorn, on a limited part time basis. Dr Watchorn assists FKAT with a suite of State-wide training for carers and psychological support for carers who are really struggling. Dr Watchorn has a PhD on the subject of trauma. He is absolutely critical to the work of FKAT, and FKAT would be greatly assisted by additional funding to employ Dr Watchorn two days a week.

The agencies

- 52 The following five agencies operate in Tasmania:
- (a) ***Glenhaven Family Care***: Glenhaven Family Care (**Glenhaven**) is a community service organisation committed to caring for, strengthening,

enriching and equipping individuals and families. It provides foster care services in the North and North-west regions. Glenhaven provides both foster care and respite care for foster carers.

- (b) **Kennerley:** Kennerley runs a foster care program for both foster and kinship carers. It offers respite care for foster and kinship carers as well as a community respite program to allow vulnerable families to have a break from parenting. It also runs the Moving On Program for young people leaving care.
- (c) **Key Assets:** Key Assets is a not-for-profit organisation dedicated to providing safe and secure homes for children and young people in need of foster care in Tasmania. It is currently funded to provide sibling group services in throughout Tasmania.
- (d) **Life Without Barriers:** Life Without Barriers provides foster and kinship care services across Tasmania; and
- (e) **Baptcare:** Baptcare provides State-wide support to kin carers. [

Placement of children

- 53 When the Department determines that a child must be placed in out of home care, in theory, the Department will then decide whether the child should be placed with a Department carer or with an agency carer.
- 54 If the Department decides to place the child within the Department, it will be the CSO who is responsible for determining which particular Department carer that child is placed with.
- 55 In practice, however, I believe the Department is not currently placing any children with its own carers. Instead, they are allocating all children to one of the agencies, and from there, the agency will decide where to place the child amongst its own carers.
- 56 As a general rule, the optics of the process by which the Department allocates children amongst the agencies appears very complicated, but in simple terms:
 - (a) if the child has high needs, they will be allocated to Life Without Barriers;
 - (b) if the child is in the North or North-west, they will be allocated to Glenhaven;

- (c) if children are within a sibling group, they will be allocated to Key Assets;
and
- (d) all other children are allocated across the agencies, including to
Kennerley.

Aboriginal Placement Principles

- 57 While the Aboriginal Placement Principles are generally adhered to when Tasmanian Aboriginal children are placed into out of home care, there are still gaps in the system and there are no follow-up audits.
- 58 For example, I know of a number of carers who have mentioned in Carer Connect meetings with FKAT that their child wants to gain more cultural awareness of their history and their families, but that this has not been facilitated or supported by the agency or not done in a timely manner. I do not think this is done intentionally; but if someone is given responsibility for facilitating the cultural awareness of an Aboriginal child in care, and that person is not familiar with or comfortable in that space, it will often go into their 'too hard basket'.
- 59 It appears that Life Without Barriers has engaged the most with the Aboriginal community in Tasmania. Life Without Barriers has allocated a significant amount of money nationally towards reconciliation and raising awareness of Aboriginal and Torres Strait Islander issues.

The Department

Department carers

- 60 As I have indicated at paragraph 55, the Department appears not to be placing any children with its carers. This has been the case for several years. The Department nevertheless still has a large cohort of carers with children in their care.
- 61 Department carers have generally been carers for a number of years and are an older cohort.

Child Safety Officers

62 From what is reported by the union and in the media, the Department's CSOs have too large a workload and are too busy to adequately monitor and respond to issues once children are placed in out of home care.

Department funding and its relationship to placements

63 I believe \$43 million was allocated to the out of home care budget two years ago. There are 1110 children in care. Around 110 of those children will be funded through Special Care Packages. The care of the remaining 90% of children is therefore funded from that \$43 million.

64 All Department and agency carers receive an allowance, which varies among agencies. Carers are paid approximately \$27 per night for a respite placement. It is unclear to me where the rest of the out of home care budget is being allocated. The Department should be able to clarify this.

65 While you might care for a child for \$27 a night if you are benevolent, altruistic and have no financial worries, the majority of the carer cohort in Tasmania is not in this position. That being said, I no longer necessarily think that if carers were paid a larger allowance that this would attract a better carer cohort. The motivator for foster carers is not usually about the money "and if it is you are getting the wrong person".

66 I know of other cases where an agency offers very attractive payments for high-needs children. The agency will then place five, six or seven high-needs children into one family scenario with the carer receiving around \$5,500 a fortnight. There are no limits on how many children can be placed with one carer, but one foster carer cannot realistically look after that many high-needs children.

67 There are a couple of carers I am aware of who do a brilliant job with eight or nine children, generally from one large sibling group. However, these are not high-needs children. In my view, the Department and the agencies should not be allocating multiple children with complex trauma or high needs to one carer.

Oversight of the out of home care system

Commissioner for Children and Young People

- 68 As an effective oversight mechanism for the out of home care system, the Commissioner for Children and Young People (**CCYP**) has historically been a chequered portfolio.
- 69 Historically the role has been held by someone from interstate who has clashed with the government. This has meant the CCYP's level of influence has been minimal.
- 70 I think that the current CCYP, Leanne McLean, is a good Commissioner and actively engages with all stakeholders and children and youth in the out of home care system.

Child Advocate

- 71 Similarly, I believe the current Child Advocate is doing an excellent job.
- 72 Notwithstanding, carers have raised concerns that they have an issue and see an inherent conflict of interest with the role being co-located with the Deputy Secretary of the Children, Youth and Families and reporting to the Secretary. Carers have often commented that the role of the Child Advocate is too close to all the very senior government people in the out of home care space. This is not a reflection on Sonya Pringle-Jones' performance in the role as she acts with integrity. In my view, the role should not be located within the Department. If you are a parent or carer in the out of home care system and you went to the Marine Board Building to have a meeting with the Child Advocate, some carers would be reluctant to tell the Child Advocate everything in that environment.
- 73 The Child Advocate receives a lot of referrals from FKAT and other agencies. FKAT also invites Ms Pringle-Jones to many of our events. Last year she came to an event in the North of the State with 200 attendees. Ms Pringle-Jones gets on well with carers, but it does not sit well with a lot of carers and stakeholders that the Child Advocate's role is within the Department.
- 74 More broadly, the Child Advocate deals with systemic issues including sexual abuse, placement breakdowns, and issues around multiple placements of children. Tasmania had the highest rate of multiple placements in the country. I do not think a child is usually being moved between placements due to a

breakdown in the relationship between a child and the carer. In more instances than not, there has been some sort of challenge between a carer and a Departmental staff member due to personality clashes or carers being very strong on some issues that the Departmental staff may not agree with. In response, the Departmental staff member will move the child to another carer so they no longer have to deal with a carer whom they perceive as difficult. In doing so, Department staff members are not applying the 'best interests of the child' test and so the Child Advocate may deal with these sorts of systemic problems.

- 75 The Child Advocate also deals with systemic issues relating to things like guardianship orders. Guardianship orders seem to have stagnated at the moment. There are a lot of carers who have been caring for children for seven to ten years and who are still waiting to be granted guardianship.

Ombudsman

- 76 At FKAT we encounter many cases where there has been a defective administrative decision due to a lack of an open and transparent appeal process. These decisions relate to carer concerns, often where the Department has decided to remove a child from a carer or where there are issues around restoration.
- 77 I could spend considerable time referring matters to the Ombudsman's office but I do not have the resources to do this, so I will generally encourage the carer in these situations to contact the Child Advocate.

Improving oversight mechanisms

- 78 In my view the oversight mechanisms in the out of home care system would be improved by:
- (a) moving the Child Advocate role out of the Department so it is either external or co-located with the CCYP;
 - (b) the Child Advocate producing an annual report of the systemic out of home care issues that have been investigated;
 - (c) the implementation of quality standards, a carers register, and workplace planning; and
 - (d) establishing an independent tribunal for appealing care concerns.

FKAT ADVOCACY AND SUPPORT OFFERING

Foster and Kinship Care Advocacy and Support Team

- 79 FKAT established the Foster and Kinship Care Advocacy and Support Team (**FAST**) in 2005 with the aim of providing greater levels of support and advocacy for foster and kinship carers. This move was in response to both State and national surveys that indicated that carers would prefer to be supported by foster care peak bodies and other foster carers.
- 80 FAST is a team of trained foster and kinship carers that have volunteered to provide support, advice and to advocate on the behalf of other foster or kinship carers either in a group or individual basis. Some of the issues covered by FAST include the *Children, Young Persons and Their Families Act*, funding for those in care, complaints in care, insurance, planning for leaving and care guidelines.
- 81 There is one FAST representative for each of the three regions in the State. They have the capacity to provide advice, support and advocacy to all carers within proximity or telelink into meetings where needed. The FAST representative provides a local avenue for foster and kinship carers to receive advice, support and/or advocacy on individual matters.
- 82 The FAST service is 24/7 but our members mostly ring during the day up until around 8 or 9 pm at night.

Examples of issues where FKAT provides assistance

- 83 Members might seek FKAT's support for issues relating to any challenging behaviour of the foster child, or they might ring up and say things like "Charlotte's been bedwetting for some time, we've been trying to deal with it for the last two or three years".
- 84 Bedwetting raises an alarm bell for me of a possible history of sexual abuse, so in those cases, I would arrange for Dr Watchorn to have a sensitive discussion with the carer to determine whether the carer is aware of the child's background.

- 85 Often foster carers are not actually given any information about why a foster child is in their care due to privacy concerns. However, this can create complex issues for carers if they do not have access to the child's full history.
- 86 FKAT therefore provides support to carers by providing them with information and resources.
- 87 FKAT also provides support and advocacy for members who have a care concern raised about them. For example, FKAT is assisting an older carer who, because of their age, is unable to transport the foster child to see their biological family.
- 88 In FKAT's view, the government's policy should not require foster carers to be responsible for the transport of children to visit their biological family. However, sometimes an issue such as this may lead to the child being removed from the placement even though the child and the carer are otherwise happy. In situations such as this, FKAT will contact the Department to try to set up a formal meeting with the carer, the child's case worker and FKAT. FKAT will advocate for the carer and argue why the child should not be removed in these circumstances.

FKAT's support for carers facing allegations of child sexual abuse

- 89 FKAT will also provide support and advocacy to carers when an allegation of child sexual abuse has been made against them.

The process

- 90 Where there is any concern relating to child sexual abuse in the context of an agency carer, this should be reported directly to the agency. The agency must then make a mandatory report to the Department. If the concern relates to a Department carer, it must be reported to the out of home care team within the Department.
- 91 Once a report is with the Department and the carer is notified, the carer would generally contact FKAT if they are aware of us and seek our support to assist them through the process of responding to any allegations. If the carer is not aware of FKAT, the agency will generally advise the carer that they should contact us and seek our support, particularly when the allegation is serious.

Support provided by FKAT

92 We will then support the carer during the Department's investigation process, including by sitting in on meetings and interviews between the Department and the carer.

93 However, our support and advocacy might extend beyond this. For example, in one case, a child in foster care alleged that they had been sexually abused by their foster carer. Not only did FKAT assist the carer in dealing with an allegation of misconduct made against them through a procedurally fair process, but Dr Watchorn also provided mental health support to the carer.

Acting in the best interests of the child

94 When providing support and advocacy to carers facing child sexual abuse allegations, FKAT will still always act in the best interests of the child.

95 For example, we had an agency foster father contact us who said, in effect, "there have been some care concerns laid at my feet, I just need some assistance going through the process".

96 I then attended an interview with the Department and the carer. At the beginning of the interview the Department informed the carer that the matter was already closed, but that they still wanted to hear the carer's version of events. I considered this to be completely inappropriate. However, I am always guided by the 'best interest of the child' test. While my role is to advocate for the carer, the carer wanted to proceed with the interview to understand the allegations made against him.

97 In the course of the interview, the carer provided further information that was very incriminating, so I am unsure how the file could have remained closed as per the representation made by the Departmental staff member.

98 By combining the information from the foster child's report, the Department interview and the agency's awareness of existing issues, the agency was able to bring together a pattern of concerning behaviour in relation to this particular carer.

Support for members making allegations of child sexual abuse

99 FKAT also provides support to members who are themselves making allegations of child sexual abuse. For example, kin are alleging that a child's

foster parent has sexually abused the child. We would assist the kin in navigating the process of mandatory reporting, getting the Department involved and trying to remove the child from the foster home immediately.

Gaps in FKAT's support and advocacy resources

- 100 FKAT is ultimately quite small and we are limited in the support and advocacy we can provide.
- 101 We would definitely be assisted by having more staff. In particular, a part-time lawyer would be very useful.
- 102 Our members often come to us with a variety of legal issues. For example, I had a carer ring me to ask for advice as she had been subpoenaed. She did not want to go to court and give evidence as she had received threats from the biological family. I would have loved to have given her legal advice in these circumstances but I was not able to.
- 103 FKAT would further benefit from full-time advocate roles in the North/North-west and the South who can provide support to carers and their families on a day to day basis.
- 104 Ideally we would also have a team of support workers, similar to the McGrath Breast Care Nurses,² who can be sent out to stay with carers across the State when they are in crisis. This would be helpful because when a carer calls FKAT, generally, they are not looking for help with the small issues. Carers usually call us in relation to the big issues, when they have reached crisis point, can no longer cope and feel they have no support.

DEPARTMENT'S RESPONSE TO ALLEGATIONS OF CHILD SEXUAL ABUSE FROM CHILDREN IN OUT OF HOME CARE

Nature of allegations

- 105 In the out of home care context, it is important to note at the outset that it is not uncommon for children to say that they have been physically or sexually abused in care when their biological parents are trying to encourage the child

² See 'Our Nurses', *McGrath Foundation* (Web Page) <<https://www.mcgrathfoundation.com.au/about/what-we-do/nurses/>>.

back home. Children may make a false allegation where they see it as a way to be removed from care and placed back with their parents.

- 106 This is not to discount the prevalence of sexual abuse in out of home care, and FKAT has been involved in many absolutely tragic cases. Rather, this is just to point out that there is a spectrum of allegations that might be made by children in this context.

Difficulty of dual investigations by the Police and the Department

- 107 When an allegation of child sexual abuse in out of home care is made, there will often be two investigations and reports: one conducted by the Police and then one conducted by the Department internally. If the Police investigation concludes and they find that there is a case to answer and sufficient evidence to lay charges, the Department's own internal review and report will flow naturally out of the Police's investigation. I am not aware of the extent agencies go to undertake their own investigations.
- 108 What I find challenging are the circumstances where the Police have found that there is no case to answer using the criminal standard of proof ('beyond reasonable doubt'), but the Department then spends considerable time conducting their own review to determine whether the allegations are made out using the lower, civil standard of proof ('on the balance of probabilities').
- 109 This can be very disruptive, especially in the case where a foster carer who is the subject of allegations had other foster children in their care at the time. The foster carer and the children may have been well-suited, there may have been good family dynamics in the foster home, but the whole family unit will have been completely dissolved.

The need for a formal deregistration system

- 110 When a Department determines that an allegation made against a carer is substantiated on the balance of probabilities, there is no formal deregistration process. The Department may informally determine that the carer should not have any further children placed in their care, but this is done internally and the carer may not be formally notified of that decision in some instances.

- 111 This is concerning for the following two reasons. First, it means there is no formal appeals process available to the carer. Secondly, it means that carers who may present a risk may resurface in other contexts where they will have access to children. While they may no longer be foster carers, they might then be employed in a child care respite centre, or as a carer with a disability service provider where they provide 24/7 in-home care to a child as part of a Special Care Package.
- 112 Agencies might also informally 'black ban' carers amongst themselves. For example, FKAT assisted a foster carer who had been banned by an agency. She was then unable to get work at other agencies because there had been private conversations between the agencies about her. The carer made a complaint to Equal Opportunity Tasmania which found that there was no case to answer against her. The carer raised the issue with the Department to advocate for her being allowed back into the system. The Department had no issue with this, and she was ultimately engaged by another agency. Other carers may not have the courage to do this.
- 113 A formal deregistration system would therefore have the further benefit of preventing agencies from informally black banning carers in circumstances where they would never have been deregistered if the issue had been formally considered by the Department in the first place. In addition, it will provide a robust checking system so we do not have individuals caring for children and youth in Tasmania that have substantiated allegations proven against them.

Reporting within the Department

- 114 I am also of the view that allegations relating to both Departmental carers and agency carers should be reported up to the Secretary and Deputy Secretary of the Department. Currently, I do not believe all reports would be received by the Secretary and Deputy Secretary.
- 115 During my time at the Ombudsman, I also could not understand why the Department and its predecessors did not have a single resource that received every complaint. Complaints within the Department seem to go all over the place.

116 I believe the Department should have one person or role that receives all complaints and that all child sexual abuse allegations received should be reported up to the Secretary. The Secretary should know about these things because, at the end of the day, the Secretary is the youth or child's guardian in out of home care.

Mandatory reporting to the Board

117 I am of the view that the Department should introduce legislative change or implement policy guidelines that require any mandatory reporting of child sexual abuse allegations within an agency to also be reported up to the agency's Board.

118 Currently this is not happening in all matters. This means that in some agencies, the directors might think that the CEO is doing a wonderful job, but none of the allegations which require mandatory reporting to the Department are being reported to the Board.

119 At the end of the day, this is a contingent liability for the Board of directors, who have a duty of care to the organisation. If the agency has vulnerable children in their care and these kinds of allegations are being made within the organisation, then the Board needs to know about them.

Leadership and culture of the Department

120 If you have strong leadership, good governance, good reporting requirements, a system of registration, selection and mandatory training you will have a much better system than the one we have now.

I make this solemn declaration under the



Declared at [place]
on [date]

Before me



[Full name of Justice, Commissioner for Declarations or Authorised Person]

