Responding to Problem Sexual Behaviour and Sexually Abusive Behaviour in Tasmania

Position Paper

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Position Paper
Pathways to Change:
Responding to Problem Sexual Behaviour and Sexually Abusive Behaviour in Tasmania

Contents

Part 1: Background

This Position Paper makes recommendations in relation to the design of a Tasmanian response to children and adolescents who display problem sexual behaviour (PSB) and sexually abusive behaviour (SAB). In 2014 the Sexual Assault Support Service (SASS) developed an Options Paper on this issue and opened this up for public comment. This Position Paper presents SASS's final recommendations on the design of a Tasmanian approach, synthesising the comments received on the Options Paper, the literature and SASS's experience in this area.

The project has its origins in the 2012 SASS-led project *Pathways to Change*, funded through the Child Aware Grants Program administered by the former Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA). The objectives of the *Pathways to Change* project were to:

- Identify key service deliverers supporting children with PSB and SAB; and
- Develop a consistent practice response, built on best practice principles and involving effective intervention and collaborative case management, as part of a Tasmanian response to the issue of PSB and SAB.

The SASS Options Paper was the next element in this project, and aimed to:

- Outline the key issues arising in the consideration of a Tasmanian response to children and adolescents displaying PSB and SAB;
- Gather responses and comments from relevant stakeholders regarding the approach required to address this critical issue;
- Contribute to the Tasmanian Government's ability to implement the *National Plan to Reduce Violence against Women and their Children 2010-2022* and the State's own framework, *Taking Action: Tasmania's Primary Prevention Strategy to Reduce Violence Against Women and Children 2012-2022*;
- Contribute to the Tasmanian Government's ability to implement the *National Framework for Protecting Australia's Children 2009–2020*; and
- Support the Tasmanian Government in defining the context and focus of a program for young people displaying PSB and SAB, as per the Government's *Plan for Children, Young People and Families*.

Acknowledgements
SASS received a number of valuable and insightful comments in response to the Options Paper. In the preparation of this Report detailed consideration has been given to all responses. The Sexual Assault Support Service expresses our sincere appreciation to all those who submitted comments.

Responses to the Options Paper were received from:

1. Migrant Resource Centre (oral submission)
2. Mr Richard James, South Eastern Centre Against Sexual Assault (SECASA), Victoria
3. Ms Jenny Forward, Refugee Migrant Health Liaison, Royal Hobart Hospital
4. Dr Julianne Read, Forensic Psychologist
5. Ms Anne Costin, individual submission

6. Dr Jeremy Prichard, Faculty of Law, University of Tasmania
7. YNOT Network of Tasmania
8. Colony 47
9. Anglicare
10. Dr Caroline Spiranovic, Faculty of Law, University of Tasmania
11. Ms Carolyn Worth, SECASA
12. Dr Georgina O'Donnell, Forensiclinic
13. Mr Mark Morrissey, Commissioner for Children, Tasmania
14. Dr Wendy O'Brien, School of Humanities and Social Sciences, Deakin University
15. Mr Darren Hine, Commissioner for Police, Tasmania
16. Mr D G Coates SC, Acting Director of Public Prosecutions, Office of the Director of Public Prosecutions

About SASS

SASS is a community-based support and counselling service for female and male victims of sexual assault in the Southern region of Tasmania. It provides a range of services to children, young people and adults including sexual assault crisis intervention, counselling and community education. SASS also provides counselling and support services in relation to PSB/SAB to children under the age of 12 years and their families, carers or service providers (e.g. schools).

Terminology

The word 'child' is used throughout the report to mean a child or young person aged between 0-17 years.

Recommendations

1. The following terms be used:
    - *Problem Sexual Behaviour* (PSB) for behaviour of a sexual nature irrespective of age that is both outside that behaviour accepted as 'normal' for their age and level of development and occurs to the detriment of the child's or young person's engagement in activities of normal functioning. This may include behaviours such as excessive self-stimulation or excessive preoccupation with pornography that isolates them from normal social and/or learning opportunities and does not include the sexual abuse of others. This term is to be used generally in reference to children and young people up to and including the age of 17;
    - *Sexually Abusive Behaviour* (SAB) to describe a subset of behaviours displayed by children and young people irrespective of age, which involves any of the following: the absence of consent; the use of threat or threat of force; coercion; and a disparity of age, level of development or size. Policy and service provision responses in Tasmania will take into consideration that young people aged 10 years and older may be subject to legal consequences of such behaviour; and
    - *Child who is the target of the sexual behaviour*, to describe the child targeted by another child's sexually abusive actions.

2. The future goal of the development of a comprehensive service system response to PSB and SAB be recognised and supported by the Tasmanian Government as part of its commitment to developing secondary and tertiary prevention strategies for sexual assault.

3. The Tasmanian Government commits to the implementation of Strategy 6.2 of the *National Framework for Protecting Australia's Children* which explicitly recognises the need to address PSB and SAB and outlines a strategic framework for how the state will tackle the issue through policies, research and funded programs.

4. The Tasmanian Government commits to the implementation, under *the National Plan to Reduce Violence Against Women and their Children*, of the provisions of the *Primary Prevention Strategy to Reduce Family Violence and Sexual Assault in Tasmania (2012 – 2022)* which explicitly recognises the need to address PSB and SAB, and outlines a strategic framework for how the state will tackle the issue through policies and funded programs.

5. Any future development of the Tasmanian child protection system considers the need to acknowledge and systematically respond to the issue of problem sexual behaviour and sexually abusive behaviour in children.

6. Any policy, practice or law regarding children/young people with PSB/SAB take into account Tasmania's international legal obligations, including all relevant Articles from the United Nations *Convention for the Rights of the Child* and the *International Covenant on Civil and Political Rights*.

7. The Tasmanian *Children, Young Persons and their Families Act 1997* be amended to state that children and young people up to and including 17 years of age displaying PSB/SAB require a child protection intervention, whether or not they are themselves at risk of neglect or abuse; and

8. That under the Act, a child protection intervention in these cases focus on both the safety management of other vulnerable children and the provision of rehabilitative treatment (including a mandated intervention) to the child that poses a risk to others.

9. Notifications regarding a child displaying sexually abusive behaviour should also attract mandatory notification to the police.

10. Legislative reform be accompanied by professional training for frontline child protection workers to ensure that where a notification is made regarding a child displaying PSB/SAB, this is appropriately responded to the first time the report is made.

11. The Children's and/or Youth Justice Divisions of the Magistrates Court be granted power to order a young person up to and including 17 years of age, and their family, to undergo therapeutic counselling for sexually abusive behaviours where it is clear that they would not otherwise access voluntary treatment.

12. Any statements made by a child or young person whilst participating in voluntary, or non-voluntary counselling, are not admissible in court.

13. The *Children, Young Persons and their Families Act 1997* (Tas) be amended to enable a child to be placed out of home where this is necessary to ensure their attendance and participation in an appropriate treatment program, through a Therapeutic Treatment Placement Order.

14. The *Children, Young Persons and their Families Act 1997* be amended to expressly consider the effects of cumulative harm, rather than just episodic interventions.

15. Amendments be made to the *Youth Justice Act* 1997 to:
    - Enable the Magistrate's Court (Children's Division) to refer children and young people (aged between 10-17 inclusive) convicted of a sexual offence to an individual assessment, and then based on this, to an appropriate therapeutic treatment program;
    - Enable the Court to adjourn criminal matters when a child or young person (aged between 10-17 inclusive) is made subject to a Therapeutic Treatment Order (assuming that the *Child, Youth and Families Act* 1997 is amended to adopt this approach); and
    - To dismiss charges where a child or young person (aged 10-17 inclusive) successfully completes a treatment program – whether this is voluntary or non-voluntary. In making a decision as to whether a young person has 'successfully completed' a program, the Magistrate is to have regard to:
        i. the young person's attendance records;
        ii. the nature and extent of the young person's participation;
        iii. whether or not the young person's participation was to the satisfaction of the therapeutic treatment provider; and
        iv. the opinion of the therapeutic treatment provider as to the effectiveness of the treatment.

16. The development of a Tasmanian service delivery model for children/young people with PSB or SAB take into account the specific needs of children/young people with an intellectual disability, including the development of specialised programs, resources, education and monitoring, as well as appropriate practitioner training.

17. The draft Tasmanian Standards adopt a modified (Tasmania-specific) form of the Victorian *Aboriginal Cultural Competence Framework*, that include:
    - a statement of principles for working with Aboriginal families whose children display PSB/SAB; and
    - a commitment to consulting with the Tasmanian Aboriginal community in all matters affecting Aboriginal children and families.

18. The Tasmanian Government commit to ongoing, adequate funding for voluntary treatment programs for children and young people up to 17 years of age who are displaying PSB or SAB, but who:
    - Have not been found guilty of a sexual offence; and

- Are not subject to a Therapeutic Treatment Order.

19. Treatment programs are to involve working with the child or young person and their family, and to include brokerage support to ensure that children and families can be linked to additional relevant support services.

20. Issues of access are considered, and any planned treatment programs include outreach services and/or appropriate transport options that will enable children and young people in regional and outlying areas to participate.

21. As part of a comprehensive child protection and sexual assault prevention strategy, the Tasmanian Government support the development and ongoing provision of non-voluntary treatment programs for children and young people displaying SAB and subject to a substantiated child protection notification and ensuing Therapeutic Treatment Order as a result of the behaviour.

22. The development of the Tasmanian sexual assault prevention and support sector should include the creation of a young offender treatment program. This program would operate as a tertiary intervention strategy that functions within a comprehensive system of secondary and tertiary prevention programs.

23. The young offender treatment program would be open to both young men and young women, although we note that practice understandings in the area of treatment programs for young women are under-researched.

24. The young offender treatment program would be open to young people up to and including 18 years of age.

25. The young offender treatment program would draw on the burgeoning evidence base of best practice from Australia and overseas.

26. Child protection services implement a comprehensive strategy towards the provision of care to children and young people displaying PSB/SAB that includes:
    - Appropriate placement choices so that children displaying PSB/SAB are matched with carers with the appropriate skills and temperaments, and with households where other children will not be put at risk;
    - Full disclosure to carers of all details of the child's past and current behaviour, and any past trauma that may be contributing to the behaviour, prior to the child commencing the placement;
    - The provision of comprehensive and targeted training in identifying, responding to and providing care to children displaying PSB/SAB for all carers;
    - In addition to the above, kinship carers receive particular training on managing PSB/SAB within a family environment and context.
    - Every case to have a comprehensive case plan detailing how the child's PSB/SAB will be addressed and managed. These are to be developed collaboratively by Child Protection Services, the child's family and carer/s and

the relevant support providers who will be providing the therapeutic programs;

- Where assessed as potentially beneficial for the child, children displaying PSB or SAB to receive early intervention in the form of therapeutic care with a provider trained in working with children and young people displaying PSB/SAB; and
- The appointment of a Therapeutic Treatment adviser to provide ongoing support and consultation to foster and residential carers and agencies working with children displaying PSB/SAB. This position could be located either within the DHHS or within a sexual assault support service.

27. The *Pathways to Change Standards of Practice for Problem Sexual Behaviours and Sexually Abusive Behaviours* and complementary practitioner resources be recognised and formally adopted by the Tasmanian Government.

28. The Tasmanian Government explore options for an appropriate system of accreditation and ongoing professional development for practitioners working with children displaying PSB/SAB, whether through a state-based system or through utilising existing networks across Australia.

29. Standards for supervision within the sexual assault field are developed and upheld by services working with SAB and PSB clientele in Tasmania.

30. The Tasmanian government fund supervisors from across Australia to supervise and advise Tasmanian practitioners until a sufficient pool of qualified practitioners can provide supervision within the state.

31. When working with families from CALD backgrounds, practitioners are to consult with cultural experts.

32. Where needed qualified and accredited interpreters are to be provided, accommodating as far as possible the client's preference for a particular gender of interpreter.

Part 2: Context of Problem Sexual Behaviour and Sexually Abusive Behaviour within Australia

A. Characteristics of children displaying Problem Sexual Behaviour and Sexually Abusive Behaviour

Research is limited on the causational pathways to children displaying PSB or SAB. A 2010 Australian Crime Commission (ACC) Report states that children displaying PSB or SAB are likely to have experienced or to be experiencing a combination of:

- childhood trauma;
- compromised educational outcomes;
- adverse socio-economic conditions;
- homelessness;
- intellectual impairment or developmental delays;
- social isolation; and
- exposure to drug or alcohol misuse.[1]

The Australian Childhood Foundation confirms this, highlighting that key familial characteristics associated with children displaying PSB include:

- lower socioeconomic status;
- sexually and/or physically abusive caregivers;
- parents'/caregivers' own histories of abuse;
- criminality;
- clinical disorders such as depression; and
- drug and alcohol misuse.[2]

B. Prevalence of Problem Sexual Behaviour and Sexually Abusive Behaviour

An accurate estimate of the incidence of children with PSB and SAB within Australia is difficult to determine. Grant et al cite international research which indicates that between 40 to 90 per cent of sexual offending against children is committed by other children and young people.[3]

Whilst the general public remains largely unaware of the issue, it is not unfamiliar to practitioners. The NSW Department of Health identifies that "ongoing feedback from frontline workers and in their request for policy direction and guidance in providing a response" reveals compelling evidence of the prevalence of children with PSB or SAB. [4] SASS data affirms this, indicating that between April 2011 and April 2012, 88 SASS clients aged

[1] O'Brien, W. (2010). *Australia's Response to Sexualised or Sexually Abusive Behaviours in Children and Young People*. Australian Crime Commission. Canberra, pp. 14-15.
[2] Australian Childhood Foundation (ACF) (2005). *Children who engage in problem sexual behaviours: context, characteristics and treatment: A review of the literature*. Staiger, P (ed). Melbourne, pp. 27-31.
[3] Grant, J. et al. (2009). 'Intrafamilial adolescent sex offenders: psychological profile and treatment.' *Trends & issues In crime and criminal justice*, No. 375. Australian Institute of Criminology. Canberra, p.1.
[4] NSW Department of Health (2005). *Responding to children under ten who display problematic sexualised behaviour or sexually abusive behaviour: Issues Paper*. Sydney, p.7.

between 3 and 16 were identified who displayed Problem Sexual Behaviour (PSB) and/or Sexually Abusive Behaviour (SAB) as their presenting issue.[5]

It is likely that this statistic represents a small indicator of a larger problem. Numerous challenges exist in gaining an accurate assessment of the scope of the issue in Australia, and consequentially operationalising a response. These include:

- Diverse community attitudes towards PSB/SAB – including denial of or downplaying the behaviour/issue,[6] coupled with a tendency towards under-reporting by parents, caregivers, teachers and others when abnormal sexualised behaviour is observed;
- A lack of rigorous, evidence-based research and the collection of empirical data on PSB/SAB. Additionally, what research is available predominantly comes from the United States, which although provides useful comparative evidence, presents limitations for our understanding of the problem in Australia; and
- A lack of consensus on clear definitions of PSB and SAB, as well as on what constitutes developmentally appropriate and inappropriate sexual behaviour.[7]

Aside from Victoria, little attention has been paid to the issue within public policy, resulting in inconsistent and fragmented responses by statutory bodies, police and child welfare organisations. The Australian Childhood Foundation highlights that the service system "often fails to acknowledge the significance of the problem and frequently does not record reliable data."[8] Many practitioners also struggle with identifying and documenting PSB in particular, for fear of stigmatising a child.

C. Risk of future offending

Whilst child/adolescent sexually abusive behaviour does not necessarily lead to adult sexual offending, evidence does suggest that a subset of adolescent sexual offenders are at high risk of progressing from adolescent to adult sexual offending.[9] Gelb identifies two particular studies that support this conclusion; the first being a US survey of adult sex offenders, in which 58 per cent reported that their offending behaviour began when they were adolescents, and the second a New Zealand study that interviewed female survivors of child sexual abuse and found that 25 per cent had been abused by adolescents.[10] Corroborating this, Abel and Harlow's 2001 research with 4007 self-confessed child sex offenders revealed that "20% said they began abusing boys and 12% began abusing girls before the age of ten. Forty-three per cent began abusing boys when they were aged 10–15 years and 32% began abusing girls. Seventy per cent of adult male offenders were abusing boys by the time they were aged 19 and 54% were abusing girls."[11]

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[5] SASS (2012). *Pathways to Change Project 2012: Sexual Assault Support Service File Audit*. Hobart, p. 2.
[6] Australian Childhood Foundation (2005), p. 7.
[7] Ibid.
[8] Ibid.
[9] Gelb, K. (2007). *Recidivism of Sex Offenders Research Paper*. Sentencing Advisory Council. Victoria, pp. 16-17; and NSW Department of Health (2005), p. 8; and Laing, L. et al. (2014). 'Recidivism Following Community Based Treatment for Non-Adjudicated Young People with Sexually Abusive Behaviors'. *Sexual Abuse in Australia and New Zealand*. Vol. 6, Issue 1, p.38.
[10] Gelb (2007), pp. 16-17.
[11] Abel & Harlow, 2001 in Briggs, F. (2014). 'Child sexual abuse in early-childhood care and education settings'. *Early Child Development and Care*. Vol. 184, Issue 9-10, p. 1418.

Furthermore, research from New Zealand indicates that "adult sex offenders against children who began offending in their youth are almost twice as likely to reoffend sexually than those who began offending in their adulthood."[12]

D. Treatment options and approaches

Dr Wendy O'Brien, a leading Australian expert on PSB and SAB, discusses the need to develop a consistent response to children displaying PSB/SAB across a range of settings, including therapeutic interventions, child protection services, schools and community services. Both scholars and practitioners strongly emphasise that earlier interventions increase the chance of positive rehabilitation outcomes for the child.[13] This decreases the likelihood that the child may follow a pathway onto adult sex offending and family violence, and thus also limits the risk that other children or adults become the victims of sexual abuse or other forms of interpersonal violence.

Scholars and clinicians also agree that the area of therapeutic interventions for children displaying PSB or SAB is "a separate and specialised field of service provision necessitating specialist training and supervision for clinicians."[14] There are, however, significant challenges inherent within Australia's current provision of such treatment;

- Therapeutic programs to support children and their families are exceedingly scarce, where they do exist, high demand and insufficient resourcing often hampers their effectiveness and scope;
- Complex program eligibility requirements result in the exclusion of large numbers of children and adolescents requiring intervention. These requirements generally relate to a child's age, or to whether they have a court-order for treatment. Such provisions often exclude children who have not had contact with the criminal justice system, or who are not within a specified age range; and
- The complexity of the web of sentencing and rehabilitative treatments available or potentially available. NSW Department of Juvenile Justice data shows that sentencing generally fails to take into account an offender's rehabilitative needs, instead determining penalties according to the criminal justice system. This is believed to leave youth sex offenders at risk of recidivism.[15]

E. Gaps in current Tasmanian system

Policy, legislation and service system responses to PSB and SAB differ significantly across each Australian jurisdiction. Victoria has the most comprehensive state system, with supporting legislation, standards of practice for services and practitioners, and targeted funding to enable service provision.

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[12] Bakker et al (1998) cited by MacGregor, S. (2008). *Sex offender treatment programs: effectiveness of prison and community based programs in Australia and New Zealand*. Brief 3, April 2008. Indigenous Justice Clearinghouse, p. 4.

[13] O'Brien (2010), p. 3.

[14] O'Brien (2010), p. 16.

[15] Kenny (1999) cited by O'Brien, W. (2008). *Problem Sexual Behaviour in Children: A Review of the Literature*. Australian Crime Commission. Canberra, p. 47.

In contrast, Tasmania (amongst other states and territories) has no agreed framework and scarce funding for intervention with children and young people displaying PSB or SAB. What programs do exist are only available for children under 12 years of age; are offered on a voluntary basis only; and are subject to the availability of resources, which are often diverted from victim services.

The state also has no system for collaborative case management focussing on aligning intervention practice and response consistency across the justice, child protection, and therapeutic/rehabilitation systems. Whilst SASS provides support to children aged up to 12 years displaying PSB or SAB (if resources are available), there is no capacity to provide services to young people aged 12 and over. Tasmania also has no system of juvenile treatment programs for young people aged over 10 and charged with or convicted of a criminal sexual offence.

These policy and service system gaps leave a significant number of children and adolescents, and their families, without the support that evidence suggests is critical in effectively addressing inappropriate or abusive sexual behaviours.

Part 3: Options and Recommendations for a Tasmanian Response

The submissions received in response to SASS's Options Paper all expressed strong support for the development of a holistic, state-wide framework to address PSB/SAB. Respondents affirmed that PSB/SAB is a significant issue in Tasmania that has, for too long, been under-researched, under-resourced and poorly addressed. Respondents noted that it has particularly suffered from the lack of a strong legislative and policy framework to guide, empower and enable service delivery, and that a comprehensive approach to tackling the issue would require multi-agency collaboration endorsed at a national, state and community level.

The submissions also reflected a sense of optimism and enthusiasm at the opportunity open to Tasmania to establish a best-practice framework that draws on the evidence base from other states across Australia. One respondent suggested that the response to PSB/SAB should be driven by the goal to promote the wellbeing of children, young people and their families, and to enable them to achieve healthy, happy and fulfilling lives. The respondent further noted that "The emphasis on the child's strengths and prospects can help provide an effective framework for intervention." SASS wholly endorses this view, and proposes this as a founding principle for a Tasmanian response to problem sexual behaviour and sexually abusive behaviour.

1. Definitions of Problem Sexual Behaviour and Sexually Abusive Behaviour

Definitions of Problem Sexual Behaviour and Sexually Abusive Behaviour remain contested within Australian policy, research and practice. The use of appropriate terminology carries significant weight, as labelling children with terms that may shadow them into adulthood, such as 'perpetrator' or 'offender', is potentially stigmatising and detrimental to the development of their self-identity.[16] The adoption and usage of specific terminology is therefore central to the development of Tasmania's response to addressing the gap in treatment options for children and young people displaying PSB and SAB.

Responses received to the Options Paper

Of the six respondents who commented on this issue, Dr O'Brien, Dr Read and the Commissioner for Children agreed with the definitions proposed by SASS. O'Brien also suggested that it would be valuable to quantify the disparity in age referred to in the definition of SAB.

Anglicare and Colony 47 suggested that it may be worth considering use of the term 'sexually harmful behaviour' rather than 'sexually abusive behaviour'. Anglicare considered that the term 'harm' can have "less association with qualities associated with adult practices of abuse" and instead "focuses on children's sexual behaviours which may target others in harmful ways, but which may carry no legal consequences." Colony 47 noted the importance, even in terminology, of recognising that within the context of a child displaying

[16] NSW Department of Health (2005), p. 4.

sexually abusive behaviour "there are two 'victims' of this behaviour rather than a perpetrator and a victim. The vast majority of PSB/SAB is triggered by trauma that needs to be therapeutically treated."

The Victorian-based South Eastern Centre Against Sexual Assault (SECASA) recommended that Tasmania adopt the approach followed by the Victorian Centre Against Sexual Assault (CASA) forum;

> *Problem Sexual Behaviours*: Behaviours of a sexual nature displayed by a child under 10 years old. These behaviours may or may not have been known to be reactive to a child's own experience of having been sexually abused.
> AND
> *Sexually Abusive Behaviours*: Behaviours of a sexual nature displayed by a child over the age of 10 and under the age of 18. These behaviours may or may not be known as reactive to a child's own experience of having been sexually abused. They may or may not be considered a chargeable offence within the law.

SASS's view

Whilst some states have defined PSB and SAB according to age, SASS considers that basing categorisations of behaviour on age risks underplaying and mislabelling abusive behaviour. Sexual abuse carries significant harmful consequences for the recipient regardless of the perpetrator's age. In resolving a position on the contested issue of nomenclature, SASS has opted to generally use the term 'children and young people displaying problem sexual behaviour (PSB)' while identifying, where present, a particular subset of behaviours called sexually abusive behaviours (SAB).

In taking this stance, SASS has endorsed the need to initially engage clients displaying SAB through a risk assessment/safety management framework focusing on other affected parties as part of the assessment case planning process.

<u>Recommendation</u>

1. **The following terms be used:**
    - ***Problem Sexual Behaviour* (PSB) for behaviour of a sexual nature irrespective of age that is both outside that behaviour accepted as 'normal' for their age and level of development and occurs to the detriment of the child's or young person's engagement in activities of normal functioning. This may include behaviours such as excessive self-stimulation or excessive preoccupation with pornography that isolates them from normal social and/or learning opportunities and does not include the sexual abuse of others. This term is to be used generally in reference to children and young people up to and including the age of 17;**
    - ***Sexually Abusive Behaviour* (SAB) to describe a subset of behaviours displayed by children and young people irrespective of age, which involves any of the following: the absence of consent; the use of threat or threat of force; coercion; and a disparity of age, level of development or size. Policy and service provision responses in Tasmania will take into consideration that young people**

aged 10 years and older may be subject to legal consequences of such behaviour; and

- ***Child who is the target of the sexual behaviour*, to describe the child targeted by another child's sexually abusive actions.**

2. International, National and State Policy Frameworks

A Tasmanian response must be situated within the following relevant national and state frameworks, and within international law.

2.1 *National Framework for Protecting Australia's Children 2009-2020*

The National Framework has been developed by the Council of Australian Governments (COAG) and endorsed by the Tasmanian Government. The Framework's overall goal is that Australia's children and young people are safe and well. Outcome 6 outlines that 'Child sexual abuse and exploitation is prevented and survivors receive adequate support'. The discussion on this outcome notes that "There is also increased reporting of children and young people with sexually abusive behaviours and of sibling sexual abuse." Strategy 6.2 relates to enhancing prevention strategies for child sexual abuse, setting out the following actions within the first 3-year action plan:

- Investigate best practice therapeutic programs for children displaying sexually abusive behaviours, such as:
    - collaboration between government agencies and therapeutic treatment service providers to build a state-wide therapeutic treatment service system to implement the relevant provisions of the Children, Youth and Families Act 2005 (VIC)
    - New Street program for adolescents aged 10-17 years who display sexually abusive behaviours (NSW).

2.2 *National Plan to Reduce Violence against Women and their Children 2010-2022*

The Tasmanian state Government has committed to the development of policy, legislation and service delivery systems with the aim to both reduce violence against, and increase victim support for women and children. The National Plan identifies a key primary prevention strategy through National Outcome 6, which promotes legal responses and rehabilitation programs for perpetrators, and within this Strategy 6.3, which calls for early intervention with children and young people who are at risk of becoming offenders in adulthood. Outcome 6 requires the development of state policy, legislation and service systems pertaining to children and young people displaying PSB and/or SAB, as both possible victims of sexual assault, domestic violence and other forms of child abuse, and as potential adult perpetrators of violence.

2.3 *Primary Prevention Strategy to Reduce Family Violence and Sexual Assault in Tasmania (2012 – 2022)*

In response to Outcome 1 of the National Plan, Tasmania produced the above Strategy to guide state Government policy on family violence and sexual assault. The Strategy focuses on a public health approach to reducing family violence and sexual assault, and notes rising

concerns about the high numbers of children and adolescents in Tasmania exhibiting Problem Sexual Behaviour and Sexually Abusive Behaviour. It outlines that best practice models of secondary interventions for child and adolescent perpetrators of sexual violence will be researched as part of the *Tasmanian Implementation Plan: Second Action Plan 2013-16* (yet to be developed).

2.4 *Sharing Responsibility for Our Children, Young People and their Families*

In 2010 the Tasmanian Parliament convened a Select Committee on Child Protection. In their final report, the Committee recommended that the Tasmanian Government give consideration to recommendations made by SASS to the Committee, which included that "the problem and prevalence of problem sexual behaviour in children be acknowledged and responded to in a systematic manner."[17] The Tasmanian Government responded to the Committee's findings in their report, *Tasmanian Government's Response, Sharing Responsibility for Our Children, Young People and their Families*, in which they noted the recommendation regarding SASS's submission. The Tasmanian state response is then operationalised in the *Sharing Responsibility for Our Children, Young People and their Families: Implementation Framework 2012-2015,*[18] which does not mention PSB/SAB.

2.5 *Our Children, Our Young People, Our Future*

The Tasmanian Government launched the state Agenda for Young People; *Our Children, Our Young People, Our Future* in 2011.[19] This document also makes no mention of PSB or SAB.

Responses received to the Options Paper

Responses indicated broad and strong support for the establishment of a service system to support children and young people with PSB and SAB, including legislative change, service funding and ongoing training for staff working with children and young people displaying PSB and SAB. One contributor noted that, based on their experience as a PSB/SAB service provider, children and young people provided with treatment have a lowered recidivism rate than those who do not receive treatment. Colony 47 suggested that a service system response must involve the Department of Education, in order to ensure that teachers and school staff are appropriately trained. They recommended that such training focus on the identification and de-stigmatisation of PSB/SAB, but also on greater protective prevention and early intervention when a child is at risk. Colony 47 suggested that this could be achieved through "an established professional development program following a 'train the trainer' methodology utilising school social workers as the trainer of school staff". They further noted that the involvement of school staff would require an increase in funding/resourcing for school social workers and staff to ensure they could adequately respond to PSB within the school system.

More broadly, Colony 47 suggested that as PSB/SAB is not widely understood by many practitioners or the general public, a concerted effort is required to educate people working

[17] Sexual Assault Support Services (SASS). (2010). *Response to the Select Committee on Child Protection*. Hobart, p. 6.

[18] Department of Health and Human Services (2012). *Sharing Responsibility for Our Children, Young People and Their Families: Implementation Framework 2012-2015*. Tasmanian Government, Hobart.

[19] Office for Children. (2011). *Our Children, Our Young People, Our Future*. Tasmanian Government, Hobart.

with children. They highlighted Family Planning Queensland's *Traffic Lights guide to sexual behaviours in children and young people: identify, understand and respond* as a useful tool to utilise in this.

SASS's view

Despite increasing recognition of PSB and SAB, the Tasmanian policy, legislation and service delivery system pertaining to sexual assault remains less comprehensive than its family violence counterpart. The Pathways to Change Project and the production of the *Tasmanian Standards of Practice for Problem Sexual Behaviour and Sexually Abusive Behaviour: Intervention and Treatment Programs* and complementary practitioner resources offers the foundation for a Tasmanian response to the issue of PSB and SAB. This response correlates with the aims of Outcome 6 of the *National Plan to Reduce Violence Against Women and their Children*. SASS hopes to see the development of a comprehensive state response, built on SASS's existing work, as part of Tasmania's commitment to achieving the outcomes of the *National Plan to Reduce Violence Against Women and their Children* and the *National Framework for Protecting Australia's Children*.

Recommendations

2. **The future goal of the development of a comprehensive service system response to PSB and SAB be recognised and supported by the Tasmanian Government as part of its commitment to developing secondary and tertiary prevention strategies for sexual assault.**
3. **The Tasmanian Government commits to the implementation of Strategy 6.2 of the *National Framework for Protecting Australia's Children* which explicitly recognises the need to address PSB and SAB and outlines a strategic framework for how the state will tackle the issue through policies, research and funded programs.**
4. **The Tasmanian Government commits to the implementation, under *the National Plan to Reduce Violence Against Women and their Children*, of the provisions of the *Primary Prevention Strategy to Reduce Family Violence and Sexual Assault in Tasmania (2012 – 2022)* which explicitly recognises the need to address PSB and SAB, and outlines a strategic framework for how the state will tackle the issue through policies and funded programs.**
5. **Any future development of the Tasmanian child protection system considers the need to acknowledge and systematically respond to the issue of problem sexual behaviour and sexually abusive behaviour in children.**

2.6 International law and the Rights of the Child

The Cease *Standards of Practice for Problem Sexual Behaviour and Sexually Abusive Behaviour Treatment Programs*, which guide Victorian practice in this area, state that PSB and SAB treatment programs will be underpinned by the *Victorian Charter of Human Rights and Responsibilities Act 2006*. There is no equivalent Charter within Tasmanian state legislation. However, it would be appropriate for Tasmanian programs to be guided by relevant provisions within the United Nations *Convention on the Rights of the Child*, to which Australia is a signatory.

Responses received to the Options Paper

Two respondents, Dr O'Brien and the Commissioner for Children, commented on this section. They noted that other relevant Articles are:

- **Article 1** – a child is defined as a human below 18 years of age. Tasmania is therefore failing to meet its obligations under the Convention with regard to those children aged 12-17 who are currently ineligible for PSB/SAB counselling, and children in parts of regional Tasmania who face challenges in accessing appropriate counselling services.
- **Article 2** – all rights apply to all children without discrimination.
- **Article 3 (1)** – the best interests of the child shall be a primary consideration in all actions concerning them.
- **Article 9** – separation of a child from their parents should only occur in accordance with applicable laws and procedures, and where it is in the child's best interests.
- **Articles 12 and 13** – the child's right to be heard in matters that affect them. O'Brien highlighted that this requires the State and service providers to consider children's participatory rights within counselling and the criminal justice system, and to support and value children's participation in developing anti-violence strategies.
- **Article 19** – state responses to protect children from abuse. O'Brien also stated that read together, Articles 3 and 19 "clarify the obligations on the State to provide *all* children (all below 18 years of age) with the service supports necessary to protect children from all forms of violence and harm. The provision of appropriate primary, secondary and tertiary PSB/SAB interventions *directly advances* the State's obligations under the [Convention on the Rights of the Child."
- **Article 23** – children with a disability have a right to special care and support.
- **Article 37** – arrest, detention or imprisonment should only be used as a last resort.

O'Brien also noted the relevancy of the *International Covenant on Civil and Political Rights* (ICCPR). Specifically, she indicated that the ICCPR states that the primary purpose of the juvenile penitentiary system is 'reformation and social rehabilitation', and that the State therefore has an obligation to provide rehabilitative services to youth who have been detained or placed on a community service order (see Articles 10.3 and 14.4). O'Brien also raised Articles 10.2 (b) (separation of adult and juvenile detainees and speedy adjudication) and Articles 9.3 and 9.4 (lengthy remand terms – which serve to deny juveniles access to rehabilitative counselling).

O'Brien mentioned Article 23 (1) (protection of the family as the fundamental unit of society) as pertinent in emphasising the importance of taking an ecological counselling approach to PSB/SAB that aims to strengthen family functioning. She noted again that Tasmania is falling short of its international legal obligations in this regard.

Lastly, O'Brien referred to the relevance of Article 17 (right to privacy) with regard to ensuring that children and young people displaying PSB/SAB are not unduly punished or stigmatised. She noted that the state should ensure any response to PSB/SAB upholds the privacy and reputation of children, young people and their families to the fullest extent possible.

Recommendation

6. **Any policy, practice or law regarding children/young people with PSB/SAB take into account Tasmania's international legal obligations, including all relevant Articles from the United Nations *Convention for the Rights of the Child* and the *International Covenant on Civil and Political Rights*.**

3. State Legislative Frameworks

This section of the Position Paper will identify relevant aspects of and gaps within the state legislative and policy framework relevant to the Tasmanian response to addressing PSB/SAB.

3.1 *Children, Young Persons and their Families Act 1997*

3.1.1 Child Protection notifications

A supportive child protection framework is a key enabling element of a responsive service system for the treatment of PSB and SAB in children and young people. The Victorian *Children, Youth and Families Act 2005* contains two grounds on which child protection intervention may be warranted where a report of sexually abusive behaviour is received:

- The young person is in need of protection (s.162); and/or
- The young person is in need of therapeutic treatment due to their sexually abusive behaviour (s.248) (for a child aged 10-15 years of age).[20]

The equivalent Tasmanian legislation, the *Children, Young Persons and their Families Act 1997*, enables a child protection intervention on the basis of a child being "at risk" (s. 4) of abuse or neglect, including sexual abuse by others. It does not provide for interventions on the basis that a child needs treatment for sexually abusive behaviours, which may make them a risk to others. There is therefore no mandate for intervention in cases where a child displays SAB but is not deemed at risk of neglect or abuse. In such cases, legislation which requires intervention on the grounds of the risk such children pose to others, and their need for assistance in the form of treatment, provides a more effective response to the problem.

Responses received to the Options Paper

The majority of responses strongly supported the amendment of legislation to focus both on safety management for other vulnerable children and the provision of rehabilitative treatment to the child displaying the behaviour. One respondent recommended that frontline child protection workers also receive training to ensure that notifications made regarding a child displaying PSB/SAB are appropriately responded to the first time the report is made. The Tasmanian Commissioner for Children suggested that notifications regarding a child displaying SAB should also attract a mandatory notification to the police.

Dr O'Brien outlined the importance of legislative reform, stating,

[20] *Children, Youth and Families Act 2005* (Vic).

> It is absolutely crucial that childhood PSB/SAB is understood as a sign that the child *is at risk* (there does not need to be evidence that a child has experienced, or is at risk of neglect or abuse from an adult sex offender). To make a determination that a child with PSB/SAB is not at risk is to be blind to their imminent risk of contact with the criminal justice system should their behaviours be ignored. It is also blind to the risk that the child or young person poses to other children. Finally, this kind of denial is blind to the research that indicates that children with PSB/SAB do often (but not always) come from homes where violence, neglect, sexual abuse and/or caregiver substance abuse occur.

Dr O'Brien emphasised that the proposed amendments are a crucial part of formalising the complex process necessary when a notification is made to child protection services. She highlighted the key elements of such an approach,

> There is no single approach that will suit all circumstances… On a case-by-case basis a thorough and sensitive assessment should be conducted (by a PSB/SAB counsellor, with the involvement of a specialised child protection case worker trained in PSB/SAB). This will include a holistic needs assessment for the family (PSB/SAB counselling is unlikely to be the only support required). It should also include the involvement of parents/caregivers, children, and possibly teachers, in the formation of a sensitive and non-stigmatising safety plan (both for the home and possibly also for school). It is crucial that children be involved in designing this plan. Where the PSB/SAB has been directed at children outside the home then teachers should be included in sensitive safety planning. It is extremely unlikely that a child or young person would need to be removed from their school setting – to do so would have a detrimental impact on their prospects for healthy socialisation and rehabilitation. Involving the child or young person in developing a non-stigmatising safety plan for home/school can allow for their own involvement (and empowerment) in their behavioural change, and will fulfill the important aim of safeguarding other children.

One respondent did not support the amendment, on the basis that there is too little evidence to demonstrate the causal risk between adolescent offending and adult sex offending, and this approach therefore risks labelling children as 'sex offenders'.

Three submissions commented on the appropriate age range for a notification regarding a child or young person displaying PSB or SAB. SECASA recommended these apply to children and young people aged 10-17 years, whilst Colony 47 and Dr O'Brien recommended these apply to children and young people aged 0-17 years.

The Tasmanian Office of the Director of Public Prosecutions noted that any extension of the scope of the *Children, Young Persons and their Families Act 1997* will require significant additional resourcing in order to accommodate the increased number of children and young people needing to be managed.

SASS's view

After considering the submissions received, the literature and our experience in this area, SASS's view is that a notification system is vital to ensure that children and young people

displaying PSB/SAB are identified and able to receive appropriate support as soon as possible. Displaying PSB/SAB can be highly detrimental to the child/young person concerned (in addition to the damage experienced by the child targeted by the behaviour). We advocate that a notification system pertain to children and young people aged 0-17 years.

Recommendations

7. **The Tasmanian *Children, Young Persons and their Families Act 1997* be amended to state that children and young people up to and including 17 years of age displaying PSB/SAB require a child protection intervention, whether or not they are themselves at risk of neglect or abuse; and**
8. **That under the Act, a child protection intervention in these cases focus on both the safety management of other vulnerable children and the provision of rehabilitative treatment (including a mandated intervention) to the child that poses a risk to others.**
9. **Notifications regarding a child displaying sexually abusive behaviour should also attract mandatory notification to the police.**
10. **Legislative reform be accompanied by professional training for frontline child protection workers to ensure that where a notification is made regarding a child displaying PSB/SAB, this is appropriately responded to the first time the report is made.**

3.1.2 Therapeutic Treatment Orders

A large percentage of young people who exhibit SAB will not be prosecuted for a sexual offence. Reasons for this include the low reporting rates of sexual assault and the fact that such cases rely heavily on specific types of evidence which may be difficult to obtain. Additionally, there exists a cohort of young people who commit an offence but where a number of factors prevent a conviction, including that a) they are not above the age of criminal responsibility (eg they are under the age of ten years old; b) they would be found not legally responsible for their actions due to the legal presumption of *doli incapax*; or c) it is too difficult to prove that they had the requisite mental intent necessary to secure a conviction. A comprehensive sexual assault prevention system therefore needs more than just young offender treatment programs.

Victoria has addressed this problem through policy and legislative reform across the child protection and youth justice sectors. Provisions in the Victorian *Children Youth and Families Act 2005* enable the Department of Human Services (DHS) to receive reports for children aged 10 – 14 requiring therapeutic treatment, and where these are substantiated, refer the case to the Children's Court. Under Section 248 the Court can then make a Therapeutic Treatment Order (TTO) which mandates the young person and their family to access non-voluntary therapeutic treatment at a specified counselling service (for example, one of the Victorian Centres against Sexual Assault). A therapeutic placement order can also be issued where it is impossible for a young person to remain at home throughout the duration of treatment. This provides an alternative treatment pathway where a young person or their family does not voluntarily seek help, without the need to rely on a criminal prosecution.

Where the young person has criminal matters pending, child protection may be required to assess the suitability of a TTO on request by the Criminal Division of the Children's Court.

Additionally if the matter has come directly to the Criminal Division of the Children's Court, it may be referred to DHS, where the Therapeutic Treatment Board (established under a provision within the CYFA) gives advice on the viability of an application for therapeutic treatment. If a TTO is deemed appropriate, and the court makes the Order, the sexual offence matter in the criminal division is adjourned for the duration of the TTO.[21] As the TTO nears completion, the Criminal Division of the Children's Court can dismiss the charges if it believes the young person has satisfactorily engaged with treatment.[22]

The TTO provisions aim to enable early intervention for young people who exhibit SAB, and therefore to limit the potential for ongoing and more serious offences. TTOs allow for 12 months of compulsory therapeutic counselling, but are only issued where children and their families do not voluntarily access treatment. A select number of counselling services have received increased state funding in order to execute the provision of therapeutic treatment to those subject to TTOs.

Reported benefits of the TTO system include:

- Young people and their families are opting to access voluntary treatment more readily to avoid TTOs;
- An increase in awareness by child protection and law enforcement professionals regarding children with SAB and which services are best able to respond;
- TTOs highlight the seriousness of the issue and efficacy of treatment;
- Trends of under reporting sexual assault, attritions of sexual assault reports generally and the fact that SAB in young people is rarely addressed comprehensively through criminal justice, means that many young people displaying SAB are never required to address and change their behaviour. The TTO system has captured three cohorts of young people who previously would have slipped through this gap;
    - Those who are reported to the police as a result of their behaviours, but not pursued via the courts;
    - Those who come to the attention of a statutory Child Protection agency due to their behaviours; and
    - Those who appear as defendants within criminal justice proceedings and where the Court determines that there is *prima facie* evidence that grounds exist for the application of a TTO.[23]

Between 2007 and 2012, 1611 children and adolescents were treated within the TTO framework, with positive outcome results overall.[24] Whilst the data set for all 1611 clients is incomplete due to data recording constraints over the time period, out of a total of 831 young people seen through the TTO system, 92% of clients fully, substantially, or partially reached their goals of treatment (73% either fully or substantially).[25]

[21] *Children, Youth and Families Act 2005* (Vic), s.352.
[22] Ibid, s.354 (4).
[23] O'Brien (2010), p. 73.
[24] Pratt, R. (2013). A community treatment model for adolescents who sexually harm: Diverting youth from criminal justice to therapeutic responses. *International Journal of Behavioral Consultation and Therapy*. Number 8, Issues 3-4, p. 41.
[25] Ibid.

However, some of the potential problems with a TTO system include:

- Involuntary treatment may not produce the best therapeutic outcomes;
- Specialised treatment programs require specific ongoing governmental funding;
- The TTO system relies heavily on the availability of geographically accessible services (including in regional and remote settings) to deliver the mandated treatment. For example, in Victoria sexual assault service providers operate extensively through a system of 15 CASAs – a structure unique to the Victorian context. This service network provides a solid foundation from which to deliver SAB treatment programs, but still leaves some regions with inadequate service access. In Tasmania, sexual assault services are currently provided from three central locations (Hobart, Launceston and Burnie). The Tasmanian population is widely spread across rural and regional areas, which presents challenges for equitable service access;
- TTOs are only available for those aged over 10 years. This assumes that children younger than 10 who are displaying SAB will voluntarily access treatment;
- The "pursuit of justice" for sexual offence victims, through the successful prosecution of an offender, is not an option in cases where a young person is diverted from the criminal justice system through a TTO and successfully completes treatment; and
- Even where treatment is mandatory, parents/carers may still not engage with treatment options. In such cases children displaying SAB may not receive appropriate treatment.

Responses received to the Options Paper

The majority of submissions supported a Therapeutic Treatment Order (TTO) system as an effective youth justice diversion and sexual assault prevention strategy. Dr O'Brien highlighted the success of this strategy in Victoria in enabling access to treatment for additional cohorts of children and young people who "might otherwise have failed to come to attention, or failed to be offered appropriate referral pathways." O'Brien also commented that,

> Introducing the TTO scheme would formalise the message that the Tasmanian Government is serious about responding to these behaviours, with the dual aim of preventing further harm, and diverting children and young people from the criminal justice system. With the implementation of the TTO scheme, parents, teachers, and child protection workers who may currently be unsure of their obligations about referral would be assured that the Tasmanian Government takes these behaviours seriously, and that the Government has processes in place to respond to children in a timely and sensitive manner.

Additional specific comments raised with regard to the proposed TTO system include:

- The Commissioner for Children expressed reservation regarding the appropriateness of ordering families to attend treatment within the TTO, particularly in the context of a criminal prosecution. Conversely, Anglicare and Colony 47 endorsed SASS's recommendation to include families within a TTO, with the latter suggesting that if the actions of a child under 10 constitute PSB/SAB and parents are unwilling/unable

to engage, mandatory therapeutic intervention needs to be considered a viable option.

- The Tasmanian Commissioner for Children and one other respondent expressed support that statements made by a child or young person during voluntary and involuntary therapeutic treatment are not then admissible in court proceedings. Dr Read highlighted that this is particularly important to ensure that TTOs are not used merely to gain this protection for the child, in situations where a child may otherwise have voluntarily participated in treatment.
- Colony 47 supported a TTO system, but noted that PSB/SAB treatment requires a rapid response approach, and warned that utilising TTOs as a punitive action could be counterproductive (particularly where a child has a history of trauma), therefore funding must be made available to ensure appropriate therapy is available for the child and their family.
- Colony 47 further recommended that a system for interim orders be developed to remove a child where they are at risk of hurting themselves or others, and their parents are unable or unwilling to engage in treatment or intervene. In recommending this, they noted that such an approach would necessitate extreme care "as the act of separating a child from their family will in all likelihood cause significant trauma."

Drs O'Brien and Read both stated that children should only be placed on a TTO where they will otherwise not voluntarily access treatment. O'Brien highlighted that "a child or young person's voluntary engagement with therapy is by far the most desirable and therapeutically appropriate outcome, particularly where family are supportive of the therapeutic process. This should remain the goal for most children." However, O'Brien also noted that there are several reasons why voluntary family engagement with therapy is not always possible. Her comments are reproduced below:

- "Denial or minimisation of the behaviours compromises the commitment that family (and the child or young person) might have to the therapeutic program. Through denial or minimisation families might fail to seek out services, or decline a referral to therapeutic service.
- A proportion of children and young people with PSB or SAB come from homes beset by compromised family functioning. In such circumstances, the family may not be in a position to prioritise therapeutic counselling for a child or young person.
- Socio-economic difficulties can also compromise access to services. Some families may literally be unable to afford the petrol to drive their child or young person to counselling. Where financial barriers make therapy prohibitive, children and young people slip from notice. If these families are flagged by the TTO system then there is a greater chance that the necessary supports will be accessible to them."

Dr Read noted that a flaw within the Victorian TTO system is that even though a child may be voluntarily participating in treatment, they can still be placed on a Therapeutic Treatment Order. She highlighted that this places significant stress on the family, and a perception of an unnecessary and confronting intrusion of the Department into their lives.

The issue of the age range targeted by a TTO system raised diverse comments. A number of commentators recommended that the system apply to children aged 0-17. Colony 47 highlighted that PSB/SAB is prevalent in children below 10 years of age, necessitating a similar approach to intervention and treatment as for children aged over 10. Dr O'Brien, SECASA and Dr Read recommended 10-17 years of age (inclusive). SECASA advised that in Victoria the age restriction of 10-14 has meant that a cohort of 15-17 year olds are being processed through the criminal justice system when a therapeutic jurisprudence approach would be more beneficial, and that this challenge has necessitated an informal diversionary approach.

SECASA, Dr Read and Dr O'Brien recommended that the TTO system not apply to children aged under 10 years. SECASA stated that thus far they have not experienced challenges relating to non-engagement of a parent/carer where the child is aged under 10 years. Similarly, Dr O'Brien stated that "voluntary involvement is far more successful, and in many cases this is possible, if appropriate supports are provided to the family and/or caregivers". O'Brien advocated instead that the State allocate resources to assist in understanding and addressing challenges families face in accessing services. She stated that this would necessitate:

- "research with social service, allied health and school professionals, and with parents themselves, to better understand the barriers (ideological and logistical) to referrals and ongoing access to service;
- a public education campaign, to educate parents (and other professionals) about developmentally appropriate behaviours and the sexualised behaviours that are excessive to developmental norms. This should include attention to the seriousness of the consequences if PSB/SAB is ignored;
- professional training for all front line child protection workers so that parental concerns about PSB/SAB are responded to appropriately the *first* time contact is made;
- the provision of supports for families and carers to mitigate the logistical barriers to service access. Ideally, the one child protection case worker could offer continuity of care to a family and, equipped with the relevant training, they could encourage access to PSB/SAB and other relevant services; and
- an acknowledgement that where children display PSB/SAB there are very often other serious challenges experienced in the home. This means that whilst PSB/SAB services are required they are *very unlikely* to be the only services required for that family. Integrated service support needs should be carefully assessed, and managed centrally and carefully by child protection to ensure that the family's broader needs are met. This will ensure that parents/caregivers are in a better position to support their children through ecologically based counselling for PSB/SAB. It will also contribute to broader prevention aims, by fostering increased family functioning (an outcome that is unlikely to come from a TTO alone)."

The Tasmanian Commissioner for Children recommended that the system target 10-13 year olds, in alignment with the presumption of *doli incapax*. The Commissioner recommended that any decision to mirror the Victorian approach of 10-14 years of age only be adopted once further information is known in regards to the rationale for this target age range.

Dr O'Brien also indicated that whilst she recommends a TTO system for 10-17 year olds, therapeutic programs must appropriately reflect the age of the child/young person. She proposed that the system also cover programs for both PSB and SAB (which are not to be 'diagnosed' according to a child or young person's age) with a,

> …sensitive assessment of each child or young person to ensure that they have access to counselling appropriate for their needs…The TTO system (and associated counselling services) needs to be funded such that the necessary assessments of children and young people's needs can be made on a case-by-case basis.

A number of respondents commented on the risk that children/young people displaying PSB/SAB may be stigmatised due to their being placed on a TTO. Dr Read recommended that attention be given to the potential adverse outcomes of a child being placed on a TTO, including:

- how the presence of a charge and/or TTO may later impact on a young person's ability to gain a Working with Children Check;
- on what is described on the police record that is released as part of a Criminal History Check; and
- how being on a TTO, and the attendant involvement with the Children's Court and Child Protection Services, may impact on the stress of all family members.

O'Brien highlighted that the TTO system should not be viewed as punitive, or as bearing stigma but should operate as an administrative mechanism to facilitate access to a service that would not otherwise be voluntarily utilised. She noted that this would require the state government to invest time and money in the extension of existing services and/or the development and implementation of appropriate adolescent services before the TTO system is introduced.

With regard to the decision-making process in relation to applying for a TTO, Dr Read stated that this must be fair and reasonable and that,

> Due consideration must be given by all parties in the criminal justice system to all of the relevant circumstances prior to deciding to proceed with a TTO. This includes ensuring that treatment providers, magistrates, members of the [Therapeutic Treatment] Board, lawyers, [Department] workers and Police are fully cognisant of *who* is eligible for a TTO, under *what* circumstances, *how* the TTO will impact on the child and *why* a TTO is appropriate i.e. *for what purpose is the TTO sought.*

SASS's view

After considering the submissions received, the literature and our experience in this area, SASS's view is that a Therapeutic Treatment Order system is vital, and should apply to all children up to and including 17 years of age. We believe that this age range is necessary to ensure that all children can access treatment, even where this is not supported by their parent/caregiver.

Furthermore, a TTO system would not automatically result in older adolescents being diverted away from the criminal justice system, which we appreciate was a concern of some respondents. In some situations - for example where a young person's behaviour is particularly serious - it may be preferable for a young person to be dealt with within the criminal justice system. These considerations can be comprehensively addressed during the process of a TTO application to ensure that the right pathway is being pursued.

SASS strongly believes that family participation is a critical component of treatment, as a child's behaviour cannot be viewed outside their ecological context. Families can also provide a protective environment and reduce risk. They are pivotal to developing an understanding of the sexually abusive behaviours, and to addressing the underlying issues that have triggered the child's behaviour. With regard to the significance of the family on the child's behaviour, Pratt outlines that "the therapist has the youth 'in-session' one to three hours per week – the family or caregiver for the remaining 160-plus hours per week. Clearly most opportunity for teachable moments will occur when the youth is in the realm of the family system."[26] It is therefore critical to include immediate and extended family members in treatment in order to support the child's ongoing rehabilitation – including promoting acceptance of the child as a fully functioning family member. It is on this basis that we support the ability of TTO's to mandate families to attend treatment. However, SASS does appreciate that, as with children, voluntary participation of the family will always be preferable. We therefore suggest the following approach, as per the Victorian process:

- During the pre-TTO investigation child protection services will explore the likelihood of the family engaging, and make a recommendation regarding this to the Magistrate's Court.
- In most situations it is expected that a TTO will commence without conditions imposed regarding the family's attendance; however, the family will be strongly encouraged to participate.
- If the family does not then engage, and all other options have been exhausted, the Order can be varied to mandate the family to attend.

We support the comments made regarding the need to ensure that statements made during the course of treatment are not then later admissible in court. This will give children and young people confidence to participate freely and openly in the therapeutic process.

SASS further recommends that a system be initiated to allow Therapeutic Treatment Placement Orders (TTPOs) to enable a child to be placed out of home where this is necessary to ensure their attendance and participation in an appropriate treatment program. We recommend that this follows Section 252 in the *Children, Youth and Families Act 2005* (Vic), which outlines that a TTPO can be made where "the Court is satisfied that the therapeutic treatment (placement) order is necessary for the treatment of the child."

[26] Pratt (2013), p. 41.

Recommendations

11. **The Children's and/or Youth Justice Divisions of the Magistrates Court be granted power to order a young person up to and including 17 years of age, and their family, to undergo therapeutic counselling for sexually abusive behaviours where it is clear that they would not otherwise access voluntary treatment.**
12. **Any statements made by a child or young person whilst participating in voluntary, or non-voluntary counselling, are not admissible in court.**
13. **The *Children, Young Persons and their Families Act 1997* (Tas) be amended to enable a child to be placed out of home where this is necessary to ensure their attendance and participation in an appropriate treatment program, through a Therapeutic Treatment Placement Order.**

3.1.3 Cumulative Harm

Cumulative harm refers to the effects of patterns of adverse circumstances and events in a child's life, the daily impact of which can be profound and exponential, and "diminish a child's sense of safety, stability and wellbeing."[27] Cumulative harm may be caused by an accumulation of a single recurring adverse circumstance or event (such as unrelenting low-level care); or by multiple circumstances or events (such as persistent verbal abuse and denigration, inconsistent or harsh discipline, and/or exposure to family violence). It can be present in any type of protective concern but is unlikely to be the sole factor for reporting, and thus is often overlooked.

The concept of cumulative harm is of particular importance when considering children with PSB/SAB as clinical data reveals that such children are likely to have experienced a history of childhood neglect, abuse and adverse circumstances in their earlier years,[28] and that sexualised behaviours are therefore often an 'acting out' response to trauma.[29] Supporting this, an evaluation of the New Street Adolescent Service found that "the majority of young people at the service who had engaged in SABs had experienced harm themselves, including neglect and exposure to domestic violence."[30]

The Victorian *Children, Youth and Families Act 2005* (CYFA) expressly considers cumulative harm, stating that the best interests of the child must always be paramount when making a decision mandating action with regard to a child. Included in the best interest principle, and outlined in Section 10 (3) (e) is "the effect of cumulative patterns of harm on a child's safety and development". Further, Section 162 (2) of the CYFA determines that "harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances".

[27] Miller, R. (2007). *Cumulative harm: a conceptual overview. Best interests series*. Department of Human Services. Victorian Government. Melbourne, p. 1.
[28] O'Brien (2010), pp. 54 and 100; Department of Human Services. (2012). *Adolescents with sexually abusive behaviours and their families*. Best interests case practice mode. Specialist practice resource. Victorian Government. Melbourne, p. 12.
[29] O'Brien (2010), p. 12.
[30] McGregor, S. (2008) cited by O'Brien (2010), p. 5.

The grounds for statutory intervention are outlined in Section 162 (1) (c) to (f). Cumulative harm may be a factor in any one ground (such as failure to provide basic care) or a combination of different grounds (such as physical injury and emotional harm) where the prolonged and repeated experience of these circumstances or events have or are likely to cause the child significant harm. The need to identify and respond to cumulative harm has the most impact on cases of "omission" (neglect) that may have previously been considered as low risk when considered episodically.

In line with the CYFA, Victorian practitioners are required to assess each report as bringing new information that needs to be carefully integrated into the history of the child and weighted in a holistic assessment of the cumulative impact on the child, rather than an episodic focus on immediate harm.

Unlike the Victoria legislation, the Tasmanian *Children, Young Persons and their Families Act 1997* (CYPFA) does not expressly consider the effects of cumulative patterns of harm on a child's safety and development.

Responses received to the Options Paper

Five contributors agreed that the *Children, Young Persons and their Families Act 1997* (Tas) should be amended to expressly consider and respond to the effect of cumulative patterns of harm on a child's safety and development. Particular comments raised with regard to this issue were:

- Colony 47 noted that PSB/SAB is usually a symptom or indication of underlying trauma or neglect, and that presentation of PSB/SAB should therefore trigger a full investigation into a child's history (including whether there have been previous notifications to child protection services) to determine if there is a link between the PSB/SAB and a history of abuse and/or neglect.
- Dr O'Brien highlighted that "It is impossible…to expect that a child modify their PSB/SAB if other challenges in the home go unaddressed (family violence, caregiver substance abuse, etc). These correlative harms are very likely to be contributing factors to the child's behaviours." She therefore suggested that "A formal (legislative) acknowledgement of cumulative harm will precipitate the statutory protocols required to provide integrated and holistic service provision to improve family functioning."
- SECASA noted that cumulative harm is of particular relevance in the context of multiple out of home care placements and situations of long-term parental inability to provide a stable home.
- One respondent commented that a full understanding of cumulative harm within a particular case is not possible without "an integrated data system across all agencies for youth issues" in addition to "a method of identifying and collating multiple referrals to [child protection services], for an individual child".

<u>Recommendation</u>

14. The *Children, Young Persons and their Families Act 1997* be amended to expressly consider the effects of cumulative harm, rather than just episodic interventions.

3.2 *Youth Justice Act 1997* (Tas)

Crucial to the development of a comprehensive Tasmanian service system response to sexually abusive behaviour is the development of tertiary justice diversion options for children and young people aged between 10-17 years of age who are found guilty of a sexual offence.

The current diversionary option within Tasmania is a community conference, the procedure for which is set out within the *Youth Justice Act 1997* (YJA). A referral can be made for a conference by the police under sections 9 (1) (b) and 13 (1), or by the Magistrate under section 37 (1). A community conference is a one-off session attended by the young person, a DHHS appointed facilitator, a youth justice worker and a nominated police representative. Where the conference is court-ordered, one of the young person's parents/guardians must also be invited, as well as a person with a close association with the young person (such as a counsellor). Victims may also be involved. The conference involves a discussion of the crime, an admission by the offender, and agreement on a suitable sanction. This can include, amongst other things, the payment of compensation, community service, or an apology to the victim.

Whilst the community conference process can be a valuable diversionary, restorative justice approach in some contexts, SASS believes that it is not an appropriate process for young people displaying sexually abusive behaviours.

Firstly, the stated aim of community conferences is "restoration for those people affected by the young person's offending behaviour".[31] The concept of restoration is not adequate to encompass the behavioural change process necessary for a young person to cease their sexually abusive behaviour.

Secondly, the original intent within the YJA was that the police would commission a conference in response to minor offending committed by "that 80% of adolescents who offend as part of a maturation process, rather than those young people who have committed serious, repeat offences and who are subject to a variety of social inhibitors that require more intensive intervention."[32] In her recent analysis of Tasmania's community conference model, Douglas finds that "it is clear that those referred for diversion by police and courts are presenting with higher criminogenic risks and needs than previously envisaged, or considered in existing legislation."[33]

Young people displaying SAB present with diverse and complex histories and needs. A significant number are themselves the victims of intra-familial abuse and neglect. Some common features of many young people who have engaged in SAB include:

- "being a witness to, or being directly exposed to family violence

[31] Youth Justice Online Practice Manual, cited by Douglas, A. (2013). "Getting beyond "Just" talk – making thinking visible in Conferencing Contexts". Paper presented at the *Australasian Youth Justice Conference "Changing Trajectories of Offending and Re Offending.* Canberra, May 20-22, 2013. Available at http://www.aic.gov.au/media_library/conferences/2013-youthjustice/presentations/douglas-paper.pdf

[32] Ibid.

[33] Ibid.

- chronic, long-term neglect (cumulative harm)
- inappropriately witnessing sexual activity
- being a victim of sexual abuse."[34]

Other characteristics common amongst young people displaying SAB include low self-esteem, experiences of bullying, poor problem-solving skills and lowered emotional regulation capacity.

Treatment approaches need to consider the unique developmental context and learning style of each young person, as well as the impact any childhood abuse and neglect may have had upon them. Whilst further research is needed into optimum treatment approaches for the different 'categories' of young people who engage in SAB, the Australian Childhood Foundation suggests that it is "highly likely that different types of therapy might be needed for different groupings of children and family circumstances."[35] According to a recent review of effective practice in juvenile justice commissioned by the NSW Minister for Juvenile Justice,

> Effective juvenile justice programs focus on addressing the underlying factors behind the offending behaviour of juveniles… Effective responses to youth crime often include programs which deliver family, school or community-based therapies and services.[36]

A community conference is not the appropriate process or setting within which to address the complex therapeutic needs of young people who have been found guilty of a sexual offence. Without addressing the underlying causes of a young person's offending behaviour, and investing in a supported behavioural change process, the risk that they will reoffend remains high. Little evidence exists on the effectiveness of community conferencing for young people who have been found guilty of a sexual offence, with a review of youth justice diversionary responses undertaken by the Federal Attorney General's Department stating that "the safest thing that can be concluded at the moment is that it has not been proven that conferencing produces lowered levels of recidivism."[37]

An effective service response to SAB therefore requires legislative reform to enable the referral of children and young people (10 years and over) who have been found guilty of a sexual offence to relevant tertiary intervention programs. Central to this is provision for an initial assessment that can then determine, based on the young person's family context and social, emotional and sexual development, the appropriate treatment option. Intervention program options should incorporate risk, need and responsivity principles.

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[34] Department of Human Services (2012) p. 12.
[35] ACF (2005) p. 55.
[36] McGinness A. and McDermott, T. (2010), *Review of Effective Practice in Juvenile Justice.* Report prepared for the Minister for Juvenile Justice. Noetic Solutions. Canberra, p. iv.
[37] Polk, K. et al. (2003). *Early Intervention: Diversion and Youth Conferencing. A national profile and review of current approaches to diverting juveniles from the criminal justice system*. Attorney-General's Department. Australian Government. Canberra, p. 53.

Victoria provides an example of a flexible and responsive diversionary system. The *Children, Youth and Families Act 2005* enables referral to a therapeutic treatment program for young people convicted of sexual offences or for whom a criminal charge is being pursued. The CYFA also enables the criminal division of the Children's Court to stand down criminal matters when a child is subject to a Therapeutic Treatment Order and to dismiss charges where a child successfully completes a treatment program.[38]

Responses received to the Options Paper

A variety of responses were put forward with regard to effective youth justice diversion processes that could be appropriate within the Tasmanian context.

A number of comments were made regarding community or family conferences:

- Dr O'Brien supported SASS's view that conferencing is an inappropriate diversionary strategy for children and young people who have displayed sexually abusive behaviours, noting that "the general consensus in criminological scholarship is that conferencing is not appropriate for serious crimes against the person (including sexual assault)."
- Dr Jeremy Prichard suggested that family group conferencing under the child protection system could be useful, particularly for children under the age of criminal responsibility and for those displaying PSB.
- SECASA proposed a model of restorative justice conferences as an additional option to TTOs and as a treatment option in cases assessed as suitable.
- One respondent highlighted that the contemporary youth justice model in Tasmania is based on restorative justice philosophies, and that current options at a formal cautioning or community conference include an option for the young person to attend a course for 'the purpose of health or personal development'. Furthermore, the respondent indicated that Magistrates currently have the option to defer sentencing and refer a youth to complete an appropriate program, with the option to then dismiss the sentence once this has been carried out.

Five respondents commented on whether the *Youth Justice Act 1997* should be amended to enable the Magistrate's Court (Children's Division) to refer children and young people (aged between 10-17 inclusive) convicted of a sexual offence to an individual assessment, and then based on this, to an appropriate therapeutic treatment program. Three commentators agreed that it should, with one qualifying that this should only apply to 10-13 year olds.

With regard to broader patterns of rehabilitation and punitive responses, O'Brien noted that,

> The complex therapeutic and criminogenic needs experienced by children and young people with SAB necessitate a thorough and integrated rehabilitative support network, rather than a punitive response. Detention is likely to exacerbate a young person's trauma, thus deepening their behaviours. This is particularly the case where specialised

[38] Department of Human Services. (2007). Children in need of therapeutic treatment. Therapeutic treatment orders. Victorian Government, p. 2.

> SAB counselling is unavailable….detention that does not also aim to rehabilitate is in breach of Australia's international legal obligations.

O'Brien therefore recommended that,

> The ecologically based and integrated service support and specialised counselling that is recommended for non-adjudicated children and young people should also be a formal requirement for children and young people placed on a community order. Simply reporting to a corrective services officer is not, in and of itself, therapeutic or rehabilitative. All adjudicated children and young people should be required to engage in rehabilitative counselling that is also sensitive to their other support needs (housing, substance abuse counselling, etc).

O'Brien further highlighted that all children should be able to access services, regardless of their geographical location. She recommended a system of outreach counselling, formally linked to a community order, for children and young people adjudicated for SAB, and suggested that this could operate in a similar fashion to the Griffith Youth Forensic Service (GYFS) model in Queensland (described in further detail below under Section 6 of this paper).

Three respondents agreed with SASS's recommendation that criminal matters be adjourned when a child or young person is made subject to a TTO, although one recommended that this only apply to children aged 10-13 (inclusive). Where a young person is aged 14-17 (inclusive), the respondent suggested that the court have power to order attendance at a therapeutic treatment program, but only in the context of sentencing. The Children's Commissioner also recommended that the Magistrate hold responsibility to determine whether a TTO should be made.

SECASA, Dr Read, Colony 47 and Dr O'Brien recommended that charges be dismissed where a child or young person (aged 10-17 inclusive) successfully completes a treatment program. The Tasmanian Children's Commissioner considered that further clarification was needed as to what would constitute the 'successful completion of a program', and that the Court should be able to revoke a TTO where a child has failed to attend therapeutic treatment (as per the Victorian scheme).

Both SECASA and Dr Read raised concerns that sexual offence charges can be released as part of a pre-employment criminal history check, and can have implications for a range of security checks including overseas travel. SECASA cited their professional experience of where a young person had successfully completed a TTO process, but had later been denied a Working with Children Check on the basis of their TTO history. Dr Read highlighted the negative effects this can have on young people,

> If young people, who have successfully completed treatment and demonstrated positive change in their lives are continually labelled in a negative light and have difficulty moving forward (for example being refused jobs) their risk of reoffending can increase if beliefs of worthlessness and apathy manifest and are perpetuated. It

is critical that the broader system focus on the young people's strengths and motivating young people to continue making positive changes in their lives.

Dr Read cited an informal process occasionally used in Victoria that overcomes these challenges, known as the "Therapeutic Treatment Response". The process involves Police inviting a young person displaying SAB to participate in therapeutic treatment *before* charges are pressed. If the young person then successfully completes the program no charges are laid. In her submission Read advocated for legislative reform to enable implementation of this process across Australia, highlighting that "the threat of charges could be more of a motivation for young people to engage in treatment, who are otherwise unwilling to attend voluntarily, than the *fait accompli* that is the presence of charges on their record."

SASS's view

SASS's position is that adjudicated children and young people aged 10-17 years should be offered the same level and quality of treatment as their non-adjudicated peers. For the reasons outlined above, we do not believe that conferencing (community or family) is an appropriate or effective process for young people who have displayed sexually abusive behaviour. Whilst we recognise that current youth justice approaches in Tasmania do enable a Magistrate to defer sentencing and refer a youth to complete an appropriate program, we believe that a specific, codified diversionary process is vital to ensure that young people displaying SAB consistently receive appropriate treatment and are not treated punitively.

We recommend that Magistrates be granted power to dismiss charges where a young person successfully completes a therapeutic treatment program. We recommend that in making a decision as to whether a young person has 'successfully completed' a program, the Magistrate is to have regard to:

- the young person's attendance records;
- the nature and extent of the young person's participation;
- whether or not the young person's participation was to the satisfaction of the therapeutic treatment provider; and
- the opinion of the therapeutic treatment provider as to the effectiveness of the treatment.

If the Magistrate does not find that the young person has 'successfully completed' the program, we recommend that they be given power to determine what (if any) further criminal proceedings in respect of the young person are appropriate.

Where a young person is found guilty of a sexual offence, we recommend that therapeutic treatment is considered as part of the young person's Bail Support Plan, as part of the *Supporting Young People on Bail* program.

Prescribed offences

Recommendation

15. Amendments be made to the *Youth Justice Act* 1997 to:

- **Enable the Magistrate's Court (Children's Division) to refer children and young people (aged between 10-17 inclusive) convicted of a sexual offence to an individual assessment, and then based on this, to an appropriate therapeutic treatment program;**
- **Enable the Court to adjourn criminal matters for non-prescribed offences when a child or young person (aged between 10-17 inclusive) is made subject to a Therapeutic Treatment Order (assuming that the Child, Youth and Families Act 1997 is amended to adopt this approach); and**
- **To dismiss charges where a child or young person (aged 10-17 inclusive) successfully completes a treatment program – whether this is voluntary or non-voluntary. In making a decision as to whether a young person has 'successfully completed' a program, the Magistrate is to have regard to:**
  - **i. the young person's attendance records;**
  - **ii. the nature and extent of the young person's participation;**
  - **iii. whether or not the young person's participation was to the satisfaction of the therapeutic treatment provider; and**
  - **iv. the opinion of the therapeutic treatment provider as to the effectiveness of the treatment.**

3.3 *Disability Services Act 2011* (Tas)

Clinical data indicates that children with autism/Asperger's syndrome, ADD/ADHD, developmental delay, and intellectual disability are overrepresented in groups of children displaying PSB or SAB.[39] A specialised response is required for these children, which may include the provision of specific resources, education and/or monitoring.[40]

There is no direct reference within the CEASE Standards to principles governing interventions with children or adolescents with intellectual disabilities. The Good Way Model, developed and run by the New Zealand organisation WellStop, provides an example of a model that predominantly works with adolescents with intellectual and development disabilities who also display SAB.

It is highly likely that a proportion of children and young people with PSB and SAB in Tasmania will also have an intellectual disability. It is therefore prudent to consider how this will be addressed within the development of a service model. Subsequently, the relevance of the *Disability Services Act 2011* (potentially s.5 principles, and s.6 designated standards) will need to be taken into account.

[39] Pratt (2013), p. 41; and O'Brien (2010), p. 14.

[40] Evertsz, J. and Miller, R. (2012). *Children with problem sexual behaviours and their families. Best interests case practice model. Specialist practice resource*. Department of Human Services, Victorian Government. Melbourne, p. 39.

Responses received to the Options Paper

Three respondents commented on this aspect of the paper. One respondent agreed that the *Disabilities Services Act 2011* and the relevant policy/service delivery framework be reviewed to facilitate the capacity to work with a potential cohort of children/young people displaying PSB or SAB who also have an intellectual disability. Another respondent recommended that children/young people with an intellectual disability, who are also displaying PSB/SAB, should be seen within the same service as those without a disability.

Dr Read and SECASA Clinician Richard James noted that in Victoria SECASA receives referrals for any young person, regardless of any intellectual disability or special needs they may have. Where a child or young person has a disability the assessment is adjusted to suit their needs. A clinician is allocated to the young person, and will then work with the client according to their individual treatment needs. Richard James also noted that SECASA implement the *Good Way Model*, and have found the model to be equally effective in working with children with an intellectual disability as with those without.

Recommendation

16. **The development of a Tasmanian service delivery model for children/young people with PSB or SAB take into account the specific needs of children/young people with an intellectual disability, including the development of specialised programs, resources, education and monitoring, as well as appropriate practitioner training.**

4. Working with Aboriginal and Torres Strait Islander children and their families

Cultural competence, sensitivity and respect are essential in any intervention with children and families. The Victorian Cease Standards state that programs working with Aboriginal and Torres Strait Islander clients and their families will be guided by the *Aboriginal Cultural Competence Framework.*[41] This Framework outlines the understandings, principles and service context that underpin Aboriginal cultural competence for the Victorian child and family services system. Whilst there is currently no Tasmanian equivalent, it would be prudent to identify and include a set of principles to guide practice with Aboriginal and Torres Strait Islander peoples within the Tasmanian context. It would also be judicious to consider the relevance of Section 9 of the Tasmanian *Children, Young Persons and their Families Act 1997*, which outlines principles for working with the Aboriginal community in relation to child protection interventions.

We note that the SASS *Practice Handbook: Responding to Children and Young People with Problem Sexual Behaviours* contains a section on working with Aboriginal families, including the need to work with cultural competence, sensitivity and respect, and to recognise the particular contextual factors experienced by Aboriginal families. The Handbook sets out that in working with Aboriginal families, practitioners should prioritise:

[41] Victorian Aboriginal Child Care Agency (2008). *Aboriginal Cultural Competence Framework*. Victorian Government Department of Human Services (pubs). Melbourne.

- holistic family healing approaches that plan to provide for the physical, mental, emotional and spiritual wellbeing of the child and their family;
- the healing value of culture, which affirms identity and connection to community as protective factors that encourage resilience; and
- seeking advice from Aboriginal cultural experts.

Responses received to the Options Paper

Three specific responses were given on this issue. SECASA recommended adopting the Victorian *Aboriginal Cultural Competence Framework*, and also suggested that culturally appropriate service provision can include "providing information in different languages, displaying artwork and plaques representing local Indigenous groups and where possible providing interpreters." Anglicare recommended that service providers consult with the Tasmanian Aboriginal community to ensure that responses to PSB/SAB are implemented in a culturally appropriate manner. The Commissioner for Children also suggested that specific protocols be developed for working with members of the Tasmanian Aboriginal community.

Recommendation

17. **The draft Tasmanian Standards adopt a modified (Tasmania-specific) form of the Victorian *Aboriginal Cultural Competence Framework*, that include:**
    - **a statement of principles for working with Aboriginal families whose children display PSB/SAB; and**
    - **a commitment to consulting with the Tasmanian Aboriginal community in all matters affecting Aboriginal children and families.**

5. Program funding for children and young people displaying PSB/SAB

Tasmanian providers of sexual assault services are currently contracted to offer treatment programs to children under 12 years of age displaying PSB or SAB, subject to available resources. This leaves a gap in service provision for young people aged 12-17 years who are displaying PSB or SAB, but who have not been found guilty of a sexual offence.

This issue is of significant concern to practitioners. SASS receives numerous calls each month from teachers, police officers and child protection workers who are concerned about an adolescent who is displaying PSB or SAB. Without access to specialist treatment options, these young people remain at high risk of continuing their offending behaviour, and potentially progressing to adult sexual offending. O'Brien describes hearing, through her Australian Institute of Crime research process, numerous stories of children "who were not referred for therapeutic response until their behaviours had escalated to acts of serious sexual harm against others".[42] This gap in service provision means that numerous young people will become involved with the juvenile justice system for offences that might have been avoided had earlier action been taken.[43]

[42] O'Brien (2010), p. 24.
[43] Ibid, p. 25.

Responses received to the Options Paper

The majority of respondents specifically recommended that the State Government fund voluntary treatment programs for children up to 17 years of age who are displaying PSB or SAB, and that this funding be ongoing. Additionally, several respondents noted that program funding must support both specific therapeutic treatment programs *and* brokerage funding to enable the delivery of additional relevant support services, in light of evidence around causal pathways to children displaying PSB/SAB (including family characteristics such as adverse socio-economic conditions, homelessness, mental ill health, substance use issues and child abuse and neglect).

Several respondents recommended that program eligibility criteria be as open as possible. Dr Read noted that ideally the Tasmanian service system would be all-inclusive with regard to gender, age, voluntary or non-voluntary participation, special needs, and type of behaviour displayed (PSB or SAB); and that treatment would be tailored to each individual's needs. One respondent noted that voluntary treatment programs should be provided to young people aged 10-17 and displaying SAB, and children under the age of 10 displaying PSB, and that service provision not be contingent on a police report being made. Instead, they recommended that parents, caregivers and statutory authorities be able to make referrals, and children and young people be able to self-refer.

Colony 47 recommended that the delivery of programs be contracted through a competitive tender process, and noted that specialist services such as SASS and the Australian Childhood Foundation are already working in this area and ideally placed to provide the evidence-based therapeutic service required. Colony noted that there are also a number of more generalist agencies with expertise in programs that would complement and enhance the work of these specialist agencies. Other respondents felt that Tasmanian sexual assault support services are best placed to provide voluntary and non-voluntary PSB/SAB treatment programs. One respondent noted that additional staff training would be required if SASS were expected to provide non-voluntary treatment.

Forensiclinic expressed their concern that the paper did not reference private sector service provision, and noted that they have been providing individual treatment programs for children and adolescents with problem sexual behaviours in Tasmania since 2007, and do not have any exclusion criteria. They also noted that further service provision would be possible if Government support was provided.

Several respondents commented on how a Tasmanian service system could be designed to effectively cater to the state's geographically dispersed population:

- Colony 47 highlighted the value of cross-sector training so that PSB/SAB could be more readily identified and responded to through multiple avenues (schools, community sector, specialist agencies and health services). They also suggested that an intensive 'Train the Trainer' model of delivery could be an effective mechanism for centralised training, to then enable new trainers to then take their knowledge and skills back to other practitioners in their local area.
- SECASA suggested a system of 'operating care teams' for isolated, rural or remote areas. Such a system would require a worker trained in delivering PSB/SAB services, who could then travel to the child's location and work to build the capacity of their

key support people, such as family members, teachers and local police officers, who could then monitor the child's behaviour. Monthly visits by the worker would help to ensure that the system was working effectively to support the child.

Similarly, Dr O'Brien submitted that counselling must be responsive to a child or young person's context, and should therefore involve counsellors visiting the child and their family in their home, school or community, and working in collaboration with other professionals and/or caregivers in the child's life. O'Brien highlighted that such an approach is more likely to be effective as it addresses factors within the child's context – for example their home, school or community life – that may be enabling or prompting the behaviour. O'Brien noted that a further strength of this approach is that it utilises an integrated support team (for example the school, health providers, substance abuse support and PSB/SAB counselling staff), which is particularly important given that children and young people with PSB/SAB often come from families that face multiple challenges (family violence, caregiver substance abuse, etc) and therefore ensuring that a child regularly attends counselling, particularly if this is remote from the family home, is unlikely to be the family's first priority.

O'Brien suggests two examples for consideration in the design of a Tasmanian approach, citing the Griffith Youth Forensic Service (GYFS) in Queensland as an example of an effective outreach program to regional and remote communities that aims to build local capacity and a support network to assist the young person; and the Northern Territory-based Mobile Outreach Service, which offers counselling to children and young people with PSB/SAB (in addition to children and young people who have experienced abuse or neglect).

SASS's view

After consideration of the literature, comments received and our expertise in this area, SASS recommends that the Tasmanian Government investigates best practice outreach models for delivering therapeutic services to children and young people displaying PSB/SAB, who live in regional and remote areas.

<u>Recommendations</u>

18. **The Tasmanian Government commit to ongoing, adequate funding for voluntary treatment programs for children and young people up to and including 17 years of age who are displaying PSB or SAB, but who:**
    - **Have not been found guilty of a sexual offence; and**
    - **Are not subject to a Therapeutic Treatment Order.**
19. **Treatment programs are to involve working with the child or young person and their family, and to include brokerage support to ensure that children and families can be linked to additional relevant support services.**
20. **Issues of access are considered, and any planned treatment programs include outreach services and/or appropriate transport options that will enable children and young people in regional and outlying areas to participate.**
21. **As part of a comprehensive child protection and sexual assault prevention strategy, the Tasmanian Government support the development and ongoing provision of non-voluntary treatment programs for children and young people displaying SAB and**

subject to a substantiated child protection notification and ensuing Therapeutic Treatment Order as a result of the behaviour.

6. Development and funding of young offender treatment programs

As discussed in Section 3.2, a comprehensive Tasmanian service response to SAB requires the development of effective tertiary intervention programs that focus on rehabilitation and lowered recidivism for young people found guilty of a sexual offence. The Tasmanian response in this area is severely lacking, with only one youth justice forensic psychologist to service the needs of all custodial and community-based clients across the entire state.[44] This has resulted in a long waiting list for young offenders to enter the assessment phase.[45] The Department of Health and Human Services identify this to be an area of critical need, outlining that,

> The major gap, and hence potential risk, for Youth Justice clients is for those young people who are either not convicted or who are diverted away from the criminal justice system (that is, through Community Conferences), who do not receive treatment for their behaviour.[46]

Community Conferences are the only rehabilitative option for young people convicted of a sex offence, and as discussed within Section 3.2, they do not provide an appropriate process through which to address offending behaviour and decrease future recidivism.

Specialist treatment programs for young people convicted of a sexual offence can reduce offender recidivism for both sexual and non-sexual offences.[47]

Victoria, Queensland and NSW provide useful examples of successful state-wide approaches. These are explored below in order to better understand the benefits of tertiary intervention for children/young people convicted of a sexual offence.

A highly successful program utilised as part of Victoria's youth justice response is the Victorian Male Adolescent Program for Positive Sexuality (MAPPS). The program facilitates specialised group and individual psychological services for young people, aged 10-21 who have been found guilty of one or more sexual offences. It is offered by the Youth Health and Rehabilitation Service (YHaRS). O'Brien provides a useful summary of the program's approach,

> For MAPPS clients, the therapeutic model is based on assisting young people to increase their understanding of themselves and others and take responsibility for their actions and choices. Young people are supported to develop an understanding of the deliberate pattern of their offending, as well as developing victim awareness

[44] Ibid, p. 54.
[45] Ibid.
[46] Thain, J., (2009), cited by O'Brien, (2010), p. 98.
[47] Laing et al (2014), p. 39.

and empathy. MAPPS encourages young people to take responsibility for choosing a positive lifestyle that does not incorporate offending or abusive relationships."[48]

An independent evaluation of the program's effectiveness found the following significantly positive findings:

- "A low-recorded reoffending rate…95 per cent of 138 MAPPS clients over the 4.5 year review period did not commit any further sexual offences (based on Victoria Police Information Bureau of Records and Youth Justice client information systems).
- Client treatment outcomes - young men took increased responsibility for their offending behaviour rather than blame others and acknowledged the extent of their sexually abusive behaviour by admitting to 63 per cent more offences during treatment in MAPPS than had been presented to the court.
- Stakeholders' views - parents, caregivers, judges, Youth Justice supervisory staff and other professionals indicated that MAPPS was performing at a very high level in all its functions of offender treatment, family support, secondary consultation, training and public education."[49]

One particular limitation of the program that is worth raising is that it is not available to young women. Whilst sexual assault statistics indicate that men are predominately the perpetrators of sexual offences, a small percentage of perpetrators are female. Supporting this, an audit of SASS client files who presented with PSB indicates a number of young females who were engaged in sexually coercive behaviours with other vulnerable children.[50] Whether or not these coercive behaviours developed into SAB at an older age is unknown. However, it is worth considering whether a young offenders treatment program should have the capacity to work with female adolescents.

The NSW New Street program provides a program for young people aged 10-17 years who have committed a sexual offence but who, for a range of factors, have not been criminally prosecuted. The program has a focus "on the young people taking personal responsibility for their actions in harming others. However, this expectation (and all other aspects of treatment) is targeted at the developmentally appropriate level of the young person."[51] The program has several other key elements:

- It is contextually based, and includes working with the young person's family, carer and/or relevant others in their lives such as school staff;
- Cases are planned in a multi-agency context, "and while addressing the sexual abuse behaviours is a clear focus, the sexual abuse does not globally define the framework for understanding young people and families in their communities."[52]
- Restorative practices are a key part of the therapeutic approach.

[48] O'Brien (2010), p. 50.
[49] Department of Human Services (2009). *Male Adolescent Program for Positive Sexuality (MAPPS): Youth Justice fact sheet*. Government of Victoria. Melbourne, p. 2.
[50] SASS (2012), p. 2.
[51] Laing et al (2014), p. 40.
[52] Ibid.

In Queensland, the Queensland Department of Justice and Attorney-General (Youth Justice) provides a "range of ecosystemic treatment approaches individually tailored to the individual needs of the young person and their family."[53] Whilst they differ in form, programs across the state generally feature the following elements:

- An individualised therapeutic approach tailored to the needs of the young person;
- Consideration of the 'unique social ecology' of the young person, including their community, school, family and peers;
- Involvement of the young person's family as a requirement of treatment; and
- Within some programs, a required commitment to counselling for 6 months – 2 years.

Notably, the state-wide program delivered by the Griffith Youth Forensic Service (GYFS) employs 'field-based practice' where clients are assessed and provided with specialist treatment services within their own community. GYFS also utilises a collaborative approach that strives "to build community capacity that will outlast the service that GYFS can provide."[54] Program workers consult with the young person to identify key people to engage as part of their ongoing support network, in recognition that "whilst clinicians offer specialist psychological expertise in responding to sexual offending behaviours, they are not the only component required to support the young person."[55]

Good practice in working with young people convicted of a sex offence is now understood to constitute a focus on ecological work and the involvement of the family, as opposed to an approach characterised by isolated individual therapy.[56] An ecological approach involves a "sensitive and integrated understanding of a child's context, with attention to their family life and their socio-economic circumstances, their peer group, the young person's physical, emotional and intellectual wellbeing, and the wellbeing of those around them."[57] Systemic challenges within youth justice services continue however to limit the application of this approach. Professor Smallbone explains the tension within the sector,

> Programs for youth sexual offenders were originally modelled on those developed for adult sexual offenders, and many youth programs in Australia (and elsewhere) continue to operate according to this adult model. Many programs still provide highly prescriptive group-based psychotherapies that more or less exclusively target individual level-factors.[58]

[53] Griffith Youth Forensic Service. 'Services provided by GYFS'. *Griffith University*, accessed 18/03/2015 at http://www.griffith.edu.au/criminology-law/griffith-youth-forensic-service/clinical-service/services-provided-by-gyfs
[54] O'Brien (2010), p. 52.
[55] Ibid.
[56] Ibid, p. 55.
[57] O'Brien. (2011). 'Youth Justice: Challenges in Responding to Young People Convicted of Sexual Offences'. *Deakin Law Review*. Vol. 16, No. 1, p. 134.
[58] Smallbone, S. (2009) cited by O'Brien (2010), p. 56.

Responses received to the Options Paper

Several respondents commented on young offender treatment program approaches. Anglicare shared SASS's concerns regarding the lack of capacity within Tasmania to provide juvenile treatment programs to young people aged over 10 who are charged with, or convicted of, a criminal sexual offence.

SECASA recommended that young people charged with serious offences, including crimes such as rape, should be dealt with in the juvenile justice system, recommending that juvenile offenders not be treated in the same way as adult offenders and be provided with rehabilitation options. SECASA also suggested that a young offenders program could be designed and run by a sexual assault service, but provided within a juvenile justice setting.

Colony 47 recommended that a young offender program would sit most appropriately within an agency such as a Sexual Assault Service, provided the agency was appropriately funded to deliver the program. As a further option, they suggested that clinical psychologists could be trained in appropriate treatment methods for PSB/SAB, and the *Better Access to Psychiatrists, Psychologists and General Practitioners through the Medicare Benefits Schedule* allowance be extended to enable young people to access up to 20 sessions annually in circumstances that require this level of intervention.

Dr O'Brien suggested that SASS would be well placed to lead the development and implementation of PSB/SAB services across the state, including services for adjudicated children and young people (in detention and/or community), but that this would require significant workforce development and ongoing state funding for professional development. O'Brien also commented that specialised supervision would be a further requirement, suggesting that it may be appropriate to provide funding for SASS staff to receive professional supervision from MAPPS in Victoria and/or GYFS in Queensland.

Dr Read stated that young people who have been found guilty of a sexual offence should be treated within the same service as other young people who have engaged in SAB but not been through the criminal court.

Strong support was expressed for the proposal that any potential young offenders program be designed to include female offenders. One respondent commented that as this is not an area of sustained attention within the Australian literature or practice, the international research base on female PSB/SAB would be useful in informing appropriate therapeutic responses.

One respondent raised that 'offender' is not an appropriate title as it has the potential to stigmatise the young person, and suggested that they are referred to as 'young people found guilty of a sexual offence'.

SASS's view

The development of a Tasmanian youth offenders program must be evidence-based and consider the need for therapeutic interventions that involve the offender's family and focus on the multiple contexts in which children and adolescents live. Program eligibility must be

open to both male and female youth offenders, and young people up to and including 18 years of age.

Recommendations

22. **The development of the Tasmanian sexual assault prevention and support sector should include the creation of a young offender treatment program. This program would operate as a tertiary intervention strategy that functions within a comprehensive system of secondary and tertiary prevention programs.**
23. **The young offender treatment program would be open to both young men and young women, although we note that practice understandings in the area of treatment programs for young women are under-researched.**
24. **The young offender treatment program would be open to young people up to and including 18 years of age.**
25. **The young offender treatment program would draw on the burgeoning evidence base of best practice from Australia and overseas.**

7. Out of Home Care system

A number of children displaying PSB/SAB have some form of contact with the out of home care (OOHC) system. Evidence indicates that the Tasmanian OOHC system has thus far not taken a strategic or comprehensive approach to supporting or managing these children. Children and young people displaying PSB/SAB are often moved through different placements once their behaviour cannot be managed by their current carer, or is deemed to be putting other children at risk. In some situations the next carer is not fully informed about the child's behaviour, let alone how to manage it for the wellbeing of the child and the safety of other children within the placement. This perpetuates a cycle where traumatised children who display PSB or SAB are moved to a different placement where carers are ill-equipped to manage them, the child then re-displays the behaviour, and is subsequently moved on again.

In redressing these gaps, child protection systems must design and implement a strategic risk and behavioural management strategy throughout the entire continuum of involvement within the child protection system, including the grounds for notifications; substantiation of notification; decision-making regarding care and protection; removal from family; and placement options and management.

Specific strategies will also need to be adopted depending on the type of placement. An effective OOHC support system for foster care placements would involve:

- Careful placement selection and ongoing management to ensure that other children within the foster home are not placed at risk;
- Careful carer selection to ensure that children displaying PSB/SAB are matched with carers who have the appropriate skills, knowledge and attitude to support children to manage and gain control over their behaviours. Specifically, carers must have the knowledge and skills to:
    - Identify a child displaying PSB/SAB;

    - Appropriately respond to the behaviour, including safety planning for other children at risk, and the child displaying the behaviour; and
    - Support the longer-term healing and correction of the child's behaviour.
- Ongoing support, including training, to ensure that carers can continue to meet and manage the child's needs; and
- Carers receive full information regarding the children in their care both before the placement commences, and on an ongoing basis.

Children displaying PSB/SAB frequently end up in residential care placements, as they are often deemed unsuitable for foster care homes. Whilst the safety of other children within foster care placements must be a priority, it is also possible to effectively manage a child's PSB/SAB within a foster care environment for the safety both of themselves and any other children within the home. Unless a child's behaviour directly places others at risk, there is therefore no need for a child's behaviour to preclude them from any form of child and family support that could support their healthy development.

The Tasmanian Government recently recognised in its briefing paper on Out of Home Care Reform, that residential care staffing is often inadequate to cope with the high needs of the children placed within residential units. It states,

> Staffing of some residential care arrangements is characterised by staff that do not have specialist professional training or accreditation (which is currently unavailable), inadequate supervision and limited access to training. This has resulted in situations where the only service provided to the most chaotic and vulnerable children, is adult monitoring rather than specific care intervention.[59]

Recognising that a number of children displaying SAB are placed in residential care, and that residential carers often do not have access to training on the provision of care for children displaying SAB, the Child Protection Society (CPS) recently piloted a joint initiative with three agencies that all provide residential care to cohorts of children displaying SAB. CPS employs a Therapeutic Adviser who provides support and consultation to residential carers to "develop their knowledge and skills in looking after young people who have caused sexual harm."[60] This role has several elements:

- "Provide regular on-site consultation to residential care staff and case managers regarding provision of an environment that promotes safety and minimizes the risk of engagement in sexually abusive behaviours.
- Regular liaison with therapeutic treatment providers working with individual young people placed in residential units, to ensure management plans are consistent with the therapeutic needs of each young person.
- Attendance at care team meetings as appropriate, but not in lieu of the young person's treatment provider."[61]

[59] Children and Youth Services. (2014). *Out of Home Care Reform in Tasmania*. Tasmanian Government, p.9.
[60] Child Protection Society. (2013). *Annual Report 2013*. Melbourne, p. 8.
[61] Victorian Commission for Children and Young People. (2013). *Submission to Royal Commission into Institutional Responses to Child Sexual Abuse. Issues Paper 4: Preventing Sexual Abuse of Children in Out of Home Care*. Victoria, Melbourne, p.19.

In addition to the Therapeutic Adviser position, CPS also provides the following elements:

- "Provision of consultation and support to the Placement Coordination Unit and the Out of Home Care agencies in relation to placement planning and matching…and assisting in the development of safety plans.
- A one day training package was offered for all residential care staff across the region, to be repeated four times per year to address staff turnover.
- Additional training packages were to be offered to the three residential care agencies as needs were identified." [62]

This project, the first of its kind in Victoria, has to date "demonstrated very positive outcomes for the care and support of these young people."[63] This example demonstrates a comprehensive, strategic approach to managing the provision of care for children and young people with PSB/SAB who are placed within residential care. It would be prudent to consider the application of such an approach within the Tasmanian context.

Kinship carers are a further group who require targeted support in caring for children displaying PSB/SAB, and specific placement strategies. Kinship carers may experience particular challenges "given the complexity of caring for children and young people who have been sexually abusive or engaging in problematic sexual behaviours with young members of their own extended family and all of the complex family dynamics this is likely to invoke."[64] Within the Tasmanian child protection system there is no standardised approach to kinship carer training or placement management where a child has displayed PSB/SAB.

Responses received to the Options Paper

A number of respondents expressed support for SASS's recommendations that the OOHC system be appropriately equipped to care for children with PSB/SAB, including through carer training, appropriate placement matching and case management, and provision of appropriate therapeutic support to the child/young person.

Colony 47 recommended that the principles of Trauma-Informed Care be adopted, and specialist support be provided for both the foster carer and the child.

A number of respondents supported the proposal for a 'Therapeutic Adviser' position to provide ongoing support and consultation to residential carers and agencies working with children displaying PSB/SAB, recommending that this be located within the Tasmanian Department of Health and Human Services. One respondent commented that this was necessary as a 'minimum standard' for supporting children with PSB/SAB in OOHC.

O'Brien highlighted that all those involved in providing OOHC, including foster and kinship carers as well as staff in OOHC residential units, "should be provided with at least basic training to foster an awareness of PSB/SAB, with a view to ensuring the safety and wellbeing

[62] Ibid, p. 18.
[63] Child Protection Society (2013), p. 3.
[64] Victorian Commission for Children and Young People (2013), p.19.

of all children, and preventing the stigmatisation of children with PSB/SAB." O'Brien highlighted the necessity of targeted training to ensure that carers are well equipped to provide timely and sensitive responses to children's PSB/SAB. She stated that this was particularly crucial given the "significant capacity for increased harm to children once their behaviours come to attention."

O'Brien also commented on the importance of avoiding placement breakdowns by ensuring that carers are fully informed about a child's behaviour prior to placement, and that they have appropriate training. She further noted that "Ensuring the safety of other children will require that foster and kinship carers and residential care staff work closely with the child's PSB/SAB counsellor in implementing a counselling attendance schedule and an appropriate (respectful) safety plan."

Additional comments offered by respondents included that whilst specialist foster care placements are the best option for children displaying PSB/SAB, the dearth of foster carers means that many children are placed in group homes. Anglicare also noted the importance of ensuring that families are involved in decisions about treatment and out-of-home care options.

SASS's view

SASS recommends that the Department of Health and Human Services implement a holistic strategy, as detailed below, to ensure the delivery of appropriate care to children and young people displaying PSB/SAB in out of home care, including the provision of appropriate support to carers, families and other key stakeholders.

Recommendation

26. Child protection services implement a comprehensive strategy towards the provision of care to children and young people displaying PSB/SAB that includes:

- **Appropriate placement choices so that children displaying PSB/SAB are matched with carers with the appropriate skills and temperaments, and with households where other children will not be put at risk;**
- **Full disclosure to carers of all details of the child's past and current behaviour, and any past trauma that may be contributing to the behaviour, prior to the child commencing the placement;**
- **The provision of comprehensive and targeted training in identifying, responding to and providing care to children displaying PSB/SAB for all carers;**
- **In addition to the above, kinship carers receive particular training on managing PSB/SAB within a family environment and context.**
- **Every case to have a comprehensive case plan detailing how the child's PSB/SAB will be addressed and managed. These are to be developed collaboratively by Child Protection Services, the child's family and carer/s and the relevant support providers who will be providing the therapeutic programs;**
- **Where assessed as potentially beneficial for the child, children displaying PSB or SAB to receive early intervention in the form of therapeutic care**

with a provider trained in working with children and young people displaying PSB/SAB; and

- **The appointment of a Therapeutic Treatment adviser to provide ongoing support and consultation to foster and residential carers and agencies working with children displaying PSB/SAB. This position could be located either within the DHHS or within a sexual assault support service.**

8. Practitioner regulation

8.1 Approved Standards of Practice

SASS has identified the CEASE *Standards of Practice for Problem Sexual Behaviours and Sexual Abusive Behaviour Treatment Programs* as best practice in outlining the requirements for services to ensure equity of access and quality of care. SASS has adapted these Standards to create a modified form for the Tasmanian context; the *Tasmanian Standards of Practice for Problem Sexual Behaviour and Sexually Abusive Behaviour: Intervention and Treatment Programs*. These Standards have been adopted within SASS and are offered to Government and other agencies and services for their consideration as possible state-wide standards.

Responses received to the Options Paper

Three respondents commented on this section. All recommended that the Standards and practitioner resource be adopted uniformly across the state "to ensure parity of service provision and therapeutic approach." O'Brien highlighted the value of the Standards in "safeguarding children and young people against deficits in public understanding, punitive or stigmatising responses driven by fear."

Recommendation

27. The *Pathways to Change Standards of Practice for Problem Sexual Behaviours and Sexually Abusive Behaviours* and complementary practitioner resources be recognised and formally adopted by the Tasmanian Government.

8.2 Practitioner training and accreditation

The provision of therapeutic treatment to children displaying PSB, and particularly SAB, is a highly specialised area of practice. Practitioners must possess particular knowledge and skills above and beyond generalist counselling approaches. A Tasmanian response to treating PSB and SAB therefore requires the identification of appropriate practitioner standards, and the specific training required to become and remain appropriately professionally equipped.

Significant barriers exist in accessing professional development in Tasmania, with most professional development opportunities occurring on mainland Australia. The development of a comprehensive Tasmanian service response to PSB and SAB therefore needs to include the creation of state-based training opportunities specific to this work.

The Victorian CEASE Standards outline education, training and practitioner requirements, including that practitioners must annually complete a specified amount of professional development on working with children displaying PSB or SAB, and their families.

NSW practitioners working with children and young people displaying SAB are required to be accredited under the NSW Child Sex Offender Counsellor Accreditation Scheme (CSOCAS).[65] To be accredited, practitioners must have certain qualifications, successfully undergo a 'good character check', and abide by the Australian and New Zealand Association for the Treatment of Sexual Abuse (ANZATSA) *Codes of Conduct and Ethics*. The scheme offers three levels of accreditation; supervisor, associate and clinical, and two types of accreditation; working with adult offenders or working with children displaying SAB.

Accredited counsellors are provided with annual professional development workshops. These workshops are designed to keep counsellors abreast of current research findings and techniques to improve their work with clients, including children, who sexually offend against children. The NSW example showcases a specific training response to a specialised practice area. It clearly sets out standards and qualifications, and requires practitioners to demonstrate their capacities in relation to these through an accreditation process. It also enables the public to clearly identify appropriately trained practitioners.

Responses received to the Options Paper

Four respondents commented on this section. O'Brien highlighted that ill-informed approaches cause children additional harm, and accreditation is therefore a critical safeguard to ensure a specialised, skilled sector. Specifically she recommended:

- the provision of funding for counsellors to undertake a graduate diploma;
- ongoing training and workforce development in line with current international best practice; and
- ongoing consultation with Australian and New Zealand experts – potentially through ANZATSA.

SECASA expressed concern that Tasmania may not have the critical mass of workers or population to sustain a state-based accreditation system. Instead SECASA suggested the provision of an annual training program such as the current CEASE/ANZATSA sexually abusive treatment services workforce development program, which provides 10 workshops a year, and an advanced practitioner group. Similarly, whilst Colony 47 endorsed the establishment of a formal accreditation pathway, they cautioned against the implementation of a Tasmanian specific scheme, and instead suggested that adopting the Victorian or NSW system would be more cost effective and efficient.

The Commissioner for Children noted that accreditation of specialised practitioners, in addition to maintenance of qualifications in terms of ongoing professional development, should be a mandatory requirement for service providers seeking to provide a treatment program.

[65] For more information see http://www.kidsguardian.nsw.gov.au/About-us/Offender-counsellors.

Anglicare noted the importance of recognising the valuable supportive work that can be provided by professional support staff, for example, social workers and psychologists employed within community sector organisations. Anglicare also noted their support for SASS's recommendations in regards to training and accreditation, and suggested that state based training opportunities be sought and developed.

With regard to the provision of training, O'Brien commented that relying solely on interstate training opportunities could be problematic as "the ad hoc arrangements that would be required with individual specialists might be successful for a time, but perhaps not on an ongoing basis." She also noted however the excellent training opportunities currently offered by services such as the Australian Childhood Foundation, and Dr Russell Pratt from the Victorian Department of Human Services, and suggested that where possible, these training opportunities should be utilised as a supplement to, or as a part of, a formal accreditation program.

O'Brien also raised that there are significant workforce development needs that must be met before services can be expanded for delivery to additional cohorts (young people aged 12-17; adjudicated children and young people; and children and young people in regional communities). She indicated that this will likely necessitate ongoing state funding for professional development.

Recommendation

28. The Tasmanian Government explore options for an appropriate system of accreditation and ongoing professional development for practitioners working with children displaying PSB/SAB, whether through a state-based system or through utilising existing networks across Australia.

8.3 Practitioner supervision

The CEASE Standards of Practice state that a minimum standard for practitioners in the field of PSB and SAB is a fortnightly supervision session with a supervisor experienced in the field. One issue for Tasmanian sexual assault practitioners is accessing appropriate supervisors who have relevant practice knowledge and supervision experience. The provision of appropriate supervision options therefore needs to be considered throughout the development of a Tasmanian service response to PSB and SAB.

Whilst sexual assault services across Australia generally utilise their own combination of supervision approaches, minimum standards for supervision across the sexual assault field include a combination of informal debriefing, peer, clinical and line-management supervision.[66]

The NSW Child Sex Offender Counsellors Accreditation Scheme (CSOCAS) requires accredited counsellors to receive regular supervision with an accredited supervisor, thus ensuring that supervision is specific to their work with offenders. This pool of accredited

[66] See the National Association of Services Against Sexual Violence (NASASV): http://www.nasasv.org.au/index.htm.

supervisors also overcomes the issue of practitioners being unable to locate external supervisors who have appropriate experience. In Victoria, SECASA provides clinical supervision for practitioners working within the fields of sexual assault and family violence.

Responses received to the Options Paper

Six respondents commented on this issue, confirming that professional supervision is an important element of ongoing workforce development. Further comments were:

- Colony 47 recommended that the Tasmanian government fund Victorian or NSW-based clinicians to supervise and advise Tasmanian practitioners as required until there is a sufficient pool of qualified practitioners who can provide supervision within the Tasmania.
- SECASA suggested that Skype could provide a feasible option for supervision sessions for Tasmanian workers in remote areas.
- O'Brien noted that specialised supervision is critical to ensure practitioners remain abreast of developments in best practice. She further noted that "[o]ngoing, specialised supervision is also important to mitigate vicarious trauma and/or counsellor burnout. Investing in appropriate and regular supervision is therefore necessary to preserve the valuable expertise that exists within the current cohort of Tasmanian PSB/SAB counsellors.
- Dr Read suggested that it could be useful to compile a list of individual supervisors, and/or to establish an agreed secondary-consult arrangement with pre-existing services in other states. Supervision could then be provided via skype/telephone.

SASS's view

SASS recommends that the Tasmanian government fund clinicians/supervisors from other Australian states to supervise and advise Tasmanian practitioners as required until a sufficient pool of qualified practitioners can provide supervision within the State. This could utilise technology such as skype and/or video-conferencing sessions.

Recommendations

29. Standards for supervision within the sexual assault field are developed and upheld by services working with SAB and PSB clientele in Tasmania.

30. The Tasmanian government fund supervisors from across Australia to supervise and advise Tasmanian practitioners until a sufficient pool of qualified practitioners can provide supervision within the State.

9. Additional issues raised during the consultations

A number of issues were raised by respondents that had not been considered in the initial Options Paper. These are discussed below, with additional recommendations put forward where relevant.

9.1 Primary prevention

Several submissions discussed the need for primary prevention programs to support normative positive adolescent sexuality. One respondent suggested that the Griffith

University Bystander Education program provides a useful example of community education through peer intervention, which could work well as a group intervention for young people.

Whilst SASS is wholly supportive of primary prevention programs as an integral element to reduce sexual assault in Australian society, we consider that this issue is out of the scope of this particular paper. This paper is focused upon the specific responses required to support the identification, management and rehabilitation of children and young people displaying problem sexual behaviour and sexually abusive behaviour, rather than the preventative approaches necessary to ensure the behaviours do not manifest in the first place. Our decision not to address primary prevention programs does not reflect the importance we attribute to such programs in supporting adolescents to develop healthy, developmentally appropriate sexual identities.

9.2 IT-enabled PSB and SAB

Several respondents highlighted that responses to PSB/SAB must be cognisant of IT-enabled PSB and SAB, including through the use of computers, smart phones, digital cameras, social media, the internet and other technologies.

SASS strongly supports this proposition, and considers that PSB/SAB displayed through these mediums is consistent with the current definitions of PSB/SAB. The Traffic Light resource, which is widely accepted as a valuable tool to identify age-appropriate behaviours, discusses the appropriateness of children and adolescents' use of mobile phones and the internet at different ages. SASS strongly recommends that the service delivery framework be cognisant of and responsive to IT-enabled PSB and SAB.

9.3 Sexualisation of children and exposure of children to inappropriate sexual content

Several respondents raised concerns regarding the increased sexualisation of children, and the exposure of children and young people to harmful and inappropriate sexual content through pornography and online games. Dr Spiranovic highlighted research indicating that pornography use is a risk factor for sexually aggressive behaviour among already predisposed children and adolescents (children and adolescents who possess other risk factors that predispose them towards sexual aggression).[67]

SASS agrees with respondents that the increasing sexualisation of children and their exposure to inappropriate sexual content is of significant concern and is closely linked to the occurrence of PSB/SAB. It is therefore an issue of which practitioners working with children/young people displaying PSB/SAB need to be aware.

9.4 Criminalisation of children

Several respondents s expressed concern regarding the potential criminalising of children through state interventions into their lives and their involvement in the criminal justice system. Dr Prichard suggested that any state intervention be implemented with caution and

[67] Owens, E. et al. (2012). 'The Impact of Internet Pornography on Adolescents: A Review of the Research'. *Sexual Addiction & Compulsivity*. Vol. 19, Issue 1-2, pp.108-9.

due acknowledgement of the risks of young people, as a result of an intervention, labelling themselves as 'sexual predators' or 'sexual offenders'. He highlighted that criminological research suggests that such a labelling process may be criminogenic – becoming a self-fulfilling prophecy for the child or young person concerned. Prichard indicated that any response must not be more severe than that targeted at an adult – as per section 5 (1) (b) of the *Youth Justice Act* 1997, highlighting that for some behaviours young people have been effectively incarcerated (through involuntary residential therapies) for longer periods of time than adults (in prison).

SASS affirms that a service system response to PSB/SAB must be founded on a desire to enable access to supportive, non-judgmental and rehabilitative therapeutic treatment and appropriate supports. It should never be viewed or operate as a punitive system. Children who have displayed PSB or SAB must never be thought of as young sexual offenders, but as children in need of support.

9.5 Culturally and Linguistically Diverse communities

Three respondents raised the issue of working with culturally and linguistically diverse (CALD) communities, with one respondent referring specifically to the need to work sensitively with humanitarian entrants. Another respondent noted the need to use qualified, accredited interpreters through a phone service – which enables the client to state their preference for a particular gender, and helps to ensure client confidentiality.

The recently developed SASS *Practice Handbook: Responding to Children and Young People with Problem Sexual Behaviours* contains a section on working with CALD children and families. This section discusses, amongst other aspects, the need for practitioners to be open-minded, self-reflective and culturally sensitive; and to work in partnership with cultural experts.

Recommendations

31. **When working with families from CALD backgrounds, practitioners are to consult with cultural experts.**
32. **Where needed qualified and accredited interpreters are to be provided, accommodating as far as possible the client's preference for a particular gender of interpreter.**

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