



Ms Mama Fatima Singhateh
UN Special Rapporteur on the sale and sexual exploitation of children

By email: hrc-sr-saleofchildren@un.org

Dear Ms Singhateh

Submission to contribute to preparations for country visit

The Victorian Commission for Children and Young People (the Commission) welcomes your upcoming visit to Australia, and the opportunity to provide the enclosed contribution to inform your visit.

Located in Melbourne, the Commission is Victoria's independent statutory body focused on promoting and protecting children and young people's safety, wellbeing and rights. We have operated under legislation¹ since 2013 and have a range of functions including:

- providing independent oversight of Victoria's child protection and out-of-home care systems and youth justice centres
- conducting individual, group and systemic inquiries into services provided to vulnerable children and young people
- overseeing two state-wide child safety regulatory schemes, the 'Reportable Conduct Scheme' and 'Child Safe Standards', designed to prevent and respond to child abuse in organisations.

The Commission has a particular focus on Aboriginal children and young people. Victoria was the first Australian jurisdiction to appoint a Commissioner for Aboriginal Children and Young People, in 2013. This is a vital position given that Aboriginal children and young people continue to be vastly over-represented in Victoria's child protection, out-of-home care and youth justice systems. The importance of the position was recently recognised by Victoria's Yoorrook Justice Commission,² established in May 2021, and the first formal truth telling process into injustices experienced by First Peoples in Victoria.

The enclosed submission focuses on two issues relating to the Commission's work that are relevant to your call for submissions:

- sexual exploitation of children and young people who are absent or missing from state residential out-of-home care
- the role of Victoria's Reportable Conduct Scheme in preventing and responding to grooming in organisations.

We would be pleased to expand on any of the points raised and provide any further information that may assist your visit. We are scheduled to attend meetings with you on 8 November 2023, and look forward to this opportunity to discuss the issues with you.

If the Commission can otherwise assist you further, we can be contacted via [REDACTED],
[REDACTED] at [REDACTED].

Yours sincerely



Liana Buchanan
Principal Commissioner

27/10/2023



Meena Singh
**Commissioner for Aboriginal
Children and Young People**

24/10/2023



Contribution to country visit

Issue 1 – Sexual exploitation of Victorian children and young people in state residential care

1. In Victoria, approximately 8,000 children and young people live in out-of-home care, because they cannot live with their family at home and a legal order is in place to support the arrangement. Most children and young people in out-of-home care live in home-based care (foster care or kinship care), and around five per cent living in state residential care (accommodation in staffed community-based houses). Children and young people who live in residential care have commonly experienced significant levels of disadvantage and often have trauma and have complex support needs.
2. The Commission's independent oversight of the out-of-home care system includes monitoring serious incidents reported to the Commission (most of which occur in residential care)³ and conducting individual, group and systemic inquiries into the experiences of children and young people in these settings. The Commission's monitoring of incidents in out-of-home care, and our state-wide monitoring program (meeting children and young people in randomly selected residential care homes) informs our advice to Ministers and government departments on systemic opportunities for improvement.
3. In recent years, the Commission has been deeply concerned about sexual exploitation of children and young people who are absent or missing from residential care in Victoria. In June 2021, the Commission tabled its *Out of Sight* inquiry in the Victorian Parliament which examined how often children and young people were absent or missing from residential care and why this was occurring.
4. This inquiry found that while absent or missing, an alarmingly high rate of children and young people are sexually exploited, abused and assaulted, often by adult men.⁴
5. Further detail is provided in the following sections that address specific matters identified in the call for submissions.

Nature, scope and magnitude of the sexual exploitation of children in Victoria's out-of-home care system

6. The *Out of sight* inquiry learned of a range of sexually exploitative scenarios occurring in Victoria, including organised paedophile rings actively targeting children and young people in residential care, through to individual adults opportunistically exploiting and assaulting children and young people absent or missing from care.⁵
7. The inquiry found that exploitation, abuse and assault of children and young people could be ongoing for long periods, with devastating and long-term consequences.⁶
8. Consultations, file reviews and analysis of incident reports conducted as part of the inquiry indicated that children and young people often experience sexual exploitation when they are absent or missing from residential care. In the 18 months prior to 31 March 2020, 870 'absent client' incident reports referred to 'sexual exploitation',⁷ and 220 sexual exploitation incident reports were made.⁸
9. While these figures are substantial, *Out of sight* found that sexual exploitation was under-reported, due to a lack of disclosures or other evidence,⁹ and inconsistencies in reporting

and monitoring practices. These factors reduced the state's visibility of this issue at a systemic level.¹⁰

10. Since the inquiry was tabled, the Commission has continued to raise concerns with government about a high number of incidents involving sexual exploitation of children and young people in residential care and the ongoing under-reporting of these incidents.
11. In April 2023, the Commission published further data indicating that between July 2021 and March 2023, 423 incidents of sexual exploitation in residential care were reported, involving 165 children.¹¹ The reports indicate that perpetrators are targeting children in residential care and offering drugs and/or money if the children leave care to meet up with them in cars, homes or hotels. Sexual abuse and assaults are common occurrences for these children.
12. The harms are compounded for Aboriginal children and young people, who are over-represented in residential care and the broader child protection and out-of-home care system.
13. Further data and discussion will be included in the Commission's forthcoming 2022-23 Annual Report, which we expect will be tabled in the Victorian Parliament during the Special Rapporteur's visit.

Root causes and contributing factors

14. The *Out of sight* inquiry provided valuable insights into why children and young people are absent or missing from residential care, which increases the risk of sexual exploitation. These reasons include:
 - a. Poor connection to the residential care placement, as a result of a flawed model of care that does not meet children and young people's needs. Issues that contribute to this reduced connection include a lack of safety in placements, children and young people's lack of control and autonomy over decisions, compounding experiences of trauma, and limited activities and engagement.¹²
 - b. Insufficient support in residential care settings for children and young people to maintain relationships and connections with family, friends, community and culture.¹³
 - c. Seeking access to alcohol and other substances, which can be part of predators' grooming, coercion and control techniques.¹⁴
15. The inquiry found a range of reasons why children and young people become involved in sexually exploitative 'relationships' when they are absent or missing from care:
 - a. in response to a need for a sense of 'safety' or responding to a history of trauma.
 - b. to give a child or young person a sense of control and independence.
 - c. to obtain gifts of clothes, money and drugs, to bolster self-esteem and social standing among peers
 - d. to mitigate the instability they experience in the care system and beyond.¹⁵
16. Perpetrators of sexual exploitation often use existing connections within children and young people's social networks as pathways to reach other children and young people in out-of-home care.¹⁶

Recommendation to improve the policy and institutional framework and action in response

17. *Out of sight* identified a number of initiatives by Victoria's policing and child protection systems to respond to child sexual exploitation. These included:

- a. implementation of Sexual Exploitation Practice Leader roles across Child Protection, who play a role in increasing stakeholders' awareness of child sexual exploitation and its link to children and young people going absent or missing from residential care¹⁷
 - b. an effective pilot in 2016-2017 of a 'Child Sexual Exploitation Enhanced Response Model', which adopted a consistent, coordinated, cross-agency approach to tackling sexual exploitation of children in residential care, resulting in significant improvements in the coordination of responses and information sharing between Victoria Police, Child Protection and service providers.¹⁸
18. The inquiry recommended that the Victorian Government commit to and maintain a joint, targeted response to child sexual exploitation, by reinstating and expanding the successful Child Sexual Exploitation Enhanced Response Model across the state.¹⁹ The Victorian Government accepted this recommendation in principle, subject to resources.²⁰ As at October 2023, this recommendation has not been implemented.
19. This year, the Commission urged the Victorian Government and Victoria Police (directly and via public advocacy) to take stronger action to implement the recommendation and to protect children and young people in residential care from sexual exploitation.²¹
20. In May 2023, the Victorian Government committed \$13.4 million over four years to prevent and address child sexual exploitation.²² The Commission welcomed this investment and will closely monitor whether cross-agency efforts are progressed in line with the Commission's recommendation. We continue to work with the relevant government department and Victoria Police to improve the safety of children and young people in residential care.
21. The Commission has also repeatedly recommended that the residential care system be significantly reformed.²³ This is a crucial part of keeping children in their placement and safe from exploitation. This year, the Victorian Government recognised the urgent need to improve residential care, investing \$548 million over four years to (among other things) increase therapeutic supports in residential care homes. We welcome this investment and will continue to monitor the government's progress against the Commission's recommendations for major reform of residential care.

Issue 2 – The role of Victoria's Reportable Conduct Scheme in preventing and responding to grooming in organisations

The Reportable Conduct Scheme

22. Victoria's Reportable Conduct Scheme (the Scheme) is a key part of Victoria's legislative, policy and institutional framework for preventing and responding to child abuse, including grooming, within organisations.
23. The legislated Scheme,²⁴ which started in July 2017, requires heads of certain organisations to:
- a. have systems in place to prevent child abuse and, if child abuse is alleged, to ensure allegations can be brought to the attention of appropriate persons for investigation and response
 - b. ensure that the Commission is notified of allegations of 'reportable conduct' and that each allegation is investigated.²⁵
24. The Scheme operates alongside another regulatory framework administered by the Commission – the Child Safe Standards (Standards)²⁶ – which prescribes a system of child-centred policies, procedures and practices that organisations that work with children must implement.²⁷ Victoria's Standards align with Australia's National Principles for Child Safe Organisations.²⁸

Reportable conduct includes grooming

25. In Victoria, there are five types of reportable conduct.²⁹ These include:

- a. a sexual offence committed against, with or in the presence of, a child – whether or not a criminal proceeding relating to the offence has been commenced or concluded
- b. sexual misconduct committed against, with or in the presence of, a child.³⁰

26. Both of these types of conduct can include grooming behaviour.³¹ Sexual misconduct also includes voyeurism, inappropriate touching and behaviour, physical contact or speech or other communication of a sexual nature.

Scope of the Scheme

27. The Scheme applies to about 12,500 Victorian organisations across a range of sectors. These include Child Protection and out-of-home care, education and early childhood education, religious bodies, youth justice, disability, health, accommodation services and Victorian Government departments.

28. The Scheme includes conduct by employees of these organisations that occurs outside their employment.

29. The Victorian Government is currently considering whether the Scheme should be expanded to include additional organisations, as part of a five-year review of the Scheme.³²

The Commission's role under the Scheme

30. The Commission administers, oversees and monitors the Scheme.³³ This involves:

- a. overseeing individual cases, including supporting and providing advice to organisations and scrutinising organisations' investigations
- b. administering the Scheme at a system-level.

31. The Commission can also conduct its own investigation into reportable allegations in certain circumstances, where this is in the public interest or an organisation is unable or unwilling to investigate.³⁴ In some instances, the Commission has exercised this power in cases involving serious grooming allegations.³⁵

32. A substantiated finding of reportable conduct against a person can result in an individual losing their clearance to work with children in Victoria. The Commission refers substantiated findings to the Working with Children Check Unit (except in limited instances where the Commission exercises its statutory discretion not to do so).³⁶

33. The Commission and organisations must also report all allegations that are potentially criminal in nature to Victoria Police.

Trends and observations

34. Since the Scheme started in mid-2017, the Commission has published data and observations on the operation of the Scheme in the Commission's annual reports, which are tabled in the Victorian Parliament, and published on the Commission's website.³⁷

35. To date, we have not published specific data about cases involving grooming, but our Annual Reports include data on sexual misconduct and sexual offences allegations.

36. Some relevant insights from the most recent published data (up to 30 June 2022) include:

- a. In the first five years of the Scheme's operation, the Commission received:

- i. 2,116 sexual misconduct allegations from mandatory notifications to the Commission (the second most common allegation type, behind physical violence allegations which totalled 4,465)
 - ii. 755 sexual offence allegations from mandatory notifications (the lowest number of allegations compared with the other types of reportable conduct).³⁸
 - b. Substantiation rates for sexual offence and sexual misconduct allegations have increased over time, from:
 - i. 15 per cent (2018-19) to 38 per cent (2021-22) for sexual offence allegations
 - ii. 21 per cent (2018-19) to 31 per cent (2021-22) for sexual misconduct allegations.³⁹
 - c. The education sector has accounted for most allegations of sexual misconduct (69 per cent).⁴⁰ There were marked increases in sexual misconduct allegations from the education sector from 2019-20 to 2021-22, compared with first two years of Scheme, which may indicate increased awareness among children, parents and workers of inappropriate behaviour including grooming and how to report concerns.⁴¹
 - d. Alleged child victims of sexual misconduct are more likely to be female.⁴² In 2021-22, most sexual misconduct allegations and most sexual offence allegations were made against men (83 per cent and 79 per cent respectively).⁴³
37. Updated data (up to June 2023) will be included in the Commission's 2022-23 Annual Report, which we expect will be tabled in Parliament during the Special Rapporteur's visit. We would be pleased to provide the updated data after the report is tabled if this would assist the Special Rapporteur. (There are restrictions on the Commission sharing the data before the report is tabled.)

Improved understanding and responses by organisations

38. In recent years, the Commission has had a focus on the oversight of organisations' investigations of alleged sexual misconduct including grooming, which can be challenging to detect. As a result of this work, including providing guidance to organisations, we have seen responses by organisations to sexual misconduct and grooming allegations start to improve and substantiation rates for sexual misconduct allegations have increased. We have identified these improvements as clear benefits of the Scheme.⁴⁴

Ongoing concerns about organisations' responses

39. While we have seen improvements, the Commission continues to have concerns about some organisations' approaches to investigating sexual misconduct allegations – particularly when the conduct is alleged to have been overly personal and intimate towards a child, or crossed professional boundaries.⁴⁵
40. A key 2022-25 strategic priority for the Commission is holding organisations to account for their obligation to rigorously investigate, and keep children and young people safe from, grooming and sexual misconduct.⁴⁶ This includes continuing to support and guide organisations to conduct thorough investigations, give appropriate weight to the evidence of affected children, and make sound decisions about whether proven conduct amounts to sexual misconduct.
41. The Commission is also supporting a research project into understanding under-reporting of grooming behaviours.

Other Reportable Conduct Schemes in Australia

42. Reportable Conduct Schemes operate in some other Australian jurisdictions – New South Wales, Western Australia, and the Australian Capital Territory. Tasmania recently enacted a Reportable Conduct Scheme.
43. There are differences across these schemes. A recent national Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recommended that schemes be harmonised.⁴⁷ An Australian Government taskforce will consider the Royal Commission's recommendations.⁴⁸

Endnotes

- ¹ Commission for Children and Young People Act 2012 (Vic), available [here](#).
- ² Yoorrook Justice Commission 2023, [Yoorrook Justice Commission, Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems \(2023\)](#), p.119-121; Commission for Children and Young People (CCYP), [Yoorrook Justice Commission recommendations could be life-changing, says Commissioner for Aboriginal Children and Young People](#) [media statement], 4 September 2023.
- ³ CCYP, [Annual Report 2020-21](#), p.47.
- ⁴ CCYP, June 2021, [Out of sight: Systemic inquiry into children and young people who are absent or missing from residential care \(Out of sight\)](#), finding 19, p.132.
- ⁵ [Out of sight](#), p.128.
- ⁶ CCYP, June 2021, [Out of sight: Systemic inquiry into children and young people who are absent or missing from residential care \(Out of sight\)](#), finding 19, p.132.
- ⁷ References may refer to a risk of sexual exploitation or an unconfirmed suspicion that sexual exploitation has occurred while the child or young person was absent or missing from residential care.
- ⁸ [Out of sight](#), p.127.
- ⁹ [Out of sight](#), p.132.
- ¹⁰ [Out of sight](#), finding 3, p.74-75.
- ¹¹ CCYP, [Statewide action overdue amid new data showing continuing sexual exploitation of children in residential care](#) [media statement], 5 April 2023.
- ¹² [Out of sight](#), finding 12, p.114.
- ¹³ [Out of sight](#), findings 13 – 16, p.31-32.
- ¹⁴ [Out of sight](#), finding 17, p.122.
- ¹⁵ [Out of sight](#), p.128-129.
- ¹⁶ [Out of sight](#), p.130.
- ¹⁷ [Out of sight](#), finding 32, p.34 and p.159.
- ¹⁸ [Out of sight](#), finding 31, p.34 and p.158.
- ¹⁹ Recommendation 5.
- ²⁰ CCYP, [Annual Report 2021-22](#), p.195-196.
- ²¹ CCYP, [Statewide action overdue amid new data showing continuing sexual exploitation of children in residential care](#) [media statement], 5 April 2023.
- ²² The Hon. Lizzie Blandthorn MP, Minister for Child Protection and Family Services, [2023-24 State Budget presentation](#), 15 June 2023.
- ²³ CCYP, November 2019, [In our own words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system](#); CCYP, August 2015, ['...as a good parent would...': Inquiry into sexual abuse or sexual exploitation of Victorian children and young people in residential care](#).
- ²⁴ [Child Wellbeing and Safety Act 2005](#) (Vic), Part 5A (Reportable Conduct Scheme).
- ²⁵ CCYP, [Reportable Conduct Scheme Information sheet 3: Responsibilities of the head of an organisation](#).
- ²⁶ [Child Wellbeing and Safety Act 2005](#) (Vic), Part 6 (Child Safe Standards).
- ²⁷ For information about Child Safe Standards, see the Commission's website at <https://ccyp.vic.gov.au/child-safe-standards/the-11-child-safe-standards/> and <https://ccyp.vic.gov.au/resources/child-safe-standards/>.
- ²⁸ Australian Human Rights Commission, 2018, [National Principles for Child Safe Organisations](#).
- ²⁹ [Child Wellbeing and Safety Act](#), s 3 (definition of 'reportable conduct'); CCYP, [Information Sheet 2: What is reportable conduct under the Reportable Conduct Scheme?](#).
- ³⁰ [Child Wellbeing and Safety Act](#), s 3 (definition of 'reportable conduct').
- ³¹ [Child Wellbeing and Safety Act](#), s 3 (definition of 'sexual misconduct'); CCYP, [Information Sheet 9: Sexual misconduct under the Reportable Conduct Scheme](#).
- ³² The Commission provided a submission to this review: [Submission to the Department of Families, Fairness and Housing – Review of Victoria's Reportable Conduct Scheme \(Submission for publication\)](#) (CCYP Submission to Review of Victoria's Reportable Conduct Scheme), 15 November 2022.
- ³³ [Child Wellbeing and Safety Act 2005](#) (Vic), s 16D. Also see ss 16F and 16G.
- ³⁴ [Child Wellbeing and Safety Act 2005](#) (Vic), s 16O.
- ³⁵ CCYP Submission to Review of Victoria's Reportable Conduct Scheme, p.11-12.

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- ³⁶ *Child Wellbeing and Safety Act 2005* (Vic), s 16ZD.
- ³⁷ See (for example) CCYP, [Annual Report 2021-22](#), from page 80.
- ³⁸ CCYP, [Annual Report 2021-22](#), Table 15, p.86.
- ³⁹ CCYP, [Annual Report 2021-22](#), p.14, 80, 102.
- ⁴⁰ CCYP, [Annual Report 2021-22](#), Table 17, pages 90-91.
- ⁴¹ CCYP Submission to Review of Victoria's Reportable Conduct Scheme, p.17.
- ⁴² CCYP, [Annual Report 2021-22](#), Table 15, p.95.
- ⁴³ CCYP, [Annual Report 2021-22](#), Table 15, p.98.
- ⁴⁴ CCYP Submission to Review of Victoria's Reportable Conduct Scheme, p.14, 17-18.
- ⁴⁵ CCYP, [Annual Report 2021-22](#), p.90.
- ⁴⁶ CCYP, [Strategic Plan 2022-2025](#).
- ⁴⁷ [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Final Report](#) (September 2023) Volume 11, p.195-220.
- ⁴⁸ See ABC News, [Disability royal commission hands down final report with 222 recommendations for change](#), 29 September 2023.