SEXUAL ASSAULT SUPPORT SERVICE (SASS)
RESPONSE TO THE
SELECT COMMITTEE ON CHILD PROTECTION

November 2010

TERMS OF REFERENCE

To inquire into and report upon the adequacy of Tasmania's child protection systems, including:

PART A
Early identification, intervention and prevention strategies currently in place within all relevant agencies including the Department of Health and Human Services (including Family Support and Child Protection Services), the Office of the Commissioner for Children, Department of Education, Department of Justice, Tasmania Police, and the non-government sector including Gateway service providers, and including comparison with child protection regimes in other Australian jurisdictions;

Early identification, intervention and prevention strategies;

SASS has concerns that the number of complex and serious cases of children experiencing or at risk of experiencing sexual abuse is so high that service systems such as ours continue to respond after the event and have significant waiting lists.

SASS has seen 558 clients between 1 July 2010 and 26 November 2010 and at the time of writing this submission had a waiting list of 42 clients awaiting assessment or counselling including 12 children between 0-12; 5 young people between 13 and 18; and 27 adults above the age of 18 years.

SASS is carrying a current case load of 209 clients of whom 47.4% (99) are 18 years or below - of these 67% are girls and 33% are boys.

SASS staff report that interacting with Child Protection Services (CPS) is unproblematic when fulfilling the mandatory reporting requirements in relation to identified or 'at risk' child sexual abuse. Staff also commented that the level of communication and collaboration between CPS and SASS regarding shared clients was with few exceptions, good and that SASS' expertise in the areas such as trauma, attachment and Problem Sexualised Behaviour (PSB) is well utilised and respected by CPS workers.

However in certain circumstances our communication and capacity to collaborate with CPS is reported to be less than positive. These events occur when CPS closes their case after referral of the child to SASS - this leaves SASS solely holding the duty of care and safety monitoring for what may be 'at risk' CPS clients. As the CPS case is closed, SASS is expected by CPS to notify them if a client fails to attend appointments or if there are further identified safety/risk factors. However in a number of cases reporting from SASS and advocacy in relation to the need for further CPS safety management interventions has been ignored. Thus SASS reporting regarding safety concerns in relation to a child who is a 'closed case' and the need for forensic investigation are at times assessed by CPS as not a priority.

Recommendation:

- **That cases referred to SASS by CPS are not closed until both SASS and CPS have agreed that relevant interventions are completed and that there are no ongoing risk or safety management issues.**
- **That CPS and SASS have a mutually agreed case management plan for joint clients and that there is a designated 'lead' case manager appointed for each case.**

Investigation of Child Sexual Assault

SASS counsellors build therapeutic relationships and healthy attachments with children, young people and adult clients in order to enable appropriate processing of trauma which can ultimately lead to healing. There is significant tension between these therapeutic goals and the investigative role SASS counsellors find imposed on them when CPS have ongoing involvement with a shared client or make a referral and close the case.

As stated previously, after referral of a client to SASS, CPS often closes the case in the absence of 'disclosure' but with the presence of 'risk', presumably because there are not resources, skills or structures elsewhere in the Child Protection system to respond to the management of this risk or because the risk is not deemed sufficiently high to warrant the investment of scarce resources. It should be noted that client attendance at SASS is voluntary.

The perception in SASS is that CPS use the above mechanism in the hope that the child may make a disclosure to SASS during counselling and that mandatory reporting provisions will require SASS to notify CPS even though their case is closed with CPS. This becomes the ongoing safety management strategy for that child.

SASS is not funded to investigate child sexual assault but to assist survivors of sexual abuse to resolve their trauma and return to the best state of well-being that they can after suffering that abuse. Being used as a substitute mechanism to investigate incidents of sexual assault is not necessarily consistent with achieving positive therapeutic outcomes for our clients. It should be noted that SASS accepts these referrals from CPS on the basis of the 'primacy of safety' of the child, that is if no one else is monitoring a child's safety and well-being then SASS will do so simply because we believe it needs to be done.

However it should not be assumed that referral to SASS counselling will or should eventuate in a disclosure of sexual abuse sufficient to trigger a formal investigation or safety response - this is not the mandate of SASS or the purpose of the client's choice to engage with our service. Engaging with a client in order to obtain a disclosure on behalf of CPS can be counter-therapeutic and does not constitute an effective counselling intervention. These types of investigation are the responsibility of CPS and Tasmania

Police and at present, adequate and timely investigations into childhood sexual abuse in Tasmania are not being conducted.

Recommendations:

- The investigative process of childhood sexual abuse should be reviewed across all government systems with the intent of introducing specialist, trained investigation teams made up of CPS and Tasmania Police.

- That CPS workers are trained to identify the risk of sexual abuse and to formulate and implement effective interventions in relation to safety management where such risk exists.

Primary and Secondary Prevention of Childhood Sexual Abuse

By the time a child makes it to SASS for counselling, it is usual that harm has already been done. In mentioning CPS and justice system responses to identifying and intervening in childhood sexual abuse, it should be noted that successful prosecution of perpetrators is part of the much publicised 'whole of community' responsibility for child protection and forms part of the necessary approach to prevention, if only because perpetrators of sexual abuse rarely have only one victim.

Tertiary prevention of sexual assault has been outlined above in regards to the services SASS is funded to provide. Secondary prevention refers to either providing services to groups at higher risk of victimisation or perpetration or alternatively to those who have already been victims of sexual assault and are showing signs of perpetrating behaviour (this incudes in children who display problem sexual or sexually abusive behaviour – a major and growing problem). Primary Prevention refers to activities such as information, education or social marketing campaigns (Quadara, 2010) designed to prevent sexual abuse occurring (Carmody, 2009).

Widely accepted statistics for prevalence suggest that up to 1 in 3 females and 1 in 6 males will be subjected to childhood sexual abuse (Fergusson & Mullen, 1999). Much research has linked childhood sexual abuse to a higher prevalence of a range of mental health and substance abuse issues in later life (Fergus & Keel, 2005; Walker, 2008; Duncan, 2005). Childhood sexual abuse is for example linked to Post Traumatic Stress Disorder (PTSD) and those with PTSD have an 80-85% chance of also having depression (O'Donnell, Creamer, & Pattison, P. 2004).

SASS believes that it is imperative for government to take the lead in reducing the prevalence of childhood sexual abuse and the subsequent flow on of life opportunity and economic costs to individuals, families, the health care system, the child protection system and beyond. At present SASS engages in prevention work with young people but the scope of our work is severely constrained by lack of funding.

Recommendations:

- A best practice primary and secondary prevention approach to sexual assault should be developed and implemented by government.

Children and Young People in Care

Of the 61% of girls and 45% of boys in year 12 who have ever had intercourse, 45% of girls and 21% of boys said they had unwanted sex (Australian Research Centre in Sex, Health and Society, 2008). The Department of Premier and Cabinets' *Agenda for Children and Young People: Consultation Paper* gives statistics on high teen pregnancy rates in Tasmania and states a strategic policy focus on early intervention and prevention.

The impact of early sexual activity in the Out of Home Care (OOHC) system is unknown; however there is considerable anecdotal evidence that within that system an 'abstinence' rather than 'harm minimisation' approach to sexual activity is used. SASS is concerned that this may be unrealistic and suggests that programs on sexual health, ethical sexual behaviour, and safe sex may be more realistic and beneficial.

In addition the issue of sexual behaviour in children known as Problem Sexualised Behaviour (PSB) is becoming a significant problem in schools, pre-schools, and the OOHC system. Problem sexual behaviours are broadly described as acts of aggression, or coercive sexual behaviours exhibited by children toward other children, usually of a younger age. SASS receives referrals of children as young as 3 years old who are displaying PSB. Being a victim of childhood sexual abuse is correlated with exhibiting PSB as are other CPS risk factors (O'Brien, 2010).

SASS is receiving an increasing number of PSB referrals and requests for advice and guidance in this area, often from primary schools. It is acknowledged that children or young people perpetrate somewhere between one quarter and one third of childhood sexual abuse cases in the United Kingdom (Fergus & Keel, 2005). This has significant implications for the OOHC system in CPS; the Department of Education (DoE); and Youth Justice, and supports the case for non-government organisations such as SASS becoming partners in prevention and early intervention in the area of safe, consensual sexual development.

It is interesting to note that Fergus & Keel (2005) state the likelihood of women who have been sexually assaulted as children being revictimised as adults is double the average victimisation rate at 54%.

Recommendation:

- CPS articulates and enacts policy in regards to education of young people in their care in relation to leading safe, consensual, ethical sexual lives as part of secondary prevention of sexual assault policy.
- That the problem and prevalence of problem sexual behaviour in children be acknowledged and responded to in a systematic manner.

Impacts of Trauma on Parenting

In discussing early intervention, preventing entry or re-entry into protective care, and risk factors, Bromfield & Holzer (2008, p.62) stress the need for skills and resources to be provided to families. They also assert the imperative that both risks and needs are identified at all stages of involvement in child protection. Walker (2008) clearly outlines the impacts of unresolved trauma on individuals and their capacity to parent especially in relation to issues with repeating patterns of abuse of their own children; attachment; the use of drugs and alcohol as a coping mechanism; and, mental health issues.

Sexual assault is a type of trauma - SASS deals with the impact of sexual assault as our core business. These impacts are also regarded as risk factors within CPS. As stated by the Commissioner for Children in his *Inquiry into the Circumstances of a 12 year old girl under the Guardianship of the Secretary* (2010, p.7) the unresolved trauma history of the mother was overlooked as were her consequent and predictable lack of boundary setting and substance abuse issues. Any risk assessment in relation to protective and safe parenting should take these matters into account. While a punitive response that focuses simply on removal of children would seem to be unjust in these circumstances, there are no resources available to work with adults to mitigate the impact of unresolved trauma as a result of childhood abuse. As a consequence of their own childhood sexual abuse such parents may be sentenced to a life of continually losing custody of their own children to the CPS.

The Child and Family Services *New Directions for Child Protection in Tasmania: An Integrated Strategic Framework* released in 2008 includes consideration of parental risk factors. Furthermore Bromfield & Holzer (2008, p.68) points out the Tasmanian Government identified families where there are mental health and drug and alcohol issues as priority areas for early intervention. They also state that whilst the legislative framework is strong there is a lack of resources to enable support services to fulfil the legislative intention for early intervention.

SASS calls for all levels of government make good on the policies outlined in both the *New Directions for Child Protection in Tasmania: An Integrated Strategic Framework* and *Agenda for Children and Young People: Consultation Paper* by considering the abovementioned recommendations regarding early identification, intervention and prevention of child sexual assault.

Recommendations:

- Trauma history of parents involved with CPS should be systematically assessed and risk assessment frameworks should contain appropriate indicators of complex trauma symptoms.
- CPS workers should be skilled, resourced and required to assess the impact of childhood sexual abuse on the parents of at risk children and services should be made available to such parents to support their recovery from complex trauma related problems wherever possible.

Department of Education;

The Tasmanian Department of Education (DoE) does not currently have an overarching strategy that builds on partnerships to ensure the safety of children and young people at school and within their school community.

Recommendation:

- The *Responding to Allegations of Student Sexual Assault: Procedures for Victorian Government Schools* be considered for adaptation for DoE procedures.

Department of Justice

Child Protection and the Family Court

It should be noted the Family Court often ends up as part of the child protection service system by default, hearing evidence of childhood sexual abuse in order to determine parental custody and access arrangements. Recognition of the criminality of childhood sexual abuse is missed in this process. Because CPS are not involved, risk assessments are conducted in an adversarial rather than objective environment, mediated by lawyers and Family Court Judges while the primacy of safety of the child is obscured by issues of competing parental rights of access. Facts that may seem trivial or unrelated when considered in isolation when viewed together may prove likelihood of further risk of harm both in Family Court, criminal proceedings and CPS investigations (Parkinson, 1999). Research shows that false allegations of childhood sexual abuse are not as common as lawyers believe (Parkinson, 1999).

Threshold of Evidence Needed to Trigger Police Investigation

There are many interpersonal barriers to reporting childhood sexual abuse to the police such as fear for the family and family members including other children and for personal safety. In addition “structures within law that continue to prejudice outcomes of sexual offences cases” such as corroboration requirements, which in the case of childhood sexual abuse often means that the sworn testimony of the survivor against the accused is not

enough. The absence of corroborative evidence, delays in reporting and other complex and counter-intuitive behaviours can be interpreted by the criminal justice system as evidence of the false nature of the charges (Fergus & Keel 2005). These issues are also identified within the Family Court system (Parkinson, 1999).

There is conflicting professional opinion in regards to the reliability and suggestibility of child witnesses. Children can give reliable evidence, however investigative and interviewing personnel require specific skills to ensure that questions are appropriate and that answers are understood. The justice system must ensure investigations are timely as children's memory will fade (Steward et al, 1993).

Court processes and provisions for vulnerable witnesses need to be significantly improved in Tasmania in order to facilitate the access of children and young people to the justice system and the safety that it can afford them. Western Australia Police have a specialised Child Interview Unit and well developed training, policies and procedures to minimise further distress when interviewing victims of childhood sexual abuse (Voyez, M, Western Australian Police, 2005).

Recommendations:

- Review the rules relating to the collection and admission of evidence with the charge of childhood sexual abuse.

- Initial interview with police to be video recorded and used as the evidence in chief of the child
    - Requires prosecution to give notice of the intention to use the recording
    - A preliminary pre-trial Hearing where Defense gets to view recordings and Judge can make decisions about admissibility
    - Recording of any cross examination or reexamination to be used in retrial

- Capacity for child to give evidence from remote site becomes standard practice rather than by request, also authorisation of child friendly remote sites other than the court.

- Provision of an independent Children's Advocate for children participating in criminal trials around family violence and sexual assault
    - Children's Advocate to be recognised as a friend of the Court and to accompany the child in the remote witness facility to help them understand process and questions etc
    - Capacity to make representation to presiding judge about the nature of cross examination or issues re the child's capacity to comprehend process or physically and emotionally cope

- Removal of discretion of the Judge as to whether they limit the nature of the type of questioning (content and style) of witnesses under the age of 18 yrs in order to protect the child from harassment or embarrassment and to make sure questions are age appropriate and non repetitious
    - Provision of training to judges, court officials and lawyers about age appropriate questioning of children
    - Provision of training to specialist prosecutors
    - Consideration as to the admission of opinion evidence re child development and the effect of sexual abuse on children

- Mandatory joint trials where there are multiple complainants and admission of evidence re defendant's serial offending

- Limitation of an unrepresented defendant to cross-examine any child witness
    - Cross-examination may be done by court appointed person
    - Make it a condition of the cross examination of a child that the accused give evidence (Justice Woods)

- Introduction of offences re sexual exploitation and trafficking of children (reflecting UN provisions) aimed at limiting the market to purchase child sexual services or products (cf child pornography)

- Establishment of specialist Child Protection and Sexual Crime Squads
    - investigation teams across police and child protection

- Extension of the current Safe at Home Child Witness Service to child victims of sexual assault in order to prepare them for court and provide advice about impact of process on the child

PART C
Review of the Children, Young Persons and their Families Act 1997, including all proposed amendments to the Act as mentioned in the Commissioner for Children's report on his inquiry into the circumstances of a 12 year old child under guardianship of the Secretary, October 2010;

Cumulative Harm

Unlike the Victorian *Children, Youth and Families* Act 2005 (CYFA), 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. 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). The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child's sense of safety, stability and wellbeing. Therefore, it can be present in any type of protective concern but is unlikely to be the sole factor for reporting and thus overlooked.

The CYFA states that the best interests of the child must always be paramount when making a decision taking 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, at section 162(2) 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"*.

The grounds for statutory intervention are outlined in section 162(1) (c)-(f) and 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.

Recommendation:

- Legislation is amended to change the focus from episodic interventions to cumulative harm.

PART D

Other long term contributors to child abuse and neglect, such as poverty, drug and alcohol misuse and mental health issues.

As stated earlier, Walker (2008) outlines the impacts of unresolved trauma on individuals and their capacity to parent especially in relation to repeating patterns of abuse with their own children; attachment; the use of drugs and alcohol as a coping mechanism; and, mental health issues. In short unresolved trauma can lead to disturbed patterns of attachment in the parent which in turn leads to disorganised behaviour in the child and equates to significant risks for mental health problems in adulthood. These impacts are also regarded as risk factors within CPS.

Numerous studies link childhood sexual abuse to an increase in depression, anxiety disorders, antisocial behaviour, substance abuse, eating disorders,

suicidal behaviour, and Post Traumatic Stress Disorder (Dinwiddie et al. 2000: Fergusson, Lynskey & Horwood, 1996; Mullen, Martin, Anderson Romans & Herbison, 1994, as cited in Fergus & Keel, 2005). There are also co-morbidity issues with those with Post Traumatic Stress Disorder having an 80-85% chance of having depression also (O'Donnell, Creamer, & Pattison, P. 2004).

Some US research suggests that 35-75% of women seeking mental health services reported childhood sexual abuse (Polusny & Follette, 1995, as cited in Duncan, 2005). One Australian study found four times as many of the childhood sexual abuse sample had received treatment in the public mental health system and there was a significantly higher rate of "major affective disorders, anxiety disorders, personality disorders and disorders of childhood" (Spataro & Mullen, 2004). With childhood sexual abuse often being perpetrated by a family member or someone trusted by the family, there is intergenerational risk created by the effect of trauma on parenting capacity, but also by the belief systems that sustain sexual abuse being passed on (Duncan, 2004, as cited in Duncan, 2005).

The enormous individual, social and public health system impacts of sexual abuse cannot be overlooked. As the Tasmanian child protection system, like many in Australia, is taking a public health model approach (Bromfield, 2010), SASS urges the Select Committee to consider the abovementioned substantiated links between childhood sexual abuse and ongoing lifetime problems as a result of unresolved trauma.

Bibliography

Australian Research Centre in Sex, Health and Society. 2008. *Secondary Students and Sexual Health,* La Trobe University, Melbourne.

Carmody, M. 2009. *Conceptualising the prevention of sexual assault and the role of education,* ACSSA Issues, 10, Australian Institute of Family Studies. Accessed online 1/8/10 at http://www.aifs.gov.au/acssa/pubs/issue/i10.html

Specialist practice resource. 2010. *Cumulative harm, Best Interest case practice model,* State Government Victoria

Department of Premier and Cabinet. 2010. *Agenda for Children and Young People: Consultation Paper,* Community Development Unit, DPAC

Duncan, K. A. 2005. *The Impact of Child sexual Abuse on Parenting: A Female Perspective,* In G. R. Walz & R. K. Yep (Eds.), VISTAS: Compelling perspectives on counseling, *2005* (pp. 267-270). Alexandria, VA: American Counseling Association.

Fergus, L. & Keel, M. 2005. *Adult victim/survivors of childhood sexual assault,* ACSSA Wrap, 1, Australian Institute of Family Studies. Accessed online 1/8/10 at http://www.aifs.gov.au/acssa/pubs/wrap/w1.html

Fergusson, D. M., & Mullen, P. E. 1999. Childhood sexual abuse: An evidence based perspective, Sage, London.

Lamont, A., & Bromfield, L. 2010. *History of child protection services*, National Child Protection Clearinghouse Fact Sheet, Australian Institute of Family Studies. Accessed online 16/11/10 at http://www.aifs.gov.au/nch/pubs/sheets/rs22/index.html

Lyon, T. D. 2001. *Let's not Exaggerate Suggestibility of Children,* Court Review, Fall 2001, pp.12-14.

Lyon, T. D. 2002. *Applying Suggestibility research to the Real World: The case of repeated questions,* Winter 2002

O'Brien, W. 2010. *Australia's Response to Sexualised or Sexually Abusive Behaviours in Children and Young People,* Australian Crime Commission, Commonwealth of Australia.

O'Donnell, M. L., Creamer, M., & Pattison, P. 2004. *Posttraumatic Stress Disorder and Depression Following Trauma: Understanding Co-morbidity, American Journal of Psychiatry,* 161, pp.1390–1396

Parkinson, P. 1999. *Family Law and Parent-Child Contact: Assessing the Risk of Sexual Abuse,* Melbourne University Law Review, 15, pp.1-26

Steward, M. et al. 1993. *Implications of Developmental Research for Interviewing Children,* Child Abuse and Neglect, 17, pp.25-37

Quadara, A. 2010. *Public education media campaigns,* ACSSA Aware No. 24, May 2010. Accessed online 1/8/10 at http://www.aifs.gov.au/acssa/pubs/newsletter/n24.html

Voyez, M. Western Australian Police. 2005. *Legal Response to Sexual Assault,* Western Australian Federation of Sexual Assault Services (WAFSAS) Forum, Perth

Walker, J. 2008. *Unresolved trauma in parents and its implications in terms of child protection.* Community Care Inform. Accessed online 16/11/10 at http://www.ccinform.co.uk/Articles/2008/01/08/1975/