

4: Therapeutic Treatment Issues - Departmental Perspective Overview: Lisa Rodda, DHHS



History and context

Children and Young Person's Act (1989)

Prior to the development of the Children, Youth and Families Act 2005 (the Act), the Child Protection program found it difficult to respond to and intervene with families where children and young people exhibited Problem Sexual Behaviours (PSBs) or Sexually Abusive Behaviours (SABs). This was mainly due to:

- The legislation only allowed Child Protection workers to intervene if a child was being harmed but not harming others; and
- SABs engaged in by young people were deemed to be criminal matters. Little focus was placed on providing a therapeutic response that was not tied in any way with a criminal response.

At this time three therapeutic treatment services provided state-wide services for children engaged in harmful sexual behaviours.

These were:

- South East CASA,
- Berry Street (Shepparton),
- Children's Protection Society.

The Male Adolescent Program for Positive Sexuality (MAPPS) was only available to young people convicted of sexual offences.

Review of the Children and Young Person's Act (1989)

An extensive review of the Act was undertaken in 2002 to strengthen provisions regarding children at risk of abuse and neglect and to address the issues of cumulative harm. The review also provided the opportunity for then DHS ("The Department") to consult broadly with key stakeholders, including the Gatehouse Centre, Centres Against Sexual Assault, Children's Protection Society and the Australian Childhood Foundation.

The consultations revealed a number of concerning issues:

- Adult survivors of sexual abuse were disclosing they had engaged in problem sexual behaviours when they were young; and
- Child survivors and adult survivors disclosing they had been sexually harmed by an older child.

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Victoria Police also advised that many of the sex offences being committed, were committed by children and young people. This was in line with international research data. Given that many of the sexual offences were occurring in the family context, Victoria Police advised that many families did not want to pursue criminal charges or, if the young person was charged, it was very unlikely they would be found guilty of a sexual offence due to the young person not having the mental intent to understand that the behaviour constituted a crime (known as a *doli incapax* defence).

In summary:

A criminal justice response was often unsuccessful due to:

- ***Doli incapax*** – when the child was aged between 10 and 14 years, this defence was that the child was too young to possess the mental maturity to understand that what they did was **seriously** wrong, and thus did not possess the mental capacity to form intent to commit the crime. This often resulted in no criminal conviction, and thus no mandated treatment via MAPPS;
- ***One child's needs over the other's needs*** - Children engaged in SABs towards siblings or other close family members, placed families in an untenable position – forcing them to support one child's needs over the other's needs, making a criminal justice response almost impossible;
- ***Victims of the behaviours were often too young to provide an 'accurate' account of the abuse*** particularly; and
- ***Growing recognition*** that a therapeutic response with a focus on child development/attachment/trauma and inclusive of the family was more appropriate in most cases than a criminal justice response would be.

In 2004, the Victorian Law Reform Commission highlighted the need for an improved response to children and young people with Sexually Abusive Behaviours. The Commission concluded that neither the criminal justice system nor the Child Protection system responded adequately to young people who engaged in SABs.

All these factors combined to provide the landscape to shift the paradigm and view children engaging in harmful sexual behaviours as developmentally inappropriate and placing those children and young people 'at risk', with, in some circumstances, a Child Protection statutory response being required. As a result of this, the new *Children, Youth and Families Act 2005* (the Act) was able to include provisions to assist children and families where the child had engaged in harmful sexual behaviours.

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The provisions commenced in 2007, relating to children and young people aged 10 to under 15 years, and provided the legislative framework to support a systems approach for children by:

- Adding to the existing system, rather than seeking to replace it,
- Allowing for voluntary treatment access,
- Allowing for a criminal justice response.

Reports to child protection

Until recently, *The Act* made provisions for the Secretary of the Department of Health and Human Services to receive reports about children aged 10 years or over and less than 15 years, who exhibit Sexually Abusive Behaviours and are believed to need therapeutic treatment. These provisions are now extended to include young people aged 15 – 18 years. A Therapeutic Treatment report can be made by any community member, the Victoria Police or the Criminal Division of the Children’s Court.

Child Protection must investigate all therapeutic treatment reports to determine the nature and extent of the Sexually Abusive Behaviours and the appropriateness of a Therapeutic Treatment Order.

Child protection investigation

Child Protection’s investigation and assessment will focus on the child and parental response to the behaviour, and the risk the child poses to other children (including siblings or other children residing in the same out-of-home care placement).

Following the Child Protection investigation, a decision regarding the appropriate intervention with the child and family is made. Possible outcomes of the investigation include:

- No therapeutic treatment is required either due to the reported behaviours not being confirmed, or the child or young person and their family require other supports, but not therapeutic treatment, or
- A TTO is not appropriate as the family and child have indicated their willingness for the child to attend and participate in treatment voluntarily, or
- Although the family is ambivalent, with some support and time the family may be able to ensure their child receives any treatment required without the need for a TTO and so it would be appropriate for Child Protection to work with the family for up to 90 days from the report without applying for a TTO, or
- An application for a TTO would be appropriate, with the child remaining in their parent’s care, or

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- An application for a TTO is appropriate, along with an application for a TTPO, because placing the child in out-of-home care will be necessary for the treatment of the child or to assure the safety of the victims, or
- A Protection Application is required to ensure the child's safety, or
- The child's behaviours and criminal charges are so serious and it is Child Protection's assessment that the child's behaviours cannot be managed with a TTO, and criminal prosecution should be considered by Victoria Police, which might lead to conviction with resulting mandated treatment by a service such as MAPPS, overseen by youth justice.

Therapeutic Treatment Orders (TTO) and Therapeutic Treatment Placement Orders (TTPO)

A Therapeutic Treatment Order is made in the Family Division of the Children's Court, upon an application made by Child Protection. There is no finding of guilt in the Criminal Division of the Children's Court.

The Court is able to order a child into therapeutic treatment and, where necessary for that treatment, place the child in out-of-home care. The order can only be made if the Court is satisfied that:

- The child has engaged in harmful sexual behaviours; and
- The order is necessary for the child's access to and attendance at treatment.

A Therapeutic Treatment Placement Order grants parental responsibility for the child to the Secretary of the Department, but requires the parents to make long term decisions about the child. The order may include any conditions the Court considers to be in the best interests of the child including a condition regarding contact by the parent or other person/s with the child, and in the case of an Aboriginal child, a condition incorporating a cultural plan. The TTPO remains in force for the period and not exceeding the period of the TTO.

TTOs and TTPOs can be made for a period of 12 months and can be extended once, for a further period of up to 12 months. If the child turns 15 during the first 12 months of the TTO, the TTO can still be extended.

Managing Therapeutic Treatment Orders

Child Protection is responsible for the management of the TTO and the TTPO. It is expected that Child Protection will have regular face-to-face contact with the child, family and SABTS provider to monitor compliance with the effectiveness of the order. SABTS should be provided with a copy of the Order.

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SABTS reports to the Criminal Division of the Children's Court

Where a child's criminal charges have been set aside for the duration of the TTO, Child Protection must provide a report to the Criminal Division on the completion or revocation of the order. The report must set out details about the child's attendance at and participation in the therapeutic treatment program. The Court may direct Child Protection to provide a copy of the report to the child and the prosecutor.

Child Protection will request a report from the SABTS provider, to provide information to the Court which will satisfy the Court to dismiss the child's criminal charges. When the Court is considering dismissing the child's criminal charges, the Court must have regard to:

- The child's attendance record with the SABT program,
- The nature and extent of the child's participation in the program (it is not enough to attend – the child *must* engage in treatment),
- Whether or not the child's participation was to the satisfaction of the therapeutic treatment provider,
- The opinion of the therapeutic treatment provider as to the effectiveness of the treatment.

A child attending voluntarily who disengages from treatment or is attending but not engaging would likely meet the criteria for a TTO, as they have not engaged in voluntary treatment. In regards to the fourth point – whether or not the child's participation was satisfactory; **this provision also applies to children who have engaged in treatment in a voluntary capacity.**

Collaboration

Collaboration is the key to maximising the opportunity for the child to address the behaviours. SABTS are funded to work with the child, their family and the child's social support network and to provide regular feedback to Child Protection about treatment progress.

When the child is on an Order, regular meetings between the child, their family, Child Protection and the out-of-home care service provider where relevant, will promote a cohesive service response. SABTS should provide quarterly progress reports to Child Protection about the child's treatment. Expectations about meetings and reports should be negotiated by Child Protection at the outset, so the child, their family and other service providers are aware of their responsibilities under the TTO. The SABTS provider is expected to alert Child Protection to any issues that may place the child or other children at risk, or where the family does not engage in treatment to the satisfaction of the SABTS provider.

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Further disclosures of harmful sexual behaviours whilst in therapeutic treatment

Any statement made by a child when participating in therapeutic treatment, either voluntarily or whilst subject to a TTO, is not admissible in any criminal proceedings in relation to charges against the child, associated with the harmful sexual behaviours. However, evidence obtained from other sources may still form a basis for criminal charges.

This provision (*section 251*) does not remove or lessen the responsibility of the SABTS provider, or mandated professional to make a report to Child Protection where they believe a child is in need of protection. The SABTS agency must report all disclosures of abuse of another child to Child Protection to enable investigation and notification to police. The young person may still be charged with a criminal offence where police have been able to obtain independent evidence to pursue the charges.

Therapeutic Treatment Board

The Therapeutic Treatment Board provides advice to the Secretary of the department (Child Protection) regarding the suitability of a TTO for a child aged 10 to under 15 years and where they have engaged in SABs. The Board is made up of representatives from:

- Public Prosecutions;
- Victoria Police;
- Health Services; and
- DHHS.

Appointments are made via the Governor in Council and are usually for three years with a possible extension of a further three years.

Reports to the Therapeutic Treatment Board

Where Child Protection receives a report from Victoria Police or the Criminal Division of the Children's Court, or where a report relates to an existing Child Protection client, the case must be referred to the Board for advice, regardless of whether Child Protection recommends a TTO or not.

Child Protection will prepare a report to the Board and may also request a report from the SABTS provider, if the provider has previously worked with, or is currently working with the family. The SABTS provider's report should provide information about the child and family's previous engagement with their service.

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Advice from the Therapeutic Treatment Board

The TTB recommendation is limited to advising the Secretary on the appropriateness of seeking a TTO. The advice is based on the information provided in the referral from Child Protection, including any reports from SABTS or Victoria Police. The advice is not shared outside Child Protection unless there is a Court subpoena.

Appendix 1

Resources

<http://www.cpmanual.vic.gov.au/>

<http://www.cpmanual.vic.gov.au/our-workforce/operating-model/workforce-structure-and-roles>

Child Protection intake numbers

Division	Tel Number	Details
North Division Intake	1300 655 795	North Division has one child protection intake located at DHHS Preston covering the following areas and LGAs: <ul style="list-style-type: none"> Banyule, Buloke, Darebin, Campaspe, Central Goldfield, Gannawarra, Greater Bendigo, Hume, Loddon, Macedon Ranges, Mildura, Moreland, Mount Alexander, Nillumbik, Swan Hill, Whittlesea, Yarra.
South Division Intake	1300 655 795	South Division has one child protection intake located at DHHS Dandenong, and covers the following areas and LGAs: <ul style="list-style-type: none"> Bass Coast, Baw Baw, Bayside, Cardinia, Casey, East Gippsland, Frankston, Glen Eira, Greater Dandenong, Kingston, Latrobe, Mornington Peninsula, Port Phillip, South Gippsland, Stonnington, Wellington.
East Division Intake	1300 360 391	East Division has one child protection intake located at DHHS Box Hill covering the following areas and LGAs: <ul style="list-style-type: none"> Alpine, Benalla, Boroondara, Greater Shepparton, Indigo, Knox, Manningham, Mansfield, Maroondah, Mitchell, Moira, Monash, Murrindindi, Strathbogie, Towong, Wangaratta, Whitehorse, Wodonga, Yarra Ranges.

SECASA
PO Box 72
East Bentleigh 3165
Tel: 03 9928 8741

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Division	Tel Number	Details
West Division Intake Rural and regional only	1800 075 599	West Division has one child protection intake located at DHHS Geelong covering the following rural and regional areas and LGAs: <ul style="list-style-type: none"> Ararat, Ballarat, Colac-Otway, Corangamite, Glenelg, Golden Plains, Greater Geelong, Hepburn, Hindmarsh, Horsham, Moorabool, Moyne, Northern Grampians, Pyrenees, Queenscliffe, Southern Grampians, Surf Coast, Warrnambool West Wimmera, Yarriambiack.
West Division Intake Metropolitan only	1300 664 977	West Division Metro area reports are managed by North Division Intake located at DHHS Preston for the following areas and LGAs: <ul style="list-style-type: none"> Brimbank, Hobsons Bay, Maribyrnong, Melbourne, Melton, Moonee Valley, Wyndham.
After hours Child Protection Emergency Service	13 12 78	5.00pm - 9.00am Monday - Friday 24 hours on weekends and public holidays A state-wide after-hours emergency service that receives new reports, as well as concerns for existing child protection clients who are considered to be at immediate risk and require urgent after-hours service.

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