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Your Ref:
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The Secretary
Select Committee on Child Protection
Parliament House
Hobart TAS 7000

Dear Secretary

SELECT COMMITTEE ON CHILD PROTECTION

Thank you for your letter of 25 October 2010 and for the Committee's invitation to make a submission to the above Inquiry.

As you may be aware I have recently been appointed as the Tasmanian Commissioner for Children, which is an independent office responsible to the Parliament of Tasmania.

The powers and functions of the Commissioner for Children (hereafter referred to as "CfC") are set out in Part 9 of the *Children, Young Persons and Their Families Act 1997*.

The major focus of my role is to promote the rights and well being of children and young people as well as providing advice to the portfolio Minister on policy, practice and services provided for children and young people in Tasmania. This also includes any laws affecting the well being and protection of children.

BACKGROUND AND CONTEXT: A SUMMARY OF SIGNIFICANT REFORMS

Responsibility for administering the child protection system in Tasmania lies within the Department of Health and Human Services

(DHHS) which has statutory responsibilities in relation to vulnerable children and young people, including child protection and youth justice.

Key reforms within the child protection system have been undertaken by the DHHS since early 2009 – particularly the new Gateways, establishment of Integrated Family Support Services, outsourcing of Out of Home Care services, establishing therapeutic residential care services, and in Youth Justice and Early Years – and are at various stages of implementation. Consequently, it is not yet possible to obtain a clear understanding of the impact these reforms will have on the well-being and protection of children and young people in Tasmania.

These reforms are based on various reviews of the child protection system including:

- In October 2006 the then Government released the *Report on Child Protection Services in Tasmania* prepared by Alison Jacob (Deputy Secretary Human Services) and the then Commissioner for Children, David Fanning.
- During 2007 and in early 2008 KPMG undertook comprehensive reviews of the Tasmanian child and family service system focussing particularly on child protection, out of home care and family services.

In June 2008 the Government released *New Directions for Child Protection in Tasmania : An Integrated Strategic Framework* which outlined a comprehensive reform process across the entire Tasmanian child and family services sector.

According to *New Directions* the whole of system reform envisaged would:

- Provide a service system for children and families based on a continuum ranging from primary and preventative services through to tertiary and statutory services
- Strengthen the child protection system to better respond to at risk children in collaboration with the family services system
- Build a family services system that is able to respond to children and families with emerging problems

- Reform the out of home care system for children so that it can provide a range of quality placement types for children with a range of support and care needs.¹

Nine principles were developed to support and inform reforms across child protection, family services and out of home care² and strategic frameworks for implementing reforms in the three areas of child protection, family services and out of home care were developed.³

It is beyond the scope of this Submission to discuss in detail the reform agenda for the child protection system in Tasmania and committee members are respectfully directed to the June 2008 Report *New Directions for Child Protection in Tasmania: An Integrated Strategic Framework*.

However, some key reforms relevant to this Submission follow.

1. Gateways

A key recommendation of the KMPG reforms was for there to be a community based intake service for vulnerable children and their families, located in each of the four Disability, Child, Youth and Family Services areas with a co-located senior Child Protection worker in each of the services.

In 2009, four new Gateway and Integrated Family Support Services (IFSS) commenced operation. The primary purpose of each Gateway is to provide a single, well-publicised access point for individuals, agencies, services and other professionals to refer clients for services and to obtain information and advice in relation to family support and disability services in each of the four Disability, Child, Youth and Family services regions. The services are operated by Mission Australia (in the South East and North Western areas) and Baptcare (in the northern and south western areas).

Gateways assess families' needs using a common assessment framework and manage a case allocation process with senior caseworkers from Integrated Family Support Services (IFSS) and other services.

¹ Page 3 *New Directions for Child Protection in Tasmania: An Integrated Strategic Framework* June 2008.

² *New Directions for Child Protection in Tasmania: An Integrated Strategic Framework* June 2008, at Page 5.

³ A useful outline of elements proposed as part of each strategy is contained in the Executive Summary to the 2008 Report *New Directions for Child Protection in Tasmania: An Integrated Strategic Framework*.

2. Family Support Services

Reforms to the provision of family services to vulnerable and at risk children and young people in Tasmania are designed to complement reforms to child protection and out of home care. The 2008 Report identified two target groups for Family Services:

- children and young people whose development is at risk because of adverse family circumstances- the aim of intervention is to address concerns and ameliorate negative impact before child protection intervention is warranted
- Children and young people engaged with the child protection service- work with this client group requires a collaborative response from Child Protection and family services to reduce risk and enhance well-being.

A Quality Assurance Framework developed by DHHS in consultation with the sector is expected to include:

- clear service specifications through reformed funding and service agreements
- Key performance indicators
- Performance standards
- Monitoring and evaluation mechanisms.

3. Child protection practice

The reforms aim to implement a practice model for child protection that is clearly focused on decision making in the best interests of a child, underpinned by a strong evidence base and comprehensive information sharing and case planning.

The reforms rely on child protection and other government and non-government services working collaboratively to ensure children are safe and well cared for and there are clear pathways between child protection and a range of service providers, including Family Services.

Mechanisms for enhancing collaboration and integration include the establishment of integrated care teams for children in care that are facilitated by out of home care service providers that include the child protection worker, carer and where possible a child's family and

parents. More inclusive case planning and information sharing are to occur with the aim of enhancing the well being of a child.

DHHS central office is to be responsible for quality assurance, strategic and operational policy direction, training, IT and complaints management.

4. Out of Home Care

Prior to the KPMG Report, DHHS was responsible for the delivery of the majority of out of home care services, with a small number contracted to NGO providers.

Through the reform process out of home care services will provide placements and placement support under funding and service agreements with DHHS.

It is anticipated that service providers will provide care within a quality assurance framework and participate in performance monitoring. Practice standards and key performance indicators are to be developed and incorporated to ensure the services are accountable for the service they provide.

Central Office DHHS responsibilities will be focussed on supporting the delivery of out of home care by NGOs including by:

- Development of policies, procedures, guidelines, service specifications and strategic planning
- Ensuring on-going quality and continuous improvement
- Managing budget development and overseeing funding and service agreements for out of home care services.

In this context, and by way of an example, residential (or "rostered") care is provided to children and young people who have complex needs requiring intensive 24 hour professional intervention and support which makes them unsuitable for a home based care placement (with a foster or kin carer). In May 2010, in accordance with KPMG's recommendations to outsource "rostered care", Anglicare Victoria and Anglicare Tasmania will provide Therapeutic Residential Care Services in the northern regions and the Salvation Army in partnership with Salvation Army Westcare will provide the service for the southern regions.

5. The legislative framework

Child protection in Tasmania occurs within a legislative framework made up of the following legislation:

- The *Children, Young Persons and Their Families Act 1997*, which sets out the framework within which notifications may be made and action taken to address notifications about children at risk of or experiencing abuse and neglect
- *Family Violence Act 2004*
- *Family Law Act 1975* (Cth)
- *Youth Justice Act 1997*.

In October 2006 the Government released its *Report on Child Protection Services in Tasmania*.

Recommendations in this Report were wide ranging, addressing identified deficiencies in child protection practice and Departmental policy and guidelines and within the legislative framework set out in the *Children, Young Persons and Their Families Act 1997*.

The *Children, Young Persons and Their Families Amendment Act 2009* was the first step in implementing legislative recommendations set out in the 2006 Report. Those amendments, which came into effect in August 2009, included the following:

1. Broader powers for the Secretary, Department of Health and Human Services (DHHS) (or Delegate) to share information relevant to the best interests of a child who is the subject of a report under the *Children, Young Persons and their Families Act 1997* (CYPTFA);
2. The ability for mandatory reporters under section 14 of the Act to notify concerns to the proposed Gateways as an alternative to notifying the Secretary through Child Protection Services. This amendment is intended to ensure that vulnerable children and families who may require access to community services, rather than a statutory child protection response, are referred appropriately in the first instance;
3. The ability for the Secretary to receive information concerning unborn children;
4. Greater options for permanent care arrangements in cases where reunification of a child with their birth families is not an option.

The amendments to information sharing and mandatory reporting were intended to facilitate and permit reforms to the child and family support system.

The amending Act also legislatively enshrined the Commissioner for Children's role as advocate for detainees under the *Youth Justice Act 1997*. This function is currently fulfilled with the assistance of the Ashley Youth Detention Centre (AYDC) Residents' Advocate who reports to the Commissioner for Children.

The balance of the 2006 Report's recommendations for legislative reform include consideration of:

- The object and principles of the CYPTF Act
- Terminology in the CYPTF Act
- The operating period for Voluntary Care agreements
- Flexibility regards adjournments in Court processes
- Removal and custody of a child without Court order
- Responsibilities of the Secretary as guardian
- Duration of an Assessment Order
- Advisory Panels.

Other proposals for legislative reform have been put forward, the effect of which would include the following:

- More flexibility to the Court regarding the length of care and protection orders
- Changes to the parties in child protection proceedings
- Procedural changes (eg as to the rules of evidence, capacity/standing to seek orders and file documents)
- Representation of children and young people in care and protection proceedings.

MAJOR ISSUES

Although implementation of the reform agenda outlined in the 2008 Report is in its early stages, it is possible to identify deficiencies in the system as it is presently operating. These deficiencies should be addressed immediately – especially if they are inconsistent with the philosophical values underpinning the reformed system and/or have the potential to undermine the quality of service now being provided by the NGO sector.

Some deficiencies represent gaps in service provision whilst others compromise the ability of the DHHS to ensure that service providers are held accountable for the quality of the services they provide.

1. Information sharing

Underpinning the ongoing structural reforms is a pronounced shift in emphasis to placing children and young people at the centre of service delivery and ensuring their needs are met in the context of early interventions, support for their family and the provision of services to enhance their well being. This in turn relies on collaborative and integrated approaches to service delivery and an emphasis on information sharing and shared case planning.

The following examples of deficiencies in information sharing suggest there is an immediate need to review legislation and practices to ensure that an integrated and collaborative approach to the safety and well being of children and young people can be implemented across Government and NGO services.

1.1 Information sharing and service provision generally

NGOs with an agreement with the Tasmanian Government to provide health, welfare, residential etc services wholly or partly for children are “personal information custodians” for the purpose of the *Personal Information Protection Act 2004*. This restricts the use of information obtained by these organisations.

Information sharing between Child Protection and Gateways is subject to the legislative provisions in the *Children Young Persons and Their Families Act 1997*, as amended in 2009 and facilitated by a November 2009 Memorandum of Understanding between Child Protection and Gateway Services.⁴

⁴ http://www.dhhs.tas.gov.au/data/assets/pdf_file/0016/51055/CP_Gateway_MoU_2009-11-27.pdf
Accessed 11 November 2010.

Staff working within Gateways, Integrated Family Support Services or any other organisations involved in the delivery of services to children and their families may share information received from clients with Child Protection if there are concerns regarding the safety and well being of a child.

Section 53B of the CYPTF Act provides that the Secretary of the DHHS may share information with an "information sharing entity"⁵ or may require that entity to provide relevant information when assessing a child's circumstances.

Although information sharing entities may share relevant information with each other it is only the Secretary of the Department (or an authorised officer under the CYPTF Act) that may compel production of relevant information.

Therefore Gateway Services are not empowered to compel production of relevant information from other agencies such as the Police or Mental Health.

Recommendation

I RECOMMEND that Government undertake a review of current practice and legislation governing information sharing as between Gateways and Government agencies to assess whether Gateway services are being denied access to information that would otherwise be relevant to the performance of their functions.

1.2 Interagency Support Teams

Interagency Support Teams (IASTs) currently operate for some young people who come in contact with the Youth Justice system who present with a range of multi-systemic problems such as education, child protection/housing etc. These teams include representatives from various Government agencies including education, police, youth justice and mental health. The purpose of the IAST is to bring together a range of services to plan for the young person in a manner that addresses all of their needs in a holistic way.

While the IAST is a positive initiative which has achieved positive outcomes and implemented effective interventions for many young people, the teams as they are currently constituted include only Government agencies, excluding NGOs from the process.

⁵ Defined in s3 of the *Children, Young Persons and Their Families Act 1997*.

In excluding NGOs the process excludes a significant number of services that may be involved with the young person or if not already involved may offer services which could be of significant assistance to the young person.

This raises the question of how the young person's needs can effectively be addressed when the most appropriate service may not be involved in the process. This could become even more problematic once out of home care is fully outsourced meaning that the service provider could be excluded from IAST meetings.

Recommendation

IT IS RECOMMENDED that if the whole of the young person's needs are to be addressed, as is the aim of the IAST, then NGOs must be included in the process and the current format and information sharing must be amended.

2. Standards

In June 2008 DHHS issued Action Plans for Family Services and for Children in Care. These documents set out the goals to be achieved during the reform process envisaged following KPMG's review of the child protection and family services systems.

Both Action Plans acknowledge that before implementation of the reforms detailed in the June 2008 *New Directions for Child Protection*, DHHS would need to undertake a range of tasks to:

- Build capacity in the NGO sector to provide a range of services to vulnerable and at risk children, youth and their families
- Support service delivery through the development of appropriate practice standards and guidance, protocols and training
- Ensure that monitoring and reporting mechanisms are in place and reflected in adequate funding and service agreements.

In relation to out of home care, it was acknowledged that no common standards existed for placements and those standards for carers and staff were inconsistent or not well implemented. National Standards for out of home care are being developed and it is likely they will be adopted for use in the Tasmanian out of home care system; however

until they are, there are no standards by which out of home care providers can be measure.

Additionally, the current capacity to ensure that services will comply with these or any other standards and can be monitored against compliance is severely restricted. This deficiency can be remedied by adoption of independent monitoring against the Charter of Rights for children and young people in out of home care and a Children's Visitors Program, initiatives discussed later in this Submission.

In relation to family services, it was acknowledged there were ad hoc and ineffective funding arrangements between DHHS and NGO service providers and that services generally worked in isolation from each other.

Recommendations

If contracted services are to work in partnership with government to ensure consistent and high quality practice, I RECOMMEND that common standards be adopted and that the performance of contracted services against them should be capable of independent monitoring.

I RECOMMEND FURTHER that consideration be given to requiring registration of NGO service providers, particularly in out of home care and for there to be periodic review of that registration status.

3. Family Violence

Safe at Home⁶ is an integrated criminal justice response to family violence where the safety of the victim is considered to be paramount. The first point of contact is through the Police.

A number of services were established or extended to meet the identified needs of adult and child victims and offenders or to create system linkages including but not limited to:

- Family Violence Response and Referral Line
- Victim Safety Response Team

⁶ For detailed consideration of Safe at Home refer to the March 2009 Success Works Discussion Paper issued in the context of the recent review of Safe at Home
http://www.safeathome.tas.gov.au/_data/assets/pdf_file/0004/124978/SAH_discussion_paper_FINAL-web.pdf

Accessed 11 November 2010 and the June 2009 Final Report of that review
http://www.safeathome.tas.gov.au/pubs/SAH_Final_Report_FINAL_240609.pdf
Accessed 11 November 2010.

- Court Support and Liaison Service
- Children and Young Persons Program (CHYPP)
- Family Violence Counselling and Support Service.

Family violence is a major contributor to the abuse and neglect of children and young people:

It is apparent that Safe at Home has had an impact on the number of Child protection notifications. Across the State notifications initiated through Safe at Home comprise almost one-quarter of all child protection notifications. Moreover, notifications through Safe at Home now account for the majority of all police child protection notifications.....It has been suggested that the increase in child protection applications may be partly ascribed to Safe at Home identifying families who are at risk. Rarely is any child protection application brought solely because of family violence. There are almost always issues of mental health, neglect, substance abuse and/or school non-attendance.⁷

Consequently, family services will come into contact with families experiencing family violence, necessitating coordination and cooperation between programs and services provided under the Safe at Home umbrella and those within family services as part of an integrated response to enhancing the safety of children and young people.

However, there is no integrated Family Violence strategy across Government and there are gaps in service provision because of policies adopted within the Safe at Home framework.

For example, the Family Violence Counselling and Support Service based in DHHS offers therapeutic counselling for children and their caregivers who have experienced trauma as a result of their experience of family violence. However the Service only receives referrals through Safe at Home. Therefore if it is recognised by a service provider that a child has a history of exposure to family violence but no Safe at Home intervention that child has no specialist service such as this to access.

Also it is our understanding that if the perpetrator is living in the family home the Family Violence Counselling Service will not provide services to the child.

⁷ *Review of the Integrated Response to Family Violence : Final Report* June 2009, Department of Justice, Success Works, page 82, relying on data from DHHS comparing sources for child protection notifications for the period February 2008-June 2008.

Recommendation

I RECOMMEND that access to Safe at Home children's counselling services be available to all children and young people who have been assessed as being affected by family violence and that adequate resources are made available to permit this to occur. I RECOMMEND FURTHER that no child should be denied counselling for family violence related issues on the basis that the perpetrator is living in the family home.

4. Mental Health

Child & Adolescent Mental Health Service (CAMHS) provides a free and confidential community-based service for children and adolescents (aged 0-18 years) who require specialist assessment and treatment for serious mental health problems.

There is a major challenge for CAMHS to move from a tertiary focus to a more integrated universal and secondary treatment focus. It is our understanding from children, young people, foster carers and service providers that it is very difficult to access services unless there are emergency issues, such as individuals having a psychotic episode.

A secondary treatment role would provide a preventative and early intervention approach to the assessment and treatment of children and young people. For example CAMHS could provide an assessment and intervention /treatment plan for a young person in out of home care as part of their care plan at the beginning of their placement.

This would provide carers with an understanding of the mental health issues and of appropriate interventions and monitoring of the child or young person's mental health status.

Further, the Crisis Assessment Teams (CAT) only operate from 8am - 8pm on weekends. Consequently, families, children and young people, particularly those in care, have to go directly to the hospital. This can be extremely difficult for families and those operating residential settings to manage, particularly if the young person refuses or is incapable of being transported. Often the only option left would be to call the Police for assistance. Additionally, because there is no secure adolescent facility within the hospital, children and young people are admitted and discharged within a short time frame or held on another inappropriate ward.

Recommendation

I RECOMMEND that a review is conducted into the Child and Adolescent Mental Health Service to ensure that this service has an early intervention and preventative focus. I RECOMMEND FURTHER that CAT teams operating hours are extended to 24 hrs a day/7 days a week and that a secure adolescent facility is established as a priority within the hospital.

5. Out of Home Care: case management

According to the August 2010 DHHS Progress Chart⁸ there were 896 children in out of home care, representing a 10.9% increase over the same period in the previous year, which, according to the Progress Chart document:

..[is] partly explained by the tendency for children admitted to care to remain in care. Factors such as low family income, parental substance abuse, mental health issues and family violence tend to lengthen the time these children remain in care.⁹

Current reforms to out of home care are occurring in the context of out sourcing service provision to the NGO sector. Consideration should be given to contracting case management to the out of home care provider.

This would require the establishment of a case management coordination unit within child protection that would provide both a placement co-ordination and contract case management function in partnership with the NGO provider. This in turn would allow child protection to focus on case planning and statutory obligations regarding the child or young person.

It would also provide greater stability and better outcomes for children and young people by having the organisation that cares for them on a daily basis also case manage them. Intensive case management for high needs clients would need to be incorporated into this model.

Furthermore, we understand that a reunification service is to be established in 2011, with NGO agencies working in partnership with child protection to assess and provide ongoing support to children and families where reunification has been identified as an option.

⁸ http://www.dhhs.tas.gov.au/news_and_media/?a=63479 page 17

Accessed 11 November 2010; the Chart measures performance for the 12 months to the end of June 2010.

⁹ Ibid.

Such a service would need to be adequately and fully resourced to enable it to deal effectively and efficiently with children and young people who have been placed in care for the first time.

Recommendation

I RECOMMEND that contract case management is explored by DHHS and trialled in the first instance with current NGOs providing residential services to children and young people and that those NGOs are adequately resourced so as to permit them to undertake this function.

6. Youth Justice

6.1 Bail options and post release services.

The greatest issue with ensuring that bail is available to all young offenders is not legislating to ensure that they are granted bail. Rather it is having sufficient bail options, including accommodation, in place so that they can be utilised by young offenders that require them

The current lack of options available when making a bail determination for a youth has led to a situation where many youths are placed on remand at the Ashley Youth Detention Centre (AYDC), the State's only correctional facility for youth offenders, because there is no alternative option. As a consequence, the majority of residents housed at Ashley are on remand, and at any one time it is estimated that at least 60% of the residents at Ashley are on remand.

There was evidence in the *Review of Juvenile Remandees in Tasmania* (Commissioner for Children, April 2006) that sometimes Magistrates are inclined to order "welfare remand", that is, ordering custodial remand in order to secure safe and adequate physical housing for a bail applicant.

In April 2008, the Government issued its *Response to the Legislative Council Select Committee inquiry into Ashley, Youth Justice and Detention*. In this Response the Government indicated that the development of bail options was a priority that was being considered as part of the 2008/2009 budget estimates. Similarly in May 2008, the then Commissioner for Children was invited by the Department of Police and Emergency Management to comment on a Bail Alternatives

Business Case. Despite numerous proposals for bail options over the past few years, failure to implement any of the proposed options means there remains a lack of services for young people who continue to be unnecessarily remanded to AYDC.

Although as a percentage of all young people in detention on any given day the number of young people on remand is high, when one considers the raw numbers the reality of the small number of services required to prevent these young people being remanded to AYDC is more apparent. On the day of writing there are 26 young people being held at AYDC. Of these 26, 12 are on remand.¹⁰ Many are on remand for breaching their bail conditions, but it is not apparent whether these breaches were a significant threat to public order and safety or whether they were breaches of reporting, residence or association conditions.

The potential for young people to be diverted from remand may therefore result in significant reduction in the numbers of young people residing at AYDC. A reduction in the number of youths remanded at AYDC would have significant cost benefits, once – as has been pointed out by the Management of AYDC – that reduction is sufficient to close a unit and effect staff roster changes.

The funds saved by diverting young people from incarceration in AYDC could be redirected to alternative accommodation and support services to effectively address the underlying causes of offending behaviour.

During recent consultations with residents of AYDC several of the residents indicated that they actually preferred being placed on remand rather than being bailed in the community as they were provided with stable accommodation, clothing and food and had access to a variety of programs including education that they would not have if they remained in the community.

This information provides an excellent starting point when establishing bail options for young offenders and encapsulates exactly what the services must include if they are to be effective for their clientele.

Ashley in conjunction with Youth Justice provide post release planning and support to residents exiting Ashley. The new SITS and Same House Different Landlord programs have recently been established by Centacare and Colony 47 to provide ongoing support/case management and housing to people leaving prison, Ashley and

¹⁰ Ashley Daily Roll, Department of Health and Human Services, 4 November 2010.

residential care as well as mental health clients. However the target numbers for these services are low.

The majority of Australian states have developed a range of bail options and post release supported accommodation services for young offenders. These services often include accommodation and case management or supervision which allows the young person to have access to community based services addressing education, employment, health, substance abuse and other lifestyle issues. Such services have proven to be effective in reducing the remand populations in the youth detention centres within these states.

Recommendations

I RECOMMEND that a bail options program is established immediately and adequately resourced to ensure that young people on remand have appropriate, secure community based accommodation and support to assist them. I RECOMMEND FURTHER that the Specialist Intervention Tenancy Service (SITS) and Same House Different Landlord Programs resources are increased by Housing Tasmania to meet the needs of young people exiting Ashley.

6.2 Dedicated Children's Magistrates

It has often been argued that as in other jurisdictions a specialist children's court should be created within Tasmania to hear all matters involving children and young people. While the creation of a children's court has been rejected on the grounds that Tasmania is too small to warrant the dedication of resources that the creation of a separate children's court would require, the need for a young person to be dealt with by someone who is aware of the specific issues related to youth offending remains.

To address this issue the Magistrates Court of Tasmania will pilot a program in which a dedicated Magistrate will hear all matters related to Youth Justice. The aim of this process is not only to ensure that the Magistrate is an "expert" in youth justice matters but also, by having someone who is dedicated to hearing these matters, hearings can be expedited, ensuring that cases are able to come before the court in a reasonable time without long adjournments resulting in the case lingering on and in some cases young people spending unreasonable amounts of time on remand at Ashley Youth Detention Centre.

Recommendation

If the Children's Court Youth Magistrate pilot is successful, IT IS RECOMMENDED that it be expanded to include all issues related to children and young people including child protection matters as the benefits of having a dedicated Magistrate would be equally as valuable in this area.

7. Legislative Reform

Other jurisdictions have engaged in wide ranging inquiries into their child protection systems or aspects thereof. For example, recommendations made by the Victorian Law Reform Commission in its recent comprehensive report *Protection Applications in the Children's Court* are potentially relevant to Tasmania and are deserving of careful consideration.

Child protection systems should be amenable to ongoing and continuous improvement through regular review and assessment to ensure best practice and child centred strategies are at the forefront of the system. Piecemeal reform over an extended period runs the risk of overlooking the need for major reform and assessment of underlying principles.

Recommendation

I RECOMMEND that there be a complete overhaul of the legislative framework within which child protection in Tasmania is practised and in that context, the review body could take account of all outstanding recommendations for reform that require or involve legislative action, and make recommendations for reform to be contained in an entirely new Act.

Recommendations for specific issues to be included in a review are set out below.

7.1 *Legislate for Standards governing and regulating service delivery*

- Charter of Rights for Children and Young People in Out of Home Care

- Provisions governing the registration and monitoring of out of home care and/or other community based child and family services
- Standards for the provision of services, including out of home care.

7.1.1 Charter of Rights for Children and Young People in Out of Home Care

In June 2009 the Minister for Human Services the Hon Lin Thorp MLC launched the Charter of Rights for Children and Young People in Out of Home Care in Tasmania.

The Charter was developed by a Steering Group chaired by my predecessor over a period of approximately 13 months. During this process the views of various individuals and organisations were considered by the Steering Group which also comprised representatives from CREATE, the DHHS and the Foster Carers Association of Tasmania (FCAT).

Consultations occurred with members of the Children and Young Persons Advisory Council established under s.81(1)(a) of the *Children Young Persons and Their Families Act 1997* ("the CYPATF Act"), the Children and Young Persons Consultative Council ("the Adult Advisory Council") established under s.81(1)(b) of that Act, non-Government organisations involved in the provision of out of home care, child protection workers, young people who are in/have been in care (via CREATE), FCAT, the Department of Education and a Children and Young Persons Reference Group.

Particular importance was placed on the views and opinions of children and young people about the content, drafting and design of the Charter.

Administratively DHHS has agreed that it will be responsible for distribution of the Charter documents to all children and young people entering out of home care.

The Charter also provides a framework for the important work of Children's Visitors pursuant to the pilot Children's Visitors Program being run from this Office. As such, it provides a means for measuring the experiences of children in care and for promoting a more integrated, transparent and consistent standard of practice amongst carers and agencies involved in the delivery of out of home care services.

In New South Wales, Victoria and Queensland official acknowledgement of the importance and relevance of Charters is reflected in the embedding of those Charters in legislation governing child protection and out of home care.

Recommendation

I strongly RECOMMEND immediate amendment of the *Children, Young Persons and Their Families Act 1997* to reflect the importance of such a Charter and the continuing obligation upon either the Department or the portfolio Minister to promote compliance with the Charter by all agencies and carers involved in the provision of out of home care.

Whether the actual text of the Charter is incorporated in legislation (as is the case in Queensland) or whether further consultations should occur before any legislative acknowledgment are matters for further consideration.

7.1.2 Provisions governing the registration and monitoring of out of home care and other community services

Part 3.3 of Chapter 3 of the *Children, Youth and Their Families Act 2005* (Vic) provides for the establishment, registration and monitoring of community services.

The Secretary may register a body as a community service if, inter alia, it is established to provide services to meet the needs of children requiring care, support, protection or accommodation and of families requiring support and that body can meet relevant performance standards.¹¹ Generally registration has effect for 3 years.

There are 3 categories of registration:

- (a) out of home care service
- (b) community based child and family service
- (c) a prescribed category of service.

Once registered, a community service provider must:

- (a) provide its services in relation to a child in a manner that is in the best interests of the child; and

¹¹ Section 46 *Children, Youth and Families Act 2005* (Vic).

- (b) ensure that the services provided by the service are accessible to and made widely known to the public, recognising that prioritisation of provision of services will occur based on need; and
- (c) participate collaboratively with local service networks to promote the best interests of children.¹²

The Secretary is empowered to conduct inquiries relating to any matter arising from the manner in which a community service performs its functions.¹³

Similarly, Part 3.4 of Chapter 3 of the Victorian legislation provides for a registration system for persons who provide out of home care as a means of promoting protection for children in out of home care.

Recommendation

I RECOMMEND that consideration be given to introducing a legislative scheme similar to the Victorian model providing for registration of community services that provide out of home care and /or child and family services and for registration of individuals providing out of home care in Tasmania.

7.1.3 Standards for the provision of services, including out of home care

In Victoria, s58 of the *Children, Youth and Families Act 2005* provides as follows:

- (1) The Minister may from time to time determine performance standards to be met by community services.

Section 59 describes what performance standards may cover:

Performance standards may be made in respect of any matter relating to the operation of a community service including, but not limited to—

- (a) governance;
- (b) probity;
- (c) information management;
- (d) financial viability;

¹² Section 61 *Children, Youth and Families Act 2005* (Vic).

¹³ Section 62 *Children, Youth and Families Act 2005* (Vic).

- (e) client care, including cultural standards applicable to client care;
- (f) pre-employment checks and pre-placement checks;
- (g) service delivery and case management;
- (h) privacy and confidentiality;
- (i) complaints management;
- (j) human resource management;
- (k) compliance with this Act and the regulations.

Community services must comply with the relevant performance standards applicable to that community service.¹⁴

Recommendation

I RECOMMEND that there be a legislatively enshrined obligation on relevant community services/NGO providers, particularly in out of home care, in Tasmania to comply with standards determined by the Minister.

7.2 Less adversarial procedures for resolving child protection concerns

The Terms of Reference for the Victorian Law Reform Commission's recent inquiry¹⁵ into that State's child protection system required it to review Victoria's legislative and administrative arrangements in relation to Children's Court processes in child protection matters. The terms of reference also directed the Commission to consider models that take a more administrative case management approach to child protection issues.

Broadly, the Commission concluded as follows:

6.29 The Commission believes that Victoria should move away from child protection procedures that closely resemble those used in summary criminal prosecutions. The processes used in child protection matters should be designed specially for this unique jurisdiction. Much can be drawn from experiences elsewhere in the

¹⁴ Section 60 *Children, Youth and Families Act 2005* (Vic); see also s46(1)(b) of that Act which includes the capacity of a community service to meet relevant performance standards as a factor relevant to registration.

¹⁵ Victorian Law Reform Commission – *Protection Applications in the Children's Court* – Final Report 19.

legal system to guide procedural changes that may minimise disputation while maintaining a focus on the best interests of children.

6.30 New procedures should reflect the fact that most child protection cases will be resolved by agreement. This is clearly a desirable outcome in proceedings of this nature when the parties will usually have important ongoing relationships.¹⁶

Even if Government accepted the arguments in favour of less adversarial child protection processes, I do not endorse further ad hoc and piecemeal amendment of the CYPTF Act to implement this reform. That sort of ad hoc amendment runs the risk of focusing only on Court processes and ignoring the possibilities for adoption of less adversarial processes at each stage of the child protection decision making process.

For example, greater use of Family Group Conferences and of agreed outcomes arrived at after discussion and input from all relevant service providers and agencies involved with a child or young person identified as being at risk of entering the child protection system, is entirely consistent with the reform agenda currently underway. Recourse to adjudicative Court processes would be a last resort, the focus being on provision of services to a child and family members to address issues and factors that would otherwise lead to a child or young person becoming embroiled in the child protection system.

Recommendation

I RECOMMEND Government inquire into the extent to which the child protection system- particularly Court processes- would benefit from adoption of less adversarial procedures.

8. Powers and Functions of the Commissioner for Children

8.1 *Independent monitoring by the CfC*

Because of the independence of the CfC it is uniquely placed to assume a robust and independent function as regards specific aspects of the child protection system.

The CfC is currently responsible for 2 projects which permit independent oversight and monitoring of matters relevant to the health and well being of children and young people in Tasmania:

¹⁶ Victorian Law Reform Commission – *Protection Applications in the Children’s Court* –Final Report 19, at page 209.

- Ashley Youth Detention Centre Resident's Advocate
- Children's Visitors Pilot.

8.1.1 Ashley Youth Detention Centre Resident's Advocate

The ability of the CfC to monitor and advocate on behalf of individual residents within Ashley Youth Detention Centre (AYDC) was provided for in the 2009 amendments to the *Children, Young Persons and Their Families Act 1997*. This function is fulfilled by the creation of a Resident's Advocate (RA) within the CfC office.

The RA visits AYDC on a weekly basis. There are on average about 30 young people, mainly males, resident in Ashley at any one time with a disproportionate representation of Indigenous young people. The RA connects with as many residents as possible each week through one to one meetings, group discussions, meals and informal discussions.

The RA has advocated on behalf of the residents on a number of issues and concerns that the residents have shared with her, and liaised with Staff so the matters could be resolved before escalation. The RA meets with Ashley Management on a fortnightly basis to raise resident issues as they arise and seek solutions to the issues on behalf of the resident.

Since the position was established in 2007 the RA has established successful relationships with both residents and staff at AYDC with the residents seeking out the RA for assistance when they have concerns about anything while within AYDC.

Recommendation

It is RECOMMENDED that the Government commit to ongoing and adequate resourcing for the Ashley Residents Advocate and that adequate resourcing be provided to the CfC for this purpose.

8.1.2 Children's Visitors Pilot

Following a Colloquium held by the CFC in May 2009 that provided an overview of some of the children's visiting programs operating across Australia and overseas and their benefits, Disability, Child, Youth and Family Services (DCYFS) agreed to fund the Commissioner for Children to commence a Children's Visitors Pilot in Tasmania for children in out of home care.

The Children's Visitors Pilot is being undertaken in the South of the state and will run for a period of 12 months from March 2010. Eighteen children aged 8-12 years agreed to take part in the Pilot and twelve volunteer Children's Visitors (CVs) have been recruited, trained and are supported to visit each child for one hour a month. The primary role of the CVs in the Pilot is to provide opportunities for children in long-term out of home care to speak with an independent person about what might be happening in their lives (good and not). The CVs promote the child's wellbeing using the Charter of Rights for Tasmanian children and young people in out of home care as a framework.

The 6 month independent evaluation of the Pilot has concluded that the presence of a CV in a child's life has raised issues that may not have otherwise surfaced, allowing them to be addressed for the child. After only 6 one hour visits more than half of the children involved have said that having their CV visit them has resulted in positive changes within their lives. The carers of the children involved, although at first hesitant about having an additional person in the child's life, have been largely supportive of the program.

Recommendation

It is RECOMMENDED that the CfC be appropriately funded to implement a Children's Visitors Program for all children and young people in out of home care AND IT IS NOTED that the Program's functions could be expanded to encompass monitoring of the proposed National Out of Home Care standards including ascertaining the views of children and young people as to whether the Standards are being adhered to. This independent monitoring role becomes particularly important in the planned outsourcing to NGOs of the out of home care system in Tasmania.

8.1.3 Independent Monitoring: Monitoring Implementation of Recommendations made by the CfC

In October 2010 the Government announced its response to recommendations made by my predecessor in his report of his Inquiry into the circumstances of a 12 year old child under guardianship of the Secretary.

Of the previous CfC's 45 recommendations, 15 were accepted by the Government, 19 were accepted with qualifications and 11 were not accepted.

I agree with the accepted Recommendations however I note there is no indication within the Government response of a timetable for implementation or of a mechanism for monitoring progress.

Recommendation

I RECOMMEND that the Minister for Children provide regular updates to the CFC on progress implementing those recommendations made by Paul Mason, the former Commissioner for Children, in his report of his Inquiry into the circumstances of a 12 year old child under guardianship of the Secretary and that were accepted by Government and that the DHHS agree to the provision of additional information upon a request being made by me for briefing regards progress.

8.2 *Complaint handling and "own motion" inquiries*

There has been some discussion recently about the CFC's functions and powers, which are set out in s79 and s80 of the *Children, Young Persons and Their Families Act 1997*.

For convenience s79 (1) is extracted in full below:

(1) The Commissioner has the following functions:

- (a) on the request of the Minister, to investigate a decision or recommendation made, or an act done or omitted, under this Act in respect of a child, other than a decision or recommendation made by the Court;
- (b) to encourage the development, within the Department, of policies and services designed to promote the health, welfare, care, protection and development of children;
- (c) on the request of the Minister, to inquire generally into and report on any matter, including any enactment, practice and procedure, relating to the health, welfare, care, protection and development of children;
- (d) to increase public awareness of matters relating to the health, welfare, care, protection and development of children;
- (e) on the Commissioner's own initiative or on the request of the Minister, to advise the Minister on any matter relating to the administration of this Act and the policies and practices of the Department, another Government department or any other person which affect the health, welfare, care, protection and development of children;

(f) on the Commissioner's own initiative or on the request of the Minister, to advise the Minister on any matter relating to the health, welfare, education, care, protection and development of children placed in the custody, or under the guardianship, of the Secretary under this or any other Act;

(fa) on the Commissioner's own initiative or on the request of the Minister, to act as an advocate for a detainee under the Youth Justice Act 1997;

(fb) to advise the Minister on any matter relating to the health, welfare, education, care, protection and development of detainees under the Youth Justice Act 1997;

(g) any other functions imposed by this or any other Act.

It has been suggested that the CFC have a function of "advocating for children under the guardianship and custody of the Secretary"¹⁷ and that the circumstances in which the CFC's could initiate an "own motion" Inquiry should be widened.

The Government response¹⁸ to the above Recommendation for an advocacy role suggests it could be considered as part of consultation on planned amendments to the *Children, Young Persons and Their Families Act 1997*, a position I support, because I believe it is appropriate for this and any other significant changes to the CFC's powers and functions to have the benefit of wide consultation and input by all relevant stakeholders.

Recommendation

I RECOMMEND that the Government engage in widespread consultations with all relevant stakeholders about the appropriateness or otherwise of widening the CfC's functions and powers to incorporate an "own motion" inquiry function and an advocacy function for children and young people under the guardianship and custody of the Secretary.

9. State of Tasmania Children and Young People Report

In 2008 the State government initiated the Kids Come First project which aims to develop an outcomes based framework for children and young people 0-17 years in Tasmania looking at key indicators

¹⁷ Recommendations made by Paul Mason, Commissioner for Children, in his *Report on his Inquiry into the Circumstances of a 12 year old child under guardianship of the Secretary*, July 2010.

¹⁸ http://www.dhhs.tas.gov.au/news_and_media/report_on_case_of_12-year-old_under_guardianship
Accessed 16 November 2010.

(health, well being, safety, learning and development) that are seen to reflect the influences of child, family and community service systems.

The *Kids Come First Report 2009* provides a snapshot of the health and wellbeing of children and young people in Tasmania and points to areas for future policy interventions.

The Kids Come First database is an integral part of this Project.

I understand there is need for further refinement of the existing framework for data collection to identify gaps in data collection and to facilitate continued data collection.¹⁹

Victoria has published a report on the state of children and young people for 2006, 2007 and 2008.²⁰ If the Kids Come First database is further developed and updated it has the potential to provide the data source for a regular report on the state of Tasmania's children and young people similar to that published in Victoria.

Recommendations

I RECOMMEND that there be ongoing support and adequate resourcing for the Kids Come First program, taking account of Recommendations contained in the 2009 Report.

I RECOMMEND FURTHER that the Minister for Children be responsible for producing an annual State of Tasmania's Children report.

CONCLUSION

I would appreciate the opportunity to provide a more detailed rationale by appearing before the Committee to give evidence and answer questions.

A list of Recommendations in this Submission is extracted at Appendix A for convenience and ease of reference.

¹⁹ *Kids Come First Report 2009-Outcomes for Children and Young People in Tasmania*, Tasmanian Government , page 73.

²⁰ Refer <http://www.apo.org.au/research/state-victorias-children-2008>

Accessed 15 November 2010 for the 2008 Report and noting information will be updated, as has occurred in relation to the 2007 and 2006 Reports.

I look forward to release of the Committee's Report.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a cursive representation of the name Aileen Ashford.

Aileen Ashford
Commissioner for Children

APPENDIX A – RECOMMENDATIONS MADE BY AILEEN ASHFORD THE COMMISSIONER FOR CHILDREN TASMANIA

1. Recommendation

I RECOMMEND that Government undertake a review of current practice and legislation governing information sharing as between Gateways and Government agencies to assess whether Gateway services are being denied access to information that would otherwise be relevant to the performance of their functions.

2. Recommendation

IT IS RECOMMENDED that if the whole of the young person's needs are to be addressed, as is the aim of the IAST, then NGOs must be included in the process and the current format and information sharing must be amended.

3. Recommendations

If contracted services are to work in partnership with government to ensure consistent and high quality practice, I RECOMMEND that common standards be adopted and that the performance of contracted services against them should be capable of independent monitoring.

I RECOMMEND FURTHER that consideration be given to requiring registration of NGO service providers, particularly in out of home care and for there to be periodic review of that registration status.

4. Recommendation

I RECOMMEND that access to Safe at Home children's counselling services be available to all children and young people who have been assessed as being affected by family violence and that adequate resources are made available to permit this to occur. I RECOMMEND FURTHER that no child should be denied counselling for family violence related issues on the basis that the perpetrator is living in the family home.

5. Recommendation

I RECOMMEND that a review is conducted into the Child and Adolescent Mental Health Service to ensure that this service has an early intervention and preventative focus. I RECOMMEND FURTHER that CAT teams operating hours are extended to 24 hrs a day/7 days a week and that a secure adolescent facility is established as a priority within the hospital.

6. Recommendation

I RECOMMEND that contract case management is explored by DHHS and trialled in the first instance with current NGOs providing residential services to children and young people and that those NGOs are adequately resourced so as to permit them to undertake this function.

7. Recommendations

I RECOMMEND that a bail options program is established immediately and adequately resourced to ensure that young people on remand have appropriate, secure community based accommodation and support to assist them. I RECOMMEND FURTHER that the Specialist Intervention Tenancy Service (SITS) and Same House Different Landlord Programs resources are increased by Housing Tasmania to meet the needs of young people exiting Ashley.

8. Recommendation

If the Children's Court Youth Magistrate pilot is successful, IT IS RECOMMENDED that it be expanded to include all issues related to children and young people including child protection matters as the benefits of having a dedicated Magistrate would be equally as valuable in this area.

9. Recommendation

I RECOMMEND that there be a complete overhaul of the legislative framework within which child protection in Tasmania is practised and in that context, the review body could take account of all outstanding recommendations for reform that require or involve legislative action,

and make recommendations for reform to be contained in an entirely new Act.

10. Recommendation

I strongly RECOMMEND immediate amendment of the *Children, Young Persons and Their Families Act 1997* to reflect the importance of such a Charter and the continuing obligation upon either the Department or the portfolio Minister to promote compliance with the Charter by all agencies and carers involved in the provision of out of home care.

Whether the actual text of the Charter is incorporated in legislation (as is the case in Queensland) or whether further consultations should occur before any legislative acknowledgment are matters for further consideration.

11. Recommendation

I RECOMMEND that consideration be given to introducing a legislative scheme similar to the Victorian model providing for registration of community services that provide out of home care and /or child and family services and for registration of individuals providing out of home care in Tasmania.

12. Recommendation

I RECOMMEND that there be a legislatively enshrined obligation on relevant community services/NGO providers, particularly in out of home care, in Tasmania to comply with standards determined by the Minister.

13. Recommendation

I RECOMMEND Government inquire into the extent to which the child protection system- particularly Court processes- would benefit from adoption of less adversarial procedures.

14. Recommendation

It is RECOMMENDED that the Government commit to ongoing and adequate resourcing for the Ashley Residents Advocate and that adequate resourcing be provided to the CfC for this purpose.

15. Recommendation

It is RECOMMENDED that the CfC be appropriately funded to implement a Children's Visitors Program for all children and young people in out of home care AND IT IS NOTED that the Program's functions could be expanded to encompass monitoring of the proposed National Out of Home Care standards including ascertaining the views of children and young people as to whether the Standards are being adhered to. This independent monitoring role becomes particularly important in the planned outsourcing to NGOs of the out of home care system in Tasmania.

16. Recommendation

I RECOMMEND that the Minister for Children provide regular updates to the CFC on progress implementing those recommendations made by Paul Mason, the former Commissioner for Children, in his report of his Inquiry into the circumstances of a 12 year old child under guardianship of the Secretary and that were accepted by Government and that the DHHS agree to the provision of additional information upon a request being made by me for briefing regards progress.

17. Recommendation

I RECOMMEND that the Government engage in widespread consultations with all relevant stakeholders about the appropriateness or otherwise of widening the CfC's functions and powers to incorporate an "own motion" inquiry function and an advocacy function for children and young people under the guardianship and custody of the Secretary.

18. Recommendations

I RECOMMEND that there be ongoing support and adequate resourcing for the Kids Come First program, taking account of Recommendations contained in the 2009 Report.

I RECOMMEND FURTHER that the Minister for Children be responsible for producing an annual State of Tasmania's Children report.

Aileen Ashford
Commissioner for Children
November 2010