

WA Branch Submission to the Review of the Commissioner for Children and Young People Act 2006 (WA)

March 2013

Introduction

The Australian Association of Social Workers (AASW) WA Branch welcomes the opportunity to provide a submission the Review of the *Commissioner for Children and Young People Act 2006*.

The Australian Association of Social Workers is the professional representative body of Social Workers in Australia, with more than 7000 members nation-wide. The social work profession is committed to the pursuit of social justice, the enhancement of the quality of life and the development of the full potential of each individual, group and community in society. Social Workers are recognised as a core professional group working with children and young people particular those who are vulnerable or disadvantaged to enhance their wellbeing.

General Comments

- The AASW endorses the continuation of an independent statutory office of the *Commissioner for Children and Young People* (the Commissioner) responsible to the Parliament of Western Australia. The enabling legislation must allow for the Commission to be a robust voice: a well resourced role with significant powers and a capacity to impact on public policy and public discourse as it relates to children and young people.
- We support the use, application and adherence to human rights frameworks (s20 (1) (b) United Nations Convention on the Rights of the Child) as appropriate to promoting, advocating and monitoring the well being of children and adolescents.
- The role, scope and activities of the Commissioner needs to remain directed to pursuing the rights, needs and aspirations of children and young people reporting directly to Parliament
- Proposed functions requiring the Commissioner to act on behalf of the government of the day should not be included in the role.

Our submission addressees in more detail three of terms of reference (Terms of Reference 2, 3 and 4).

Terms of Reference 2

Report on the extent to which the purpose of the Act, including the advocacy, promotion and monitoring of the wellbeing of children and young people, is being achieved (specifically but not limited to section 19 of the Act)

a) *Expanding the named priority categories (s20 (1) (a))*

Whilst the Act mandates the Commissioner's role relates broadly to the interests of all children and young people, with specific reference to Aboriginal and Torres Strait Islander children and young people and children and young people who are vulnerable or disadvantaged for any reason (Section 20,1(a)), in addition we believe there is merit in highlighting, within legislation,

- children and young people that are or have been in the care of State
- children and young people in detention
- refugee children and young people.

Children and young people in state care and in detention remain among the most vulnerable, and it is critical that the highest levels of scrutiny are applied to the appropriateness of the state sponsored care provided and the outcomes achieved for children and young.

Refugee children and young people is another category requiring particular attention. This category should encompass all refugee children and young people whether they are held in detention, are placed in community based settings, are unaccompanied minors or are with parents. Consistent with Human Rights conventions there is an obligation both legal and moral, to these particularly vulnerable children and young people.

b) *The identification of priority areas for advocacy, promotion and monitoring*

We commend the Commissioner's ongoing identification of priority areas to direct advocacy, promotion and monitoring activities. We support the continuation of an approach that emphasises examination of systemic issues impacting on children and young people and on promoting early intervention and prevention approaches. At the same time we endorse priority be direct to the experiences and needs of children and young people living in circumstance of heightened vulnerability as mandated in s(20)(1) of the legislation. We note to date there has been little attention to children and young people living with a disability and recommend this could be a future priority area.

c) *The conduct of special inquiries (s 19 (j))*

The Commissioner has undertaken one inquiry, the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia. The report was in the WA Parliament on 5 May 2011.

More use could be made of the function of special inquiries to gather a diversity of information on a critical matter to children and young people for the purpose of making recommendations on promoting their wellbeing. We recommended an inquiry be held into young people and the criminal justice system. The scope of such an inquiry could encompass amongst other things the intervention services provided from diversion to incarceration, with particular reference to access to education and training and mental health assessment and treatment.

d) Consulting with Children and Young People

We endorse the maintenance of s52 (2) requiring the Commissioner to establish Advisory Committee of children and young people in metropolitan and regional areas. At the same time mandated consultative mechanisms needs to extend beyond the use of Advisory committees. We recommend the inclusion in the legislation of the requirement to employ appropriate strategies to consult and involve children and young people.

The requirement for children and young people to be involved in the selection process (s7(3)) needs to be maintained in the legislation.

Terms of Reference 3

Examine what amendments to the Act are necessary to enable the Commissioner to operate as a 'one stop shop' for any complaint concerning child abuse regardless of the public sector agency that the matter relates to, as per recommendation 2 of the Inquiry into St Andrew's Hostel.

The AASW endorses the concept of developing a 'one stop shop' for any complaint concerning child abuse regardless of the public sector agency that the matter relates to. However the AASW does not support the Commissioner taking on this role. We consider that should the Commissioner take on such a role it would be a major change in direction and would diminish the capabilities of the Commissioner to maintain the focus and quality of the work that is already being taken. A 'one stop shop' would require the development of a complete new section within the Commissioner focused upon individual complaint investigation. Case by case complaint investigation would run counter to the primary function of the Commission to systemically pursue the rights, needs and aspirations of children and young people.

The AASW is of the view that a 'one stop shop' would be more appropriate within another other government agency whose focus is on complaint investigation. Suggested alternatives are the Ombudsman or the Public Guardian. These departments already undertake investigative activities, some of which relate to children and young people. The AASW recognises that if the Ombudsman or the Public Guardian were to develop the function of the 'one stop shop' for complaints concerning child abuse in a public sector agency there would need to be the development of a child focussed culture within the 'one stop shop'. One possibility could be for the 'one stop shop' to be operated by the Ombudsman or the Public Guardian but located as a section within the Commissioner so as to ensure a high level of child focus.

The AASW is of the view that whichever agency takes responsibility for the function of a 'one stop shop', its policies and procedures should have the consideration of how to protect whistleblowers that raise a complaint of abuse within their agency against any risk of victimisation or job loss.

Terms of Reference 4

Examine what amendments to the Act are necessary to facilitate recommended changes resulting from the review of the Working with Children (Criminal Record Checking) Act 2004 and any other relevant recommendations from legislative reviews or reports.

The AASW appreciates the essential and important child protection function that is achieved through all persons who work with children undergoing a Working with Children (WWC) criminal record check.

The AASW is of the view that the Children's Commissioner should continue to advocate for the placement of the working with children screening function to be relocated from the Department for Child Protection (DCP) to another body. We believe that there is a risk of potential conflict of interest under the present arrangement where DCP has a large part of its workforce that works with children and simultaneously a section of DCP is responsible for the criminal record checking of all persons who work with children, including those in its own Department.

The AASW notes that the Review of the Working with Children (Criminal Record Checking Act) 2004 examined the issue of having the WWC Screening Unit located within DCP and the potential for a perceived conflict of interest to arise. The finding in that report was that DCP had structured its administration to mitigate against such a risk. The Review noted that the potential for conflicts of interest would be resolved if the administration of the WWC screening function was the responsibility of a standalone agency. However the conflict of interest issue was not seen as sufficiently high to warrant that. The AASW does not agree with that view and would suggest that it would only take one event where a conflict of interest issue or perceived conflict of interest issue were to arise and become public to be extremely damaging to the reputation and integrity of the WWC Screening Unit, DCP and public confidence in the ability of the State to manage its child protection responsibilities.

The Report on the functions of the Commissioner: Working with children checks (Joint Standing Committee on the Commissioner, 2012) (the Committee) recommended the working with children checks function should not be administered by the Commissioner.

The Committee's rationale appeared to be a) in Western Australia the Commissioner has a 'broader focus' on children's issues than (solely) child protection matters and b) if the working with children checking function came to the Commissioner, a danger was that this broader focus would be lost or compromised.

This perspective is understood and supported by the AASW.

The AASW's submission on this issue is that the Commissioner should advocate for the placement of the working with children screening function to be relocated from DCP to another body. The AASW would recommend that the Commissioner undertake an analysis of agencies such as the Ombudsman or Public Guardian to consider if those agencies or another agency would be best suited to take on the role of Working with Children criminal record checking screening. The AASW considers that there would be merit in considering the Ombudsman or Public Guardian as staff in those agencies are not involved in direct service delivery to children.

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