



AASW
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**Australian Association
of Social Workers**

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*Response to the Legislative Amendment Review
Reference Committee Discussion Paper*

Advocacy for Children in Tasmania

Commentary – July 2013

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Introduction

The Australian Association of Social Workers (AASW) is the key professional body representing more than 7000 social workers throughout Australia. Social work is the profession committed to the pursuit of social justice, to the enhancement of the quality of life, and to the development of the full potential of each individual, group and community in society.

Concern for the wellbeing of children and young people has been a core element of social work practice internationally since the development of social work as a distinct profession. Significant numbers of social workers work in the child wellbeing and protection field in a range of roles including direct case work, management and policy. No other professional discipline is so immersed in the areas of knowledge that are essential for quality relationship-based child welfare practice. As a result, social workers are recognised throughout the world as the core professional group in child protection policy, management and practice.

The AASW is therefore pleased to provide the following commentary in response to the '**Advocacy for Children in Tasmania Discussion Paper**'.

Due to time restrictions, the AASW will not be making a detailed submission at this time but welcome further opportunities to contribute to the legislative reform discussion.

Advocacy

The AASW notes that 'advocacy' for the purposes of the 'Advocacy for Children in Tasmania Discussion Paper' is not defined in recognition that respondents may utilise whichever definition is meaningful to them. Advocacy for the purposes of this submission refers to actions that promote the wellbeing of children and mechanisms for identifying when their wellbeing may be compromised. For social workers, such actions are guided by the profession's values of respect for persons, social justice and professional integrity.ⁱ

Part 1: Issues for Consideration

Question 1

Do you consider the existing advocacy services for children and youth in Tasmania to be adequate? If not how can they be improved?

The AASW acknowledges the critical importance of the systemic advocacy role currently undertaken by the Children's Commissioner in relation to all Tasmanian children. The AASW understands this entails the promotion of "the rights and wellbeing of children and young people to the community, politicians and all levels of Government"ⁱⁱⁱ and is achieved through a range of activities including production of publications and submissions on a range of issues including "the health, welfare, care, protection and development of children in Tasmania"ⁱⁱⁱ. However the AASW believes that advocacy services for children and youth can and should be improved.

Recommendation:

The AASW endorses a public health model of child well being and protection as defined by the *National Child Protection Clearinghouse* and reflected in the *National Framework for Protecting Australia's Children 2012-2015*. The public health model suggests that "*primary, secondary and tertiary services are all critical elements in the child welfare and child protection system. However, a well-balanced system has primary interventions as the largest component of the service system, with secondary and tertiary services progressively smaller components of the service system. Investment in primary prevention programs has the greatest likelihood of preventing progression along the service continuum and sparing children and families from the harmful consequences of abuse and neglect.*"^{iv}.

The AASW believes this kind of service system must be underpinned by collaborative approaches to working with and between children, families, government and non-government agencies and communities. Accordingly, and in relation to the advocacy for children in Tasmania, the AASW recommends that effective advocacy, particularly for vulnerable children, requires an independent central advocacy body that has the power and mandate to identify, investigate and make recommendations regarding individual cases and systemic responses to relevant matters. The AASW believes these functions and powers are best situated within an appropriately resourced and legislated Office of the Children's Commissioner.

Question 2

Are existing advocacy services for children and youth who are likely to be, are, or have had involvement with Child Protection Services adequate? If not, how can they be improved?

The AASW acknowledges and commends the work of existing organisations that undertake an advocacy function in relation to vulnerable Tasmanian children and young people. This includes the CREATE Foundation in relation to children in out of home care; Save the Children in relation to young people exiting Ashley Youth Detention Centre; the Association for Children with a Disability (Tas); and, the Youth Network of Tasmania (YNOT), which acts as the peak youth body for the non-government youth sector.^v This is not to mention the number of community welfare organisations that undertake advocacy activities.

The AASW is concerned however that many of these bodies are small and significantly limited in their scope and capacity to respond to the needs of Tasmanian children, particularly vulnerable children, in a coordinated manner. The AASW believes that the capacity to effect systemic change is integral to improving outcomes for vulnerable children. Thus, given the lack of independent monitoring of the child protection and out of home care system, and in light of the “Governments stated intention to further devolve service provision to non-government organisations”^{vi}, a centralised advocacy function will be not only important, but necessary. The AASW suggests that the lack of a centralised body that can independently investigate, inquire and respond to issues facing vulnerable children and youth undermines the systemic integrity of current and future advocacy arrangements.

Recommendations:

The AASW recommends that:

- an Office of the Children’s Commissioner be the ‘peak advocacy body’ for children and youth in Tasmania and be resourced appropriately to provide coordination of all relevant advocacy initiatives,
- the Commissioner’s Office has responsibility for the independent monitoring of child protection and out of home care, and
- further consultation take place to explore options for the independent monitoring of the child protection and out of home care systems, particularly in light of the proposed devolution of related services.

Question 3

Are the existing advocacy services for children and youth who are likely to be, are, or have had involvement with Youth Justice (including Ashley Youth Detention Centre) adequate? If not how can they be improved?

The AASW commends the fact that the Children's Commissioner is legislated to act as an advocate for detainees under the Youth Justice Act 1997. However the AASW is concerned that the role of the Commissioner is not adequately defined in the *Children, Young Persons and Their Families Act 1997* (CYPFA).

Recommendations:

The AASW recommends that:

- s 79(1) of the CYPFA is reviewed to provide more clarity on the role of the Children's Commissioner in relation to advocacy for detainees under the Youth Justice Act 1997.
- support to young people at Ashley Youth Detention Centre (AYDC) include more formal collaboration and review processes between the Commissioner and AYDC management. The AASW suggests this should include a requirement that AYDC give due consideration and provide a formal response to the advice and recommendations of the Commissioner with regard to the 'best interests' of young people in detention,
- the AYDC are required to act on the advice and recommendations of the Commissioner with regard to the treatment or support of specific detainees.

Question 4

Are you aware of these appeal and review processes? Do you think that young people are aware of these processes? Do you have a view on whether the current processes for responding to individual complaints are adequate or sufficient? If not how might they be improved?

The AASW is aware of current appeal and review processes however believe these are not viewed by potential complainants as:

- accessible
- adequately resourced
- fair, equitable and free from bias

Further, AASW members report that current appeal processes through Departmental channels, the Ombudsman or Auditor General are seen to be overly complicated, time consuming and not generally promoted by child protection services.

AASW members have advised that it is very onerous for families and/or children or young people to begin a review or complaint process as they fear that such a process is likely to have negative ramifications on their standing within the 'system'. The power differential between the Child Protection Agency and the clients or other services involved in supporting children at risk, is significant. This results in many situations where workers, clients or families simply choose not to make a complaint as they believe that there is little chance of their concern being seriously considered. The AASW believes there is a community perception of a lack of independence of the current review and appeal process.

Recommendations:

The AASW recommends that:

- an additional, independent and child-focused complaints process is required,
- further consultation take place and consideration be given to the establishment of a Children's Guardian within the Office of the Commissioner for Children with responsibility to receive and respond to complaints and make recommendations on how services to vulnerable children and young people can be improved,
- information on current and any future complaints processes be made available to children, young people and their families or interested parties in clear, plain language and in a number of languages as required,
- consideration is given to how children and young people can be better supported through the complaints process.

Question 5

Please comment on how you perceive the need or otherwise for the role of Commissioner for Children to include the capacity to respond to individual complaints relating to children and youth in care.

The AASW understands it has been argued that the Commissioner for Children would be 'swamped' by the workload involved in accepting individual complaints, however we do not believe this is sufficient reason not to provide this service. Indeed, the possibility of system overload did not prevent the introduction of mandatory reporting of child abuse. Rather, we believe there is an ethical and professional obligation to provide processes that allow the most vulnerable members of our community access to an independent review of service delivery. Complaints or case reviews need to be seen in the light of an opportunity to improve the quality of services being provided rather than as exercise in 'blaming' a particular worker or family for 'failing' in their role.

Recommendations:

The AASW recommends that:

- further consultation take place to explore in more detail the role of the Commissioner for Children and the capacity to receive, investigate and respond to complaints relating to children and youth in care,
- further detailed consultation is undertaken to consider how the capacity to receive and respond to complaints will be resourced and reflected in the CYPFA.

Question 6

Do you think there needs to be a particular role of Guardian for the children and youth in Tasmania?

The AASW believes that the role of Guardian needs to be given further detailed consideration and that this requires further consultation with the sector and interested parties. As outlined in response to question 4, the AASW believes there may be merit in this approach and that the most appropriate mandate for such a position would be to oversee and monitor child protection and out of home care. The AASW believes this should also include the capacity to receive complaints. In any case and regardless of whether a Guardian role is established, the AASW believes that an independent complaints and oversight mechanism for child protection and out of home care is essential.

Question 7

Is there a need for the Commissioner for Children to initiate their own investigations, independent reviews and inquiries about particular children and circumstances and/or systemic issues?

Yes.

The AASW believes that the capacity to initiate own investigations, independent reviews and inquiries about particular children and / or systemic issues is fundamental to ensuring the integrity of the advocacy system as a whole and establishing the Commissioner for Children as independent of governmental influence and control.

Question 8

- a) *If there is a need for increased capacity to undertake independent reviews and inquiries for all children and youth in Tasmania;***

Yes. The AASW believes the Commissioner for Children would need further staffing and related resources to undertake independent reviews.

- b) *Should this be provided for all children and youth receiving State funded services or limited to services provided under the Children, Young Persons and Their Families Act 1997 and the Youth Justice Act 1997?***

The AASW believes the Commissioner for Children should be responsible for considering the needs of all children. We suggest this is consistent with the public health model of child wellbeing and protection as reflected in the National Framework for Protecting Australia's Children 2009-2020 and important in terms of achieving systemic integrity. However, the AASW also recognises the need to focus on advocacy for the more vulnerable children and young people in our community hence the recommendation that further consideration be given to the establishment of a Child Guardian or similar function within an Office of the Children's Commissioner. We believe both functions are essential.

Part 2: Powers

Question 9

What powers are required for the Commissioner to undertake the recommended functions?

As outlined above, the AASW believes a more comprehensive consultation and review process needs to be undertaken to adequately explore the range of issues raised in this discussion paper, and any related review on the powers of the Commissioner. However, the AASW provides the following broad recommendations based on our commentary to date.

Recommendations:

The AASW recommends that the Commissioner should have the power to:

- initiate investigations, reviews and inquiries
- access any and all information necessary to conduct such reviews in a comprehensive manner. The AASW believes this should include access, for example, to departmental files.
- require the participation and cooperation of AYDT and any child protection or out of home care service or support.
- make binding recommendations to improve systemic issues
- receive, investigate and respond to complaints relating to children and youth in care.

Question 10

Are these powers suitably placed in the Children's Young Persons and Their Families Act 1997 or do we require new legislation?

As indicated above, the AASW believes there may be merit in the establishment of a Guardian and therefore a Commission for Children comprising the Commissioner for Children and Children's Guardian, however we suggest further detailed consultation is required to explore and respond to this issue in more depth.

Regardless, and in light of recommendations regarding substantial reviews to the role and powers of the Commissioner for Children, the AASW believes new legislation may be necessary.

Part 3: Governance

Question 11

Please comment on any governance arrangements you think may enhance the role and capacity of the Commissioner for Children in meeting the needs of children and youth in Tasmania.

The AASW will not be making a detailed response in relation to governance arrangements required to enhance the role and capacity of the Commissioner at this time, however as indicated above the AASW believes that it may be necessary and appropriate to establish a Commission made up of the Children's Commissioner and Children's Guardian as well as dedicated support staff.

In addition, and in line with the AASW's vision of the child wellbeing and protection system, we believe that children and young people are best supported when the service system adopts a collaborative approach to advocacy issues.

Conclusion

The AASW believes that the advocacy system in Tasmania can and should be improved. We believe such improvements should be underpinned by a commitment to systemic integrity, which we suggest relies on formal collaboration among and between children, families, government and non-government agencies and communities facilitated by a centralised advocacy peak body. This advocacy body should represent the needs and interests of all children and vulnerable children with differential processes and responses to these groups as required. The AASW believes a Children's Commission is best placed to undertake this role. However, the AASW also recognises that such an arrangement will require a review of the powers and functions of the Children's Commissioner and we believe that further detailed consultation is required to explore these issues and how they may be reflected in legislative terms.

In any case, the AASW strongly supports and recommends the need for an independent body that can investigate and respond to individual and systemic issues within the child protection and out of home care sectors. We believe this will become increasingly critical in the context of the devolution of child welfare services. The AASW does not have strong views on whether this function can and should be carried out by the Commissioner for Children or whether a Children's Guardian needs to be established with responsibility to oversee the child protection system, however we do believe that such a function must exist and that this should include the capacity to receive, investigate and respond to complaints at an individual and systemic level with accordant legislative mandate and resourcing.

We welcome the opportunity to contribute to this discussion as the legislative review process progresses.

Prepared in collaboration with AASW Tasmania and submitted for and on behalf of the Australian Association of Social Workers Ltd



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References

Australian Association of Social Workers 2010, *Code of Ethics*, AASW Canberra.

Australian Institute of Family Studies 2011, 'Defining the public health model for the child welfare services context' accessed 7 March 2013, <<http://www.aifs.gov.au/nch/pubs/sheets/rs11/rs11.pdf>>

Commissioner for Children 2013, 'Services', accessed 7 July 2013, <<http://www.childcomm.tas.gov.au/services/>>

Commissioner for Children 2013, 'Submission to the [Legislative Reform Project](#) (Children, Young Persons and Their Families Act 1997)', retrieved 7 July 2013 from <<http://www.childcomm.tas.gov.au/wp-content/uploads/2013/02/CfC-Submission-Legislative-Reform-Project-CYPF-Act-cover-lett-Sub-2013-02-19.pdf>>

Youth Network of Tasmania 2013, 'About Us', accessed 7 July 2013, <<http://www.ynot.org.au/about-us>>

ⁱ Australian Association of Social Workers 2010, Code of Ethics, AASW Canberra.

ⁱⁱ Commissioner for Children 2013, 'Services', accessed 7 July 2013, <<http://www.childcomm.tas.gov.au/services/>>

ⁱⁱⁱ Commissioner for Children 2013, 'Submission to the [Legislative Reform Project](#) (Children, Young Persons and Their Families Act 1997)', retrieved 7 July 2013 from <<http://www.childcomm.tas.gov.au/wp-content/uploads/2013/02/CfC-Submission-Legislative-Reform-Project-CYPF-Act-cover-lett-Sub-2013-02-19.pdf>>

^{iv} Australian Institute of Family Studies (2011). Defining the public health model for the child welfare services context. <http://www.aifs.gov.au/nch/pubs/sheets/rs11/rs11.pdf>, accessed 7/03/2013

^v Youth Network of Tasmania 2013, 'About Us', accessed 7 July 2013, <<http://www.ynot.org.au/about-us>>

^{vi} Commissioner for Children 2013, 'Submission to the [Legislative Reform Project](#) (Children, Young Persons and Their Families Act 1997)', retrieved 7 July 2013 from <<http://www.childcomm.tas.gov.au/wp-content/uploads/2013/02/CfC-Submission-Legislative-Reform-Project-CYPF-Act-cover-lett-Sub-2013-02-19.pdf>>