

Our ref: 348

10 December 2018

Engagement and Innovation Division
Department of Communities Tasmania
GPO Box 65
Tasmania 7001

By email: cpsredesignteam@communities.tas.gov.au

To whom it may concern

Re: Invitation to Provide Comment on the *Discussion Paper Series: A Future Program for Family Based Care*

Thank you for the opportunity to respond to the *Discussion Paper Series: A Future Program for Family Based Care* (the *Discussion Paper*) as part of the Out of Home Care Foundations Project.

The role of the Commissioner for Children and Young People (Tas)

The office of Commissioner for Children and Young People is established under the *Commissioner for Children and Young People Act 2016* (CCYP Act). The Commissioner's functions include:

- (a) advocating for all children and young people in the State generally;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;
- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally; and
- (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.



In performing these and other functions under the CCYP Act, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (UNCRC).¹

Preliminary Comments

I commend the Tasmanian Government for its courage and ongoing commitment to reforming the Tasmanian Out of Home Care (OOHC) system, noting that the challenges facing the Tasmanian OOHC system are shared by all other Australian jurisdictions.

The *Discussion Paper* seeks to respond to significant problems in the family based care system in Tasmania, many of which have been identified in earlier system reviews and proposed reforms, as documented in the *Select Committee on Child Protection: Final Report* (2011) and the report on *Out of Home Care Reform in Tasmania* (2014). These longstanding issues continue to create obstacles to the achievement of positive outcomes for the children and young people in our OOHC system.

As issues of resourcing are outside the scope of the *Discussion Paper*, the views and opinions I express below do not take account of resourcing implications, however I have noted the importance of resourcing in section 2.

I have responded to each of the 28 questions posed in the *Discussion Paper* at Appendix A to this letter. Additionally, I have provided below my views about the various broad areas of the overall program design.

1. Scope and Conceptual Framework

As a general comment, I have had some difficulty in formulating a response to the *Discussion Paper*. This may be because its scope is limited to the defined elements of a Family Based Care Program (such as recruitment, assessment, training and support and placement matching). It is unclear though, how the matters put forward for consideration in regard to each of the elements align with the broader child safety system reform agenda. Further; I've found it difficult to assess the distinct elements of family based care without a clear sense of the overall model of care (including who will deliver it, where it sits on the continuum of care, and how it interacts with other types of care in the OOHC system).

Similarly, it is difficult to comment on the elements of family based care put forward in isolation from the proposed permanency framework² and the proposed Quality and Accountability Framework (which would incorporate standards).³ The *Discussion Paper* acknowledges that the future program for family based care will impact on some of the outcomes detailed in the *Outcomes Framework for Children and Young People in Out of*

¹ Section 3(1) of the *Commissioner for Children and Young People Act 2016* (Tas)

² Department of Communities Tasmania (2018), *Discussion Paper Series: A Future Program for Family Based Care Foundations Project*, Tasmanian Government, October, p.7

³ Department of Health and Human Services, *Out of Home Care Foundations Project*, Tasmanian Government, www.dhhs.tas.gov.au/children/out_of_home_care_reform_in_tasmania/out_of_home_care_foundations_project



Home Care Tasmania. However, it is not clear how the specific initiatives proposed in the *Discussion Paper* will lead to the achievement of those outcomes.

There is also in my opinion, a need to ensure that whatever model of family based care is agreed and developed is **child centred**; i.e. it promotes and protects the rights and wellbeing of children and young people, including as described by the *Outcomes Framework for Children and Young People in Out of Home Care Tasmania*. Although the *Discussion Paper* at Part 1 states that “this paper places the needs of children and young people at the centre” (p.7) and refers to the *Outcomes Framework for Children and Young People in Out of Home Care Tasmania*, the principles listed as part of the conceptual framework (p.4) all refer to how carers will successfully fulfil their role as carers. It would be helpful if, as a result of this feedback, every element of the program was clearly linked back to the benefits for the child and a clear vision about the purpose of family based care and the case for reform.

A commitment to child centredness as a fundamental principle governing the delivery of family based care would be consistent with principles outlined in the *Children, Young Persons and Their Families Act 1997* (by way of example, ensuring children are treated with respect (s 10D), the best interests of the child (s 10E), and child participation (s 10F)) and align with the approach to OOHc monitoring described in Interim Commissioner Clement’s *Conceptual Plan for Independent Monitoring of Out-of-Home Care in Tasmania* (pp.15-16).

On a related point, there is in my opinion a clear need to provide training to practitioners and carers about what it means to provide family based care in a child centred way. Gail Winkworth and Morag McArthur have delineated ten principles for child centred practice in child protection, which include, for example, the provision of appropriate opportunities for children and young people to participate in the care and protection system, including an ability to express their feelings and wishes, and for children and young people to be informed about how to make complaints about their care.⁴

Development of a child centred system of family based care would also provide the opportunity and means for adoption and implementation of recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. As acknowledged by the Royal Commission, foster carers and kinship carers provide care to children and young people in an institutional context, as they are either directly engaged by a government department or engaged by service providers which are contracted to a government department. Family based carers are especially well-placed to promote children’s participation and expression of opinion on matters that affect them. Acknowledging the importance of children’s participation and agency, the Royal Commission recommended (recommendation 12.10) that:

State and territory governments, in collaboration with out-of-home care service providers and peak bodies, should develop resources to assist service providers to:

- a. provide appropriate support and mechanisms for children in out-of-home care to communicate, either verbally or through behaviour, their views, concerns and complaints

⁴ Gail Winkworth and Morag McArthur (2006), “Being ‘child centred’ in child protection: What does it mean?”, *Children Australia*, Vol 31, No 4, pp.13-21



- b. provide appropriate training and support to carers and caseworkers to ensure they hear and respond to children in out-of-home care, including ensuring children are involved in decisions about their lives
- c. regularly consult with the children in their care as part of continuous improvement processes.

In developing and reforming our family based care system, we need to ensure that it operates in a manner that aligns with recommendations of the Royal Commission and with the proposed National Principles for Child Safe Organisations once they are endorsed by COAG.

2. Resourcing

Most, if not all, of the proposals in the *Discussion Paper* have resourcing implications, whether in terms of staffing, service provision such as training, or purchasing specialist technical inputs from experts, or payments to carers with respect to any professionalisation of family based care in Tasmania. Irrespective of the model of family based care that is adopted by the Department of Communities Tasmania, there is a clear need to ensure that appropriate resources are dedicated to its implementation including the development and maintenance of policies and procedures. In making this statement, I note that the Tasmanian Government has accepted recommendation 12.17 of the Royal Commission which states in part that each state and territory government should ensure that “the financial support and training provided to kinship/relative carers is equivalent to that provided to foster carers”; and “the need for additional supports are identified during kinship/relative carers assessments and are funded”.

3. Recruitment, Training and Support

The *Elements of a Family Based Care Model* include “Recruitment” as a first step in attracting new carers. However, in order to recruit a sufficient pool of capable and/or skilled family based carers, we need to acknowledge that the community in general has very little awareness and appreciation of the OOHC system, and of the circumstances of the children and young people in that system.

As Commissioner, I believe it is fundamentally important that we engage in a new and different conversation in the Tasmanian community, focusing on the value of children and young people to our society. Through this conversation, I would hope that more members of our community would become engaged in some way with activities which could better promote the wellbeing of children and young people in our child safety system, particularly those in OOHC. The supports that we provide to our family based carers do not necessarily need to flow only from the Department of Communities Tasmania or from those organisations contracted to provide OOHC services. For example, this conversation could prompt a community member to volunteer time to assist carers with appropriate domestic activities, essentially lessening their load and/or providing emotional support.

The *Discussion Paper* acknowledges that there is a need for training to be provided to foster carers and relative/kinship carers in trauma-informed care, an initiative I support. In my opinion, training should also be provided in relation to identifying and responding to



children exhibiting harmful sexual behaviours. Training strategies focusing on these matters would align with recommendations of the Royal Commission, specifically:

Recommendation 12.11 – which focuses on ensuring that all carers receive training which includes an understanding of trauma and abuse, the impact on children, and the principles of trauma informed care so as to assist them to meet the needs of children in out of home care, including children with harmful sexual behaviours.

Recommendation 12.13 – which calls on government and OOHC service providers to provide advice, guidelines and ongoing professional development for foster and kinship carers, and residential care staff about preventing and responding to the harmful sexual behaviours of some children in out-of-home care.

4. Placement Stability

I also commend the Tasmanian Government for emphasising the need to achieve greater placement stability for children in family based care, including through placement matching. This is consistent with the Tasmanian Government's acceptance of recommendation 12.16 of the Royal Commission which states:

All institutions that provide out-of-home care should develop strategies that increase the likelihood of safe and stable placements for children in care. Such strategies should include:

- a. improved processes for 'matching' children with carers and other children in a placement, including in residential care
- b. the provision of necessary information to carers about a child, prior to and during their placement, to enable carers to properly support the child
- c. support and training for carers to deal with the different developmental needs of children as well as managing difficult situations and challenging behaviour.

I note that the paper proposes a number of options for the assessment of children and young people prior to being placed in longer term care as one way of contributing to an appropriate placement which provides stability and support to the child or young person. This is not just an issue for Tasmania. Children and young people have expressed concerns about inappropriate placement decisions in consultations undertaken by UNICEF as convener of the Australian Child Rights Taskforce to inform preparation of the 2018 *Children's Report* to the United Nations Committee on the Rights of the Child:⁵

The current need for out-of-home care services far outweighs the capacity of the child protection system and service providers, resulting in decisions about appropriate placements for children often being based on availability rather than a need to ensure children's safety, care and development. As a young advocate with lived experience of out-of-home care in South Australia stated during the national consultation: 'They don't even bother looking at whether it's a good fit, is this actually going to work? They just turn around and say – this place can take this child, here you go.' This practice may involve failures to take into account a child's development, gender, mental health and behavioural tendencies when making placement decisions.

⁵ Australian Child Rights Taskforce, *The Children's Report* (2018), UNICEF Australia, p.30



Children and young people have expressed very clear views about being consulted on placement decisions. This is a common theme evidenced in reports and publications produced by the CREATE Foundation.⁶ It is my view that a suite of options should be made available, that children and young people should be consulted on their preferences, and the system should be flexible enough to meet their needs. This approach has the potential to respond to those young people who, in the context of consultations conducted by the Department of Communities Tasmania, expressed a preference for having a say about carer matching and placement choice.⁷

5. Oversight and Monitoring

I understand that the forthcoming Quality and Accountability Framework will “describe the standards and performance measures that will be used to ensure out of home care is delivering quality services to children and young people in care”.

In the absence of a Quality and Accountability Framework for the delivery of OOHC in Tasmania, it is difficult to comment on the overall approach to oversight and monitoring discussed in the *Discussion Paper*. For example, the *Discussion Paper* proposes the “development of a Carer Home Visit Policy to identify standards for home visits to carers by out of home care workers...”, but it is unclear whether these standards will also be part of the Quality and Accountability Framework.

The *Discussion Paper* considers how a central carer register could provide a more consistent approach to carer registration and provide additional safeguards for children and young people. As a matter of principle, I support the establishment of a centrally managed carers register, noting the Tasmanian Government’s in principle acceptance of recommendation 8.17 of the Royal Commission which states that: “state and territory governments should introduce legislation to establish carers registers in their respective jurisdictions”, including for foster carers. A carer’s register should, in my opinion, contain at a minimum information described by the Royal Commission in recommendation 8.19 of its Report (see also recommendations 8.20 – 8.23 inclusive).

I support improved carer review and renewal processes and, I particularly support interviews with children and young people playing a part in annual carer reviews, noting Recommendation 12.7 of the Royal Commission and the Royal Commission’s clear view:⁸

Foster and kinship/relative carers are, in theory, reviewed annually in most jurisdictions, and at least every two to three years in others. Existing policies indicate that these reviews should be extensive, including discussion and documentation of any changes to the household, the physical environment of the house, any allegations against the carer and the willingness of the carer to continue in the role. Additional needs or support requirements of carers can also be identified during this formal process. Having regular reviews of authorised carers, including residential care staff, is an important accountability mechanism for ensuring out-of-home care service providers can maintain confidence in the quality and

⁶ See for example: CREATE (2013), *Experiencing Out-of-Home Care in Australia: The Views of Children and Young People*, CREATE Report Card, Chapter 4.2

⁷ Department of Communities Tasmania (2018), *Fact Sheet: The Voices of Children and Young People in Out of Home Care*, Tasmanian Government.

⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report, Volume 12: Contemporary Out-of-Home Care*, p.19



competence of their authorised carers. It is our strong view that interviews with all the children in a placement, including in residential care placements, should, as a matter of course, form part of the annual review of carers (Recommendation 12.7).

In my opinion, there is a need to consider the introduction of an accreditation scheme for OOH service providers, noting recommendations 12.4 and 12.5 of the Royal Commission.

Recommendation 12.4 requires: “each state and territory should revise existing mandatory accreditation schemes” and recommendation 12.5 states: “an existing statutory body or office that is independent of the relevant child protection agency and out-of-home care service providers should have responsibility for receiving applications for accreditation and conducting audits of accredited service providers”.

Finally, the *Discussion Paper* does not make note of other oversight and monitoring frameworks and programs such as the Out-of-Home Care Monitoring Program of the Commissioner for Children and Young People. It may be of benefit to include initiatives such as these in the overall program design as useful, independent mechanisms for driving accountability and continuous improvement.

6. Particular Needs

The *Discussion Paper* does not address in detail the particular needs of children and young people with a disability, Aboriginal children and young people, children and young people who are culturally and linguistically diverse (CALD) or sex and gender diverse children and young people. In order to achieve placement stability and have carers who are trained and supported adequately to respond to their needs, special consideration needs to be given to the care of these children and young people.

In relation to children with a disability, recommendation 12.21 of the Royal Commission, which the Tasmanian Government accepted in principle, states that:

Each state and territory government should ensure:

- a. the adequate assessment of all children with disability entering out-of-home care
- b. the availability and provision of therapeutic support
- c. support for disability-related needs
- d. the development and implementation of care plans that identify specific risk-management and safety strategies for individual children, including the identification of trusted and safe adults in the child’s life.

Whilst the *Discussion Paper* proposes stand-alone tools for taking into account the needs of Aboriginal children and young people, the Department of Communities Tasmania has not outlined a comprehensive set of reforms designed to meet the particular needs of this cohort in family based care. Recommendation 12.20 of the Royal Commission states:

Each state and territory government, in consultation with appropriate Aboriginal and Torres Strait Islander organisations and community representatives, should develop and implement plans to:

- a. fully implement the Aboriginal and Torres Strait Islander Child Placement Principle



- b. improve community and child protection sector understanding of the intent and scope of the principle
- c. develop outcome measures that allow quantification and reporting on the extent of the full application of the principle, and evaluation of its impact on child safety and the reunification of Aboriginal and Torres Strait Islander children with their families
- d. invest in community capacity building as a recognised part of kinship care, in addition to supporting individual carers, in recognition of the role of Aboriginal and Torres Strait Islander communities in bringing up children.

Conclusion

Thank you for the opportunity to provide feedback on the future program for family based care and please don't hesitate to contact me if you need further clarification.

I would appreciate the opportunity to be involved in the next stage of this very important initiative.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc: *The Hon. Roger Jaensch, Minister for Human Services*
Ginna Webster, Secretary, Department of Communities Tasmania

**APPENDIX A TO THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (CCYP)
LETTER DATED 10 DECEMBER 2018 IN RESPONSE TO THE *DISCUSSION PAPER*
SERIES: A FUTURE PROGRAM FOR FAMILY BASED CARE**

Questions from the <i>Discussion Paper</i>	The Commissioner's response
<p><i>Conceptual Framework</i></p> <ol style="list-style-type: none"> Does the conceptual framework presented in this paper support a contemporary and effective family based care program in Tasmania? What are additional factors or considerations that need to be taken into account? 	<p>There is a need to incorporate overarching Principles – specifically, the need to be child centred, to promote and protect the wellbeing and best interests of children and young people. Family based care should be seen as operating within a wider therapeutic, trauma informed system of OOHC system governed by standards, including Child Safe Standards as recommend by the Royal Commission on Institutional Responses to Child Sexual Abuse.</p> <p>Refer to the CCYP letter dated 10 December 2018 (CCYP letter), especially section 1 on the scope of the <i>Discussion Paper</i> and the proposed conceptual framework for family based care in Tasmania.</p>
<p><i>Care during an Assessment Phase</i></p> <ol style="list-style-type: none"> The Care during an Assessment Phase section discusses the concept of an assessment phase prior to the placement of the child or young person in long term care arrangements with the aim of ensuring an appropriate placement which provides improved stability and support for the child or young person. How can this be best achieved? Provide reasons for your response. Are there other options or issues related to care during an assessment phase not detailed in this paper? Provide details. 	<p>There should be a suite of options available, children and young people should be consulted on their preferences and the system should be flexible enough to meet their needs.</p> <p>Refer to section 4 on placement stability in the CCYP letter.</p>

Questions from the <i>Discussion Paper</i>	The Commissioner's response
<p data-bbox="197 271 456 304"><i>Continuity of Care</i></p> <p data-bbox="197 338 788 636">5. A Continuity of Care Approach to Family Based Care section discusses the importance of continuity of care approach to family based care and the need for clearly articulated roles and responsibilities for carers. Do you believe that this would improve outcomes for children and young people in out of home care? Provide reasons for your response.</p> <p data-bbox="197 674 778 768">6. Are there other continuity of care options or issues not considered in this paper? Provide details.</p>	<p data-bbox="813 271 1378 338">Refer to the CCYP response to questions 3 and 4 above.</p>
<p data-bbox="197 869 767 936"><i>Family Based Care and Intensive Family Based Care</i></p> <p data-bbox="197 969 791 1238">7. The Family Based Care and Intensive Family based Care section details a number of different approaches that can be used to broaden the scope of family based care. Which of the listed approaches would provide better outcomes for children and young people? Provide reasons for your response.</p> <p data-bbox="197 1272 775 1473">8. Are there other options or issues related to providing better support to children and young people with highly complex needs and behaviours that have not been discussed in this paper? Provide details.</p>	<p data-bbox="813 869 1390 1003">In principle support for the development of a therapeutic practice framework for family based care and to also provide intensive family based care.</p>

Questions from the <i>Discussion Paper</i>	The Commissioner's response
<p>Recruitment</p> <p>9. The Recruitment and Registration of Carers section discusses a number of changes to current carer recruitment practices with the aim of building on and strengthening our current approach to recruitment. Which of these ideas do you believe will be more effective? Provide reasons for your response.</p> <p>10. Are there other carer recruitment improvement options or issues that have not been discussed in this paper? Provide details.</p>	<p>In principle support for strengthening the current approach to recruitment, including through the development of an overarching recruitment strategy.</p> <p>Refer to section 3 on recruitment, training and support in the CCYP letter.</p>
<p>Preservice Training</p> <p>11. The Pre-Service Training section identifies a number of potential methods for building on and strengthening the current approach to training carers. Which of these methods do you believe would be effective? Provide reasons for your response.</p> <p>12. Are there other options or issues related to strengthening carer training that have not been explored in this paper? Provide details.</p>	<p>Refer to section 3 on recruitment, training and support to carers in the CCYP letter.</p>
<p>Carer Assessment</p> <p>13. The Carer Assessment section identifies a number of potential methods for building on and strengthening our current approach to carer assessment. Which of these methods do you believe would be effective? Provide reasons for your response.</p> <p>14. Are there other options or issues related to strengthening carer assessment processes that have not been discussed in this paper? Provide details.</p>	<p>In principle support for strengthening the current approach to carer assessment.</p>

Questions from the <i>Discussion Paper</i>	The Commissioner's response
<p><i>Approval of Carers</i></p> <p>15. The Approval of Carers section presents methods to build on and improve the current approval processes. Which of these methods do you believe would be effective? Provide reasons for your response.</p> <p>16. Are there other options or issues related to improving carer approval processes that have not been explored in this paper? Provide details.</p>	<p>In principle support for strengthening the current approach to carer approval.</p>
<p><i>Registration of Carers</i></p> <p>17. The Registration of Carers section discusses how a central carer register (accessible by the Department and service providers) could provide a more consistent approach to carer registration and provide additional safeguards for children and young people. What issues should be considered as part of the implementation of a central carer register?</p> <p>18. Are there other options or issues related to improving information sharing for carer approval and registration that have not been explored in this paper? Provide details.</p>	<p>Strong support for the introduction of a carers register, noting recommendations 8.19 – 8.23 (inclusive) of the Royal Commission into Institutional Responses to Child Sexual Abuse.</p>
<p><i>Placement</i></p> <p>19. The Placement section discusses the importance of placement matching processes to improve placement stability and details a number of factors that could form part of a coordinated placement matching process. What factors do you think should be taken into account as part of the implementation of a placement matching process? Provide reasons for your response.</p> <p>20. Are there other placement matching options or issues that have not been explored in this paper? Provide details.</p>	<p>Refer to section 4 on placement stability in the CCYP letter.</p>

Questions from the <i>Discussion Paper</i>	The Commissioner's response
<p>Ongoing Training</p> <p>21. The Ongoing Training section proposes methods to build on and strengthen the delivery of ongoing training to carers. What parts of this framework do you believe would be effective? Provide reasons for your response.</p> <p>22. Are there other carer training options or issues that have not been considered in this paper? Provide details.</p>	<p>In principle support for the provision of ongoing training, noting also the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.</p> <p>Refer to section 3 on recruitment, training and support to carers in the CCYP letter.</p>
<p>Ongoing Support and Retention</p> <p>23. The Ongoing Support and Retention section proposes a number of actions that aim to build on and enhance support for carers. Which of these do you believe would be effective in providing enhanced support to carers? Provide reasons for your response.</p> <p>24. Are there any other options or issues related to enhancing support for carers that have not been discussed in this paper? Provide details.</p>	<p>In principle support for the provision of additional support to carers.</p> <p>Refer to section 3 on recruitment, training and support to carers in the CCYP letter.</p>
<p>Respite Care</p> <p>25. The Respite Care section details a number of methods that could maximise the benefit of respite care to both carers and children or young people. Which of these methods do you believe would be most effective? Provide reasons for your response.</p> <p>26. Are there any other respite care options or issues that have not been considered in this paper? Provide details.</p>	<p>In principle support for considering new ways in which respite care could be used to benefit carers and the children and young people in their care.</p>

Questions from the <i>Discussion Paper</i>	The Commissioner's response
<p><i>Oversight and Monitoring</i></p> <p>27. The Oversight and Monitoring section details a number of methods that could improve the oversight and monitoring of carers. Which of these methods do you believe would be effective? Provide reasons for your response.</p> <p>28. Are there any other options or issues related to improving carer oversight and monitoring that have not been explored in this paper? Provide details.</p>	<p>Strong in principle support for improving current monitoring and oversight of carers.</p> <p>Refer to section 5 on oversight and monitoring in the CCYP letter.</p>
<p>Are there other comments you'd like to make against any of the points raised in this paper or that you feel have not been covered in respect to family based care?</p>	<p>Refer to the CCYP letter, especially to:</p> <ul style="list-style-type: none"> • section 1 on the scope of the <i>Discussion Paper Series</i> and the conceptual framework for family based care; • section 2 on resourcing; and • section 6 on the particular needs of children and young people.