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Our Ref: 893

2 August 2021

Deputy Secretary, Children, Youth and Families  
Department of Communities Tasmania

Sent by email: [CYS-DSecDRM@communities.tas.gov.au](mailto:CYS-DSecDRM@communities.tas.gov.au)

Dear Deputy Secretary

**Re: Under 16 Homelessness Consultation**

Thank you for the opportunity to provide feedback on the *Draft for Consultation: Under 16 Homelessness – A Policy Framework for Tasmania: Children and young people under 16 who are alone and at risk of or experiencing homelessness* (Draft Framework). I am grateful for the extension of time to provide this feedback.

The challenge of appropriately responding to the unique needs of unaccompanied homeless children has been a longstanding issue for Tasmania,<sup>1</sup> as it has been in other Australian jurisdictions. I therefore warmly welcome the Government's commitment to developing a policy framework to underpin a robust and coordinated response to these highly vulnerable young Tasmanians.<sup>2</sup>

I note that the 4 June 2021 Media Release from the Hon Sarah Courtney MP, Minister for Children and Youth, announcing the consultation process on the Draft Framework, said as follows:

*The Under 16 Youth Homelessness Working Group has now prepared draft documents for consultation that will further support these young people across the service sector. The documents include:*

- 1. An Under 16 Youth Homelessness Policy Framework for Tasmania;*
- 2. Practice Guidelines for Specialist Homelessness Services; and*
- 3. Practice Guidelines to assist Specialist Homelessness Services with a COVID-19 response.*

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<sup>1</sup> See for example the 2005 Protocol *Sharing Responsibility for the Care and Protection of Homeless, Unsupported Young People Under Eighteen Years of Age*, developed by a Joint Action Group which included representatives from the statutory care and protection services in Child and Family Service, Department of Health and Human Services, community partners, regional representatives of services funded through the Supported Accommodation Assistance Program (SAAP) and the Youth Network of Tasmania (YNOT).

<sup>2</sup> The Hon Sarah Courtney MP, Minister for Children and Youth (2021). [Tackling under 16 youth homelessness](#).



This comment has been prepared based on the Draft Framework only as it was the only document made available to me.

## **Role of the Commissioner for Children and Young People**

The Commissioner for Children and Young People is an independent statutory office established under Tasmania's *Commissioner for Children and Young People Act 2016* (the CCYP Act). The Commissioner's general functions, which are set out in s8 of the CCYP Act, include providing systemic advocacy for all children and young people in Tasmania, promoting, monitoring, and reviewing the wellbeing of children and young people in Tasmania generally, and researching, investigating and influencing policy development into matters relating to children and young people generally. In carrying out these and other functions, I am required to give special regard and serious consideration to the interests and needs of children and young people who are disadvantaged for any reason or vulnerable.

Consistent with my statutory functions, my comments below focus on matters that are particularly relevant to promoting and protecting the rights, wellbeing and best interests of children and young people in Tasmania.

## **Background**

The invitation to provide feedback on the Draft Framework published on the Department of Communities Tasmania website provides the following background information:

In June 2019, the then Minister for Human Services announced the establishment of an Under 16 Homelessness Taskforce to develop a greater understanding of the issues associated with under 16 homelessness in Tasmania. The Taskforce's final report, delivered in December 2019, recommended a range of immediate and longer-term initiatives to improve outcomes for this vulnerable cohort.

An Under 16 Homelessness Working Group was formed in June 2020 to oversee implementation of the Taskforce's immediate initiatives and provide advice on longer-term recommendations. One of the key outputs from the working group is the development of the *Under 16 Homelessness - a Policy Framework for Tasmania: Children and young people under 16 who are alone and at risk of or experiencing homelessness*. The Framework provides a policy setting to guide our response to children and young people under the age of 16 who are alone and have nowhere safe and stable to live.

As Commissioner for Children and Young People, I am a strong advocate for the need for a specific policy response for children aged less than 16 years who experience homelessness alone. My comments below build upon my [March 2019 advice](#) to the Hon Roger Jaensch MP, then Minister for Human Services, regarding the urgent need for an improved policy and programmatic response. In that advice, I endorsed advice previously provided by former Interim Commissioner David Clements, and pointed out the urgent need for further work to be done to ensure Tasmania has in place a policy and program response which specifically responds to the unique needs of these children. Consistent with the advice of the former Interim Commissioner, I recommended that:



Any policy framework needs to consider and address issues such as (but not limited to):

- the challenge of capturing reliable data relating to children's unique experiences of unaccompanied homelessness;
- the role and responsibility of the Department of Communities Tasmania, especially Child Safety Services, regardless of whether a child is subject to care and protection orders;
- the role and responsibilities of specialist homelessness service providers;
- the role and responsibilities of other service providers across the human services and health sectors generally, including for example those providing support for mental health and alcohol and other drugs issues;
- case management responsibility;
- matters arising from the absence of an active parent or guardian in a child's life (including consideration of the extent to which service providers have the legal authority necessary to make critical decisions concerning those children in their care who do not have an active guardian); and
- the type of specialist supports required to appropriately address the unique and complex needs of this cohort of children.

Further, the associated program and service design should prioritise the development of a continuum of services, which includes the provision of a comprehensive medium - to long-term care environment for highly vulnerable children aged less than 16 years, augmented by intensive therapeutic and trauma informed support services and capacity for outreach at all transition points along the continuum.

I would add to the dot points above the need to consider and address the critical role and responsibility of education providers in providing support to unaccompanied homeless children.

What is clear to me is the need to ensure a whole-of-government and cross sector response to promote improved outcomes for children who experience homelessness alone. As I said in my [Comment on Tasmania's Child and Youth Wellbeing Strategy Discussion Paper – January 2021](#), addressing homelessness, particularly for unaccompanied homeless children under the age of 16, should also be a priority action in any strategy to promote the wellbeing of children and young people in Tasmania (p.16).

## **General Comments**

I commend the Tasmanian Government on its establishment of the Under 16 Homelessness Working Group in June 2020 and the subsequent development of the Draft Framework, in response to the report of the *Under 16 Homelessness Taskforce: Ministerial Advice* ('the Taskforce'). Additionally, I welcome the Government's commitments to additional investments in services to support children and young people experiencing homelessness, including the recent commitment of \$10 million over three years for the Under 16 Lighthouse Pilot Project, a residential care pilot program for children aged less than 16 who are not in the care of the state and are unable to live at home.



In addition to the commitments already mentioned, I note the Tasmanian Government has committed to some of the “immediate initiatives” proposed by the Taskforce, including by:

- Trialling a ‘Care Team’ approach to improve support for this cohort (proposed initiative no. 2); and
- Adopting a single front door for advice, assessment and referral through the Strong Families, Safe Kids advice and referral Line (ARL) (proposed initiative no. 4).

These commitments, together with the trial of a dedicated Child Safety and Wellbeing Liaison position in the ARL, represent positive steps toward improving outcomes for unaccompanied homeless children.

### **Primary prevention and early intervention**

I am very supportive of the focus on prevention and early intervention, and family restoration, as key elements of the new policy approach outlined in the Draft Framework. An international review of evidence conducted by the Wales Centre for Public Policy found that: “The current emergency-focused response to youth homelessness is failing young people. Studies from around the world show that we are missing critical opportunities to intervene early, and we often fail to move young people out of homelessness quickly.”<sup>3</sup>

The Draft Framework’s stated commitment is to “provide services that strengthen family connections and help families fulfil their care responsibilities” as part of prevention and early intervention efforts. There is clearly a pressing need to improve families’ timely access to therapeutic and trauma-informed support services, including family mediation services, family violence support, family supports, financial and housing supports, mental health services, and alcohol and other drug services. More information regarding the review of existing services to better respond to and prevent unaccompanied child homelessness should be included in the Framework.

I recommend that the Tasmanian Government commits additional funds, in addition to those already committed to the Lighthouse Pilot Project, to further strengthen the government and non-government sectors’ service response to this cohort of young people, including through the funding of improved access to universal parenting and family supports, mental health, and drug and alcohol services, and up-skilling of workers in therapeutic and trauma informed family support. Increased provision of parenting supports especially in the first 1,000 days of a child’s life will provide significant benefit for the safety and wellbeing of children who might otherwise experience homelessness alone.<sup>4</sup> There is also a clear need to develop innovative models of support, assistance and accommodation, noting for example the advice of the Expert Panel on the essential elements required for an improved service system response for Tasmanian children and young people with highly complex needs.<sup>5</sup> Further, there is a clear need for greater assistance and support for parents so that they are well-equipped to positively parent their preteen and teenaged children. Assistance and support for parents should be universally available at no cost.

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<sup>3</sup> Wales Centre for Public Policy, 2018. *Preventing youth homelessness: An international review of evidence*. Wales Centre for Public Policy. August.

<sup>4</sup> *Expert Panel advice and recommendations to the Minister for Children and Youth on the essential therapeutic elements required for an improved service system response for Tasmanian children and young people with highly complex needs*, July 2021.

[https://www.communities.tas.gov.au/data/assets/pdf\\_file/0033/178782/Final-Report-Expert-Panel-27-JULY-2021.pdf](https://www.communities.tas.gov.au/data/assets/pdf_file/0033/178782/Final-Report-Expert-Panel-27-JULY-2021.pdf).

<sup>5</sup> Ibid



## Integration and shared responsibility

The Draft Framework indicates an intention to “connect and integrate services through a shared vision and collaborative practice where roles and responsibilities are clear and effective, and support and accommodation responses are in place to achieve the best outcomes for the child or young person”. The intent of this commitment is consistent with a recent review of the international evidence for preventing and ending youth homelessness, which recommended “an integrated ‘one-government’ approach” to this cohort, which is embedded across all relevant government departments and levels of government, including education, health care, youth justice, as well as child protection and housing.<sup>6</sup> However, the Draft Framework does not outline an innovative pathway towards greater integration both within government and between the government and non-government sectors, other than through a general expression of and commitment to shared responsibility. In particular, defined roles and responsibilities, and mechanisms for collaborative action are notably absent from the Draft Framework for key units and agencies, including the Department of Education, Youth Justice Services and Child Safety Services in the Department of Communities, and Child and Adolescent Mental Health Services in the Department of Health. It appears from the Draft Framework that Practice Guidelines are intended to be the mechanism through which roles and responsibilities are clarified.

The Framework should include a clear statement of commitment to the comprehensive integration of services for unaccompanied homeless children and articulate the roles and responsibilities of each organisation with a role in responding to these children, including by clearly outlining accountability for actions and outcomes. Practice Guidelines would then operationalise elements of this shared understanding of accountability.

## Accountability

While the new actions and commitments described in the Draft Framework represent a very promising start, the Draft Framework stops short of committing to other commendable initiatives proposed by the Taskforce. Arguably the most significant of these proposed initiatives is:

Immediately establish a **point of authority and accountability** for responding to the immediate needs of children under 16 that are unaccompanied (proposed initiative no. 1).

The Draft Framework acknowledges that the Taskforce’s recommendations “reinforce the need for an integrated response that provides... clear processes and **strong accountabilities**” (p.5) and commits to a “coordinated service system response with **strong governance and accountability**” (p. 14). Although the Draft Framework establishes “a single point of contact and advice to strengthen oversight and accountability” within the ARL, the Draft Framework does not explicitly allocate responsibility for coordinating and leading responsibility for the new care team approach to improve supports for these children. Rather, the Draft Framework emphasises that responsibility for this cohort will be shared (see pages 4, 5, 10 and 14). I support improved collaboration and the active participation of government and non-government agencies in responding to children under 16 who are homeless and alone. However, given the statutory role of the Child Safety Service and ambiguities around decision-making processes (a matter I refer

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<sup>6</sup> Wales Centre for Public Policy, 2018. *Preventing youth homelessness: An international review of evidence*. Wales Centre for Public Policy.



to later in this comment), the governance and accountability for the new policy framework would in my view be strengthened by clearly identifying that the ARL (or the Child Safety Service where a child is under a care and protection order or it is otherwise appropriate for this to be the case) will lead, be ultimately responsible and accountable for, responses to unaccompanied homeless children, including through the care team mechanism.

### **Decision-making authority**

An area of ongoing concern for me relates to decision-making authority for unaccompanied homeless children, especially those not under a care and protection order where the child's parent is unavailable, unable or unwilling to provide consent or make the decision, and the child lacks 'Gillick' competence. There may be circumstances in which it is not appropriate – including for reasons related to safety – to seek parental consent. The Draft Framework appropriately acknowledges that “establishing who has decision making authority and to what extent, has been a longstanding issue for services in Tasmania...” (p.8). This issue is also fundamental to the question of accountability for ensuring that the wellbeing of unaccompanied homeless children is promoted and protected.

The Under 16 Homelessness Taskforce identified ambiguities around decision-making for unaccompanied homeless children as an issue that needs to be resolved<sup>7</sup>:

Supporting the wellbeing of children by creating a care environment outside of the family is complex, involving a broad array of services and decisions to be made on behalf of the child. Doing this well requires a clear source of authority in terms of who is responsible for the child, clear process for empowering services and strong accountabilities for ensuring that actions are in the interest of the child, and that support is available when and where it is required. A lack of legislative clarity and policy direction for supporting the wellbeing of unaccompanied children results in ambiguity regarding who has responsibility for their wellbeing. This can lead to vulnerable children falling between legislative, policy and service gaps, causing them to become a hidden problem, with nobody ultimately being accountable for their welfare. At the service level, a lack of clarity around the authority to make decision on behalf of young people leaves services vulnerable, or young people without the capacity to make the decisions necessary for their every day care...

Tasmania currently has a lack of legislative clarity and policy direction for supporting the wellbeing of unaccompanied children. There are also no overarching principles or standards to safeguard the care and protection of unaccompanied children. There is no official policy position for this cohort within or across services and the issue of who has duty of care, and who can legally provide consent for these children, in the absence of a parent or legal guardian, is also unresolved. The issues surrounding consent also impact on an unaccompanied child's ability to access appropriate identification, such as birth certificates, Medicare cards and student identification. These forms of identification usually require a parent or guardians' consent. A failure to secure these types of identification can lead to problems in, for example, enrolling in education and training, attending doctors' appointments, securing Government entitlements...

Shelters have also expressed their concern around their inability to consent to things such as medical treatment or school enrolment on behalf of an unaccompanied child who presents to a shelter. The ability to consent on behalf of an unaccompanied

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<sup>7</sup> Under 16 Homelessness Taskforce Ministerial Advice, December 2019, pages 33 and 34



children who is not on a statutory order rests with the parent, even if the child has left the family home and is not in contact with their family. Shelters have also expressed their concern around 'duty of care' for children who are sharing shelter accommodation with much older residents who have multiple complex needs and present potential risks to a younger cohort.

The Taskforce acknowledged the need for alignment of the legislative, regulatory and services responses including by recommending the “provision of advice to the Minister on the legislative authority required to support decision-making for children under the age of 16 where no effective guardian is available”.<sup>8</sup>

In a 2018 report to the NSW Parliament, the NSW Ombudsman highlighted the challenges of “the extent of legal authority to make critical decisions concerning children under 16” in specialist homelessness services (p.1). The NSW Ombudsman noted that, in NSW, for children who are not subject to a Care and Protection Order, their guardianship rests with their parents or legal guardians, irrespective of the level of contact those children have with them. As noted by the NSW Ombudsman, this means that in the absence of parental consent, Government agencies and non-government organisations do not have the legal authority to make important decisions for those children, such as arranging for certain forms of medical care or enrolling them in school.<sup>9</sup> A subsequent progress report by the NSW Ombudsman notes that the NSW Government is yet to resolve this issue.<sup>10</sup>

The Draft Framework proposes “developmentally appropriate responses” for children who are under 16 and facing homelessness, informed by the approach of the Tasmanian Child and Youth Wellbeing Framework. While this approach may be suitable for informing broad approaches to assessment and holistic case management, it fails to clearly articulate the roles and responsibilities of government and non-government services in ensuring that legal requirements for decision-making authority or informed consent are met for unaccompanied homeless children. It appears to me that in the absence of clear policy and practice guidance on this important issue, service providers will continue to carry a level of risk where critical decisions are required to be made for a child in the absence of an effective parent or guardian. Furthermore, it is not clear who is accountable for ensuring decision-making promotes wellbeing and best interests, including by ensuring that children are provided with developmentally appropriate opportunities to genuinely participate in the decision-making process, regardless of competence.

I therefore strongly recommend that the Tasmanian Government undertakes further work to clarify the legal framework for decision-making authority and accountability for unaccompanied homeless children. This work should include consideration of any liability which might arise for specialist homelessness services when critical decisions are necessary for a child and identify appropriate solutions so that their needs can be appropriately and legally met. If not already included in the Practice Guidelines accompanying the Draft Framework, there is an urgent need for detailed practical advice outlining a shared understanding of when, by whom and how decision-making is to occur.

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<sup>8</sup> Ibid, Proposed Long-Term Initiative 15

<sup>9</sup> Ombudsman NSW. 2018. *More than shelter – addressing legal and policy gaps in supporting homeless children*, 21 June, Ombudsman New South Wales.

<sup>10</sup> Ombudsman NSW. 2020. *More than shelter – addressing legal and policy gaps in supporting homeless children: A progress report*, 19 October, Ombudsman New South Wales.



## **A child rights perspective**

The right of every child to a safe place to live is clearly articulated in the *United Nations Convention on the Rights of the Child*; in particular, article 27 recognises “the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development”, and identifies the responsibilities of State Parties to “take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”<sup>11</sup>

The Draft Framework includes a commitment to 'a child centred response' to unaccompanied homeless children, including through collaborative decision-making practices and processes. I support this commitment and emphasise the importance of not only involving children in their own care decisions, but also listening to their voices as part of the development of the policy framework and the implementation of the reforms, including by seeking their feedback on their experiences of the Lighthouse Pilot Project and/or the trial of the 'Care Team' approach, as well as their active involvement in any co-design of the service system, as recommended by the Taskforce.

I therefore recommend that the Tasmanian Government commits to the establishment of robust mechanisms and processes to facilitate the active participation of children and young people with lived experience in the co-design, delivery and evaluation of programs and services delivered to support them.

## **The importance of information and data sharing**

I note the Taskforce made five recommendations calling for new mechanisms to improve data sharing and collaboration across government and the community sector, data linkage, incorporation of outcomes measurement in funding agreements and the development of an integrated database and case management system (recommendations 20 – 24).

Robust and well-defined information and data sharing arrangements as well as an integrated database and case management system across the service system will provide the means by which the proposed collaborative approach outlined in the Draft Framework will be achieved. It is also fundamental to the early identification of opportunities to intervene early and to provide the supports and assistance required to promote the wellbeing of children who are under 16 homeless and alone.

## **Concluding comments**

Children who experience homelessness alone are not only worthy of our attention and responsive action – but also deserve our respect for their courage and resourcefulness in the face of considerable life challenges. Reflecting on the findings of his consultation with homeless young people aged 12-15 years, the WA Commissioner for Children and Young People

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<sup>11</sup> UN. 1989. *United Nations Convention of the Rights of the Child*.



observed that many of the young people involved in the consultation “had been resourceful actors in shaping their own lives”.<sup>12</sup>

It is important that the design and delivery of Government and non-government responses to children aged under 16 who are homeless and unaccompanied fully reflects the agency and potential of these children. As noted by the Brotherhood of St Laurence, “no matter how difficult their circumstances, every young person possesses an innate desire to flourish. Solutions need to prevent children and young people becoming homeless, but they also need to provide young people with the resources and opportunities to develop the capabilities they need to realise their potential and live good lives.”<sup>13</sup> With this in mind, I believe the vision of the Policy Framework could be phrased at a higher level with a greater focus on aspirational outcomes for the children at its centre.

In conclusion, I believe the Draft Framework represents a good first step towards strengthening our collective response to children who experience homelessness alone, but there is far more work to be done to ensure that it does more than simply describe the issue and identify some general principles to inform our response. Instead, the finalised policy framework should provide a more robust and detailed plan for establishing accountability and shared action by Tasmanian Government agencies and non-government organisations to achieve improved outcomes for children who experience homelessness alone.

Please do not hesitate to contact me if you would like to discuss my feedback.

Yours sincerely

**Leanne McLean**  
Commissioner for Children and Young People

cc. *The Hon. Sarah Courtney MP, Minister for Children and Youth*  
*Prof. Michael Pervan, Secretary, Department of Communities Tasmania*

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<sup>12</sup> WA CCYP. 2018. *Policy and support needs of independent homeless young people 12-15 years: Young people's voices*. Perth: WA Commissioner for Children and Young People.

<sup>13</sup> Thornton, D., Politanski, D., Borlagdan, J. & Mallett, S. 2020. *Children and young people on the edge of care, out of home and alone*. COVID-19 Insights. Research & Policy Centre, Brotherhood of St Laurence. p.1