

Your Ref:
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17 September 2021

Ms Mandy Clarke
Deputy Secretary
Children, Youth and Families
Department of Communities Tasmania

Sent by email: CYS-SecDRM@communities.tas.gov.au

Dear Ms Clarke

Re: Tasmanian Standards for Children and Young People in Care Consultation

Thank you for the opportunity to provide a submission to inform the development of Tasmanian out-of-home care (OOHC) standards and a carers register and in particular to provide comment on the content of the Department's [Consultation Workbook: Establishing Tasmanian Out of Home Care Standards and a Carers Register](#) (the Consultation Workbook). I note that many of the comments I made on an earlier version of the Consultation Workbook have been reflected in the current draft OOHC standards.

The below comments and observations, which are not intended to be exhaustive, build on verbal feedback already provided in my individual consultation session with officers from the Department of Communities Tasmania (the Department) on 3 September 2021.

My comments have been informed by relevant recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) especially:

Recommendation 12.4

Each state and territory government should revise existing mandatory accreditation schemes to:

- a. incorporate compliance with the Child Safe Standards identified by the Royal Commission
- b. extend accreditation requirements to both government and non-government out-of-home care service providers.



Recommendation 12.5

In each state and territory, an existing statutory body or office that is independent of the relevant child protection agency and out-of-home care service providers, for example a children's guardian, should have responsibility for:

- a. receiving, assessing and processing applications for accreditation of out-of-home care service providers
- b. conducting audits of accredited out-of-home care service providers to ensure ongoing compliance with accreditation standards and conditions.

Recommendations 8.17-23 which I will not extract, but which deal with the establishment of nationally consistent carer registers.

I look forward to providing additional comment and input as appropriate on subsequent versions of the OOHC standards, a proposed model for a carers' register, as well as any proposed model for the accreditation of OOHC providers.

1. 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). My functions and powers and the principles to which I must have regard are set out in that Act. Section 8 of the CCYP Act outlines my general functions as follows:

- (a) advocating for all children and young people in the State generally;
- (b) acting as advocate for a detainee under the Youth Justice Act 1997;
- (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;
- (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; and
- (h) such other functions as are prescribed.

In performing my functions, I am required to:

- Do so according to the principle that the wellbeing and best interests of children and young people are paramount;



- Observe any relevant provisions of the United Nations *Convention on the Rights of the Child*; and
- Give special regard to the needs of children and young people who are disadvantaged or vulnerable.

One of the ways I fulfill my functions is through the CCYP OOHC Monitoring Program. Commencing in 2018, the overarching aim of the CCYP OOHC Monitoring Program is to promote and protect the wellbeing and rights of children and young people in OOHC, by engaging in independent, systemic monitoring of Tasmania's OOHC system. In the absence of a Tasmania specific quality assurance system incorporating standards for the OOHC system, the CCYP OOHC Monitoring Program monitors the Tasmanian OOHC system in alignment with or through the six wellbeing domains of the *Tasmanian Child and Youth Wellbeing Framework* and the *Out-of-Home Care Outcomes Framework*.

During recent discussions with OOHC providers in the context of my OOHC Monitoring Program, I noted a general sense of positivity and optimism among providers toward the planned introduction of Tasmanian OOHC standards. Several OOHC providers who are also registered providers of NDIS-funded services commented on the benefits flowing to children and young people as well as for their organisation as a result of achieving compliance with a comprehensive quality assurance framework under the NDIS.

2. OOHC Standards

a. Introductory comments

As you know, I have been a strong advocate for the introduction of both OOHC standards and a carers' register for Tasmania. Most recently, in my October *OOHC Monitoring Program Report No. 1* (CCYP Monitoring Report), released in October 2019, I recommended:

2. **That the Tasmanian Government strengthens the quality, safety and accountability of the out-of-home care system in Tasmania by:**

...

- b. **Progressing the development and implementation of a Quality and Continuous Improvement Framework for Out-of-Home Care in Tasmania, which includes Tasmanian standards and ensuring there is a specific standard (or standards) which incorporate(s) the National Principles for Child Safe Organisations.**

The work to develop the Consultation Workbook, and in particular, the draft OOHC standards, is a positive step forward. I welcome the Tasmanian Government's commitment to "the establishment of a formal OOHC accreditation scheme to deliver improved quality of care for children and young people and increasing accountability for OOHC providers, including government providers" (p.6). However, the Consultation Workbook does not provide detailed information about how the OOHC standards will be applied or how their implementation will be monitored or assessed. It states: "work to develop an accreditation scheme, including how the accreditation scheme will be administered and governed and the timing for implementing an accreditation scheme



will be progressed alongside a review of the *Children, Young Persons and their Families Act 1997* due to commence in [the] 2021-22 financial year (p.6)". Development of a system for monitoring compliance, including through an accreditation scheme is, in my view, fundamental to the successful introduction of OOHC standards.

As noted in the CCYP Monitoring Report:

*A shift to a system of accreditation based on assessment of individual OOHC providers, including DCT, against an agreed set of standards, would require consideration of **legislative change, well planned implementation over a suitable timeframe and sufficient resourcing**. In the meantime, and at the very least, the capacity of the existing independent external oversight of OOHC currently undertaken by the Commissioner for Children and Young People could be expanded and resourced to undertake systemic monitoring based on agreed standards.*

Given the essential interrelationship between the OOHC standards and the development of the accreditation scheme necessary to ensure they are appropriately adopted and complied with, the corresponding implementation mechanism(s) should be fully scoped, consulted on and designed as a matter of priority. Noting the relevance of Recommendation 12.5 of the Royal Commission, important policy considerations include:

- Which agency or organisation will be responsible for accrediting OOHC providers and auditing their compliance with the OOHC standards?
- Will there be a legislative framework for the establishment and operation of an independent statutory body to perform this function?
- How will the OOHC standards in "Section 2: Child Safe Organisations" interact with the forthcoming legislative scheme¹ for child safe organisations including child safe standards? For example, will providers be separately assessed on their performance against each set of standards, and by whom?
- How will current OOHC providers be supported to transition to the new accreditation and quality assurance model?

b. Structure and content of the draft OOHC standards

- I am generally supportive of the OOHC standards being aligned to the domains of the *Tasmanian Child and Youth Wellbeing Framework* (the Framework), noting that consideration will need to be given to amending the standards to reflect the recent changes to the Framework, including, for example, the addition of "Valued" to the wellbeing domain of "Being Loved and Safe", recognition of the online environment, and the effects of climate change on wellbeing outcomes.²

¹ <https://www.justice.tas.gov.au/community-consultation/closed-community-consultations2/child-safe-organisations-bill-2020-have-your-say>

² *It Takes a Tasmanian Village: Child and Youth Wellbeing Strategy* (August 2021) https://hdp-au-prod-app-tas-shapewellbeing-files.s3.ap-southeast-2.amazonaws.com/7616/2968/9040/210301_Child_and_Youth_Wellbeing_Strategy_2021_wcag_FINAL.pdf



Importantly, I am advised that alignment with the Framework takes account of the views expressed by children and young people with a care experience during consultations to inform the drafting of the draft OOHC standards.

- The language of the draft OOHC standards tends to focus on what children in care should *receive* (i.e. the desired outcome). However, standards ordinarily focus on what an organisation *must do in order to achieve an outcome*. I recommend that the OOHC standards be re-drafted to reflect the latter approach.
- The format of comparable standards in other Australian jurisdictions provide useful pointers for finalising Tasmania's OOHC standards. In particular, I note that similar to the approach adopted by the ACT and NSW, each standard could summarise key legislative/legal requirements and map to relevant articles of the *Convention on the Rights of the Child*, the *Charter of Rights for Tasmanian Children and Young People in Out of Home Care*, the Aboriginal and Torres Strait Islander Child Placement Principle, the principles in the *Children, Young Persons and their Families Act 1997*, and any other relevant legislation including for example the *Registration to Work with Vulnerable People Act 2013*.
- Arguably, the indicators for each standard would perhaps be best developed at a later stage by the organisation responsible for accrediting OOHC providers and assessing their compliance against them. However, given that example indicators have been included in the Consultation Workbook, I provide the following comments for consideration:
 - I note that the Consultation Workbook includes “example indicators of success” against each of the standards. In order to better reflect the intended obligatory nature of the OOHC standards, I suggest that that the term “indicators of **success**” be revised to “indicators of **compliance**”. Indicators of compliance would more clearly demonstrate that there are sufficient and effective systems, policies, or processes in place to support the delivery of quality services for children and that services are provided at a standard which is sufficient to meet the intended outcomes.
 - Some of the example indicators of success do not appropriately acknowledge who is responsible for their implementation. For example, some indicators are more representative of the performance of the Department of Communities Tasmania as the OOHC system owner rather than the performance of the OOHC provider, and in many cases, are likely to be outside the effective control of the OOHC provider. Such indicators would perhaps be better allocated to “Standard 10. Child Safety Services”. As an illustrative example, I refer you to the following excerpt from this example indicator of success under Standard 1:



1.8 Children and young people have positive relationships with Child Safety Services as follows:

- Child and young people, carers and families know their Child Safety Officer, and any key workers involved in providing care and services, and how to contact them.
- Child Safety Officers meet and spend time with a child or young person in accordance with relevant procedures.
- Child Safety Officers have contact visits with out of home care staff and carers to establish and maintain positive relationships and communication in accordance with relevant operating procedures.
- Worker transitions are planned to include adequate handover and the new Child Safety Officer or key worker/s are promptly introduced to the child or young person.

3. Carers Register

As you would be aware, and building on the work of former Commissioner for Children and Young People, Mark Morrissey, I support the establishment of a Carers' Register for out-of-home care. I acknowledge that work is underway to further scope and design the Carers Register noting that the *Consultation Workbook* states: "Work to develop a Carer's Register, including how a Carer's Register will be administered and governed and the timing for implementation will be progressed alongside a review of the *Children, Young Persons and Their Families Act 1997* due to commence in [the] 2021-22 financial year" (p.9).

I also note Recommendations 8.17 – 8.23 of the Royal Commission which relate to the establishment of nationally consistent Carers Registers.

At this early stage in its development, and, given the lack of detail about the Carers Register provided in the *Consultation Workbook*, it is difficult for me to provide detailed comment on the proposed Carers Register. However, I recommend that the scoping and design work being undertaken by the Department be guided by the recommendations of the Royal Commission, and particularly consider the following matters:

- Will the establishment and administration of the Carers Register be governed by a legislative framework?
- How will national consistency be achieved, including information sharing protocols with other Australian jurisdictions?
- Who will be required to be on the Carers Register?
- How will the Carers Register link to the Working with Vulnerable People Register (or its interstate equivalents?)
- How will the Carers Register operate alongside the broader Child Safe approach, including information systems and sharing?
- Which agency or organisation will hold and administer the Carers Register?
- What will be the mechanism for licensing carers?



- How will minimum requirements for carers be assessed and monitored? Which agency or organisation would do this?
- How will the Carers Register be introduced and how will carers be kept informed of the process?

4. Overarching legislative mechanism for child safety and wellbeing

I note that the Tasmanian Government has committed to reviewing the *Children, Young Persons and Their Families Act 1997* and has also committed to the introduction of a child safe organisations legislative framework. I have also called for a review of the *Commissioner for Children and Young People Act 2016*. Consideration could be given to developing an overarching piece of legislation which could bring each of these separate Acts under one child safety and wellbeing legislative ‘umbrella’ as has been done in Victoria.³ An approach such as this could assist in the creation of a more coordinated and integrated child safety and wellbeing system for Tasmania. I would welcome the opportunity to discuss this in further detail.

Conclusion

Thank you for the opportunity to comment as part of this consultation process. I commend you on the work done to date, especially in relation to drafting the OOHC standards, and I look forward to providing further comment as the process of developing and introducing a quality and assurance system for out-of-home care and a carers register continues.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc *Hon Elise Archer MP, Attorney-General*
Hon Sarah Courtney, Minister for Children and Youth
The Secretary, Department of Communities Tasmania

³ *Child Wellbeing and Safety Act 2005* (Vic), <https://content.legislation.vic.gov.au/sites/default/files/2021-06/05-83aa033%20authorised.pdf>