

Our Ref: 01073-2019

Hon Dr S.E. Talbot MLC
 Chair
 Committee on the Commissioner for Children and Young People
 Email to: jscryp@parliament.wa.gov.au

Dear Dr Talbot

WRITTEN SUBMISSION: INQUIRY INTO THE MONITORING AND ENFORCING OF CHILD SAFE STANDARDS

I refer to your letter dated 17 December 2018 in which you invite the Department of Justice (the Department) to make a submission to the Committee on the Commissioner for Children and Young People's (CCYP) current Inquiry into the monitoring and enforcing of Child Safe Standards (Inquiry). Thank you for the opportunity to provide comment.

I apologise for the delay in providing the Department's submission. The Department is working closely with other Government agencies in responding to issues of child safety, and has been awaiting relevant advice.

Within the three areas of your Inquiry's terms of reference, the following recommendations appear to apply to the Department, and/or all Government agencies operating services for children that includes the Department.

1. Commissioner for Children and Young People report: *Oversight of services for children and young people in Western Australia*

The Department values the work undertaken by the CCYP in 2017 to deliver a comprehensive overview of how services for children and young people are overseen and monitored, and making several recommendations for improvement.

The Department acknowledges the following recommendation directed to the Department:

Recommendation 5

That a robust, comprehensive system of oversight for all children and young people in the youth justice system be established. This should include:

- *access to an independent advocate to support children and young people to raise concerns about their treatment and support*
- *monitoring of the application of policy and practice*
- *monitoring of the outcomes for children and young people under the care and supervision of the youth justice system.*

This recommendation is comparable to recommendation 15.10 of the Royal Commission, and the Department's response is discussed at No 3.

2. Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse relating to an independent oversight body responsible for monitoring and enforcing child safe standards

The specific recommendations within Volume 6 of the *Final Report* about ensuring that an oversight body monitors and enforces the Child Safe Standards, are:

Recommendation 6.10: *ensuring there is an independent oversight body monitoring and enforcing Child Safe Standards*

Recommendation 6.11: *details further roles of the independent oversight body, including providing advice, publishing data, providing training, and coordinating information exchange*

Implementation of the Child Safe Standards is being led by the Department of Communities. The work to finalise and implement the Child Safe Standards (as recommended by the Royal Commission) is still underway.

The Department is currently participating in the *Royal Commission Communities Working Group*, led by the Department of Communities, to identify applicable institutions and the regulatory frameworks that will facilitate implementation. It is anticipated that the national Child Safe Standards will complement and strengthen the significant work the CCYP has undertaken on Child Safe Organisations.

3. The response from the Western Australian Government to the above recommendations

The Department has contributed to two formal whole-of-Government responses to the *Final Report* of the Royal Commission, being:

- The 6 month response to the 409 recommendations of the Royal Commission: *Response by Minister McGurk on Behalf of the Government of Western Australia*; and
- The Government of Western Australia: *2018 Progress Report*.

The Department of the Premier and Cabinet (DPC) is the government agency coordinating and overseeing the cross-Government implementation of the Royal Commission's recommendations.

Oversight of Child Safe Standards (when implemented) will be led by an independent oversight body determined through work currently being led by the DPC.

DPC is considering all Royal Commission recommendations on oversight functions concurrently and holistically, in order to produce a strategic response. In addition to recommendations on oversight of Child Safe Standards, the Royal Commission also made the following recommendations on ensuring independent oversight:

Recommendations 7.9 – 7.12: *about establishing a legislative independent 'reportable conduct scheme', that would require heads of institutions dealing with children to report any 'reportable conduct' of staff*

Recommendation 12.5: *ensuring there is an independent statutory body overseeing accreditation standards of out-of-home-care services*

Recommendation 15.10: *ensuring an independent oversight body provides oversight of youth detention*

Implementation of Department of Justice recommendations

Of the above recommendations, Recommendation 5 of the CCYP Report, and recommendation 15.10 of the Royal Commission's *Final Report*, are directly applicable to the Department.

These two recommendations call for:

- Independent oversight of youth in detention;
- Individual advocacy of youth detainees; and
- Monitoring of outcomes for youth in the justice system.

Youth detention is currently overseen by four independent agencies.

The Office of the Inspector of Custodial Services (OICS) provides independent oversight of custodial services, including youth detention at Banksia Hill Detention Centre (BHDC). OICS is mandated under statute to monitor rights of detainees, review facility practices and conduct inspection of facilities. OICS also administers the Independent Visitors Scheme whereby young detainees are visited by skilled volunteers and invited to report concerns about treatment and conditions. The Department's view is that OICS is best placed, with its functions and powers under the *Inspector of Custodial Services Act 2003* (WA) to fulfil the primary role of conducting oversight of children in youth detention.

The Ombudsman Western Australia visits BHDC twice per year to promote its complaint handling functions. The Ombudsman also has capacity to conduct own motion investigations or reviews into specific issues identified.

The Commissioner for Children and Young People provides a systemic advocacy function and monitoring of standards against human rights instruments. The Commissioner, under a special Inquiry, has powers to enter and inspect any place where the wellbeing of children and young people is in question.

The Office of the Auditor General, as part of its statutory function to undertake performance examinations of public agencies, can conduct performance audits as to the effective and efficient management of government programs.

Whilst it is acknowledged that these four separate oversight bodies carry out primarily different roles, some roles and functions of the bodies overlap and intersect, presenting a degree of inefficiency and duplication. Further, there have been instances when all four oversight bodies have requested access to BHDC at the same time, often as a result of an incident, which can seriously disrupt the operations of the Centre and affect staff management of detainees. In such cases the Department has requested one oversight body take the lead role to minimise disruption of the facility.

The Department advises that implementation of any further specificities as to oversight of youth detention arising from the above CCYP recommendation, and of the Royal Commission, will be influenced by the outcome of the following current considerations:

- On 21 December 2017, Australia ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (OPCAT) and has three years from the date of ratification to be OPCAT-ready. The Department is overseeing Western Australia's implementation of OPCAT with a key step being the appointment of custodial oversight bodies, or 'National Preventative Mechanisms' (NPMs), which are independent of government. OPCAT requires that places of detention (which include youth detention) are routinely visited by the NPM, to ensure compliance with OPCAT obligations. This work is currently being undertaken.

- DPC, as indicated above, is currently leading work in response to the Royal Commission, to establish the mechanisms of independent oversight related to the Child Safe Standards, a reportable conduct scheme, youth detention and the out-of-home-care sector.

I trust this information will assist you in your Inquiry.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Tomison', with a long horizontal flourish extending to the right.

Dr Adam Tomison
DIRECTOR GENERAL
DEPARTMENT OF JUSTICE

29 March 2019