

## COMMISSION FOR CHILDREN AND YOUNG PEOPLE

5 November 2015  
CCYPD/15/839

Ms Claire Thorn  
Acting Director  
Office for Youth and Disability  
50 Lonsdale Street  
MELBOURNE VIC 3000

Dear Ms Thorn

### **Re: Discussion Paper - *What's Important to Youth?***

The Commission for Children and Young People (the Commission) welcomes the opportunity to provide input into the Office for Youth and Disability's development of a youth policy.

In considering the discussion paper *What's Important to Youth*, the Commission appreciates the focus on those young people who are disadvantaged, disengaged or facing challenges in life. A key feature of the *Commission for Children and Young People Act 2012* and the role of the Commission is a focus on 'vulnerable children and young people'. The definition of 'vulnerable children and young people' in the Act encompasses:

- those who are or have been clients of Child Protection
- those who are involved in the Youth Justice service system
- those who have themselves received or whose primary carer is receiving or has received services from certain registered community services
- young people under the age of 21 who have left the care of the Secretary to the Department of Health & Human Services to live independently.

Given the mandate and expertise of the Commission, this submission highlights key issues facing children and young people that have come to our attention.

### **Hearing the voice of children and young people**

Children and young people strive to have their views heard and listened to, and for some, this task is harder than for others. In recognition of the lack of empowerment and opportunity for children and young people who have experienced disadvantage and abuse, the Commission has strived to develop ways to undertake meaningful consultation and enable children and young people to have their issues heard.



### *Independent Visitor Program*

The Commission has developed Independent Visitor Programs in Youth Justice, Secure Welfare Services and a pilot program in residential care. During visits, the visitors speak to the children and young people about their everyday experiences and any issues the young people wish to raise. At this point in time, the Youth Justice visitors are community-based volunteers and Commission staff undertake visits at Secure Welfare Services.

### *Community Integration Program*

The Commission has oversight of a Community Integration Program, contracted to Whitelion. It recruits community-based volunteers to support young people living in residential care, to enable opportunities for community connections outside their care environment. Young people in the Child Protection system can find it particularly difficult engage with their community. Time and resources are invested in recruiting the right volunteers, training, supporting and supervising them.

In addition to these formal strategies designed to listen to children, the Commission broadly, and the Commissioners in particular, take proactive measures to meet with and talk to children and young people across the state.

### **Adequacy of the provision of residential care services to children and young people**

In August 2015, the Commission tabled in Parliament a report titled '*...as a good parent would...*' *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care.*

The inquiry found the current residential care system creates opportunities for the sexual abuse of children and young people. The Commission has called for an urgent redevelopment of residential care services in Victoria. Key issues identified in the Inquiry include:

- a lack of compatibility with human rights as described in the *Charter of Human Rights and Responsibilities Act 2006*
- flawed models of residential care and a lack of options for professional foster care and therapeutic placements
- poor matching to placements and multiple placement changes
- poor physical standard of many residential units
- systemic flaws in the Department of Health & Human Services quality of care systems and processes
- restrictive and intrusive care practices evident in a number of residential care units
- appropriate treatment not given to many children and young people who had been sexually abused in residential care
- a lack of an outcomes basis for funding and accreditation, that focuses on specific outcomes for children in placement, rather than contractual performance of the organisation
- the need for independent oversight and consistent responses to children in residential care.

The scarcity of residential care units or more culturally appropriate houses operated by Aboriginal Community Controlled Organisations (ACCOS) contributes to Aboriginal children and young people being isolated from their community and support networks, resulting in them being at risk. Given the high representation of Aboriginal children and young people in residential care, a focus on cultural connectedness for Aboriginal children and young people requires urgent attention.

We would strongly encourage you to read the Inquiry report, which can be found at:  
<http://www.cyp.vic.gov.au/downloads/inquiry/final-report-as-a-good-parent-would.pdf>

## Youth Justice

Children and young people detained in youth justice facilities are amongst the states most vulnerable and disadvantaged. The community can at times find it difficult to understand the level of trauma and abuse that has preceded offending by these young people. Whilst not minimising the impact that their offending may have had on the community, the following snapshot of young people detained in youth justice provides a useful insight into their history and journey to youth justice.

### *Characteristics of young offenders<sup>1</sup>*

- 43 per cent had previous Child Protection order
- 19 per cent had a current Child Protection order
- 62 per cent were victims of abuse, trauma or neglect
- 58 per cent had previously been suspended or expelled from school
- 33 per cent presented with mental health issues
- 23 per cent had a history of self-harm or suicidal ideation
- 22 per cent presented with issues concerning their intellectual functioning
- 9 per cent were registered with Disability Services
- 8 per cent had a history of alcohol misuse
- 19 per cent had a history of drug misuse
- 60 per cent had a history of both alcohol and drug misuse
- 10 per cent had offended whilst under the influence of alcohol but not drugs
- 19 per cent had offended whilst under the influence of drugs but not alcohol
- 53 per cent had offended whilst under the influence of alcohol, and also whilst under the influence of drugs
- 10 per cent were parents.

17% of young people who received youth residential and youth justice centre orders during 2014-15 were Aboriginal.

Incarceration is largely a consequence of poverty and disadvantage, along with the cyclical nature of violence, abuse and trauma. The 2015 Jesuit Social Services report, *Dropping off the Edge*<sup>2</sup>, identified that two per cent of Victorian postcodes make up one-quarter of the prison population.

### *Over-representation of Aboriginal Children and Young People in Child Protection and Youth Justice*

Cumulative harm for Aboriginal children and young people is built upon a foundation of historical dispossession, separation of children from families and disconnection from culture. The passage of trauma from generation to generation and the devastating impact this can have on our Aboriginal communities has been well documented. The 2012 report on Victoria's Vulnerable Children (commonly referred to as the Cummins Inquiry) found that the history of dispossession, colonisation and past government and church policies continues to impact on Aboriginal communities in Victoria, and directly impacts on Aboriginal children and families today.

More than two decades ago the Royal Commission into Aboriginal Deaths in Custody released 339 recommendations, many of which specifically related to Aboriginal children. As is well known, the Royal Commission found that the reason for the high number of deaths in custody was the drastic over-representation of Aboriginal people in Australia's prison system. Despite the glaring warnings and recommendations the Royal Commission made over 20 years ago, more than 50 per cent of children

<sup>1</sup> The results of a snapshot survey of 157 males and 8 females detained on sentence and remand on 3 September, as contained in the *Youth Parole Board Annual Report 2014-15*.

<sup>2</sup> *Dropping off the edge: persistent communal disadvantage in Australia* / Tony Vinson, Margot Rawsthorne, Adrian Beavis, Matthew Ericson, 2015

and young people in youth detention in Australia are Aboriginal. For children under 18 years of age the rate is over 60 per cent.

The rate of detention of Aboriginal children and young people in Victoria is the lowest in the country, yet Koori children are still 13 times more likely to be in custody than their non-Aboriginal brothers and sisters.

The number of children detained in the state's Youth Justice custodial precincts on any given day is small but, as it should be, our society is judged by how well it protects and gives a voice to those who are most vulnerable and in need of care.

While we commend the Aboriginal cultural programs implemented at the youth justice custodial precincts over the past year, and the tireless work of the Aboriginal cultural support workers and independent visitors; Aboriginal children are still grossly over-represented in both youth detention and youth supervision programs. The Youth Justice Fact Sheets published by the Australian Institute of Health and Welfare in 2015 reported that in Victoria in 2013–14:

- although only two per cent of the state's population of 10 to 17 year olds are Aboriginal, 16 per cent of the young people in detention were Aboriginal
- Aboriginal young people were 12 times more likely as non-Aboriginal young people to be in community-based supervision and 13 times more likely to be in detention.

The Commission's independent visitor program provides a unique window into current youth justice trends. Snapshot data on the days of the independent visits at Parkville and Malmsbury Youth Justice Custodial Precincts during the first quarter of 2015 revealed that the proportion of Aboriginal children and young people at both precincts was consistently close to or above 20 per cent. At Malmsbury in February 2015, it reached a high of 25 per cent.

#### *Advocating for reform to the youth justice system*

The Commission has utilised a range of advocacy mechanisms to encourage consideration of reform activity that is required. This includes the following:

- *Minimum age of criminal responsibility:* Victoria's minimum age for criminal responsibility is ten years of age, which is up to four years below the international norm. There appears to be significant support to raise the minimum age of criminal responsibility in Victoria. A low minimum age for criminal responsibility has a particularly adverse impact on Aboriginal children. Aboriginal children and young people are represented as being younger at all stages of the Victorian youth justice system compared to non-Aboriginal children and young people. The younger a child is when they first come into contact with Youth Justice, the more quickly it is they will come back into contact with it again.
- *The trajectory from Child Protection to Youth Justice:* There is a strong correlation between children cared for, or known to, Child Protection and children and young people who become clients of Youth Justice. The Australian Institute of Health and Welfare is currently embarking on a project to develop a linked data collection to report on the relationships between Child Protection and Youth Justice supervision, and identify relevant triggers and pathways.
- *The over-policing of children in out-of-home care:* It is the Commission's view, through the analysis of critical incident reports, that one of the drivers behind the trajectory from Child Protection to Youth Justice is the residential care system's early involvement of police for relatively minor incidents, rather than finding alternative methods to solve problems or resolve conflicts.

Involving police early can lead to the early establishment of police profiles and an accelerated pathway into criminal prosecution and incarceration.

- *The need for better diversionary options:* Victoria drastically lacks diversionary options for children and young people. For this reason the Commission has, and continues to advocate for:
  - better diversionary options for children, including culturally appropriate and community-run program options for Aboriginal children and young people
  - the strengthening of trauma informed responses and support for children and young people who come into contact with the youth justice system, particularly through the residential care system
  - more consistent and equitable use of police cautioning.

The Commission is pleased to see the commencement of a pre-court diversion pilot program in the Children's Court in June 2015 and we will take an active interest in its progress, with particular interest in the accessibility and uptake by Aboriginal children and young people. We support reform to enshrine in legislation a state-wide diversionary program.

- *High numbers of children and young people on remand:* The Youth Parole Board stated in its 2014-15 Annual Report:
  - young people, often very young, should not be held in remand unless it is necessary
  - further development of resourced and supported bail programs, including safe accommodation and care, seems to me one much needed answer
  - it is clear that there has developed a problem relating to remand numbers and long periods of remand being served prior to sentence.

The Commission's Independent Visitor Program has identified a significant increase in the number of young people on remand at the Parkville Youth Justice Precinct. These are children and young people who have been charged with an offence, and who are waiting for their matter to be heard in court, or for sentencing.

The Commission is particularly concerned about the over-representation of Aboriginal children and young people on remand. Data presented by the Department of Justice & Regulation at an Aboriginal Justice Forum in 2015 showed that the number of Aboriginal youth admitted to remand increased from 12 in the second quarter of 2013-14 to 32 in the second quarter of 2014-15.

- *Incarceration of children in police cells:* The Commission continues to advocate for the elimination of the practice of incarcerating children and young people in police cells.
- *Use of restrictive practices:* The Commission is concerned about practices such as routine strip searches, isolation, and the use of physical and mechanical restraints in the state's Youth Justice custodial precincts. In advocating for reform to the criminal justice system, the Commission references the rights articulated in the Victorian Charter of Human Rights and Responsibilities.
- *Access to the Program for Students with Disabilities for students of Parkville College:* Children and young people with a disability who attend Parkville College, a registered government Specialist School, which operates in the grounds of Parkville and Malmsbury Youth Justice Precincts and at the Secure Welfare Service; do not receive access to funding under the *Program for Students with Disabilities*, which they would be eligible for if they attended any other school in the community. This is an anomaly that needs to be addressed.

### *Aboriginal Children and Young people in out-of-home care*

- Aboriginal children in Victoria are significantly over represented in Child Protection and out-of-home care. The growth of this over-representation is alarming, and the trajectory if it continues without significant change will be devastating for the current generation of children.
- The placement rates in Victoria for Aboriginal children are 62.7 per 1000 compared to the national rate of 51.4 per 1000, while in Victoria the placement rate for non-Aboriginal children is 5.1 per 1000. The highest placement rate in Victoria is 114:1000. The national rate is about 45:1000. Substantiation rates are 67.4 per 1000 as compared to non-Aboriginal 7.2 per 1000.
- It is important to unpack how the system operates and how people in the services sector view Koorie children and young people; as well as confront the drivers that result in Aboriginal babies, children and young people entering and languishing in care for many years. Most reports to Child Protection are for babies and pre-schoolers aged 1-4 years of age, which means many Aboriginal children grow up and spend their childhood and youth in the Child Protection system. It is this exposure that potentially disconnects them from their cultural, spiritual and familial base and heritage, and undermines their future development and wellbeing, as well as the strengthening of the foundations of future generations.
- The Victorian Koorie Youth Council consulted the Commission as part of its one-to-one consultations with representatives from Aboriginal Organisations for their *'What's Important to Youth Final Report'*. The Commission fully supports the Recommendations contained in the Council's report, as they represent the voice of Koorie young people themselves and the concerns they raised directly in their consultations. Please refer directly to that report for details, which we understand has been directly provided to your department as part of this consultation process.

### **Young people from culturally and linguistically diverse backgrounds**

The Commission recognises that there are a range of challenges confronting families from culturally and linguistically diverse backgrounds, where members may have low proficiency in English and low literacy in their community language.

Young people from a refugee and asylum seeker background, in addition to being dislocated from their country of origin may have experienced journeys where they were exposed to torture and trauma. Young people who are able to adapt to their new society more quickly than their parents may also find this triggers Intergenerational conflict, particularly if parents fear that they are providing inappropriate modelling for younger siblings. Those families from newly emerging communities have the additional challenge of being part of a community that is commencing the process of developing networks and other supports which form the infrastructure integral to community wellbeing.

Schools play a vital role in connecting these families to their local and the broader community and building their social capital, but it can be very difficult for young people who may have no experience of, or interrupted formal schooling. These young people, after some intense exposure to learning English are placed in mainstream educational settings with their chronological peers. This can lead to disengagement from education for those students who find it hard to adapt, and for those who are successful in completing formal qualifications there is an additional barrier of experiencing racial discrimination when seeking employment.

Young people have asked that mainstream service providers receive cultural competency training, especially in relation to the refugee experience, to ensure that they have the knowledge and skills to respond to their needs, whether this is in the health, education, community services or justice sectors.

## **Same sex attracted, intersex and gender diverse children and young people**

The Commission would like to acknowledge the importance of the contribution of funding to expand the work of the National Safe Schools Coalition to all Victorian schools to receive professional training for school staff and support same sex attracted, intersex and gender diverse students through creating inclusive environments. The Commission is aware that those children and young people who identify as gender diverse or sexuality variant also have very high rates of intentional self-harm, suicidal ideation and suicide attempts (Suicide Prevention Australia, 2009) and welcomes the Office for Youth and Disability's focus on the needs of these young people.

## **Disengagement from Education**

The Commission is concerned about the sidelining of children and young people with a range of behavioural issues into special programs and special schools, and would prefer to see teachers better supported and trained to enable those vulnerable children and young people to be included in the mainstream educational settings enjoyed by others.

The Commission is very concerned that each year, approximately 10,000 young people in Years 9 to 11 leave their school and do not go on to any other Victorian education or training provider. This is particularly disappointing when it is considered that the minimum age for attending compulsory education is 17 years. It is well known that there are high costs for the individual, the economy and society generally when disengagement occurs. These include significant impacts on the health, wellbeing, future employment opportunities and trajectory of the young person's life, and the lives of those associated with them.

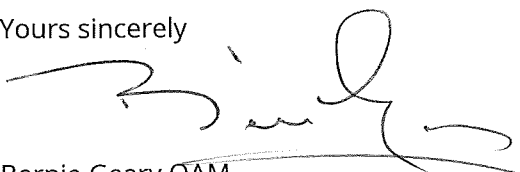
The Commission is very supportive of a strong focus on identification and early intervention to address the issue of educational disengagement to prevent exacerbation and entrenchment. Whilst the Commission believes school should be the first choice of educational setting, there is clearly a necessity for a broad range of flexible options which are appropriate to meet the varied needs of young people.

## **Metro Authorised Officers and Protective Services Officers**

Following concerning reports and images highlighting the actions of Metro Authorised Officers and Protective Services Officers with young people, in consultation with Metro, the Commission contributed to the development of a training program for Metro Authorised Officers who interact with children and young people who may have high-risk behaviours. The Commission has also sought to advocate for young people following concerning incidents vulnerable young people and Authorised Officer, however, little traction has been gained to date.

The Commission would be very pleased to engage with the Office for Youth and Disability on this, or any other matter relating to Victoria's children and young people. The Commission's Chief Executive Officer, Ms Brenda Boland can be contacted by phone on 8601 5255, should you wish to talk with us further.

Yours sincerely



**Bernie Geary OAM**  
**Principal Commissioner**



**Andrew Jackomos PSM**  
**Commissioner for Aboriginal Children and Young People**

