

Our Ref: 816

7 June 2019

Ginna Webster
Secretary
Department of Communities Tasmania
Office of the Secretary

By email to: cteccc@communities.tas.gov.au; and Anita.Doig@communities.tas.gov.au

Dear Secretary

Re: Developing a Permanency Framework for Children and Young People in the Child Safety System

Thank you for the opportunity to provide feedback in response to the *Developing a Permanency Framework for Children and Young People in the Child Safety System: Consultation Paper* (the Consultation Paper). I am particularly grateful for the extension of time in which to provide this feedback.

The Consultation Paper seeks feedback from key stakeholders to inform the development of a permanency framework for Tasmania that best meets the needs of all children and young people who come into contact with Child Safety Services (CSS). I understand that the scope of the permanency framework is to define the suite of care arrangements that will best support positive, long-lasting relationships and connections for all children who come into contact with, or are in the child safety system, including Aboriginal and Torres Strait Islander children.

Role of the Commissioner for Children and Young People

The statutory 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, which are set out in section 8(1) of the CCYP Act, include:

- advocating for all children and young people in the State generally;
- researching, investigating and influencing policy development into matters relating to children and young people generally;
- promoting, monitoring and reviewing the wellbeing of children and young people generally;
- 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; and
- assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.



In performing these and other functions under the CCYP Act, the Commissioner is required to do so according to the principle that **the wellbeing and best interests of children and young people are paramount** and must observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (CRC).¹

The Commissioner is required to give special regard to the needs of children and young people who are vulnerable or disadvantaged for any reason. The Commissioner's work must also be performed according to the principle that the views of children on all matters affecting them should be given serious consideration and taken into account, and that children are entitled to live in a caring and nurturing environment, and to be protected from harm and exploitation.²

The Commissioner may make recommendations in respect of the effects of any legislation, proposed legislation, documents, government policies, or practices or procedures, or other matters relating to the wellbeing of children and young people.³

A major initiative of the Commissioner is to undertake programmatic monitoring of Tasmania's out-of-home care system. The overarching aim of the Monitoring Program is to promote and protect the wellbeing and rights of children and young people in out-of-home care, by engaging in independent, systemic monitoring of out-of-home care. The Monitoring Program comprises three interrelated elements - regular data monitoring, thematic monitoring, and responsive investigations. These components of monitoring, which include visits to out-of-home care providers and direct engagement with children and young people with care experiences, enable the Commissioner to develop and maintain a thorough understanding of the out-of-home care system in Tasmania. More information about the Monitoring Program is available on the Commissioner's website: <https://www.childcomm.tas.gov.au/out-of-home-care-monitoring/>.

Policy Context

All states and territories have committed under Priority Area 3 of the *Fourth Action Plan 2018-2020 for the National Framework for Protecting Australia's Children 2009-2020* (the Fourth Action Plan) to improving outcomes for children and young people in out-of-home care by enhancing placement stability through reunification and other permanent care options. The Fourth Action Plan states that:

Research tells us that a sense of security, stability, and permanency are strong predictors of better outcomes for young people after they leave care. This priority area aims to support better permanency options, including consistent processes for family reunification and to reduce state guardianship for children who cannot be safely reunified with their families within a reasonable time... Efforts to improve permanency include ensuring lifelong relationships and a sense of belonging, identity and connection to culture, in line with the Aboriginal and Torres Strait Islander Child Placement Principle.⁴

The Tasmanian Government has committed to developing a Permanency Framework. As is stated in the Fourth Action Plan:

The Tasmanian Government has committed \$900,000 over three years, from 2018–19, to strengthen the permanency of placement process. A Permanency Framework will be developed that focusses on timely decision making, provision of family engagement services to prevent children and young people entering the Child Safety System; ensuring children and young people that enter the Child Safety Service system do so

¹ CCYP Act, s3(1).

² CCYP Act, s3(2).

³ CCYP Act, s11(2)(d).

⁴ *Fourth Action Plan 2018–2020 for the National Framework for Protecting Australia's Children 2009–2020*, 20.



for the shortest time possible; and the ability to secure a permanent solution for children and young people that best meets their needs, now and into the future. This will include the development of better processes and systems for transfer of guardianship and adoption, reinforced with targeted funding.⁵

As the Consultation Paper notes, the permanency framework for Tasmania will be based on the Permanency Outcomes Statement and Permanency Guiding Principles which have been agreed to by Community Services Ministers.⁶ The Permanency Outcomes Statement is as follows:

Children and young people, including those in out of home care experience:

- *Safe and stable care;*
- *Timely decision making on permanency that takes into account the views of the child; and*
- *Lifelong relationships and a sense of belonging, identity and connection to culture and community;*

to achieve better life outcomes and realise their full potential.

The development of the permanency framework is occurring in the context of ongoing work to implement the *Strong Families Safe Kids* redesign of Tasmania's child safety system and the *Out-of-Home Care Foundations Project*. Given the focus on promoting children's wellbeing, supporting families and intervening earlier when problems occur, and associated reviews of organisational structure and capabilities within the Child Safety Service and wider service system, I respectfully request that the views I outline in this submission are considered and taken into account in this broader reform context.

Comment

The Consultation Paper is structured around the ten Permanency Guiding Principles which I have listed throughout this submission. While I have not commented in detail under each of these Principles, it is important to note the interrelated nature of the factors that can impact upon the implementation of each Principle.

The Consultation Paper poses a number of questions seeking to elicit the views or feelings of children and young people, including Aboriginal children, with an experience of the out-of-home care system on particular topics. I feel uncomfortable attempting to answer those questions directly without having first consulted directly with children and young people to ascertain their views on those specific matters. Consequently, I recommend that safe, accessible and meaningful opportunities are afforded to children and young people with care experiences to have input into the development of the permanency framework, should they wish to do so.

Questions 3 and 4 of the Consultation Paper seek to ascertain the views of Aboriginal children and Aboriginal communities (respectively). I do not intend responding directly to these questions, as they clearly raise matters that are more properly responded to by Tasmanian Aboriginal communities themselves. In saying this, I make the following points:

- a. As is recognised in the *Children, Young Persons and Their Families Act 1997* (the CYPF Act), 'Aboriginal families, kinship groups, Aboriginal communities and organisations

⁵ *Fourth Action Plan 2018–2020 for the National Framework for Protecting Australia's Children 2009–2020*, 23.

⁶ *Community Services Ministers' Meeting Communiqué*, 1 June 2018.



*representing Aboriginal people have a major, self-determining role in promoting the wellbeing of Aboriginal children' in Tasmania.*⁷

- b. In the development of the permanency framework, distinct consideration must be given to how permanency is conceptualised for Aboriginal children and young people, their families and communities.
- c. We must also always remember the centrality of the Aboriginal and Torres Strait Islander Placement Principle and the need to align our legislation, policy and practice with its fundamental goal, which is *'to enhance and preserve Aboriginal children's connection to family and community and sense of identity and culture'*.⁸

There is solid evidence of the critical importance of stability and, more importantly, having a sense of security, for children and young people's healthy development, and particularly so for those children and young people in out-of-home care.^{9,10}

A focus on permanency planning has arisen out of concern for children and young people who 'drift' between multiple unstable placements during extended periods in out-of-home care. This 'drift' has been associated with a number of negative outcomes for children and young people including for their mental health and wellbeing, educational attainment, life satisfaction, access to stable and secure housing, and relational stability.¹¹

Quality permanency planning can assist to improve outcomes for children and young people in contact with the child safety system through improved stability, attachment to carers, continuity, sense of belonging and positive, loving and enduring relationships.

It is useful to reflect on what we mean when we talk about permanency planning, as research indicates that the concept of permanency planning and its intended consequences are not well understood by most stakeholders.¹²

Permanency planning has been described as the *'process of making long term care arrangements for children with families that can offer lifetime relationships and a sense of belonging.'*¹³

Permanency planning involves *relational, physical and legal* dimensions:

*Relational permanence pertains to children having the opportunity to experience positive, caring and stable relationships with significant others; physical permanence denotes stable living arrangements; and the legal dimension pertains to the legal arrangements of a child's custody and guardianship.*¹⁴

⁷ Section 10G(1)

⁸ Fioan Arney et al, 2015, *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle – Policy and practice considerations*, CFCA Paper no. 34, AIFS, <https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child/aboriginal-and>

⁹ J Cashmore and M Paxman, 2007, *Longitudinal Study of Wards Leaving Care Four to Five Years On*, Social Policy Research Centre, UNSW, https://www.facs.nsw.gov.au/_data/assets/pdf_file/0005/321728/research_wards_leavingcare2.pdf

¹⁰ Osmond, Jennifer; Tilbury, Clare, Permanency Planning Concepts, *Children Australia*, Melbourne, Vol. 37, Iss. 3, (Sep 2012): 100-107, <https://core.ac.uk/download/pdf/143881256.pdf>

¹¹ Australian Institute of Health and Welfare 2017. *Australia's welfare 2017*. Australia's welfare series no. 13. AUS 214. Canberra: AIHW, 2, <https://www.aihw.gov.au/getmedia/e84b6721-7ea0-4688-8eac-59353cfb4452/aihw-australias-welfare-2017-chapter2-5.pdf.aspx>

¹² Jennifer Osmond & Clare Tilbury, 2012, Permanency Planning Concepts, *Children Australia*, Melbourne, Vol. 37, Iss. 3: 100-107.

¹³ Clare Tilbury and Jennifer Osmond, 2006, Permanency Planning in Foster Care: A Research Review and Guidelines for Practitioners, *Australian Social Work*, 58:3, 265-280.

¹⁴ Jennifer Osmond & Clare Tilbury, 2012, Permanency planning concepts, *Children Australia*, 37(3) Iss 3, (Sep 2012), 100-107.



Relational permanency is often considered to be the most crucial dimension of permanency planning¹⁵ and it is important to remember that a child can experience long-term and stable care without having the legal permanency of a long-term order or adoption.¹⁶

Stability and quality attachment between a child and their carer, especially in the early years, has a positive impact on wellbeing.¹⁷ It is important to also acknowledge, as has been pointed out by the Australian Human Rights Commission, that:

A focus on dyadic attachments between a child and a single set of carers is not necessarily appropriate for all children and it is important to consider the possibility of multiple attachments. This is particularly the case for Aboriginal and Torres Strait Islander children where permanence and stability can also be drawn from a broader communal sense of belonging that expands extensive family networks where children are a part of a system of care which is the basis for their identity, culture and spirituality. When assessing the best interests of the Indigenous child, the UN Committee on the Rights of the Child has also noted the importance of considering the cultural rights of the Indigenous child and their need to exercise such rights collectively with members of their group.¹⁸

Permanency planning is often incorrectly thought of as “working towards adoption”. Rather, permanency options can include family preservation and reunification with a child’s family of origin as well as orders for long-term care which do not extinguish the legal relationship between children and their parents. A range of options are required in order to respond to the best interests of a child or young person, which should be thoroughly assessed in every case.

As is acknowledged in s10C of the CYPTF Act, where a child is removed from their family, safe reunification should always be the policy preference. Where this is not possible, early efforts to achieve stable, long-term care arrangements will provide the best outcomes, noting of course the fundamental importance for Aboriginal children and young people of full implementation and compliance with the Aboriginal and Torres Strait Islander Child Placement Principle.

Permanency planning is more likely to lead to positive outcomes for children and young people where decision-making processes are collaborative and take account of the perceptions of family members, including children.¹⁹ This requires that children and young people are provided with meaningful and developmentally appropriate opportunities to express their views in planning processes. Note also my comments regarding Article 12 of the CRC below.

Comments in relation to the Permanency Guiding Principles

1. Children’s interests are paramount and at the centre of all decisions impacting on their lives.

Under Principle 1, the Consultation Paper references Article 12 of the CRC. Article 12 provides that children have the right to freely express their views in all matters that affect

¹⁵ Anglicare Tasmania, “*Being Healthy*”: *preventative strategies, health care services and health outcomes for children and young people in out of home care in Tasmania*, November 2018, <https://www.socialactionresearchcentre.org.au/research/anglicare-tasmania-submission-being-healthy-preventative-strategies-health-care-services-and-health-outcomes-for-children-and-young-people-in-out-of-home-care-in-tasmania/>

¹⁶ Australian Institute of Health and Welfare 2016. *Permanency planning in child protection*. Child welfare series no. 64. Cat. no. CWS

58. Canberra: AIHW, 11, <https://www.aihw.gov.au/getmedia/792f5576-eeca-48f5-9e64-0155f537d5f1/20156.pdf.aspx?inline=true>

¹⁷ Clare Tilbury and Jennifer Osmond, 2006, Permanency Planning in Foster Care: A Research Review and Guidelines for Practitioners, *Australian Social Work*, 58:3, 268.

¹⁸ Australian Human Rights Commission, *Submission to the Standing Committee on Social Policy and Legal Affairs Inquiry into Local Adoption*, June 2018, para 58-60.

¹⁹ Clare Tilbury and Jennifer Osmond, 2006, Permanency Planning in Foster Care: A Research Review and Guidelines for Practitioners, *Australian Social Work*, 58:3, 274-275.



them and for their views to be given due weight in accordance with their age and level of maturity.²⁰ It also outlines the requirement in s10E of the CYPTF Act which provides that the best interests of the child must be the paramount consideration in performing functions or exercising powers under the Act. I note that the CYPTF Act sets out a non-exhaustive list of the matters that may be taken into account in determining a child's best interests.

There is no doubt that children and young people have the right to be involved in decision-making processes that affect them, including those around permanency, and for their views to be taken into account in accordance with their age and maturity.

However, it is important to also acknowledge that the CRC elaborates a number of other rights which are essential to the promotion and protection of children's interests and wellbeing.

Rights under the CRC which are particularly pertinent to, and should underpin any permanency framework, are set out below:

- Children have the right to non-discrimination (Article 2).
- Children have the right for their best interests to be a primary consideration in all matters affecting them (Article 3) and, in relation to adoption, the best interests of the child are the *paramount* consideration (Article 21).
- Children have the right not to be separated from their parents against their will, except where competent authorities subject to judicial review determine, in accordance with law and procedures, that such separation is in the child's best interests (Article 9).
- Children have the right to the preservation of their identity, including nationality, name and family relations (Article 8).
- Children have the right to be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, within the care of parents, legal guardians or any other person who has care of the child (Article 19).
- Children who cannot be looked after in their own family environment are entitled to special protection and assistance provided by the State with respect for their religion, culture and language (Article 20).
- Children belonging to minority groups or who are indigenous have the right, in community with other members of their group, to enjoy their culture, use their language and profess or practice their religion (Article 30).
- Children who are victims of sexual abuse or exploitation have the right to have their physical and psychological recovery promoted, in an environment that fosters their health, self-respect and dignity (Article 39).

Children and young people each have unique needs specific to their individual circumstances and experiences.²¹ The UN Committee on the Rights of the Child, as referenced in the Australian Human Rights Commission submission to the Inquiry into Local Adoption, has provided the following guidance on how to assess and determine a child's best interests in specific situations. These observations are, in my opinion, relevant to and should inform the development of the permanency framework:

²⁰ See also sections 10E and 10F of the CYPTF Act.

²¹ Clare Tilbury and Jennifer Osmond (2006), *Permanency Planning in Foster Care: A Research Review and Guidelines for Practitioners*, *Australian Social Work*, 58:3, 265-280.



- *Assessing a child's best interests is a 'unique activity that should be undertaken in each individual case, in light of the specific circumstances of each child or group of children or children in general'.*
- *It is 'useful to draw up a non-exhaustive and non-hierarchical list of elements that could be included in a best-interests assessment by any decision-maker having to determine a child's best interests'. All elements of the list must be taken into consideration and balanced in light of each situation. The list should provide 'concrete guidance, yet flexibility'.*
- *The elements may be in conflict when considering a specific case and its circumstances. For example, preservation of the family environment may conflict with the need to protect the child from the risk of violence or abuse by parents. In such situations, the elements should be weighed against each other in order to find the solution that is in the best interests of the child.*
- *In weighing the various elements, 'one needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child'.*
- *The right of the child to preserve their cultural identity must be taken into consideration when determining their best interests. There may also be a distinction 'between the best interests of the individual child, and the best interests of children as a group'.²²*

It is also important to note that the Committee on the Rights of the Child has said that, '[a]ssessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight given to said views in all matters affecting the child'.²³

2. Compliance with all five domains of the Aboriginal and Torres Strait Islander Child Placement Principle is supported and measured.

In providing the following comments I am guided by the view expressed by the Australian and New Zealand Children's Commissioners and Guardians at their May 2019 meeting:

The Aboriginal and Torres Strait Islander Child Placement Principle, inclusive of all five elements, must be fully embedded in legislation and practice

Aboriginal, Torres Strait Islander and Māori people are best placed to care for and make decisions about their children. While recognising that many Aboriginal and Torres Strait Islander and Māori children and young people live in strong and nurturing homes and communities, a priority issue for all members remains the greater disadvantage and the overrepresentation of these children and young people in child protection and youth justice systems. Members noted the fundamental importance of embedding the Aboriginal and Torres Strait Islander Child Placement Principle in legislation

²² Australian Human Rights Commission, *Submission to the Standing Committee of Social Policy and Legal Affairs Inquiry into local Adoption* – June 2018, para 25, Footnotes omitted, <https://www.humanrights.gov.au/sites/default/files/18.06.08%20AHRC%20submission%20-%20Inquiry%20into%20local%20adoption%20FINAL%20version%20.pdf>

²³ UN Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 11, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f14&Lang=en



*and practice, acknowledging that self-determination is integral to the application of this principle to practice.*²⁴

As I noted earlier in this submission, the CYPTF Act acknowledges that, 'Aboriginal families, kinship groups, Aboriginal communities and organisations representing Aboriginal people have a major, self-determining role in promoting the wellbeing of Aboriginal children' in Tasmania.²⁵

The fundamental goal of the Aboriginal and Torres Strait Islander Child Placement Principle (the ATICPP) is 'to enhance and preserve Aboriginal children's connection to family and community and sense of identity and culture'.²⁶ Connection to culture is associated with improved emotional, social and physical health for Aboriginal and Torres Strait Islander children and their families. Positive cultural connection can assist in the development of Aboriginal and Torres Strait Islander children's identity, fostering high self-esteem, emotional strength and resilience.²⁷

The ATICPP was developed in recognition of the inter-generational trauma caused by policies and practices which saw the forced separation of Aboriginal and Torres Strait Islander children from their families, communities and culture. The ATICPP seeks to prevent those practices from continuing or occurring again and to promote the self-determination of Aboriginal and Torres Strait Islander communities.

It is therefore essential that any discussion around approaches to permanency planning for Aboriginal and Torres Strait Islander children in contact with the child safety system in Tasmania takes account of this historical context. Furthermore, development of the permanency framework clearly should be consistent with the Fourth Action Plan's Priority Area 1 (Improving outcomes for Aboriginal and Torres Strait Islander children at risk of entering, or in contact with, child protection systems) and its proposed actions.

I think it is important to acknowledge that the ATICPP is often incorrectly understood as being limited to a hierarchy of preferred placement options for Aboriginal and Torres Strait Islander children who have been removed from the care of their parents. The preferred order of placement is:

- *with Aboriginal and Torres Strait Islander relatives or extended family members, or other relatives and family members; or*
- *with Aboriginal and Torres Strait Islander members of the child's community; or*
- *with Aboriginal and Torres Strait Islander family-based carers.*

If the above preferred options are not available, as a last resort the child may be placed with:

- *a non-Indigenous carer or in a residential setting.*²⁸

²⁴ Australian and New Zealand Children's Commissioners and Guardians, Communique, May 2019, <https://www.childcomm.tas.gov.au/wp-content/uploads/2019-05-ANZCCG-Communique%C3%A9-May-2019-Canberra.pdf>

²⁵ Section 10G(1)

²⁶ Fiona Arney et al (2015) *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle – Policy and practice considerations*, CFCA Paper No. 34, Australian Government: Australian Institute of Family Studies (Child Family Community Australia), Melbourne, <https://aifs.gov.au/cfca/sites/default/files/cfca34.pdf>.

²⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 12, Contemporary out-of-home care*, Commonwealth of Australia, 2017, 327.

²⁸ SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation*, 2018, https://www.snaicc.org.au/wp-content/uploads/2018/12/SNAICC-ATSICPP-resource_final-Dec2018.pdf



Preferred placements are just one of five core elements of the ATICPP, the others being: prevention, connection, partnership, and participation. As the Secretariat for National Aboriginal and Islander Child Care (SNAICC) has said, the broad aims of the ATICPP are to:

- *ensure an understanding that culture underpins and is integral to safety and wellbeing for Aboriginal and Torres Strait Islander children and is embedded in policy and practice;*
- *recognise and protect the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters;*
- *increase the level of self-determination of Aboriginal and Torres Strait Islander people in child welfare matters; and*
- *reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care systems.*²⁹

Notwithstanding the ATICPP, Aboriginal children and young people continue to be overrepresented in child safety systems nationally and, as is acknowledged in the Consultation Paper, more than one quarter of all children in out-of-home care in Tasmania are Aboriginal. In saying this it is important to note that for Tasmania the high proportion of clients with an 'unknown' Indigenous status affects the reliability of data disaggregated by Indigenous status.³⁰

Full compliance with the preferred hierarchy of placement options also continues to be a challenge. In 2017-18, 42.6 per cent of Aboriginal and Torres Strait Islander children in out-of-home care in Tasmania were placed with relatives/kin, other Aboriginal and Torres Strait Islander carers or Aboriginal and Torres Strait Islander residential care. This is 22.6 per cent lower than the national percentage of 65.2 per cent. The Tasmanian percentage has increased to 42.6 per cent at 30 June 2018 from 41.3 per cent at 30 June 2017.³¹

It is important to note that the Tasmanian Government has accepted in principle recommendation 12.20 of the Royal Commission into Institutional Responses to Child Sexual Abuse which I have set out in full below:

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

- fully implement the Aboriginal and Torres Strait Islander Child Placement Principle*
- improve community and child protection sector understanding of the intent and scope of the principle*
- 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*

²⁹ SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation*, 2018, https://www.snaicc.org.au/wp-content/uploads/2018/12/SNAICC-ATSI CPP-resource_final-Dec2018.pdf

³⁰ Australian Institute of Health and Welfare 2019. *Child protection Australia: 2017–18*. Child welfare series no. 70. Cat. no. CWS 65. Canberra: AIHW, 53, <https://www.aihw.gov.au/getmedia/e551a2bc-9149-4625-83c0-7bf1523c3793/aihw-cws-65.pdf.aspx?inline=true>

³¹ Steering Committee for the review of Government Service Provision, 2019, *Report on Government Services 2019*, Productivity Commission, Canberra (Part F, chapter 16, Child Protection, Attachment Table 16A.21 Aboriginal and Torres Strait Islander children in out-of-home care by relationship of caregiver, 30 June).



- 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.*

I have been advised that the Department of Communities in consultation with Aboriginal communities in Tasmania is developing an action plan aimed at strengthening Tasmania's compliance with the ATICPP. This is an initiative I can indicate my in principle support for, noting however, that any such initiative should be properly resourced.

3. Prevention and early intervention for all children is a key focus for achieving permanency. A child, family and community should be supported to live with their family wherever possible and/or in the community
and
4. Families, children and communities are supported to enable family preservation or reunification/restoration.

Tasmania's out-of-home care system provides foster care, kinship care and residential care for children and young people who are unable to live at home. As at December 2018, 1,310 children and young people were in out-of-home care in Tasmania, a number which has slowly increased over recent years.³²

We must always remember that in order to reduce the number of children entering or remaining in out-of-home care, the child safety system needs to actively provide the supports and services necessary to contribute to the development of safe and resilient families in which children can grow and thrive.³³

As Professor Daryl Higgins said in his submission to the Standing Committee on Social Policy and Legal Affairs' Inquiry into Local Adoption:

*Better efforts to support parents to continue to care for their children, while having access to treatment, parenting supports, respite, and 'mirror families' where highly trained carers and mentors provide in-home or out-of-home care placements to entire families, not just removing children at risk, is what is needed.*³⁴

A major objective of the *Strong Families – Safe Kids* redesign of the child protection system is to provide supports and assistance to families including through establishment of the Strong Families – Safe Kids Advice and Referral Service and by developing more intensive interventions for families at risk of entering the statutory child safety system. The aim of the advice and referral service is to 'prevent children being removed from their families by giving families and carers the support they need earlier'.³⁵

It is also useful to acknowledge the current work of the Productivity Commission under its current reference 'Systems for Protecting Children', which investigates what is known about systems that enable the 'public health approach' to protecting children. As the Productivity

³² Tasmanian Government, Human Services Dashboard, 5 April 2019, https://www.dhhs.tas.gov.au/humanservicesstats/human_services_dashboard

³³ Australian Human Rights Commission, *Submission to the Standing Committee on Social Policy and Legal Affairs Inquiry into Local Adoption*, June 2018, para 50.

³⁴ Professor Daryl Higgins, *Submission to the Standing Committee on Social Policy and Legal Affairs Inquiry into Local Adoption*, May 2018, 1.

³⁵ The Hon Roger Jaensch MP, Minister for Human Services, Helping kids and families get the help they need, when they need it, *The Advocate*, 9 December 2018, <https://www.theadvocate.com.au/story/5800818/giving-kids-and-families-the-help-they-need/>



Commission says in its consultation paper, 'a public health approach to protecting children means a focus on preventing child abuse and neglect from occurring in the first place by addressing underlying risk factors that increase the likelihood that a child will experience abuse or neglect, or where problems do occur, to intervene as early as possible to minimise harm'.³⁶

If supports to address these risk factors are not available to families either before statutory intervention or during a period where family preservation or reunification is possible, a permanency framework incorporating strict timelines for the achievement of legal permanence (for example through transfer of guardianship or adoption) may result in outcomes which are not necessarily in a child's best interests.

5. Various pathways to permanency are available to children and are considered as soon as statutory involvement occurs and reviewed regularly.

As outlined in the Consultation Paper, the current CSS permanency continuum of statutory and non-statutory options incorporates: family preservation, reunification, long-term order with custody and/or guardianship to the Secretary, transfer of guardianship and adoption.

In my opinion, permanency planning that includes family preservation or the return of a child to their parent(s) as options should commence as soon as statutory involvement occurs. Furthermore, as is the case in some other jurisdictions, I would also support a process of parallel planning under which essentially, there is a back-up option available should reunification not be a realistic option. However we need to ensure that permanency planning does not inadvertently serve to undermine efforts to support reunification where this is a safe option.

So, for example, we need to ensure that parents and carers have timely access to programs and supports which are appropriately resourced and well-matched to their needs, and that decision-making is undertaken by appropriately skilled and resourced CSS staff with expertise in child development and trauma. Furthermore, at all times, decision making must be guided by what is in the best interests of the individual child, which of course should be informed by the views of the child.

We should also take account of learnings from other jurisdictions. By way of example, I refer to the words of the Principal Commissioner and the Commissioner for Aboriginal Children and Young People of the Victorian Commission for Children and Young People who have said:

*Our review found that the permanency amendments were implemented in the context of a child protection system that did not have the resources and support required to realise the objectives of the reforms. Instead, despite recent investment, we saw a system struggling in the face of rising demand, child protection practitioners burdened with unsustainable workloads, and large numbers of unallocated cases. We also found that many practitioners lacked the specialist guidance, focus and capacity to achieve the specific permanency arrangements that are in the best interests of children.*³⁷

³⁶ Secretariat for the Steering Committee for the Review of Government Service Provision (Productivity Commission), *What is known about systems that enable the 'public health approach' to protecting children - Consultation Paper*, 2019, Australian Government: Canberra., <https://www.pc.gov.au/research/ongoing/report-on-government-services/what-works/child-protection/consultation/what-works-child-protection-consultation.pdf>

³⁷ Commissioner for Children and Young People (Vic), '*...safe and wanted...*' *Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*, p 5.



I acknowledge the usefulness of timeframes which may trigger a particular decision making process. However, I am reluctant to support the development of a permanency framework incorporating inflexible timeframes which trigger a predetermined outcome (please refer to the comments of the Committee on the Rights of the Child regarding assessment of best interests as outlined earlier). In saying this, I do not exclude the possibility that for some children, moving towards a permanent placement other than reunification within a particular timeframe may be crucial to promoting their best interests. Determination of the nature of that permanent placement should again be based on robust assessment of what is in the best interests of the particular child and decision-making processes should be undertaken by properly resourced staff with the necessary professional skills and experience.

In this context, it is useful to recall section 49(5) of the CYPTF Act which provides as follows:

- (5) *If custody or guardianship, or custody and then guardianship, of a child has been granted to a person under one or more care and protection orders and interim care and protection orders for a continuous period of 2 or more years and an application for another such order or an extension of that order is before the Court, the Court must, in the interests of securing a stable living arrangement for the child and despite [section 42\(6\)](#), consider making a care and protection order under [section 42\(4\)\(c\)](#) granting guardianship of the child until the child attains 18 years of age.*

For ease of reference, section 42(6) is extracted below:

- (6) *The Court may not make a care and protection order unless satisfied that –*
- (a) *the views of the child have been duly considered, having regard to the age, understanding and maturity of the child; and*
 - (b) *the views of the parents or other existing guardians have been duly considered; and*
 - (c) *if the order places a child under the guardianship of a person who is not an existing guardian (whether in addition to, or in substitution for, the guardianship of an existing guardian) –*
 - (i) *all reasonable steps have been taken to provide the services required to enable the child's protection and care needs to be met within the home of a parent or other existing guardian of the child; and*
 - (ii) *the person proposed as guardian is suitable to have guardianship of the child, having regard to any prescribed matters, and is willing and able to assume guardianship; and*
 - (d) *either –*
 - (i) *a family meeting or family group conference has been held in relation to the child; or*
 - (ii) *it is in the best interests of the child for the order to be made without further delay; and*
 - (e) *no other order, apart from the order considered, would be in the best interests of the child.*

As mentioned above, adoption is already an option within the CSS permanency continuum. While I acknowledge that there may be circumstances in which adoption will represent an outcome which is in the best interests of a child, it does not necessarily mean that adoption



should always be actively considered or prioritised in a hierarchy of permanency options where family restoration is not possible.

Of particular note are the significant concerns of Aboriginal and Torres Strait Islander communities and others affected by past practices of forced removal and adoption practices which are well documented and cannot be dismissed.

It has also been pointed out that an overemphasis or prioritisation of legal permanency options such as adoption as representing a 'solution or panacea' to children drifting in out-of-home care, amounts to a 'simplistic view of the complex issues related to a child's relational and physical sense of belonging'.³⁸

If the permanency framework leads to adoption being actively considered as a permanency option and/or prioritised above alternative long-term care arrangements such as transfer of guardianship, it is my strong opinion that the Tasmanian *Adoption Act 1988* should first be reviewed to ensure it reflects contemporary best practice. For example, there is no provision in our current adoption legislation to provide:

- a. That the consent of a mature minor is required in addition to the current requirement that their wishes be ascertained.
- b. For children to be able to take part in proceedings and to be represented either directly or through a separate representative.
- c. Specific provisions relevant to cultural identity of the child.

The Australian Human Rights Commission provides a useful starting point to conceptualise such a review in its June 2018 submission to the Standing Committee on Social Policy and Legal Affairs Inquiry into Local Adoption.³⁹ The Commission has suggested that a national framework for adoptions be developed which includes a number of guiding principles to ensure that the rights and best interests of children are prioritised and protected. I have set out these principles below:

- ***The rights of the child will be respected and protected.*** Children involved in adoption processes will have their human rights respected and they will be treated in accordance with Australia's obligations under the United Nations Convention on the Rights of the Child. Children will be provided with clear and age appropriate information about their rights, their situation and the care options available to them.
- ***The best interests of the child will be the paramount consideration in all adoption matters.*** For individual adoption decisions, the child's best interests should be assessed and determined on a case-by-case basis, in light of the specific circumstances and needs of the particular child.
- ***Children's rights to culture and identity will be respected:*** When determining the best interests of the child, regard should be had for the child's individual and collective rights to their identity, including their cultural identity. All rights outlined in the Convention on the Rights of the Child should be considered when determining what is in the child's best interests, including those outlined in article 30.

³⁸ Vanish Inc. *Submission to the House of Representatives Standing Committee on the Social Policy and Legal Affairs – National Inquiry into Local Adoption*, 14 May 2018.

³⁹ The Australian Human Rights Commission, *Submission to the Standing Committee on Social Policy and Legal Affairs Inquiry into Local Adoption*, June 2018; see in particular pages 22-24.



- **Children's rights to be heard will be respected and facilitated.** All children, including very young or vulnerable children, should be given the opportunity, either directly or through a representative, to express their views and be heard in adoption proceedings that affect them. As a child matures, their views should be given increasing weight in the assessment of their best interests.
- **Children's consent will be sought:** If a child has capacity to give or refuse consent, their consent should be sought prior to their adoption. Any legal minimum age requirement for a child being able to consent to their adoption should be supplemented by a provision allowing a child below that minimum age to give or refuse consent where they have demonstrated a sufficient level of maturity and understanding to do so.
- **There will be a presumption for open adoption:** Open adoption ensures that the child has access to information about their birth family and their adoption, and has ongoing contact with their birth family unless that is not in the child's best interests.
- **All parties will have access to ongoing support services:** Birth families, children and adoptive families should be provided with access to information, counselling and support services prior to, during and after an adoption. The support needs of adoptive parents should be met on an ongoing basis, to ensure that the physical, emotional, health, educational and other needs of each individual adopted child can be fulfilled.

6. Timeframes which promote timely permanency decisions including placements and hierarchy of permanency options are reflected in legislation and/or policy and practice, with national public reporting on permanency timeframes that are achieved.

I refer to my comments under Principle 5 above regarding the inconsistency I see between the imposition of inflexible timeframes for decision making and the need to base decisions on factors which promote a child's best interests. In my view, the imposition of rigid timeframes has the capacity to distort a determination of what is in a child's best interests. In saying this, I reiterate the fact that the CYPTF Act currently requires that a child's best interests are to be the paramount consideration in decision-making processes.

I also reiterate my comments about the need for there to be adequate supports in place for decision-making processes to be undertaken by appropriately skilled and resourced staff whose case-loads permit them to take the time required to conduct robust assessments of the circumstances surrounding a particular child. Staff should be supported and resourced to seek peer review and reflection and specialist input as required.

7. Every child has a comprehensive and timely permanency assessment, and culturally and trauma informed permanency planning is in place and regularly reviewed.
8. Kinship placements that preserve a child's connection to culture and relationships with their parents, siblings, community and other significant people are prioritised in permanency planning when an OoHC placement is required.



9. Carers/guardians/parents and the community are supported to provide children with the best practice permanency outcomes that meet their cultural, emotional and psychological therapeutic needs.

and

10. Significant and lifelong relationships are supported and maintained.

Recalling that permanency planning includes consideration of options such as family preservation and/or reunification, and consistent with the views I have expressed above, I support the operationalisation of Principles 7, 8, 9 and 10 for every child who comes into the statutory child safety system.

Concluding Comments

Taking account of the above, I am generally supportive of the development and implementation (with appropriate resourcing) of a permanency framework to improve outcomes for children and young people in the child safety system in Tasmania.

However, I respectfully request that such a framework takes account of the matters that I have referred to in this submission.

Without addressing systemic issues, some of which I have mentioned in this submission, the development and implementation of a permanency framework will not necessarily promote children's best interests. Of particular importance is the need to acknowledge that our child safety system - and the public health approach to child protection - is predicated on the assumption that the best place for children is with their parents where it is safe for this to occur.

As should be clear from my comments above, for implementation of a permanency framework to be done in a way which promotes the wellbeing and best interests of children and young people, we must ensure that parents have early access to the evidence based supports and services they need to safely care for their children. This requires early identification of risk factors and well-matched supports for families especially during pregnancy and in the early years of a child's life. Given the focus in the CYPTF Act and Principle 3 of the Permanency Principles on family preservation, there is, in my opinion, a clear need to provide strengthened intensive in-home or alternative residential-based supports and mentoring to families.

Furthermore, decision making within CSS should be undertaken by appropriately resourced staff with necessary qualifications and experience, working within an organisational structure which supports them.

I also suggest that the development of the Tasmanian framework is informed by the experiences of other jurisdictions that have implemented permanency frameworks including through legislative amendment. So for example, I commend to you:

- a. The report of the Victorian Commission for Children and Young People *Inquiry into Implementation of the Children Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*.⁴⁰
- b. The more recent analysis of implementation issues associated with permanent care orders in Victoria.⁴¹

⁴⁰ Commission for Children and Young People, 2017, '*...safe and wanted...: Inquiry into the implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*', <https://dhhs.vic.gov.au/publications/safe-and-wanted-inquiry-implementation-permanency-arrangements>



- c. The submission of the Australian Human Rights Commission to the Inquiry into Local Adoption.⁴²

Further, for the reasons I have noted above, it is essential that the Tasmanian Government work in partnership and collaboration with Tasmanian Aboriginal communities to build their capacity to play a greater self-determining role in promoting the safety and wellbeing of their children and young people.

Finally, it is important to ensure that the lived experiences of children and young people inform ongoing policy and practice development relating to permanency planning. For example, the NSW Department of Family and Community Services is currently undertaking a longitudinal study (Pathways of Care Longitudinal Study⁴³) over a 10 year period which will track children's experiences and outcomes from birth in order to strengthen the out-of-home care service system and improve outcomes for children in out-of-home care. I acknowledge that the Department of Communities Tasmania will be using View Point to survey children and young people in out-of-home care, which will provide some insight into their experiences. However it is also important to track their experiences over time to shape policy and practice, so that these practices can support and contribute to tangible improvements in outcomes for children and young people.

Thank you again for the opportunity to provide comment on this important area of reform. I would appreciate the opportunity to provide comment on the draft permanency framework before its finalisation.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc *Hon Roger Jaensch MP, Minister for Human Services*
Hon Jacquie Petrusma, Minister for Aboriginal Affairs
Gail Eaton-Briggs, Deputy Secretary Children, Department of Communities Tasmania.

⁴¹ Penny Mackieson, Aron Shlonsky & Marie Connolly (2019): Permanent Care Orders in Victoria: A Thematic Analysis of Implementation Issues, *Australian Social Work*, DOI: 10.1080/0312407X.2018.1539112

⁴² Australian Human Rights Commission, *Standing Committee on Social Policy and Legal Affairs Inquiry into Local Adoption* – June 2018.

⁴³ <https://www.facs.nsw.gov.au/resources/research/pathways-of-care>