



Commissioner for Children and Young People
Western Australia

All enquiries

Telephone: (08) 6213 2224
Email: krista.dunstan@ccyp.wa.gov.au
Our reference: 18/5969

Director, Aboriginal Policy Unit
Department of the Premier and Cabinet
By email: AboriginalPolicy@dpc.wa.gov.au

Dear Director

**An office for advocacy and accountability in Aboriginal affairs in WA
discussion paper - submission**

Thank you for the invitation to provide a submission to the discussion paper on an office for advocacy and accountability in Aboriginal affairs in Western Australia. As Commissioner for Children and Young People in Western Australia, I have a statutory responsibility to monitor and review laws, policies, practices and services that affect the wellbeing of children and young people under the age of 18 in WA, and in doing so, have regard to the best interests of the children and young people as being of paramount importance. It is also a statutory function of my office to advocate for the views of children and young people to be heard in decision making that affects them. In undertaking these responsibilities, I must give priority to Aboriginal¹ children and young people and those who are vulnerable or disadvantaged for any reason. I must also have regard for the United Nations Convention on the Rights of the Child.²

In reviewing the discussion paper, particularly the diagram at page 6, I note that my office is the closest operating structure in terms of the jurisdiction and function of the office to that currently proposed for the office of advocacy and accountability in Aboriginal affairs; my office is independent, has statutory power and has a legislated priority to focus on Aboriginal and Torres Strait Islander children and young people (although this focus is not exclusive). The two offices will therefore naturally have a

¹ For the purposes of this submission, the term 'Aboriginal' encompasses Australia's diverse language groups and also recognises those of Torres Strait Islander descent. The use of the term 'Aboriginal' in this way is not intended to imply equivalence between Aboriginal and Torres Strait Islander cultures, though similarities do exist.

² United Nations 1989, *Convention on the Rights of the Child*.

shared agenda on Aboriginal and Torres Strait Islander children's issues which apply across both offices.

All of the work of my office has incorporated the views of Aboriginal children and young people however we have also conducted projects with a specific Aboriginal focus including the "*Listen To Us*" consultation with almost 1,300 Aboriginal children and young people. From this consultation projects such as the "*This is Me*" publication and the "*Engaging Aboriginal Children and Young People toolkit*" were developed. Our office has also developed the *Aboriginal Leadership Cross-Cultural Solutions program*, the *Aboriginal Forum* in the *Vulnerability Speaker Series* and the "*Talking Leadership*" publication based on the feedback received from Aboriginal children and young people.

Question 1: What are your views about the outline of the office's basic features on pages 10 – 12? Does it miss out anything important? Is anything included that shouldn't be?

A. Function of the new office

In addition to the basic features of the office outlined in the discussion paper, the office should also be responsible for the promotion of positive leadership outcomes from Aboriginal-led solutions across government departments to help build case studies of best/effective practice.

Given that a significant portion of funding in the area of Aboriginal affairs originates from the Commonwealth, if it is intended that the office has influence and oversight over these decisions then the resourcing and budget of the office will need to reflect an ability to engage with the Commonwealth, including provision for travel to Canberra. To assist the office in performing its systemic advocacy role, there should also be a team of advocates hired who can assist individuals with complaints through to resolution and provide oversight and feedback into the systemic work of the office. Page 11 of the discussion paper refers to an absence of an individual case related advocacy role for the new office and cites existing organisations such as the Ombudsman and the Mental Health Commission that have this function, however how often/extensively do Aboriginal people access these existing systems? I would suggest that access to these existing structures needs to be actively facilitated by an advocacy team with the ability to deal with individual cases as part of the role of the office of advocacy and accountability in Aboriginal affairs.

B. Business of the new office

In respect of the overlap with the Commissioner for Children and Young People, I submit that the office for advocacy and accountability in Aboriginal affairs should, for reasons outlined in more detail below:

- have a clearly defined relationship with the Office of the Commissioner for Children and Young People; as it needs to be constructive and integrated at a resourcing level to achieve the best outcome for Aboriginal children and young people. The issues for Aboriginal children and young people are too critical to get the relationship wrong.
- be located physically close to the Office of the Commissioner for Children and Young People. While the physical location of the office isn't mentioned, it would be important for the office to be co-located or otherwise located nearby the Office of the Commissioner for Children and Young People to foster a close working relationship and allow for the easy transmission of information between the offices. Wherever the offices are located, they need to be accessible to Aboriginal people and the Office of the Commissioner for Children and Young People would be happy to re-locate to support this.
- be appropriately resourced to provide extensive promotion of the new role and office across the state.

Where possible, common messages and supportive action should occur between the two offices. Consultation on key issues should also be coordinated between the offices to avoid duplication and an undue burden being placed on Aboriginal children and young people. There should also be a clear outline of how each office will be recognised, measured, monitored and have recommendations implemented to assist the function of both offices.

To support this, there will need to be formal provisions around staffing included shared/dedicated staff with an agreed set of protocols to govern the relationship to formalise the obligations of the two offices to each other and keep them accountable. While there will be overlap between the work of the two offices, there will also be some divergence in the focus of the offices, as the office for advocacy and accountability in Aboriginal affairs focuses on adults as well as young people and the Commissioner for Children and Young People is responsible for both Aboriginal and non-Aboriginal children and young people. For example, both offices have an interest in addressing the concerns of children and young people in care, in which Aboriginal children are over-represented. However in dealing with systemic issues it is important

to improve the level of care for all children and young people while ensuring that there is not undue burden or duplication in oversight for the relevant agency.

Whilst I support the broader focus of the office for advocacy and accountability in Aboriginal affairs in incorporating both the views and issues of both adults and children and young people, particularly given that children and young people make up a significant proportion of the Aboriginal population and Aboriginal people have recently expressed a preference to my office in young people being assisted in a family context. I believe it is important to also ensure that a priority focus remains on the needs of children and young people given their additional vulnerability. Whilst I have advocated for a Commissioner/Deputy Commissioner for Aboriginal Children and Young People³, consideration needs to be given for how the office for advocacy and accountability in Aboriginal affairs and my office work together to assist the two offices in meeting their respective obligations.

One model to address this would be to resource and appoint a Deputy Commissioner for Aboriginal children and young people to my office with express responsibility to work across both offices.

C. Structure and powers of the new office

Given my experience as the Commissioner, I support the proposal that the office should be independent and report directly to Parliament to allow for freedom of the voice of the Commissioner as well as consistency across changes in government. I also support the proposed five year term with a re-appointment period of three-five years but no more to allow for a balance between consistency to achieve large systemic changes and revitalisation of the office.

The resourcing of the office of advocacy and accountability in Aboriginal affairs will need to be significant to undertake the necessary work of the office; including inquiries where necessary, consultation on the ground and managing a number of large policy issues at any one time through all stages from consultation, to policy development and advocacy. The office will also require significant initial funding to allow for the office holder to engage at a regional level in sharing the role and purpose of the office and to develop its local means of engagement in the regions.

³ See Finding 11 and 12 and Recommendation 3 from the Joint Standing Committee on the Commissioner for Children and Young People's "Everybody's Business" report. Series: Western Australia. Parliament. Legislative Assembly. Committees. Joint Standing Committee on the Commissioner for Children and Young People. Report 7

It may also be useful to have a power similar to that in effect with the New Zealand Office of the Children's Commissioner where agencies have a reporting function to the office which sits with the Director General to ensure relevant work, outcomes and measures including the amount of money spent must be reported to the Commissioner. Flexibility around the provisions for engagement at local/regional level will also need to be provided to allow the office to respond to the needs of each region as identified by that region and to maintain appropriate levels of contact and engagement at a local level. Budget and staffing will need to be reflective of this need in order for the office to cover the issues it will be expected to cover and meet community needs and expectations.

Question 2: What should be the formal name of the office?

I do not have a formal response to this question, although it would be worth ensuring that the views of Aboriginal children and young people are taken into consideration in naming the office.

Question 3: How should Aboriginal people and organisations be involved in the appointment process of the office-holder? Who should be involved?

This is a matter for Aboriginal people to determine, so I will not make a formal submission in this respect.

Conclusion

I am happy to assist with any further information required and look forward to supporting the development of the office for advocacy and accountability in Aboriginal affairs in WA, in whatever structure works best to progress Aboriginal affairs in WA. I recently hosted an Aboriginal Forum as part of the Vulnerability Speaker Series which was attended by nearly 100 Aboriginal leaders from across the state to consider the progression of Aboriginal-led solutions including the development and expansion of Aboriginal Community Controlled services. I will be happy to forward the outcomes from this forum once they have been endorsed by the attendees.

Yours sincerely



COLIN PETTIT

Commissioner for Children and Young People WA

31 August 2018