



Speech 26 May 2016

## WA Family Pathways Network Conference

Good morning.

- I would like to acknowledge the traditional owners of the land on which we meet today.
- My thanks to the conference secretariat for inviting me to speak to you and I also thank all of you for being here.
- I am heartened by the turnout today and the commitment from all of you in taking time to discuss ways to ethically and effectively hear the voices of children whose parents are separating.
- In November 2015 I was appointed as Western Australia's Commissioner for Children and Young People for a five year term.
- It's a role I am honoured to take on and I have a clear direction for the coming five years on how we can improve the wellbeing of our State's youngest citizens.
- Rather than start out by talking about my role, I would like to set the scene by discussing the very important people I'm here to advocate for:
  - There are now more than 586,000 children and young people in our state
  - The number of children continues to grow with increasing numbers of babies being born each year

- Just over one quarter of our children and young people live outside of the metropolitan area
  - Last year the Family Court had an increase of 3.4 per cent in the number of divorce applications
  - One in five (or 19 per cent) of dependent children in WA are living in a one parent family.
- I understand that the acting Commissioner Jenni Perkins spoke at your conference last year, and so some of you may have a broad understanding of the role.
  - I am independent and report directly to the Western Australian Parliament, working across government and with community sector partners.
  - My overarching responsibility is that I give paramount consideration in all of my work for the best interests of children and young people in WA
  - This involves advocating for, promoting and monitoring children and young people's wellbeing.
  - Under the *Commissioner for Children and Young People Act 2006*, I am also required to give priority to, and have a special regard for, the interests and needs of Aboriginal and Torres Strait Islander children and young people and to children and young people who are vulnerable or disadvantaged for any reason.
  - The Act outlines four guiding principles for the work of both myself and my staff, and these are outlined on the screen.
  - There are many parallels between my work and the decisions being made in a family law context – that children and young people are entitled to be protected from harm, that families must be supported and importantly, that children's views on matters that affect them must be heard.

- The Act also describes 15 specific functions, and while I won't go through all 15 with you this morning, I would like to highlight that one of the key functions is, as you can see behind me – focusing on listening to children in matters that affect them.
- In addition to consulting directly with children and young people, I work closely with families, community groups, government agencies, including the Family Court, and non-government organisations to ensure that the work of the office is well informed and that we bring a community-wide focus to children's wellbeing.
- Importantly, all of my work is informed by the views and opinions of children and young people, and the best available evidence and research of what works well.
- You will see on the slides behind me today a number of quotes which are all from WA children and young people who have taken part in our consultations.
- Children have a knack of 'cutting to the chase' and these comments demonstrate the insight children and young people have into their lives and the processes impacting on them.
- Underpinning my work, and that of Children's Commissioners and Guardians around the country, is the United Nations Convention on the Rights of The Child.
- Australia is one of almost 200 countries who have become state parties to this convention over its 25 year history.
- This convention is based on the premise that children and young people have the right to be heard, and that children's rights are not special rights, but rather the fundamental rights inherent to the human dignity of all people.
- However, children just do not have the same level of control over their lives as adults do and their wellbeing is dependent upon the people who care for them and those who are making decisions on their behalf.

- Articles nine to twelve of the Convention specifically relate to family law and the premise that at all times, we are to act in the best interests of the child.
- Within Australia, when a court is making a parenting order the *Family Law Act 1975* also requires it to regard the best interests of the child as the most important consideration.
- So, the legal and legislative frameworks specifying that we are to listen to children and young people are in place. We have the desire – you are all here today because you recognise the importance of listening to children.
- The issue is, how do we best involve children in important life decisions such as what parent they should live with and how they should have ongoing contact with both parents, in an effective and empathic way?
- I am going to give you an overview of several recent projects undertaken by my office and share with you some learnings that are relevant in the context of family separation. I do not claim to be an expert in family law or the inner workings of the Family Court.
- However, in advocating for all WA children and young people, I regularly conduct consultations and hear their voices, so my contribution today is based on this.
- The office has in previous years consulted children and young people on issues such as mental health, wellbeing, living in regional and remote WA and living with disability
- In the last year, the office has completed a major consultation with Aboriginal and Torres Strait Islander children and young people.
- This is the largest single consultation to be completed by the Commissioner's office to date, and to my knowledge, the biggest consultation ever undertaken with Aboriginal children and young people in WA.

- This is a diverse group of children – many of whom it should be said are doing well and have strong support from their families. Others continue to face very real and complex issues.
- Recognising the diversity of this cohort, the consultation was conducted in a range of ways – through the more traditional approaches of one-on-one interviews and an online survey, to workshops which resulted in the creation of artworks and music.
- Recognising the difficulty in reaching some of these young people, we partnered with community organisations that were already working in the field and known to communities to help us create trust and connections.
- The subsequent report from this consultation, *Listen To Us*, outlines the views expressed by Aboriginal children and young people and how these views can be applied to improve the way agencies support their healthy development and wellbeing.
- The report was tabled in State Parliament and has been positively received by Aboriginal leaders and the general community.
- The question is now what the next steps will be – it is important that the findings from these reports have real flow-on effects to the program and services working with these children.

- I am liaising with relevant government departments, such as Aboriginal Affairs and the Department of Regional Development's regional reform unit to ensure that the government maximises the resources it has, we remove duplication, and embed the key themes expressed by the children in the very services aimed at supporting them.
- All of the reports from this landmark consultation are available on my website if you would like to learn more.
- We have also recently consulted with children and young people from culturally and linguistically diverse backgrounds on their experiences.
- This included both recent migrants, refugees and children who may have been born overseas but have lived in Australia for a number of years.
- Children and young people shared their experiences in settling in WA, the best things about living here and the difficulties that they have faced.
- Through this consultation we also asked young people what support they felt they needed to thrive and achieve their goals.
- For the first time, we used peer leaders to conduct consultations on my behalf.
- The Youth Affairs Council of WA supported a group of CALD young people aged between 18 and 25 years to lead and report on consultations with their peers.
- This group of peer leaders ran consultation activities with young people up to the age of 18 in their local community.
- This approach was a success, with the peer leaders gaining valuable insights from their interview subjects and again proving that trust

and empathy are important to young people when sharing sometimes sensitive information.

- As per the ATSI consultation and all of the major projects that we do, the resources developed from this consultation are available online and I commend them to any of you working with children from CALD backgrounds.
- Just this month I have launched a suite of resources and a schedule of workshops as part of my Child Safe Organisations WA initiative.
- This is a range of resources to assist WA organisations to identify and manage risks that affect the safety and wellbeing of children and young people.
- These resources were born out of the St Andrew's Hostel Inquiry, the current Royal Commission into Institutional Responses to Child Sexual Abuse and other inquiries both here and overseas.
- These inquiries continue to highlight that children and young people are vulnerable to abuse where organisations neglect their responsibilities, fail to listen to children and young people, and prioritise the reputation of the organisation over the protection of children and young people.
- Understanding what is needed to improve the safety of children and young people when in the care of organisations is not a new endeavour, with a range of frameworks, research and resources produced in the past 15 years.
- However it is clear that despite these efforts we are not there yet – children continue to be harmed and there is much work to be done in both small and large organisations to adequately protect children and young people from abuse and neglect.

- The office also consulted with 365 WA children and young people on what they thought made an organisation child safe to inform the development of these resources – and there are some learnings from this consultation that have relevance to anyone working with children in a legal setting that I will return to later in my presentation.
- The new Child Safe Organisations WA resources are based on nine key domains for organisations to consider and enact to strengthen and create a culture of safety for children.
- My focus now is to roll out these resources through workshops to ensure that child safe organisational practices are improved in WA.
- My staff and I are committed to doing all we can to promote the importance of this work.
- Children undergoing a challenging family situation such as separation and divorce are at a greater risk of mental health problems.
- We know that good mental health is essential for a child's wellbeing.
- The main theme that constantly comes up when we speak with children about what is important to their wellbeing is family connections.
- It should be acknowledged that children from separated families can continue to have their wellbeing needs met in the same way other children do, particularly when they maintain supportive relationships with their parents and other significant people in their lives, such as extended family and family friends.
- That would be a best case scenario, and I give credit to those parents who do manage to achieve this.
- Each child's reaction and ability to adjust will vary and be dependant on the relationship they have with their parents, their age, developmental stage and personality.

- It will also depend heavily on the way they are consulted and assisted during this time.
- There is evidence that children and young people in the circumstances of family separation, or the too-often associated situations such as family violence or abuse, are affected by trauma, stress, anxiety, low self esteem and depression.
- There is general consensus that these children and young people are, to a large degree, hidden and voiceless.
- In many cases, the adults in these circumstances are receiving services that meet their particular needs. However, an adult-focussed service does not always acknowledge or provide for the needs of a child.
- I would like to point out, the issue is not always a lack of access to services, but the effectiveness of these services and their continuity.
- Children should never feel like they are just a number in the system.
- In the heartbreaking experience of Grace Cuzen, she tells of dealing with a number of different people in the years her family was involved with the Family Court, however in her view, she did not feel there was anyone that she could really open up to.
- In saying this, I acknowledge both that consulting with children who are in distress or vulnerable is by no means easy, and that this statement relates to a particularly complicated and drawn-out example of the family court system.

- I will revisit the issue of creating a safe environment in a moment. However one of the paramount considerations for anyone working with a child in the context of the family court is the mental health of that child as they navigate the lengthy and emotionally charged process of family separation.
- In 2010 the former Commissioner conducted an independent inquiry into the mental health and wellbeing of Western Australia's children and young people.
- The Inquiry report made 54 recommendations that provided clear directions for action on what needs to be done at Commonwealth and State levels as well as in the community sector to strengthen the wellbeing of our children.
- The report found that there was a general lack of understanding across the community that children and young people, including infants, suffer from conditions such as anxiety and depression and that they are as real and as debilitating as those experienced by adults.
- The Inquiry also found that although there are strong, evidence-based mental health promotion and prevention programs in WA, their delivery was limited and not available to all children and young people and that there were very few services for children and young people experiencing mild to moderate mental health problems and disorders.
- Last year my office conducted a review of how the 54 recommendations from this inquiry are being implemented.
- Entitled *Our Children Can't Wait*, the review was tabled in Parliament in late 2015 and found that while progress has been made in some areas, significant gaps remain.

- There is a continued reluctance to acknowledge that very young children can, and do, experience mental health issues that may manifest as serious social, emotional or behavioural problems and a mistaken belief that issues experienced by young children will be outgrown.
- Following the review of progress towards the 54 recommendations, *Our Children Can't Wait* contains 12 new recommendations that will be the key focus of my monitoring going forward.
- Support in regional areas in particular needs to be improved — remembering that just over a quarter of all WA children and young people live outside of the metropolitan area — and we must fully resource services and supports for vulnerable children and young people.
- I intend to monitor the progress on these recommendations over my term as Commissioner and the extent to which there are improved programs and services for children and young people of every age and improved outcomes for their mental health and wellbeing.
- So, my point to you all today is that the mental health of children whose parents are undergoing separation needs very close attention and they need every support to see them through.
- The next fundamental for anyone wanting to engage children and young people who are stressed or vulnerable in any way is the creation of a safe environment.
- I note from the Family Court of WA's Annual Review for 2014–15 that divorce applications in WA increased. Clearly, the Family Court is under increasing demand for its services.

- In addition, there was both an increase in Family Reports (5%) and a large increase in Child Inclusive Reports (38%) – creating an overall increase of 13% in cases directly involving the interviewing of children.
- According to the same annual review, family consultants are now conducting preliminary assessments of more than 95 per cent of parenting cases via the Child Related Proceedings list.
- That equates to a lot of pressure to balance the need to adequately hear the voice of a child with the management of case loads.
- I have no doubt that this also creates flow-on resourcing and funding pressures to those of you in support services.
- Despite these pressures, children have a right to the support, assistance and encouragement necessary to maintain positive, meaningful relationships and connections to family.
- They are entitled to express their feelings as they adjust to a new situation and they need to know that their feelings and wishes are considered when decisions that affect them are being made.
- It is also important that children and young people, when accessing an agency's services, are themselves recognised as service users.
- As I have outlined previously, my office has consulted with children and young people on what they feel constitutes a child safe organisation.
- In the child safe consultation, children and young people were asked what strategies they would recommend for a child or young person who is feeling unsafe or uncomfortable when engaging with an organisation, and while in the context of this consultation we were referring to all organisations outside of the family home, there are important learnings relevant to you all today:

- Having friendly and engaged staff who like children
  - being proactively asked their views
  - having their views taken seriously
  - being given choice and having flexibility around participating
  - having information about expectations and clear rules of behaviour, and
  - seeing action taken to stop problems from continuing
  - doing what you say you will do.
- Having the right staff was critical to participants – they have to be approachable, friendly, trustworthy and competent.
  - The bottom line is, if children and young people know they can speak out and that they will be listened to, taken seriously and their concerns acted upon, if they are meaningfully involved in discussions, then you have established a strong foundation to support them through the Family Court process.
  - Over the last few months my office has been consulting with children who are in contact with the youth justice system and children in out-of-home care.
  - We have just started to analyse the data from these consultations however there are already very clear themes emerging from the views of these vulnerable groups of young people that are relevant to your work with children involved in family court proceedings.
  - Both of these consultations involved children who are in varying degrees of upheaval, distress and who are facing uncertainty.

- Many of them are disconnected from the support services offered to them and are children who can be difficult to engage in a meaningful way.
- Despite this, I believe our consultations have shown that you can effectively engage with vulnerable children with an appropriate approach.
- The children have been very open and, to be honest, at times very frank with us.
- These groups of young people are not always asked about their lives and some children and young people in consultations have described feeling invisible and overlooked.
- The Youth Justice and Out of Home Care consultations involved engaging with children and young people through face-to-face interviews, telephone interviews and online surveys.
- Art-based activities were also used to provide an alternative, creative way to hear their views and ideas.
- Our experiences undertaking the Youth Justice and Out of Home Care consultations demonstrate that vulnerable children and young people are open to sharing their views and ideas on how to improve their lives, if done appropriately.
- Children want to be heard and don't want to have to repeat previous disclosures.
- It is important that anyone working with children in a stressful situation such as the Family Court context has read the previous interview notes and doesn't ask children to repeat what are often traumatic disclosures.
- We found the one-on-one interviews with staff that were approachable and authentic proved to be the most effective way to

engage and have real conversations with these young people.

- Providing a variety of participation activities to choose from encouraged a broader range of children to be able to engage with us.
- The interviewers being flexible, whether that meant going for a walk in the park to talk to the child, changing the language of the questions depending on their literacy, or getting down on the floor to do colouring in, just being adaptable to suit the preferences and capabilities of each young person made a difference.
- Through these consultations, when children did open up about their experiences we have had disclosures that were previously unknown to case workers or carers.
- Part of consulting with vulnerable children and young people involves being prepared to ask hard questions but also being prepared to listen and act on the responses.
- As adults we can often make a lot of assumptions about what children and young people need and the best way to deliver services.
- What we consistently find, and it was true for these two recent consultations, is that the young people we speak to are able to articulate very clearly their ideas on what makes services accessible and engaging and what makes a worker "good" or otherwise.
- Asking questions in a constructive way that gives young people the language to express their opinions and ideas is also very important.
- An example of a question used in these consultations that yielded insightful responses was "if you were the boss of the government department (that they were involved with), what would YOU do differently to make the lives of kids better?"

- In the Youth Justice and Out of Home Care consultations, themes of trust and respect came up regularly.
- Young people described feeling good about themselves and feeling valued when workers or carers listened to them and acted on what they said.
- As one young person said, "it's just respect".
- I'll be sharing the findings from these consultations with the community later this year and working with the involved organisations to see where the opportunities are to use the views expressed by these children to achieve improvements in service delivery.
- I think all of the same rules we have applied in these consultation also apply to you, however children who are dealing with traumatic family situations are often quite practiced in not telling.
- You have to work hard to engage in a meaningful way with these children.
- There is a particular need to consult with vulnerable children and young people because their involvement and reliance on services is higher.
- Improving how we deliver services by asking them what they think, and being responsive to what they tell us, is essential to achieving better outcomes for our young people.
- For the remainder of 2016 I will be overseeing the completion of the Out-Of-Home Care and Youth Justice consultations, in addition to undertaking a major education-based consultation with children on their engagement with school.
- This consultation will look at the factors that influence children's engagement in education and will survey randomly selected students from around the State.

- We know that children's home life and family situations have a large influence on children's engagement in school, and I will be reporting back on the findings of this consultation next year.
- A consultation I am planning for 2017 is one with children in contact with the Family Court.
- I will be consulting with key stakeholders – and looking to work collaboratively with many of you – as we shape this project.
- Before any consultation occurs I will undertake a literature review to guide the project.
- To my knowledge, a consultation of this type has not previously been undertaken in WA.
- The Family Court is a unique place, where children can be exposed to conflict between the important people in their lives over a long period of time – the median wait to trial in the Family Court I understand is at 89 weeks (in 2014-15).
- Children are often asked to choose a side, or disclose information to strangers that are deeply personal.
- This presents some unique challenges to creating the conditions I have previously spoken about that children and young people need.
- I am interested in hearing the views of children on how they feel they should be involved in Family Court proceedings.
- What questions do they think children should be asked as part of the process?
- Who should be asking the questions?
- And what do they feel are the best ways to go about this?

- This information could be extremely valuable in improving children's experiences of the Family Court and in improving support services.
- I am fully supportive of finding more effective ways to respond to the needs of children in separated families.
- Resource constraints are an issue across many organisations, and in light of this a cohesive approach and collaborative working relationships are essential.
- We cannot help children without first talking to them and finding out what they need to improve their wellbeing.
- Listening to the voices of children and young people who are undergoing family separation and family court contact will ensure that the child remains at the centre of all decision making in this area.
- I accept that engaging vulnerable children and young people can present a challenge as they are often the most disengaged and hard to reach.
- However, our experiences in consulting with a broad range of vulnerable children and young people demonstrate that the majority of them are happy to share their views and ideas on how to improve their lives, if this consultation is done appropriately and authentically.
- I would like to conclude by acknowledging all of you for the work that you do.
- You work in an extremely complex field that is no doubt rife with professional and personal challenges and your commitment to ensuring children's views are heard in the family court process is important.

- That concludes the formal part of my presentation today, however I would like to invite questions from you, and again – I am most interested to hear your thoughts on a consultation with children involved with the Family Court.