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Mrs Robyn Clarke MLA
Chair
Joint Standing Committee on the Commissioner for Children and Young People
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Chair

Report regarding a Commissioner for Aboriginal Children and Young People for WA

Thank you for the opportunity to provide the Joint Standing Committee with further information regarding the need for a Western Australian Commissioner for Aboriginal Children and Young People (CACYP).

The argument for establishing an independent CACYP in WA

An independent statutory officer, charged with representing the best interest of Western Australian (WA) Aboriginal children and young people and vested with the powers necessary to fulfil this duty, is a critical component in successfully addressing the inequities facing Aboriginal children and young people in WA. It is well established that Aboriginal children and young people are disproportionately represented in this state's child protection and youth justice systems. There is also a recognised need to improve the overall health and wellbeing of Aboriginal children in the early years of life, address mental health concerns that are more prevalent amongst young Aboriginal people, and to increase the overall literacy and numeracy amongst Aboriginal students.

Statistically, WA Aboriginal children and young people:

- Are 16.7 times more likely to be removed from their families by child protection services than non-Aboriginal children.¹

¹ SNAICC – National Voice for our Children et al 2020, The Family Matters Report 2020: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres-Strait Islander children in out-of-home care in Australia

- Are 36 times more likely to be in detention than non-Aboriginal children and young people.²
- Are 17.8 times more likely to be subject to a community-based supervision order than non-Aboriginal children and young people.³
- Experience almost three times the incidence of developmental vulnerability upon entering primary school compared to non-Aboriginal children and young people (45.2 per cent compared to 17.6 per cent).⁴
- Are at higher risk of mental health problems than their non-Aboriginal peers (almost 1 in every four Aboriginal children aged 4 to 17 years is at high risk of experiencing clinically significant emotional or behavioural difficulties).⁵

These factors alone establish a clear need for an independent CACYP in WA whose functions and powers are solely aimed at supporting governments, decision makers and the broader community to act in the best interests of the state's 40,000 Aboriginal children and young people. The complex and entrenched nature of the issues outlined above, along with the overarching responsibility of the WA Commissioner for Children and Young People (CCYP) to represent the best interests of all of WA's 610,000 children and young people, mean the current legislative requirement for the WA CCYP to give priority to the interests and needs of Aboriginal children and young people is insufficient. Appropriate expertise and resources must be specifically allocated to addressing the inequalities facing Aboriginal children and young people if meaningful change is to occur. An Aboriginal Commissioner focused on the wellbeing of Aboriginal children and young people would therefore be a significant step towards ensuring the necessary level of systemic oversight and advocacy is provided to protect and promote the rights of Aboriginal children and young people across Western Australia.

A range of community leaders, expert reports, parliamentary committees, royal commissions and coronial inquests have all recommended the establishment of a dedicated CACYP in WA. I myself have made the same recommendation to the State Government on a number of occasions during my terms as Commissioner (see Attachment 1), backed by the recommendations of the senior Aboriginal leaders who participated in the Vulnerability Speaker Series Aboriginal Forum⁶ and the experience of other Australian jurisdictions. At this stage I

² Australian Institute of Health and Welfare 2021, Youth Justice in Australia 2019-20, Cat. No. JUV 134, Table 3.1: Young people aged 10-17 under supervision on an average day by Indigenous status and state and territory, 2019-20 (rate), Canberra: AIHW.

³ Ibid

⁴ WA Department of Education 2019, WA AEDC data – source Australian Early Development Census 2009-2018, Custom report provided to the Commissioner for Children and Young People (unpublished)

⁵ Zubrick S et al 2005, The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People, Curtin University of Technology and Telethon Institute for Child Health Research, p. 25

⁶ For further information see <https://www.ccp.wa.gov.au/our-work/project/vulnerability-speaker-series/>

have not received any formal responses from the State Government regarding this recommendation.

Elements of an appropriate CACYP model for WA

Article 12 of the United Nations Convention on the Rights of the Child requires that children and young people capable of forming their own views are given the opportunity to express their views in matters affecting them. In keeping with this right, the CACYP model adopted in WA must be informed by the views of Aboriginal children and young people, along with the views of their families, carers and communities. A consultation process such as this will be critical to ensuring a WA CACYP has the role, functions and powers required to meet the needs of Aboriginal children and young people and the adults who care for and support them.

After considering the views expressed to me on this matter by Aboriginal people and representative organisations during my time as Commissioner, and taking into account the CACYP models that have been adopted in other Australian jurisdictions since 2013, I believe the Victorian model which successfully demonstrates the benefits of appointing a CACYP within the same office as the CCYP, should be the model for Western Australia. Appropriate and enabling legislative changes could be made within the *Commissioner for Children and Young People Act 2006* to facilitate, this including specifically outlining the titles and functions of each role and ensuring the CACYP role has equivalent functions and powers to the CCYP.

With this suggestion in mind the following components should form the statutory foundation of a WA CACYP:

- **A separate and distinct role** – the nature of issues experienced by Aboriginal children and young people, the credibility of the office within WA's Aboriginal community, and the need to perform functions and exercise powers in a culturally safe and appropriate way collectively require the focus of a dedicated CACYP who has the appropriate experience, skills and standing in the community.
- **Appointment process** – the legislation must ensure that the role of WA CACYP can only be filled by an Aboriginal person. In addition to this, the appointment of a person as CACYP should incorporate a similar process to that outlined in section 7 of the *Commissioner for Children and Young People Act 2006*.
- **Functions and powers**– to ensure the role of CACYP must be provided through legislation meaningful functions and powers, equivalent to those of the WA CCYP. Consideration should also be given to including within the legislation a requirement to regard the United Nations Declaration on the Rights of Indigenous Peoples in the performance of their functions.

Resourcing a future WA CACYP


It is my recommendation that a WA CACYP be co-located in the same office as the WA CCYP. This would allow the Commissioners to collaborate on matters of common interest, promote the sharing of relevant data, information and expertise, and remove the risk of one Commissioner unintentionally duplicating the work of the other.

The allocation of additional financial and human resources to a joint office will be vital to ensuring a WA CACYP can appropriately perform their functions and exercise their powers. While I note that resource requirements would be subject to the priorities and operational requirements of an incoming CACYP, the level of additional resourcing allocated to this role in the future is likely to be influenced by the following factors:

- The need to attract, retain and develop staff who specialise in policy analysis, engagement, and advocacy in relation to Aboriginal children and young people. Initially I would recommend allocating four additional FTE at a minimum, with the positions to be filled by Aboriginal personnel. These roles should be determined by the two Commissioners as per the Victoria model.
- The need to undertake regular and meaningful consultation with Aboriginal children and young people living in the metropolitan area and involve regular travel to regional and remote areas of WA. Funding allocated to the CACYP for travel would need to take into account that 58 per cent of WA's Aboriginal children and young people live in regional and remote areas (including 23.5 per cent who live in very remote areas).
- Costs associated with establishing and maintaining information and communication technology connectivity for staff within the office and remotely.

I would welcome the opportunity to meet with the Joint Standing Committee to discuss the need for a WA CACYP in more detail and look forward to reviewing the content of the report that the Committee provides to Parliament on this important matter.

Yours sincerely



COLIN PETTIT

Commissioner for Children and Young People WA

1 October 2021

Attachment 1 – Advocacy by CCYP for the establishment of a WA CACYP

Submissions:

- July 2018 – Submission to Department of Communities consultation re Closing the Gap refresh process
- August 2018 – Submission to Department of the Premier and Cabinet consultation re an office for advocacy and accountability in Aboriginal affairs in WA.
- February 2020 – Submission to Department of the Premier and Cabinet consultation re development of the WA Government’s Aboriginal Empowerment Strategy (A Path Forward)

Direct correspondence:

- October 2018 – Letter to Treasurer; Minister for Aboriginal Affairs re Summary Report from Aboriginal Forum
- June 2020 – Letter to Acting Mental Health Commissioner re commitment to Aboriginal youth wellbeing
- December 2020 – Letter to Premier re CCYP support for establishing a WA Commissioner for Aboriginal Children and Young People

Reports/Policy Papers:

- October 2018 – Summary Report from Aboriginal Forum
- October 2018 – Policy paper re supporting Aboriginal-led solutions
- April 2019 – Improving the Odds for WA’s Vulnerable Children and Young People (tabled in Parliament)

Evidence provided to Parliamentary Committees

- August 2016 – verbal evidence provided to CCYP Joint Standing Committee
- September 2017 - verbal evidence provided to CCYP Joint Standing Committee
- November 2018 - verbal evidence provided to CCYP Joint Standing Committee (closed session)
- February 2020 - verbal evidence provided to CCYP Joint Standing Committee
- September 2020 - verbal evidence provided to CCYP Joint Standing Committee