



**AUSTRALIAN MEDICAL ASSOCIATION
(SOUTH AUSTRALIA) INC**

15 September 2016

Hon Jay Weatherill MP
Hon John Rau MP
The Nyland Royal Commission Response Unit

Dear Premier and Deputy Premier

Nyland Royal Commission and draft Children and Young People (Oversight and Advocacy Bodies) Bill 2016

Thank you for the opportunity to comment on the full draft of the Children and Young People (Oversight and Advocacy Bodies) Bill.

We appreciate the State Government's step in releasing the full draft bill that the provisions to establish a Commissioner for Children and Young People sits within (previously released for consultation as Annexure 1).

The role of the Commissioner

We note that the section relating to the Commissioner in this newly released draft bill already includes some changes since the initial draft, in particular in relation to the process of appointment of the Commissioner, which we understand is now consistent with the method used to appoint the Independent Commissioner Against Corruption, the Electoral Commissioner, Ombudsman and Judicial Conduct Commissioner.

We further note some other changes such as the removal under General functions of the Commissioner of the word "investigate" in section 11(1)(d); removal of reference to the Minister in 11(1)(h); and the replacement of "is of the opinion that" with the less stringent "suspects that" in 12(2). Also the expansion regarding responsibilities/responses of state authorities to recommendations in section 14(2)(3)(4).

These changes relate to some areas of concern and interest for the AMA(SA), and we reserve judgement on these provisions until we see the fully updated version, taking into account the Government's further responses to feedback received in the consultation process closing on 26 August. We note that the advice of government on the release of this draft was that feedback provided on the Commissioner's role was still being actively considered, hence we direct you to our submission of 26 August in relation to our views on the provisions and requirements for a Commissioner, including the above areas. These views remain consistent with our previous advocacy, including in particular the need for the Commissioner to have discretionary investigative powers that can be used for systemic benefit.

Commissioner – Reporting, review, and Deputy Commissioners

We wish to see a timeframe requirement for all aspects of the reporting process including the timeframe/time requirement for the minister to prepare a report. Timeliness of response and accountability of the Minister is very important.

We also advocate for periodic review of the role, functions and resourcing of the Commissioner, eg in 5 years.

We are also interested in the previous provision for deputy Commissioners.

Discretionary investigative powers

The AMA(SA) stresses the importance of full discretionary powers of the Commissioner to investigate individual complaints where the commissioner believes there is or may be a systemic problem. As stated in our earlier submission, while generally we agree that the Commissioner should not become burdened or overwhelmed by investigating individual cases unless there are systemic ramifications, we hold that there should be no doubt that the Commissioner *can* investigate a matter concerning a child or young person where the Commissioner may reasonably think that there may be systemic benefit. The tensions between investigating systemic issues and individual cases can be addressed by having the Act clearly allow for individual case investigation at the Commissioner's discretion where there is a reasonable possibility that it may relate to systemic issues.

Which minister?

We welcome the recognition in section 16 of the updated provisions for a Commissioner that other Ministers may be involved, and reported to accordingly. We note the use of 'Minister' in the singular in section 17 following, and anticipate this refers to the relevant Minister. We are unsure which Minister is envisaged under this Bill. However, we reiterate our emphasis from our initial submission that matters affecting the health and wellbeing of children run across varied departments and should not be seen as the province of one area of government only, hence we are wary of provisions that appear to link the Commissioner's role and activity to any one Minister. Also, we stress very strongly the importance of the independence of the commissioner, which should be clearly provided for in the Act.

Resourcing and employees

A key concern of the AMA(SA) in relation to the role of the Commissioner has been that the Commissioner have an appropriately staffed and resourced office.

In relation to the question of provision of sufficient funding, and an appropriately resourced office, bills put forward in the past have provided that the Commissioner may, by agreement with the relevant minister, utilise staff, equipment or facilities of an administrative unit of the public service. While this may be of benefit to provide additional staff, over and beyond their own staff, to support the Commissioner's role, we believe the Commissioner must have their own resourced and staffed office, and the capacity to appoint their own staff. Otherwise, mendicant status remains conferred on the Commissioner.

Hence we are encouraged that the updated draft bill includes provision for employees:

9—Employees

- 1) *The Commissioner may engage employees on terms and conditions determined by the Commissioner.*
- 2) *The employees are not Public Service employees but will, for the purposes of the 25 Public Sector (Honesty and Accountability) Act 1995, be taken to be public sector employees employed by the Commissioner.*

It should be non-negotiable that the Commissioner have an independent staff and office and this must be large enough to service the needs of the Council also. We are strongly stress that the Office be appropriately resourced and funded to fully undertake its responsibilities. We note that the Department for Education and Child Development has an Office for Children and Young People component but emphasise that our advocacy has been for an independent and appropriately resourced office to support the Commissioner and Council, and that the functions

of the Commissioner should be about the broader picture, not one specific portfolio of government or area of Departmental responsibility.

We seek further reassurance and provision for the Commissioner for Children and Young People to have a dedicated office and staff available. This area is also raised in our 26 August submission.

Interrelationships, collaboration and sharing of information

We are unsure of the various interrelationships between the entities. For example there is the Youth Advisory Committee under the Guardian but also the Council for Children.

In our view the Bill should set out arrangements for interaction and collaboration between the Commissioner, Guardian, and Child Death and Serious Injury Review Committee (CDSIRC), and the Early Intervention Research Directorate recommended by Commissioner Nyland.

Sharing of information between certain persons and bodies

We note Section 56 and are concerned about sufficient provision for collaboration. We seek provision for how, and how often, these various bodies should work together. We advocate that the Commissioner, Guardian and CDSIRC should be meeting at regular intervals as a premier or executive advisory group for children and young people. We also consider regular meetings by Departmental Chief Executives (not their delegates) on matters relating to the health, wellbeing and safety of children, it is very important and has failed to occur sufficiently previously.

Also in relation to section 56, we stress the importance of these above entities being able to constructively share information. For example, there must be provision for the CDSIRC to appropriately share with the Commissioner information without this being seen as breach of confidentiality. We seek more power for the CDSIRC to communicate with the Commissioner and Guardian, and liaise.

Child Death and Serious Injury Review Committee

We note that this Committee was spared abolition in the Premier's 2014 initiative to abolish and reform various government boards and we strongly support the retention and ongoing operation of this committee, which we understand to be useful and sound, with an important purpose. We consider the independence of this Committee to be very important. We understand that the provisions for the Child Death and Serious Injury Review Committee in the new draft bill are largely unchanged from the current arrangements under the Children's Protection Act 1993. We support the continuation of the Committee in largely unchanged form. However, we do not support the change for the Committee to be appointed by the Minister (in the new Bill) instead of by the Governor (in the existing legislation). Specifically, the current Act provides that:

(3) The Committee consists of the members (not more than 20) appointed by the Governor.

(5) The Minister may, before appointments are made to the Committee, call for nominations from organisations (including departments and agencies of the government) that should, in the Minister's opinion, be represented on the Committee.

(6) The Governor will appoint a member of the Committee to chair the Committee.

We consider transparency and openness to be important to the appointments to this Committee. This is better facilitated with a process that includes calling for nominations from appropriate organisations, cabinet oversight and publication in the SA Government Gazette. Hence we do not support the provision in the new draft Bill that moves this to a Minister instead of the Governor.

(2) The Committee consists of up to 20 members appointed by the Minister.

28—Presiding member

The Minister must appoint a member of the Committee as the presiding member of the Committee.

Independence of CDSIRC and Council

Specific reference is made to independence of the Commissioner and Guardian but not the Council for Children and Child Death and Serious Injury Review Committee. We think independence is important across all these areas.

Commissioner and the CDSIRC

We seek for the Commissioner the power to monitor the implementation of the recommendations of the CDSIRC for measures to avoid the death and injury of children, if referred to the Commissioner (refer section 35(1))

We seek a clearer articulation of the Commissioner's role relating to the CDSIRC, Guardian and Council, beyond purely administrative and resourcing matters (but emphasise that appropriate resourcing of all bodies is vital). We seek these entities to be empowered and supported to appropriately use each others' powers and data for the betterment of children in this state. We seek the power for the CDSIRC to refer its recommendations to the Commissioner for the Commissioner to monitor the implementation of those recommendations – but not detracting from the CDIRC's own powers.

We also see the potential of benefit in the Youth Court being able to call the Commissioner to come and give advice to the Court – with the Commissioner or their delegate or representative having the power, for example, to stand before the court where there is a systemic matter, as an advocate for children.

Not hampering other investigations

We are concerned that provisions designed to protect other investigations from being hampered should not overly restrict the roles of the Commissioner or CDSIRC meaning that their attention to systemic matters is delayed such that significant time passes. We see a need for greater support for these entities to look at systemic matters associated with current cases, which of course must be undertaken responsibly. For example, for the CDSIRC to request exemption from the DPP to focus on a systemic matter that relates to an individual matter.

Child Development Council

The composition of the Child Development Council will be critical, in terms of its collective skills, knowledge and experience. Under the draft Bill, it appears appointment of members to the Council will be the sole responsibility of the Minister. We would be in favour of the Governor appointing the Council members, with input from the Commissioner. Ideally, expressions of interest should be sought from a broad field. Once the inaugural Council has been appointed, a skills matrix should be established to inform future appointments.

We have previously provided feedback regarding the Child Development Council, as put forward under previous Bills. We provide that feedback now for consideration for this Bill.

- In relation to a previous bill, we noted that it includes mention of health but not medical matters or medical practitioners. As we have indicated before, health will be an important element: it is imperative that there should be a medical practitioner on the Child Development Council, if established. In fact, the AMA(SA) would emphasise the importance of engagement with and input from the medical profession generally. The Child Development Council should include experts in child and youth health and development and in early childhood education and care, and this should include medical practitioners.

- In our view, the Council should be an expert body advising the Commissioner, who should appoint or recommend members of the council/membership. It is appropriate that the Commissioner should have people to support them with high level advice. In earlier feedback we advocated that the Commissioner should make appointments to the Child Development Council. However, a previously proposed bill provides that the members of Council are appointed by the Governor on the nomination of the Minister, after a call for expressions of interest. We do support a process in which a decision is made after expressions of interest are called for but advocate for the appointments being made on the nomination or appointment of the Commissioner rather than the Minister.
- We advocate that the Council report to the Commissioner not the Minister in the first instance.
- Preservation of corporate memory/experience would be important for the Council, so we have advocated that some variability in the initial terms of office should be considered so that a core of experience is maintained.

In our view, the Council should be an expert body advising the Commissioner (this is not what is provided for in the Bill); and the Commissioner should appoint or recommend members of the council/membership. We are unclear as to the real power of Commissioner, and are concerned about this activity bypassing the commissioner

We note that it does indicate in 51(4) the council must consult with the Commissioner. That is suitable but we think their role should more clearly focus on helping the Commissioner, and as an offshoot to the Commissioner's role – which may be tasked with an outcomes framework. We are somewhat unconvinced about the role of the Outcomes Framework. We also note and would raise that Section 49(2) does not refer to parents and we would stress that parents have the primary and vital role in relation to the care and wellbeing of children and young people and that supporting parents to be better parents is an important element of improving child health, development, safety and wellbeing.

We note:

47—Commissioner or representative may attend meetings of Council

The Commissioner, or a person authorised in writing by the Commissioner—

(a) may attend and take part in discussions at any meeting of the Council; and

(b) may have access to papers provided to members for the purposes of any meeting of the Council, but does not have a vote on any question arising for decision at a meeting of the Council.

We hold that the Commissioner should attend and should be an automatic ex officio member of the Council and should have a vote on a question needing decision. We also retain the view that it is preferable for the Council to report to the Commissioner rather than the Minister. We ask the Government to make the case for why reporting to the Minister is preferable, and we will be happy to consider what arguments the Government has for this arrangement. However the reporting arrangements could be seen to cut out or bypass the Commissioner. We advocate that the Council should be integrated and fully empowered.

We note:

48—Use of staff etc of Public Service

The Council may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the staff, equipment or facilities of that administrative unit.

We are concerned (noting section 48) that for the Council to do its work it must be adequately supported and resourced. We are concerned about the Council, Commissioner, and Child Death and Serious Injury Review Committee (CDSIRC) being appropriately resourced and

staffed to undertake their important roles. We also make the point that the CDSIRC requires specialist staff for its specialist function. Further we note and raise with concern that in the new Bill the provision which previously provided assurance of appropriate resourcing for the CDSIRC to undertake its role (under the Children's Protection Act 1993) is not included. We are aware of the vital work of the Committee and are concerned that it is already understaffed. We do not want to see any diminution of its specialist staff or capacity. In fact we advocate that it be better resourced to undertake its vital role.

We also make the point that we understand that a Committee previously at the Women's and Children's Hospital that looked at child mortality has we understand ceased its previous activity due to budget constraints and in the assurance that the CDSIRC was undertaking this activity. This is vital information and work that must continue.

Outcomes Framework for Children & Young People – and priority population groups

Of particular concern to the AMA are health issues among vulnerable groups, which include Aboriginal and Torres Strait Islander children and young people, and children and young people who are seeking asylum. Children and young people who reside in (or spend significant amounts of time) in institutional settings are a particularly vulnerable group, and face disparities in a number of areas, including health.

The AMA(SA) has previously advocated regarding priority population groups and specific advocacy roles for the Commissioner, and we welcome the provisions in 51(4)(d) - Outcomes Framework for Children & Young People - "ensure an appropriate focus on the needs of priority population groups". Performance indicators will be critical to tracking progress.

In relation to one of the bills previously put forward, we have previously suggested the "priority population groups" (4(d)) referred to be defined and include not only Aboriginal and Torres Strait Islander children and young people and Guardians of the State but also those disadvantaged as a result of low socioeconomic status, chronic illness, physical or intellectual disability, abuse and/or emotional neglect.

Prevention, health, development and Wellbeing

We are concerned that this Bill, and the Nyland report recommendations, do not go far enough in providing for and considering prevention and who is responsible for it. In fact, prevention is everyone's business, and many entities both within and outside government have vital roles and responsibilities regarding prevention.

We feel the Bill would be improved with a greater emphasis on prevention, health, development and wellbeing. We need to attend not just to the serious matters of child protection and safety, but the broader aspects.

Thank you for your consideration of our feedback on this important area.

Yours sincerely

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Enc AMA(SA) Letter of Submission of 26 August – re Nyland Royal Commission and draft Bill to establish a Commissioner for Children and Young People