

Tasmanian Government response

to recommendations in the Commissioner
for Children's report on his inquiry into
the circumstances of a 12 year old child
under guardianship of the Secretary

October 2010

This document summarises the Tasmanian Government's response to recommendations in the Tasmanian Commissioner for Children's report following an inquiry into the circumstances of a 12 year old child under guardianship of the Secretary of the Department of Health and Human Services.

Of the Commissioner's 45 recommendations, 15 are accepted by the Tasmanian Government; 19 are accepted with qualifications; and 11 are not accepted.

Recommendations accepted

Recommendations relating to 'Secretary to become model parent'

Recommendation:

"THAT the fact of acceptance of a referral to a Government-funded Family Support Services (FSS) not be an indication of any change in the level of risk until a) the brokered FSS has engaged and b) the engagement has been evaluated and FSS has reported demonstrated capacity to have reduced risk to an acceptable level."

Tasmanian Government response:

Recommendation accepted; this is the current direction issued to staff.

At the time of the events reviewed, the Gateway was a relatively new service; processes have been clarified and improved over the past year.

Recommendation:

"THAT s.42(4) of the CYPTF Act be amended to provide that the Court have power to make an order placing the child under the guardianship of the Secretary for such period exceeding 12 months as the Court considers necessary to provide for the safety and well-being of the child."

Tasmanian Government response:

Recommendation accepted; will be considered as part of planned amendments to the *Children, Young Persons and Their Families Act 1997*.

Recommendation:

"THAT Child Protection Workers (CPWs) conduct joint home visits with Department of Education School Social Workers in cases like the present where school non-attendance has become a threat to the developmental safety of the child and/or is a symptom of neglect or risk at home."

Tasmanian Government response:

Recommendation accepted.

Recommendations relating to ‘Court Application Advisory Group (CAAG) decision-making processes’

Recommendation:

“THAT CAAG and the Delegate in every case actively consider the option and the benefits of seeking an extension to statutory intervention and record reasons for excluding in the particular case.”

Tasmanian Government response:

Recommendation accepted.

Recommendations relating to ‘Involvement of court when making orders’

Recommendation:

“THAT s.22(3)(a) be amended to provide ‘in accordance with the application and such other assessments if any as the Court may order the Secretary to undertake.”

Tasmanian Government response:

Recommendation accepted; will be considered as part of planned amendments to the *Children, Young Persons and Their Families Act 1997*.

Recommendation:

“THAT s.22(5)(b) be repealed or the words ‘in any other case’ be replaced by words to the effect ‘to enable the completion of an assessment ordered pursuant to s.22(3)’.”

Tasmanian Government response:

Recommendation accepted; will be considered as part of planned amendments to the *Children, Young Persons and Their Families Act 1997*.

Recommendation:

“THAT Interim and Final Assessment orders identify the party who is to comply with the order of the Court (or express Assessment Orders in the active sense).”

Tasmanian Government response:

Recommendation accepted; will be considered as part of planned amendments to the *Children, Young Persons and Their Families Act 1997*.

Recommendation:

“THAT the Court in each case specify the date that the appointment of the Separate Representative shall expire and in an apposite case have power to order that a Separate Representative provide such advocacy services to the child as it sees fit. In particular, but not limited to representing the child at a Family Group Conference ordered by the Court or convened by the Secretary and representing the Child at an expiry hearing.”

Tasmanian Government response:

Recommendation accepted, noting that a family group conference is not a legal mechanism but a family decision-making forum.

Recommendations relating to ‘Children and young people under Care and Protection Orders (CAPO)’**Recommendation:**

“THAT the Department of Education prepare an Individual Education Plan for each child under the guardianship or custody of the Secretary and provide resources for alternative education programs recommended by the School Social Worker, the School Principal and School Psychologist after consultation with the child.”

Tasmanian Government response:

Recommendation accepted, noting that school principals are already required to develop individual learning plans for all children on a CAPO.

Recommendation:

“THAT the Government as a matter of urgency provide community based education settings for children who are at high risk of disengaging from formal education and for who the classroom setting has been assessed by the relevant School Social Worker and Principal as unsuitable.”

Tasmanian Government response:

Recommendation accepted, noting there is already a wide range of alternative education and flexible learning programs available to students.

Recommendation:

“THAT the Government streamline the capacity for the Department of Education to allocate funding for and provide Distance Education to children under a CAPO on the joint recommendation of the School Social Worker and the CPW, especially when the child declines or fails to attend assessment for general eligibility.”

Tasmanian Government response:

Recommendation accepted, noting that enrolment in distance education requires the recommendation of a principal as the key educator involved with the student’s learning – also that distance education may not be an appropriate choice for many children under a CAPO and other options may need to be considered.

Recommendations relating to ‘Child protection and Gateways practice’

Recommendation:

“THAT the Secretary mandate the use of Form ‘Complaints in Care Policy Standard – CHILD VISIT’ in relation to all children under the guardianship or custody of the Secretary.”

Tasmanian Government response:

Recommendation accepted as this is already mandated.

Recommendation:

“THAT Gateways accept referrals from Child Protection Services if accompanied by a Tasmanian Risk Framework report and a briefing from the CPW without conducting a further risk assessment.”

Tasmanian Government response:

Recommendation accepted; processes have already been improved.

Recommendations relating to ‘Criminal law’

Recommendation:

“THAT the Government refer and provide adequate resources to the Tasmanian Law Reform Institute (TLRI) for consultation and advice on the following matters:

- The question whether the defence of reasonable and honest mistake in relation to sexual offences against persons under 17 should be available and whether it should be altered.
- What additional protections should be provided to children giving evidence in cases involving sexual assault.”

Tasmanian Government response:

Recommendation accepted, noting some work is already underway to improve procedures for taking evidence from child witnesses. Stakeholder consultation on a best practice model will take place shortly.

Recommendation:

“THAT the Government review the *Sex Industry Offences Act 2005* and in doing so actively consider the option of prohibiting the purchase of sexual services other than for certified medical reasons and actively consider the contribution of any amendment to the safety and sexualisation of children.”

Tasmanian Government response:

Recommendation accepted, noting there are wide-ranging community views on the issue. A discussion paper on further law reform in this area will be released shortly.

Recommendations accepted with qualifications

Recommendations relating to ‘Parental poverty as a child risk factor’

Recommendation:

“THAT the Tasmanian Government as a matter of urgency commence negotiations with the Australian Government through FAHCSIA and CENTRELINK for voluntary income management for families referred to Gateway which Gateway assess as likely to benefit and involuntary income management for families with children under a Voluntary Care Agreement, requirement or orders assessed by Child Protection Services as likely to increase the level of child protection.”

Tasmanian Government response:

Recommendation accepted with qualifications – it does not recognise the voluntary nature of non-government (Gateway) response as opposed to statutory child protection intervention.

The Commissioner’s report does not provide any evidence that such a mechanism would have resulted in a different outcome in the case under review.

However, the Government (through the Community and Disability Services Ministers’ Conference) is actively monitoring the trial of such a mechanism in Western Australia and – depending on the outcome of that trial – will consider introducing something similar in Tasmania.

Recommendation:

“THAT the CPIS Notification record and Tasmanian Risk Framework include as risk factors:

- Family Structure, in particular assessments of spouses of single mothers and the presence of itinerant male associates of single mothers.
- Childhood trauma of primary carer.”

Tasmanian Government response:

Recommendation accepted with qualifications – Tasmania is moving away from the Tasmanian Risk Framework alternative tools and training based on current best practice. This will involve identification of individuals who play an important role in a child’s life.

The Government agrees that childhood trauma suffered by a primary carer should be considered in assessing the current family situation in conjunction with other risks.

Recommendations relating to ‘Secretary to become model parent’

Recommendation:

“THAT s.42(4) of the *Children, Young Persons and Their Families Act 1997* (CYPTF Act) be amended to include (a1) an order for a specified period not exceeding 12 months placing the child under the supervision of the Secretary and requiring the child or a Guardian of the child to follow all reasonable directions of the Secretary.”

Tasmanian Government response:

Recommendation accepted with qualifications – a ‘Supervision Order’ is already possible under the legislation. Will be considered as part of planned amendments to the *Children, Young Persons and Their Families Act 1997*.

Recommendation:

“THAT s.59 of the CYPTF Act be amended to provide that the appointment of the Separate Representative shall terminate when the Court so orders, and that during their tenure, the Secretary consult with the Separate Representative in Family Group Conferences, and in CAAG meetings to obtain an independent perspective of the best interests of the child.”

Tasmanian Government response:

Recommendation accepted with qualifications – involving ‘separate representatives’ in family group conferences can be problematic and is not in keeping with the non-legal philosophy of these decision-making forums.

Any legislative changes will be considered as part of planned amendments to the *Children, Young Persons and Their Families Act 1997*.

Recommendations relating to ‘Court Application Advisory Group (CAAG) decision-making processes’

Recommendation:

“THAT the CAAG decision making process for considering reunification of children placed in OOHC or placing children in the care of family with whom they were living when the most recent substantiated risk arose is conducted according to a Structured Decision Making process.”

Tasmanian Government response:

Recommendation accepted with qualifications – CAAG (the Court Application Advisory Group) is not the decision-making body; the Child Protection Manager is responsible for final decisions emanating from CAAG discussions.

There is merit in exploring the use of structured decision-making as part of the assessment process.

Recommendation:

“THAT in order to correct excessive optimism about family strengths, capacity to change and actual change, the CAAG structure be formally altered to include on every occasion perspectives from outside DCYFS drawn from the following: School Social Worker, Early Intervention Police Officer, Community Youth Justice Worker, relevant Co-located Gateway Child Protection Worker, the Family Support Service Worker who most recently visited child.”

Recommendation:

“Alternatively that the CPW Report to CAAG be circulated to the above before the CAAG meeting and they have adequate opportunity to put their views before the CAAG.”

Recommendation:

“Alternatively that the Delegate be required to consult with the above before making a decision on behalf of the Secretary.”

Tasmanian Government response to the above three recommendations:

Recommendation accepted with qualifications – CAAG (the Court Application Advisory Group) is an internal process, however case conferences involving relevant professionals are held as part of the case planning process. Options for improved collaboration will be explored.

Recommendations relating to ‘File closure’

Recommendation:

“THAT DCYFS change its file closure procedure so that when a child is living with family members with whom they were living when the original risk arose the file is closed only when an Area Manager (alternatively a Senior Practice Consultant) from an Area other than the ‘home’ area is satisfied that:

- There is documentary evidence from a professional outside DCYFS who has interviewed the child/ren and the adult family that the adult’s capacity to protect and provide for the child/ren’s health, development, education and wellbeing has changed so as to reduce the risks identified in the most recent substantiated notification;
- The child has died or moved out of the jurisdiction; or
- The child has attained 18 years.”

Tasmanian Government response:

Recommendation accepted with qualifications – child protection workers are qualified social workers and should be expected to assess the risk in a home situation.

The Government proposes that any decision to remove court orders (via revocation or lapse) is returned to the court.

Recommendations relating to ‘School social workers’

Recommendation:

“THAT the Secretary accept the assessment of a Department of Education Social Worker recorded on a Common Risk Assessment Framework Tool, to be developed for the purpose, as a substantiated notification and allocate it to case management with priority.”

Tasmanian Government response:

Recommendation accepted with qualifications – the Child Protection Service has the authority to make substantiation decisions and reserves the right to exercise that power.

Assessment processes and tools will be clarified for professionals reporting concerns (including to the Gateway Services), but the Child Protection Service will retain the right to review any assessment referred.

There has been progress with strategies for improving collaboration between relevant government agencies; work is continuing and the Commissioner’s recommendation will be considered as part of this process.

Recommendation:

“THAT Department of Education School Social Workers undergo professional development in the proper use of the Common Risk Assessment Framework Tool.”

Tasmanian Government response:

Recommendation accepted with qualifications – the Child Protection Service has the authority to make substantiation decisions and reserves the right to exercise that power.

Recommendation:

“THAT the Common Risk Assessment Framework Tool be amended so that it contains all the information necessary for a CP Intake Assessment, save for previous CPIS history to be included by Child Protection. “

Tasmanian Government response:

Recommendation accepted with qualifications – assessment processes and tools will be clarified for professionals reporting concerns (including to the Gateway Services), but the Child Protection Service will retain the right to review any assessment referred.

Recommendations relating to ‘Involvement of court when making orders’

Recommendation:

“THAT the Secretary when filing an Application for an Assessment Order under s.22 of the CYPTF Act identify on the notice and identify in the application what aspect of the child’s circumstance and each parent’s circumstances are to be assessed, from what professional discipline the assessor or assessors is to be drawn and the names and dates of the probable appointments made for the assessment; and that the relevant form be altered accordingly.”

Tasmanian Government response:

Recommendation accepted with qualifications – child protection workers are qualified (and employed) to make such assessments.

However, the Government agrees that the court should hold child protection workers accountable for assessments being undertaken.

Recommendation:

“That the Secretary be required to tender a Care Plan when seeking a final Care and Protection order specifying inter alia the risk factors identified but the Secretary that gave rise to the Application and the circumstances the Secretary in his opinion says will be evidence that the identified risks have abated to an acceptable level.”

Tasmanian Government response:

Recommendation accepted with qualifications, noting that ‘case plan’ is the accepted term.

Recommendation:

“THAT the Court makes orders that give effect to a Care Plan or require a person or persons to do such things as the Court considers will address the risk factors identified in the application.”

Tasmanian Government response:

Recommendation accepted with qualifications, noting that ‘case plan’ is the accepted term.

Recommendation:

“THAT a Care and Protection Order made pursuant to s.42(4)(a), (b) or (c) only expires upon the Court satisfying itself on evidence adduced that the lapsing of the order is in the best interests of the child (BIOC) in the circumstances that exist at the time of the relisting and that if such expiry hearing occurs after the expiry of the period of the order that the order continue in force until such time as the Court discharges it.”

Tasmanian Government response:

Recommendation accepted with qualifications, noting that ‘case plan’ is the accepted term.

Recommendations relating to ‘Children and young people under Care and Protection Orders (CAPO)’

Recommendation:

“THAT if the evaluation of the current Children’s Visitors Pilot shows that children under the guardianship of the Secretary have obtained benefit from the Pilot shows that the Minister provide for the appointment of a Children’s Visitor for each child whether in OOH, in their birth family or in Kinship care, such Visitors to be engaged by a body independent of Government.”

Tasmanian Government response:

Recommendation accepted with qualifications – child protection workers should be the main people supervising placements.

This recommendation will be considered further in 2011, once the 12 month evaluation of the Commissioner’s pilot (funded by the Department of Health and Human Services) is complete.

Recommendations relating to ‘Commissioner for Children functions and powers’

Recommendation:

“THAT the Government review the wording of s.80 of the CYPTF Act and enact amendments necessary to clarify the powers of the Commissioner for Children to obtain documents and information either necessary or convenient to the Commissioner to enable him to perform his functions under that or any other Act.”

Tasmanian Government response:

Recommendation accepted with qualifications – it is not clear what clarification is required, as the Department of Health and Human Services has always treated the Commissioner as having the power to request information.

Such amendments could be considered as part of the consultation process regarding further amendments to the *Children, Young Persons and Their Families Act 1997*.

Recommendation:

“THAT the Secretary make the Action Research and Learning Project become a permanent part of Child Protection Practice and develop processes that encourage Child Protection, Foster Care and Family Support Workers to share learning for adverse outcomes.”

Tasmanian Government response:

Recommendation accepted with qualifications – reflective practice is already a component of supervision and professional development.

The ‘Action Research’ project is specifically aimed at evaluating the Gateway Services in their first three years of operation.

Recommendations not accepted

Recommendations relating to ‘Secretary to become model parent’

Recommendation:

“THAT case closure ceases to be a measure of successful removal of risk to a child.”

Tasmanian Government response:

Recommendation not appropriate – case closure has never related to removal of risk. A case is closed once it has been decided that risk has reduced to an acceptable level.

Recommendation:

“THAT DCYFS conduct joint training of CPWs with Youth Justice Workers to understand cultural perspectives of children and young people.”

Tasmanian Government response:

Recommendation not accepted – the Commissioner’s report provides no evidence as to why youth justice workers might have a better understanding of the cultural perspectives of children and young people than child protection workers.

Recommendation:

“THAT the Legal Aid Commission of Tasmania use every endeavour to engage the same Separate Representative in relation to each child where there are multiple proceedings or applications.”

Tasmanian Government response:

Recommendation not appropriate – the Legal Aid Commission is an independent body which determines its own funding priorities within the parameters of the National Partnership Agreement on Legal Aid and any special purpose funding provided by the State.

The Commission has advised the Government that providing independent child lawyers remains a high priority, but where possible the cost should be met by the parties.

Recommendations relating to ‘Children and young people under Care and Protection Orders (CAPO)’

Recommendation:

“THAT in designing any Statewide alternative education models under the Child and Youth Strategy and the Youth at Risk Strategy, the Government consult closely with children and youths identified as chronic non-attendees, rather than create a model solely based on academic study and models external to Tasmania.”

Tasmanian Government response:

Recommendation not accepted – the Government makes no apology for adapting best practice models from interstate for use in Tasmania. Such models have been road-tested in other states and are not purely based on academic study.

Young people are always consulted where an alternative or flexible educational program is proposed to re-engage them with learning.

Recommendation:

“THAT the functions of the Commissioner for Children to include ‘advocating for children under the guardianship or custody of the Secretary’.”

Tasmanian Government response:

Recommendation not accepted – widening the role of the Commissioner could duplicate that of the Ombudsman and lead to confusion of functions and wasted resources.

However, such changes could be considered as part of consultation on planned amendments to the *Children, Young Persons and Their Families Act 1997*.

Recommendations relating to ‘Child protection and Gateways practice’

Recommendation:

“THAT the Secretary mandate that such visits be conducted with the child in the absence of any other person unless in the special circumstances of the case it is not practicable to arrange such a visit or it is not in the best interests of the child for reasons given.”

Tasmanian Government response:

Recommendation not accepted – not every visit a child protection worker makes to a child is on a one to one basis, as this is impractical and interferes with the child protection worker’s ability to assess the home or care dynamic.

Recommendations relating to ‘Future case management considerations’

Recommendation:

“THAT the Secretary in Association with the child’s counselling service refer the Child to a legal practitioner outside of Tasmania and specialising in personal injuries to provide her with legal advice as to her prospects of recovering damages or any other redress against any person or body arising relevantly out of her exposure to the risk of harm in the period 22 August 2009 to 20 September 2009.”

Tasmanian Government response:

Recommendation not accepted. There are a number of independent legal practitioners in Tasmania who could offer such advice, and who are more likely to be informed in relation to State law and practice than an interstate legal practitioner. It is noted that a ‘litigation guardian’ may need to be appointed as part of this process.

Recommendation:

“THAT the Legal Aid Commission of Tasmania meet the proper costs of such advice including the advice of counsel and the party-party costs of any proceedings instituted as a result of such advice.”

Tasmanian Government response:

Recommendation not accepted. The cost of any such action would fall to the commissioning agency, not Legal Aid.

Recommendations relating to ‘Commissioner for Children functions and powers’

Recommendation:

“That s.79 of the CYPTF Act be amended to give the Commissioner for Children such additional functions as will enable that Officer to fulfil the promise of ‘Preventing problems before they arise’ including but not limited to:

- Conducting audits both individually and generally of the circumstances of children and young people in the guardianship or custody of the Secretary.
- Conducting investigations of his own motion into the matters in existing paragraph 79(1)(f).
- Intervening in Court proceedings at the invitation of a Court and subject to rules of Court.”

Tasmanian Government response:

Recommendation not accepted, noting:

- the Commissioner undertakes annual audits of a random sample of children in care
- the Commissioner has limited existing ‘own initiative’ powers to advise the Minister
- similar positions in other jurisdictions (even those with broader powers) do not intervene in court processes
- the role of the Commissioner for Children in Tasmania relates to all children, not just those in care.

Recommendation:

“That the Department of Education institute and adequately resource a uniform and universal school-based personal safety program in the primary school curriculum of all Tasmanian Schools, both Government and Independent.”

Tasmanian Government response:

Recommendation not accepted – personal safety is already included as an integral part of the ‘health and wellbeing’ area of the Tasmanian Curriculum.

Recommendations relating to ‘Criminal law’

Recommendation:

“That after an appropriate period the Government advise the Governor to appoint a Commissioner of Inquiry under the *Commissions of Inquiry Act 1995* to review the decisions of the Crown in relation to the prosecution or otherwise of persons suspected of having had intercourse or indecent dealings in this matter in order to address any public concerns about the probity of such decisions.”

Tasmanian Government response:

Recommendation not accepted. The *Director of Public Prosecutions Act 1973* creates an independent statutory officer (the DPP) charged with the responsibility for prosecuting serious criminal offences where he “...considers it desirable to do so...”. The DPP has published comprehensive guidelines about the exercise of his prosecutorial discretion and the government is satisfied that those guidelines are appropriate and that the DPP has applied, and will continue to apply, his guidelines in a proper manner. It would be inappropriate to establish a mechanism to interfere with the independence of the DPP’s role.