

**An initial response by the Council for the Care of Children's to the Minister for Education and Child Development in relation to the Premier's review and reform of South Australian Government boards and committees**

**Initial advice to the Minister for Education and Child on 15 August 2014**

On 8 July 2014, the Premier of South Australia advised government boards and committees of the Government's intention to abolish them unless they can demonstrate that they have an 'essential purpose that cannot be met through other means' in favour of giving 'a broader range of organisations and individuals more direct access to government advisory and decision-making processes.

On 11 August 2014, the Minister for Education and Child Development (the Minister) sought initial advice on specific matters. The Minister's correspondence, received by the Council for the Care of Children on 12 August 2014, requested the following information by 15 August 2014:

- Does the Council have an *essential purpose that cannot be met through other means*?
- Should the (functions of) the Council *continue in its current form*?
- Could the Council be *merged with another (body)*?
- Is there an *alternate way to deliver the services* that the Council provides?
- Is *community engagement through the Council superior to all other options*?
- Will *abolition of the Council have a negative impact on business or community confidence*?
- What are the *risks in abolishing* the Council?
- How is the Council *constituted*?
- What is the *function* of the Council?
- How is the Council *funded*?
- How is the work of the Council *supported in terms of FTEs and operational budget allocation*?

The Council for the Care of Children considered these questions on 13 August 2014 and provides initial advice to the above questions in a slightly re-ordered sequence in this submission.

**1 How is the Council constituted?**

The Council for the Care of Children was established by the South Australian Parliament in the *Children's Protection Act 1993* under provisions which came into effect on 1 February 2006.

The Council reports to the Minister for Education and Child Development and, annually, to the South Australian Parliament.

The Council comprises between five and 10 community members appointed by the Governor, with one of them being an Aboriginal member and two being young people with experience of alternative care. The Council's membership also includes 'the chief executives of departments of government designated by the Minister as departments closely involved in issues related to the care and protection of children'. Currently the government members include the Chief Executive of the Department for Education and Child Development, the Chief Executive of SA Health, the Chief Executive of the Department for Communities and Social Inclusion and the Executive Director of the Aboriginal Affairs and Reconciliation Division of the Department of State Development.

**2 What is the function of the Council?**

The Council's functions are set out in Part 7B, section 52J of the *Children's Protection Act 1993* as follows:

- (a) to keep under review the operation of this Act and the *Family and Community Services Act 1972* so far as it affects the interests of children;
- (b) to provide advice to the Government on the rights and interests of children;
- (c) to report to the Government on progress achieved towards—
  - (i) keeping children safe from harm; and
  - (ii) ensuring that all children are cared for in a way that allows them to realise their full potential; and
  - (iii) improving the physical and mental health, and the emotional wellbeing, of children; and
  - (iv) improving access for children to educational and vocational training; and
  - (v) improving access for children to sporting and healthy recreational activities; and

- (vi) *ensuring that children are properly prepared for taking their position in society as responsible citizens; and*
- (vii) *maintaining the cultural identity of children;*
- (d) *to promote the safe care of children by their families (or surrogate families) and communities with particular reference to vulnerable children including—*
  - (i) *children under the guardianship, or in the custody, of the Minister; and*
  - (ii) *Aboriginal children; and*
  - (iii) *children with disabilities;*
- (e) *to provide advice to the Minister on—*
  - (i) *creating environments that are safe for children; and*
  - (ii) *raising community awareness of the relationship between the needs of children for care and protection and their developmental needs; and*
  - (iii) *initiatives involving the community as a whole for the protection or care of children; and*
  - (iv) *policy issues that may require government action or legislative reform; and*
  - (v) *priorities for research;*
  - (f) *to investigate and report to the Minister on matters referred to the Council for advice.'*

A copy of Part 7B of the Children's Protection Act 1993 is appended as Attachment A to this submission.

### **3 How is the Council funded?**

The Council for the Care of Children is funded through the Department for Education and Child Development by the South Australian Government.

**4 How is the work of the Council supported in terms of FTEs and operational budget allocation?**

The Council for the Care of Children is operationally supported through the Department for Education and Child Development, primarily by the provision of 1.8 FTEs comprised as follows:

ASO8 – 1 FTE (Principal Consultant)

ASO3 – 0.8 FTE (Information and Administrative Officer)

The Council for the Care of Children's operating budget for the 2014/15 financial year is:

Salaries and wages      \$199,220

Goods and services      \$ 65,100

Net operating budget    \$264,320

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Community members of the Council for the Care of Children are entitled to sitting fees. However, some members elect not to accept a fee preferring that the fee be utilised for the Council's work in the interest of improving the outcomes of children and young people in South Australia. This is a significant goodwill investment by those members who volunteer their time and efforts to further the Council's work.

**5 Does the Council have an essential purpose that cannot be met through other means?**

Yes, in the absence of a Commissioner for Children and Young People, the Council for the Care of Children provides the only independent, statutory voice for children and young people from birth to 18 years of age in South Australia.

In particular, the Council is fulfilling an essential function of liaising with groups of children and young people who are vulnerable. The Council was established by the South Australian Parliament in 2006 at the same time as the Child Death and Serious Injury Review Committee and the Guardian for Children and Young People in lieu of a Children's Commissioner (as recommended in the 2003 Layton Report).

The Council for the Care of Children is an independent statutory body that does not represent a lobby group.

The Council works from a non-biased basis. It is responsive to, and works collaboratively with, stakeholders. The Council seeks out and captures the views of some of the most vulnerable children and young people and advises the South Australian Government and government agencies in an efficient, timely and cost-effective manner.

The Council's advice is informed by the broad representative base of the Council's membership which is comprised of community members with relevant skills and expertise. The Council's membership demonstrates a collective commitment to work to improve the outcomes of children and young people in South Australia.

The Government has made a public commitment to establish a Commissioner for Children and Young People in South Australia. This commitment is articulated in the Child Development and Wellbeing Bill 2014 which was introduced into the House of Assembly on 19 June 2014.

The Child Development and Wellbeing Bill 2014 assigns the role and functions of the Council for the Care of Children primarily to the Commissioner for Children and Young People. Consequently, the Bill proposes to revoke the provisions in Part 7B of the *Children's Protection Act 1993* which establishes the Council for the Care of Children.

The Council for the Care of Children is fully supportive of being replaced by a commissioner with a mandate and resources to fulfil a similar, broad systemic advocacy function to that of the Council. However, in the absence of a commissioner, the Council is fulfilling a key function of the future Commissioner for Children and Young People.

For example, clause 16 (2) of the Child Development and Wellbeing Bill 2014 requires the Commissioner to *'engage children and young people in the performance of his or her functions'* and particularly to *'seek to engage those groups of children and young people whose ability to make their views known is limited for any reason.'*

In addition to a broad legislative mandate to advocate for the rights, interests, social inclusion and wellbeing of all children and young people in South Australia the Council reports to the Government on how well children and young people are faring in this state.

Part 7B, section 52J of the *Children's Protection Act 1993*, requires the Council for the Care of Children:

*'(d) to promote the safe care of children by their families (or surrogate families) and communities with particular reference to vulnerable children including—*

- (i) *children under the guardianship, or in the custody, of the Minister; and*
- (ii) *Aboriginal children; and*
- (iii) *children with disabilities;*
- (e) *to provide advice to the Minister on—*
  - (i) *creating environments that are safe for children; and*
  - (ii) *raising community awareness of the relationship between the needs of children for care and protection and their developmental needs; and*
  - (iii) *initiatives involving the community as a whole for the protection or care of children; and*
  - (iv) *policy issues that may require government action or legislative reform; and*
  - (v) *priorities for research;*
  - (f) *to investigate and report to the Minister on matters referred to the Council for advice.'*

Some examples of how the Council for the Care of Children seeks the views of children and young people and in particular those whose voices are not heard due to exclusion or vulnerability include:

- At the request of the Minister for Education and Child Development, the Council heard from children and young people in community residential care in 2012 and the *Architecture of Care* report was provided to the Minister (with an extract published). Their views informed the design and services of replacement community residential care facilities.
- The Council heard from young people in youth justice facilities in 2010 at Cavan and Magill and more recently in December 2013 at the new Goldsborough Campus of the Adelaide Youth Training Centre. Both reports were confidential to the Minister for Communities and Social Inclusion and the Department for Communities and Social Inclusion. However, approved extracts of the *Voices from within* and the *New beginnings* reports were provided more broadly to Government Ministers and were published.
- The Council is currently engaged in hearing from families and their children aged from birth to 14 years and who are living with disability about the National

Disability Insurance Scheme Trial in South Australia from July 2013 to June 2016. The first two reports: *Hype Hope and Possibilities* and the *National Disability Insurance Scheme – from launch pad to lift-off* were provided to relevant ministers of the Commonwealth and South Australia and were published. The next report is currently in draft form.

## **6 Should the (functions of) the Council continue in its current form?**

The Council for the Care of Children has recently considered this question and believes that the Council should continue in its current form until the Commissioner for Children and Young People is established.

The Council for the Care of Children has established strong connections with government and non-government agencies and works collaboratively with them. The Council regularly engages with government agencies and this interface builds accountability for the integration of children and young people in agency core business.

The Council for the Care of Children:

- has a depth and diversity of knowledge and experience in its membership
- has and will continue to deliver advice and input which spans multiple portfolios with a common focus on the interests and wellbeing of children and young people
- has provided and will continue to provide advice in the context of the broader system and to do so objectively, effectively and efficiently in a timely and cost-effective manner
- provides an interface with children and young people especially those who are less likely to make their views known.

## **7 Could the Council be merged with another (body)?**

The Council for the Care of Children does not believe there would be value in it being merged with another body at this time.

The Council for the Care of Children will cease to exist when the relevant provisions of the Child Development and Wellbeing Bill 2014 come into operation. Until the Commissioner for Children and Young People is established the Council should be retained to provide important continuity, stability and risk management.

More importantly the Council for the Care of Children will play an important role in helping to prepare for the establishment of the Commissioner. The Council broad membership is made up of individuals with different, complementary and specific knowledge of the needs and interests of children and young people.

The Council for the Care of Children is not, and does not represent, a lobby group. If merged with another body, the Council would lose its statutory independence and its capacity to promptly respond to issues from a non-biased perspective with collaborative input from government and non-government sources.

The true value of the Council for the Care of Children lies largely in its statutory independence, a clear and strong legislative mandate to advocate for children and young people, a strong commitment to their welfare and significant goodwill to work collaboratively with government in the interest of our youngest citizens. This is particularly important and valuable in the context of much instability and public scrutiny of child protection matters.

**8 Is there an *alternate way to deliver the services that the Council provides?***

The Council does not believe there is an alternative way to deliver the service that the Council for the Care of Children provides in a timely and cost-effective way in the short to medium term prior to the enactment of the Child Development and Wellbeing Bill 2014.

The Council for the Care of Children has published two editions of its monitoring framework, the most recent being *A Snapshot of Young South Australians* in June 2013. The Snapshot provides concrete longitudinal measures of how children and young people are faring in South Australia which helps to identify and highlight key areas for priority action.

The Council is proposing to prepare the next edition of the Snapshot by June 2015. The Snapshot provides an excellent base for the Outcomes Framework that is provided for in the Child Development and Wellbeing Bill 2014.

The Council is able to prepare and publish the Snapshot in a timely and efficient manner as evidenced from its proactive stance in delivering the previous two reports.

**9 Is *community engagement through the Council superior to all other options?***

It would be presumptuous to assert that community engagement through the Council for the Care of Children is superior to all other options; however, the Council is uniquely



placed to gather and present the views of children and young people, untainted by sector interests.

The Council for the Care of Children, as the only independent statutory body with a legislative mandate to advocate for all children and young people in South Australia, fulfils its advocacy, advice, monitoring and reporting role and functions to inform policy and operations expeditiously and efficiently in a way which represents exceptional value for money.

The Council for the Care of Children hears from, and advocates for, children and young people including those who are marginalised and whose views need to be sought and presented to government. Because of the way in which the Council for the Care of Children engages with children and young people and the way it is established in legislation, the Council is uniquely placed to continue to advise the Government and to influence government agencies to be accountable for their interaction with, and services for, children and young people. One way in which the Council influences the four government agencies represented on the Council is through annual Joint Strategic Forums with the Chief Executives (sometimes attended by the Ministers) of those agencies.

**10 Will abolition of the Council have a negative impact on business or community confidence?**

If the Council for the Care of Children is abolished prior to the establishment of a Commissioner for Children and Young People this will have a negative impact on community confidence. There is much interest in the safety and wellbeing of children and young people in out of home care at present and debate in the media has raised community expectations for the appointment of a Commissioner for Children and Young People.

Abolishing the Council for the Care of Children now would create a vacuum and disrupt the Council's well-established capacity to ensure the voices of children and young people, especially those who are vulnerable, are available to inform key policy and operational matters.

Since 2006, the Council for the Care of Children has steadily achieved greater stakeholder recognition and endorsement for its work including consultation, reports and publications. For example, in commenting on the Child Development and Wellbeing Bill 2014, the Australian Medical Association advocated for the Council not to be abolished.

Some government agencies now specifically seek the Council's views and advice and ask the Council to review draft policies. Stakeholders contact the Council with requests for advice about systemic matters that impact on children and young people and to access Council reports and submissions.

**11 What are the risks in abolishing the Council?**

Should there be a delay in establishing a Commissioner for Children and Young People, the risks of abolishing the Council for the Care of Children include the creation of an immediate vacuum in terms of the views of vulnerable groups of children and young people in a cost-effective and efficient manner.

The risks also include a loss of community confidence in the Government's commitment to receiving objective and independent reports and advice in a transparent manner of the views of children and young people in South Australia.

Extract of Part 7B of the Children's Protection Act 1993

**Part 7B—The Council for the Care of Children**

**52F—Establishment of the Council**

- (1) The Council for the Care of Children is established.
- (2) The Council consists of—
  - (a) not less than 5 and not more than 10 members appointed by the Governor; and
  - (b) the chief executives of departments of government designated by the Minister as departments closely involved in issues related to the care and protection of children.
- (3) The Council's membership must include—
  - (a) at least 1 Aboriginal member; and
  - (b) at least 2 young people with experience of alternative care, and at least one-third of the total number of members of the Council must be men and at least one-third must be women.
- (4) The Minister may, before an appointment is made to the Council, call for nominations from a government or non-government organisation that should, in the Minister's opinion, be represented on the Council.
- (5) The Governor will appoint a member of the Council to chair the Council.
- (6) The Council is to be subject to direction by the Minister but—
  - (a) the Council cannot be directed to make a particular finding or recommendation; and
  - (b) a direction is to be published in the annual report of the Council relating to the period in which the direction was given.

**52G—Terms of office of members**

- (1) Subject to this section, a member of the Council holds office for the term (not exceeding 2 years) stated in the instrument of appointment and is then eligible for re-appointment.
- (2) The office of a member of the Council becomes vacant—

- (a) if the member—
  - (i) dies; or
  - (ii) completes a term of office and is not re-appointed; or
  - (iii) resigns by notice of resignation given to the Minister; or
  - (iv) is absent from 3 consecutive meetings of the Council without the Council's permission (but the member does not vacate his or her office if the Minister excuses the absence); or
  - (v) is convicted either within or outside the State of an indictable offence or an offence carrying a maximum penalty of imprisonment for 12 months or more; or
  - (vi) is removed from office by the Governor under subsection (3); or
  - (b) if the member was appointed as nominee of a particular organisation and the organisation notifies the Minister, in writing, that the member no longer represents the organisation.
- (3) The Governor may remove a member of the Council from office for—
  - (a) breach of, or non-compliance with, a condition of appointment; or
  - (b) failure to disclose to the Council a personal or pecuniary interest of which the member is aware that may conflict with the member's duties of office; or
  - (c) neglect of duty; or
  - (d) mental or physical incapacity to carry out duties of office satisfactorily; or
  - (e) dishonourable conduct; or
  - (f) any other reason considered sufficient by the Minister.

#### **52H—Procedures of the Council**

- (1) The Council will, subject to this section and any directions of the Minister, determine its own procedures.
- (2) The Council must meet at least 5 times in each year.
- (3) The person appointed to chair the Council will preside at a meeting of the Council and, in the absence of that person, a member chosen by the members present at the meeting will preside.

- (4) A question arising for decision at a meeting of the Council will be decided by a majority of the votes cast by the members present at the meeting.
- (5) Each member present at a meeting of the Council will be entitled to one vote on any question arising for decision at the meeting and, if the votes are equal, the person presiding will have a casting vote.
- (6) The Council may delegate to a member, or a sub-committee of its members, any of its powers or functions under this Act.

#### **52I—Staff and resources**

The Minister must provide the Council with the staff and other resources that it reasonably needs for carrying out its functions.

#### **52J—Functions of the Council**

The Council's functions are as follows:

- (a) to keep under review the operation of this Act and the *Family and Community Services Act 1972* so far as it affects the interests of children;
- (b) to provide advice to the Government on the rights and interests of children;
- (c) to report to the Government on progress achieved towards—
  - (i) keeping children safe from harm; and
  - (ii) ensuring that all children are cared for in a way that allows them to realise their full potential; and
  - (iii) improving the physical and mental health, and the emotional wellbeing, of children; and
  - (iv) improving access for children to educational and vocational training; and
  - (v) improving access for children to sporting and healthy recreational activities; and
  - (vi) ensuring that children are properly prepared for taking their position in society as responsible citizens; and
  - (vii) maintaining the cultural identity of children;
- (d) to promote the safe care of children by their families (or surrogate families) and communities with particular reference to vulnerable children including—

- (i) children under the guardianship, or in the custody, of the Minister; and
- (ii) Aboriginal children; and
- (iii) children with disabilities;
- (e) to provide advice to the Minister on—
  - (i) creating environments that are safe for children; and
  - (ii) raising community awareness of the relationship between the needs of children for care and protection and their developmental needs; and
  - (iii) initiatives involving the community as a whole for the protection or care of children; and
  - (iv) policy issues that may require government action or legislative reform; and
  - (v) priorities for research;
  - (f) to investigate and report to the Minister on matters referred to the Council for advice.

#### **52K—Council's reporting obligations**

- (1) The Council must report periodically to the Minister (as required by the Minister) on the performance of its statutory functions.
- (2) The Council must, on or before 31 October in each year, report to the Minister on the performance of its statutory functions during the preceding financial year.
- (3) The Minister must, within 6 sitting days after receiving a report under subsection (2), have copies of the report laid before both Houses of Parliament.

#### **52L—Confidentiality of information**

- (1) Information about individual cases disclosed to the Council or a person employed (or formerly employed) to assist the Council is to be kept confidential and is not liable to disclosure under the *Freedom of Information Act 1991*.
- (2) This section does not, however, prevent the disclosure of information about suspected offences or suspected child abuse or neglect to the appropriate authorities.