

Your Ref: Ms Natalie Parker

Quote in reply: Children's Law Committee

27 July 2010

Ms Natalie Parker  
Acting Child Safety Director  
Department of Justice and Attorney-General  
GPO Box 149  
BRISBANE QLD 4001

By Email [REDACTED]

Dear Acting Director

## **DEVELOPMENT OF NATIONAL STANDARDS FOR OUT OF HOME CARE**

Thank you for consulting with us on the development of national standards for out of home care. This response has been compiled with the assistance with the Queensland Law Society's Children's Law Committee, who have a thorough understanding this issue.

### **1. Introductory comments**

We support the development of National Standards for out-of-home care.

We note the working document refers to evidence that children and young people who have been placed in out-of-home care have poorer life outcomes than other children and young people. We believe there are a number of areas in which the particular vulnerabilities highlighted by this evidence require that children and young people in out-of-home care have access to high quality legal advice and advocacy services. This is consistent with the overarching principle in the working document, which children and young people living in out-of-home care are provided with quality care that addresses their particular needs and improves their outcomes.

The crucial areas in which we believe children and young people in out-of-home care should be supported to access high quality legal advice and advocacy include:

- Youth justice matters;
- Victims of crime and other compensation matters; and
- Child protection matters.

## **2. Youth justice matters**

Supported access to legal advice and advocacy for children and young people in out-of-home care is an essential tool in addressing vulnerability within the youth justice system.

In our experience, this disadvantage is apparent in young people's contact with the youth justice system. Young people who have contact with the youth justice system report higher rates of childhood maltreatment and victimisation. We refer in this context to the Australian Institute of Criminology paper, *Pathways from Child maltreatment to juvenile offending*, which found that children and young people who had been the subject of child protection notifications are at increased risk of contact with the youth justice system. Those children and young people who were placed in out-of-home care had a further increased risk of contact with the youth justice system compared to their peers who were not placed outside their homes.

Anecdotally, in our experience, young people's offending is frequently associated with their care placement. We regularly provide advice and advocacy to young people who have been charged *by their care providers* with offences that occurred *in* their care placement. In this situation, legal advice that the young person experiences as being independent of the victim of the offence (the care placement provider) is especially important in ensuring young people's voices and experiences are heard within the legal process. Advocacy services may also be able to assist the young person in addressing concerns and frustrations that have contributed to their offending behaviour, thus addressing the risks of further offending and contact with the justice system.

## **3. Victims of crime and other compensation matters**

As young people come into contact with the child protection system usually due to their experiences of abuse or neglect in their family of origin, we should anticipate many of the young people in out-of-home care may be entitled to victims of crime compensation. We believe that young people's case planning and transition from care planning should include consideration of these entitlements and where appropriate, supported access for the young person to legal advice and advocacy. For young people aged over 12 years in Queensland, a parent or guardian can apply for victim of crime compensation on the young person's behalf, or the young person can apply on their own *if they are represented by a lawyer*. Accessible legal advice and representation may be vital for some young people to give effect to their entitlement to this compensation.

## **4. Child protection matters**

Standard 2 emphasises the importance of children and young people participating in decisions about their lives. As the Draft Standards have a particular focus on children and young people with *Court ordered* care arrangements, in our view the importance of access to legal advice and advocacy to give effect to this standard is particularly acute. Decisions about the lives of children and young people in out-of-home care are made in Courts and Court mandated meetings, as well as many decision making processes described in legislation that occur outside the Court system.

The Draft Standards that are most directly relevant to legal service provision are 2 and 6. However, we note that without review and enforcement mechanisms for all standards, and accessible legal advice and advocacy support for children and young people, the Standards for out-of-home care for children and young people will remain aspirational.

Accessible legal advice and advocacy that is experienced by the young person as being independent from the decision-makers (the Court, child protection authority and care providers) is essential to fulfilling the goal of the Draft Standards, to "... drive improvements in the quality of care to enable children and

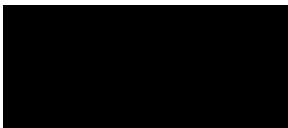
young people living in care to have the opportunity to reach their potential in all areas of well-being". Independent advocates can give young people a stake in decisions being made about them, a sense of agency in their own lives and a role-model for self-advocacy as adults. Independent advocacy for young people also provides scrutiny for adherence to National Standards, which will improve outcomes for young people. We refer to the *Own Motion Investigation into Child Protection: Out of Home Care* prepared by the Victorian Ombudsman (2010). The Executive Summary states that:

"The *out of home care* system is struggling to meet demand. Advocacy on behalf of every child in the *out of home care* system is therefore crucial to ensure that their best interests are met and their right to a safe and secure placement is not compromised by systemic pressures. Advocacy and scrutiny of the *out of home care* system is paramount in ensuring protection of the best interests of every child in *out of home care*."

If you have any questions regarding the issues raised in this letter, please do not hesitate to contact Ms Binny De Saram, a Policy Solicitor with our office on [REDACTED] or [REDACTED].

We look forward to continuing to work with you on this issue.

Yours faithfully

A large black rectangular redaction box covering the signature of Peter Eardley.

Peter Eardley  
**President**