



STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

JEREMY HANSON CSC MLA (CHAIR), MARISA PATERSON MLA (DEPUTY CHAIR), JO CLAY MLA

Inquiry into referred 2019–20 Annual and Financial Reports and Budget Estimates 2020-21
ANSWER TO QUESTION ON NOTICE

Asked by Mrs Elizabeth Kikkert MLA: To ask the Public Advocate and Children and Young People Commissioner

In relation to: **Standards of care and safety in residential care homes**

Ref: ACT Human Rights Commission Annual Report 2019–20, p. 67

1. The case study on p. 67 of the annual reports notes some concerns with the ‘standard of care and safety’ in residential care homes and the impact of this on a particular young person’s ‘mental wellbeing and attendance at school’. In commissioner’s role, what has she observed to be issues with care and safety in these homes?
2. What needs to happen to fix these issues?
3. If the legal action referred to in this case study is not ongoing, what was the outcome?
4. The commissioner was able to obtain independent legal counsel from the CSD for this young person under the Bennett Principle. Has she been able to do this before? If so, how often?
5. In the commissioner’s professional judgement, is seeking independent legal counsel under the Bennett Principle something that should happen more often in child protection matters?

Ms Jodie Griffiths-Cook: The answer to the Member’s question is as follows:–

1. The matching process for placing young people in residential care together in a placement is a key concern, albeit that it is acknowledged this is particularly challenging for a small jurisdiction such as the ACT given limitations associated with appropriate housing stock, appropriately skilled staffing, etc alongside the comparatively small number of children and young people requiring a residential care placement. It is not always clear how young people, with such diverse needs, are matched together and raises a question about the difference between a needs-led versus resource-led decision. The case study in the annual report points to situations where young people are sometimes placed in a shared residence despite having significantly different needs, the outcome of which being that individual needs are not necessarily met. Further, individual personalities can create an extremely challenging dynamic within shared residences where children and young people do not necessarily have a choice about where they are placed. This can lead to situations in which individual children and young people may feel threatened, concerned, anxious and/or scared as a result of the actions and behaviours of their cotenants, whether this is directed toward them or not.
2. I am concerned that the current model is not necessarily equipped to meet the emerging and highly complex needs of young people being brought into residential care. Specifically, I hold concerns over the ability of staff to support and deal with the young people impacted by highly complex trauma backgrounds and young people who have a disability, as well as the training of



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care workers in supporting an emerging pattern of very young children (as young as 5 years old), who have been accommodated in residential homes. Residential care has traditionally been a youth focused service and there is a very different skillset and approach required to care for the needs of young children safely and appropriately.

In terms of best practice for residential care I would offer the following three points for consideration:

- An increase in the current staffing ratio (number of staff to child/young person) – I understand the current model is based on a 1:3 ratio (one staff to three young people). This can create challenges (and has privacy implications) when, for example, one young person requires increased attention, including support to attend appointments outside the home, and the other young people in the house have to attend as well due to no other staff being available to look after them in the home.
 - A stable workforce – A regular concern raised by young people is the use of “casual” staff who don’t know them or their needs (this and other concerns are raised regularly and came through clearly in our 2018 consultation [“It’s not what you think it is...” – The views of ACT children and young people in residential care](#)
 - Staff having the training and skills to meet the complex and diverse needs of the children and young people in residential care in ways that are:
 - a) Trauma informed
 - b) Age and stage appropriate care – to ensure young children are cared for in a manner appropriate to their age and stage of development
 - c) Disability aware and responsive
 - d) A clear, needs lead, matching process for placing young people together with their views clearly articulated in this process
3. My office attempted to follow up with the young person who was living in a kinship placement, but the family did not return our call. We reiterated our availability to provide support to address this matter.
4. I have sought support for two young people in the reporting period who were offered legal support. Also, following my review of compliance documentation, if I identify issues with the information provided that raises the possibility that the young people should be provided with this legal support, I raise this question with the Director-General through the issuing of a section 879 request under the *Children and Young People Act 2008*.
5. In terms of a wider use of the Bennett principle in child protection matter, this should be used when appropriate to the circumstances the child/young person finds themselves in and the impact of this on their wellbeing whilst under the care of the Director-General. The legal advice provided to the Public Advocate on 19 January 2007 was:

“if the Chief Executive has parental responsibility for the long-term care for a child or young person, and has received a report which indicates that the child or young person has suffered injury in circumstances which might give rise to an entitlement to claim damages from someone, the duty of care owed by the Chief Executive requires them to arrange for independent legal advice to be obtained for the child or young person”



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

JACS No. 44

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Approved for circulation to the Standing Committee on Justice and Community Safety

Signature:

A handwritten signature in black ink, reading "Jm Griffiths-Cook".

Date: 9 March 2021

By the Public Advocate and Children and Young People Commissioner, Jodie Griffiths-Cook