

'More than shelter – addressing legal and policy gaps in supporting homeless children': A progress report

A special report to Parliament under section 31 of the *Ombudsman Act 1974*.

19 October 2020

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The Hon John Ajaka MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Jonathan O'Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Pursuant to section 31 of the *Ombudsman Act 1974* I am providing you with a report titled '*More than shelter - addressing legal and policy gaps in supporting homeless children: A progress report*'.

I draw your attention to the provisions of section 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make the report public forthwith.

Yours sincerely



Paul Miller
Acting NSW Ombudsman

'More than shelter – addressing legal and policy gaps in supporting homeless children': A progress report

A special report to Parliament under section 31
of the *Ombudsman Act 1974*

19 October 2020

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1. Executive Summary

1.1. Introduction

Children who present, alone, to homelessness services are extremely vulnerable. They should receive the highest level of care and support – shelter, certainly, but more than just shelter.

In 2018-19, 2,588 children aged 12-15 presented to a youth refuge somewhere in NSW without a parent or guardian.¹

Who are the children? What are the immediate and underlying causes that led them to turn up at homelessness services without a parent or guardian? What support, more than shelter, did these children need and what did they receive? What has happened to these children? We do not know. Despite recommendations made in our 2018 report, the data to answer these questions is still not routinely collected and reported.

In June 2018, the NSW Ombudsman drew attention to critical problems affecting the response to these children. Our focus was on the 12-15 age group because there are different responses for other age groups. Unaccompanied children under the age of 12 are considered too young to stay overnight in a refuge; some homelessness services specialise in supporting young people aged 16 and above. We recommended improvements for the 12-15 year olds in our report, *More than shelter – addressing legal and policy gaps in supporting homeless children*.

<https://www.ombo.nsw.gov.au/news-and-publications/publications/reports/community-and-disability-services/more-than-shelter-addressing-legal-and-policy-gaps-in-supporting-homeless-children>

Our recommendations are set out in full in section 3.4 of this report. In substance, we asked the Government to:

- Address the lack of decision-making authority for homelessness services where parental consent for unaccompanied homeless children is unobtainable or limited
- Revise the Unaccompanied Homeless Children and Young People 12-15 Years Accessing Specialist Homelessness Services policy² to clarify and strengthen the role of the Department of Communities and Justice (DCJ) (then the Department of Family and Community Services (FACS)) in supporting the services
- Improve arrangements for monitoring and reporting on children in the care of the Minister for Community Services who stay in homelessness services
- Introduce regulated standards to govern the quality of care provided to homeless children
- Develop ways to measure the capacity of the Department of Communities and Justice to respond to risk of significant harm reports by homelessness services, and the re-reporting of unaccompanied homeless children
- Establish performance measures to monitor and publicly report on outcomes for the children.

This report examines progress in implementing our previous recommendations, and makes further recommendations.

¹More than shelter – addressing legal and policy gaps in supporting homeless children: A progress report - 19 October 2020

1.2. The Government's response to our 'More than shelter' recommendations

Shortly after publication of our *More than Shelter* report, DCJ told us it had work underway or planned to address each of our recommendations.

The department said it was also allocating \$4.3 million over three years to trial the introduction of nine mobile non-government therapeutic caseworkers to work with unaccompanied children who present to homelessness services and provide connection between families, the department, and other services.³

In November 2018, we hosted the first of a series of meetings between DCJ, the peak youth homelessness body Yfoundations, service providers and the Children's Guardian. The initial aim of these meetings – which have continued into 2020 – was to provide DCJ with a forum to consult about its implementation of our recommendations and related issues. Yfoundations has hosted the ongoing meetings and our office has attended as an observer. In this report, we refer to these meetings as the 'sector group'.

In December 2019, we asked DCJ for a formal progress report on implementation of the *More than shelter* recommendations. DCJ answered our questions in January 2020.

Following is our assessment of the progress reported by DCJ.

1.3. Assessment of progress

Has DCJ clarified decision-making authority for homeless children?

DCJ has not clarified decision-making authority for unaccompanied homeless children when consent from a parent or guardian is unobtainable. DCJ has considered giving youth specialist homelessness services (SHS) new powers to enable them to make decisions for these children, or relying on its own existing powers. However, DCJ has not implemented a solution that ensures legal authority is available and applied when required to meet the needs of homeless children.

What has DCJ done to improve the policy on unaccompanied homeless children?

DCJ has made no changes to the policy since 2015 and says none will occur until other work is finalised. DCJ has foreshadowed a single consolidated revision of the policy but not indicated when this will happen. Until DCJ produces a policy that clarifies and strengthens its role in supporting youth SHS, it will have limited ability to settle operational arrangements with the providers.

Are there better monitoring and reporting arrangements for homeless children in statutory out-of-home care?

DCJ has taken an essential first step towards tracking these children, by introducing new data capture arrangements from 1 July 2020. These arrangements may produce accurate information in future. However, there is still no requirement or processes in place to enable the Children's Guardian to monitor the circumstances of these children, and DCJ has not undertaken a review it first proposed in 2017 to understand why they become homeless, and how to respond to their needs.

What has DCJ done to establish regulatory standards for the quality of care provided by youth SHS?

DCJ's advice to us indicated that it is not proposing to introduce regulated standards for the quality of care for homeless children. Instead, the department is requiring all NSW SHS to adopt the Australian Service Excellence Standards by 2023. It is not clear whether or how these standards will address the quality of care that SHS give to unaccompanied homeless children.

Can DCJ measure responses to homeless children and report outcomes for them?

There is no evidence that DCJ has established performance measures to monitor and publicly report on service and client outcomes for homeless children. There is also no indication of when DCJ will be able to measure its capacity to respond to risk of significant harm reports from youth SHS, and to measure re-reporting of these children. In the absence of such information, it is not possible to determine how well the child protection and homelessness systems are achieving the main policy goal of keeping homeless children safe.

Is DCJ's progress adequate?

The problems we reported on in 2018 were longstanding even then. The history of the department's attempts to produce settled and effective governance in this area is even longer. Work on a policy for unaccompanied homeless children first started in 2004, producing a finalised policy a decade later, in 2014. In that same year, the homelessness sector raised concerns with the department about gaps in the policy, including a lack of clarity about services' legal authority to make decisions for homeless children, and how they could handle cases where the department did not respond.

Given this history, and given that DCJ reported more than two years ago that it had work underway or planned to address each of our recommendations, the department has not made adequate progress in addressing the problems identified in *More than shelter*.

For this reason, we now make the following further recommendations.

1.4. Our further recommendations

We recommend that:

1. DCJ:
 - (a) within three months of the tabling of this report in Parliament, publish a plan that outlines what DCJ will do, and by when, to implement each of our further recommendations below; the plan should extend no further than December 2021, and
 - (b) provide the NSW Ombudsman with a final outcomes report on its implementation of the recommendations by no later than March 2022.
2. DCJ determine what approach is to be taken to close the current legal gap in decision-making authority for unaccompanied homeless children, and take all necessary steps to close that gap by ensuring that legal authority is available and applied when required to meet the needs of such children.
3. DCJ revise the *Unaccompanied Homeless Children and Young People 12-15 Years Accessing Specialist Homelessness Services Policy*, and:
 - (a) specify in the revised policy the role and responsibilities of DCJ's 'nominated contact' officers,
 - (b) include, in the revised policy, requirements for case reviews for unaccompanied homeless children who 'overstay' in youth SHS, and
 - (c) following revision of the policy, also finalise the district protocols.
4. DCJ, in consultation with the Children's Guardian, establish mandatory reporting arrangements to ensure timely reporting to the Guardian of all children in statutory out-of-home care (OOHC) who present to homelessness services.

5. DCJ conduct and publish a review of children in statutory OOHC staying in youth refuges and publish the results, together with any action it intends to take in response.
6. DCJ either:
 - (a) detail, in the plan referred to in recommendation 1, how implementation of the Australian Service Excellence Standards fully addresses our previous recommendation relating to the establishment of regulatory standards to govern the quality of care provided by youth homelessness services, or
 - (b) otherwise develop and adopt its own regulated standard for the quality of care required for homeless children.
7. DCJ :
 - (a) develop and commence reporting against appropriate performance measures to monitor outcomes for unaccompanied homeless children,
 - (b) commence regular reporting on DCJ's capacity to respond to risk of significant harm (ROSH) reports by youth homelessness services and the ROSH re-reporting of unaccompanied homeless children, and
 - (c) commence regular public reporting on outcomes for unaccompanied homeless children.

1.5. DCJ's response to our further recommendations

We gave DCJ a draft of this report on 2 September 2020 and invited it to respond to our further recommendations.

On 25 September, DCJ provided its response, which is published as an annexure to this report.

DCJ has accepted most of our further recommendations.

However, DCJ has said that it does not support our further recommendation 2, which concerns what we have identified (both in this report and in our original *More Than Shelter* report) to be a legal gap in decision-making authority for unaccompanied homeless children.

In summary, DCJ has told us that it considers the current legal framework to be appropriate and that it will work with providers to ensure that there is clear policy and practice guidance about the framework.

On 30 September, we wrote to DCJ inviting it to clarify or provide further information in relation to its position on this issue. We did so because DCJ's position appeared to suggest that its view was that there is no legal gap needing to be addressed. That view would appear to be inconsistent with the views expressed by DCJ in 2018 when it said that it would work with the sector to identify options to close the gap.

On 9 October, DCJ provided a further response (which is also included in the annexure).

DCJ has confirmed that its view is that the current legislation relating to decision-making authority for unaccompanied homeless children is appropriate.

DCJ also says that this was the view of the 'Under 18s Steering Committee', which considered that "the legislation relating to this area should not be changed as there is an adequate legal framework in place". It also noted that the SHS providers "were clear that they do not wish to have these decision-making powers and responsibilities".

We have considered DCJ's response to our further recommendation 2. Nothing in that response has caused us to withdraw or vary our recommendation.

We accept that there are existing legislative mechanisms that would, in theory, be available to DCJ to obtain and exercise the necessary decision-making authority for unaccompanied children who are "in need of care and protection"⁴. If, in practice, DCJ had the capacity and intention to utilise those mechanisms in every case where an unaccompanied homeless child was in need of care and protection, then the fact that SHS lack decision-making capacity for them would not be a concern.

However, as we observe in section 2.5 of this report, DCJ has not demonstrated that it has the practical capacity to respond in all cases where a care and protection response is warranted. Assuming that continues to be the case, it will continue to fall to SHS providers to meet the needs of children in their care, and this may necessitate making decisions for them in the absence of parental consent.

DCJ's view as to the adequacy of the current legal framework also appears to be premised on the view that any unaccompanied child that DCJ determines is not "in need of care and protection" will either be able to be returned to reside with a parent or else a parent will willingly provide necessary decision-making consent to the SHS. As a practical matter, that premise is open to doubt and needs to be tested.

DCJ has committed to providing clear policy and practice guidance on the legal framework for its staff and SHS. We look forward to reviewing this guidance when DCJ revises the policy.

2. Issues and analysis

In this section, we discuss what DCJ has done – and what remains to be done – to implement our recommendations from the *More than shelter* report.

2.1. Has DCJ clarified decision-making authority for unaccompanied homeless children?

DCJ has not clarified decision-making authority for unaccompanied homeless children when consent from a parent or guardian is unobtainable. DCJ has considered giving youth SHS new powers to enable them to make decisions for these children, or relying on its own existing powers. However, DCJ has not implemented a solution that ensures legal authority is available and applied when required to meet the needs of homeless children.

DCJ and SHS providers have ruled out proposed new decision-making powers

In 2017, we received independent legal advice that confirmed that there is no legal basis for SHS providers to make decisions for unaccompanied homeless children where parental consent is unobtainable.

In July 2018, DCJ told us it was “investigating options to amend legislation so service providers have more clarity about their decision-making authority.”⁵

In May 2019, DCJ provided the sector group with eight different legal options to resolve this issue. Four of the options would require no amendment to existing provisions of the *Children and Young Persons (Care and Protection) Act 1998*. The other four options envisaged amendments to the legislation. The essential distinction between the two sets of options was that one relied on DCJ exercising its existing decision-making powers, and the other would allocate new powers to SHS to care for homeless children.

The providers did not support the proposed amendments to the legislation. Instead, they urged the Department to use current provisions within the Act “such as temporary care arrangements that will give care responsibility to the Secretary for a limited time, secure DCJ’s support and allow services to support the young person where parental consent cannot be obtained.”⁶

Separately, DCJ acknowledged in written advice to the sector in late 2019 that “the possible amendment options are unlikely to successfully address the gaps raised in the Ombudsman’s Report.” This advice also noted that there are “already mechanisms under the *Children and Young Persons (Care and Protection) Act 1998* that provide ways for the Minister or Secretary to obtain decision-making powers if/when this is necessary.”⁷

DCJ’s plans to resolve the decision-making issue are unclear

In October 2019, DCJ informed the Minister for Community Services about the eight legal options to clarify decision-making authority for youth SHS, about the providers’ opposition to any of the proposed amendments to legislation, and about the providers’ view that DCJ should use the existing legislation to obtain the necessary authority.

DCJ reported to us that the sector would continue to discuss the advice that the department gave to the Minister.

DCJ has not explained how or when it will resolve the issue so that there is clear policy guidance for both DCJ staff and the SHS providers on dealing with cases where a parent's consent is required but unobtainable for decisions affecting unaccompanied homeless children.

We recommend:

2. DCJ determine what approach is to be taken to close the current legal gap in decision-making authority for unaccompanied homeless children, and take all necessary steps to close that gap by ensuring that legal authority is available and applied when required to meet the needs of such children.

2.2. What has DCJ done to improve the policy on unaccompanied homeless children?

DCJ has made no changes to the policy since 2015 and says none will occur in response to our 2018 recommendations until other work is finalised. DCJ has foreshadowed a single consolidated revision of the policy but not indicated when this will happen. Policy revision should clarify and strengthen DCJ's role in supporting youth SHS, address overstaying by children in refuges, and outline the role of new DCJ contact positions. In its current form, the policy does not provide for consistent responses to unaccompanied homeless children across NSW.

There is no clear plan or timeline to revise the policy

When we asked DCJ for its progress report on the *More than shelter* recommendations, we wanted to know whether the department had revised and strengthened the policy. DCJ replied that the policy remained unchanged and updating it depended upon a number of actions that were still in progress. It also said any revisions to the policy would occur in a single consolidated update, and it would update the district protocols to reflect the changes.

It is reasonable to update the policy in a consolidated way, but DCJ did not specify what actions it needed to complete before any policy revision, nor when it expected to revise the policy.

This leaves service providers with a five-year old policy that continues to provide inadequate guidance where parental consent is unobtainable, and no guidance in cases where DCJ is expected to provide a child protection response, but does not do so.

The policy is still unclear on DCJ's child protection role

The current policy is inherently contradictory: while it outlines DCJ's responsibilities, it then states that the department will not always meet them. In turn, the policy provides no clear guidance to youth SHS about dealing with cases where DCJ is required to respond but does not.

The overriding objective of the policy is to ensure the safety and wellbeing of unaccompanied children and young people who are homeless or at risk of homelessness.

The policy requires services to report to the DCJ Helpline all children 12-15 who present alone to a homelessness service; it allocates to DCJ responsibility to assume lead case management for those children who are assessed as being at risk of significant harm (ROSH) as well as those who are in OOHC placements managed by DCJ.

However, the policy also states “not all reports made to the child protection helpline are allocated for a response by [DCJ]. Also, competing priorities – such as case complexity and vulnerability – may mean that a report ‘screened in’ [as meeting the risk of significant harm threshold] will not be allocated for a period of time, or be closed.”

DCJ has not settled operational arrangements with youth SHS

It is now more than five years since DCJ first issued the policy and a draft version of the district protocols. It is yet to settle an agreed position with providers on their respective roles and responsibilities.

Two years ago, our *More than shelter* report highlighted the need for DCJ to finalise effective operational arrangements with homelessness services that clearly spelled out their respective roles and responsibilities. The report also observed that the absence of a guarantee of service in the policy had been a key contributing factor to the reluctance of SHS to sign off on district protocols intended to guide responses by both the services and DCJ at the local level.

DCJ told us in January this year that some providers have declined to sign their protocols because of “concerns over systemic barriers which exist at the junction of both the homelessness and out-of-home care service systems.”

DCJ did not identify these systemic barriers but told us that the main concerns providers raised about the protocols related to resolution of the parental consent issue, refinement of the escalation process where DCJ and providers disagree on the direction of a matter, and finalisation of a preamble to the district protocols.

In February this year, DCJ gave the sector group and us the results of a survey the department conducted of youth homelessness providers; these showed concerns about:

- limited usefulness of the protocols to guide effective service delivery
- inadequacy of the current policy to support children without parental consent
- the need to clarify legislated responsibilities with regard to parental involvement in order to strengthen the protocols
- lack of practical guidance in protocols to deal with cases where there is no DCJ response.

Given that the policy should drive consistent practice across the State, it would also seem logical to reform and strengthen the policy before finalising the district protocols. In turn, a revised policy that more clearly spells out roles and responsibilities should put DCJ in a better position to resolve concerns about local protocol arrangements.

The policy has no information about the role of new DCJ contact officers

In response to a *More than shelter* recommendation, DCJ established departmental contact positions for youth SHS in each district. In its initial response to *More than shelter*, DCJ said it had established a contact point in each district since 31 May 2018. In DCJ’s progress update, it said these positions became operational in July 2019. DCJ has not yet spelled out their roles and responsibilities in the policy.

DCJ has told us that the positions provide general support to SHS and practical assistance with information exchange and referrals. DCJ also advised that it has established a quarterly review process for these positions in order to understand their effectiveness in supporting homelessness service providers. DCJ completed the first review in November 2019 by conducting a survey of 17 youth homelessness services. DCJ provided the results of the survey to us and the sector group in February 2020.

Overall, the survey results indicated that some providers are satisfied with the contribution of their contact officer, while others are concerned about matters such as the ability of contacts to escalate cases with senior DCJ staff, and to respond in a timely way to the needs of homeless children.

To provide clear and consistent guidance to youth SHS about what they can expect from the contact positions, DCJ should spell out their role and responsibilities in the policy. In doing so, the department should also make clear:

- whether the contacts are dedicated positions
- what level of authority is attached to the positions and whether this is consistent across districts
- how general support is defined and whether this includes resolution of disputes over case direction or DCJ's capacity to respond.

The policy does not require review of children who 'over-stay' in youth refuges

Some children stay for many months in youth refuges but DCJ has not yet established a process to review the circumstances of those who 'over-stay'.

According to the policy, youth refuges are not appropriate places for children to stay long term. Instead, the policy goals are to reconnect children with their families, or transition them into other stable accommodation.

Evidence we obtained shows that a quarter of the children who stayed in a refuge in 2018-19 were there for more than three months, and one in ten children occupied a bed for more than six months.

The AIHW data that we commissioned shows that, of the 449 children aged 12-15 who stayed in a homelessness service in 2018-19 (see table 2 in section 3.1):

- 14 per cent stayed between 46 – 90 nights
- 15 per cent stayed between 91 – 180 nights
- 10 per cent stayed more than 180 nights.⁸

In its January 2020 update, DCJ told us delivery of our recommendation to establish a review process for children who overstay in youth refuges depended on two other pieces of work, but neither of these had progressed.

DCJ said it planned to test a mandated case review process as part of the Family Outreach and Child Adolescent Service (FOCAS) pilot.⁹ DCJ did not report when the pilot would begin and end.

DCJ advised us that the other work that had not progressed was scoping by the Office of the Children's Guardian (OCG) of what DCJ called an out-of-home care like regulation that would apply to youth refuges and include a mandated case review.

We asked OCG to tell us about this work. The Children's Guardian did not confirm its involvement in any work relating to proposed new regulation of youth homelessness services. The Guardian advised that she had consulted extensively on regulation of Child Safe Standards for all organisations.¹⁰

Given the Guardian's advice, and the lack of information about the timing of DCJ's pilot program, it remains unclear when the department will establish the mandated reviews and outline the requirements in a revised policy.

The current policy emphasises service limits but does not address them

In its current form, the policy says that available services may be limited but provides no guidance about what this means for the responsibilities of DCJ and youth SHS to support homeless children.

The policy states “[R]oles and responsibilities of SHS/HYAP, FACS and the broader service system in preventing or resolving homelessness for unaccompanied homeless children and young people aged 12-15 years are dependent on the age and legal status of the child, their level of need and the available services. In recognition of the limits of both government and non-government services, it is important that district protocols are developed that clarify the local service system response.”

In effect, the policy shifts responsibility for responding to vulnerable children to local level arrangements without setting clear expectations about local responses in the context of limited resources.

DCJ should revise and strengthen the policy as a priority.

We recommend:

3. DCJ revise the policy on *Unaccompanied Homeless Children and Young People aged 12-15*, and:
 - (a) specify in the revised policy the role and responsibilities of the ‘nominated contact’ officers,
 - (b) include, in the revised policy, requirements for case reviews for unaccompanied homeless children who ‘overstay’ in youth SHS, and
 - (c) following revision of the policy, also finalise the district protocols.

2.3. Are there better monitoring and reporting arrangements for homeless children who are in statutory out-of-home care?

DCJ has taken an essential first step towards tracking these children, by introducing new data capture arrangements from 1 July 2020. These arrangements may produce accurate information in future. However, there is still no process or any requirement to enable the Children’s Guardian to monitor the circumstances of these children, and DCJ has not undertaken a review it first proposed in 2017 to understand why they become homeless, and how to respond to their needs.

New data collection requirements may improve information about homeless children who are in statutory out-of-home care

On 1 July 2020, DCJ introduced a new system to collect data on all unaccompanied homeless children, including those who are in statutory OOHC. The system imposes new requirements on youth SHS when they report unaccompanied homeless children to DCJ’s Helpline, and establishes a new mandatory field in DCJ’s ChildStory database.

DCJ has advised the SHS providers that the new mandatory field will enable real-time reporting and tracking of trends allowing DCJ to identify, monitor and effectively respond to practice issues, such as the placement of children in OOHC in homelessness services, and improve long-term outcomes for vulnerable children.¹¹

Our *More than shelter* report observed that children who are in the parental responsibility of the Minister for Community Services do not stop being in statutory OOHC when they stay in a youth refuge. This means that the agencies that provide OOHC placements – DCJ and its NGO counterparts – are still responsible for these children.

Our report also pointed out that DCJ was unable to produce accurate information about the number of children in statutory OOHC staying in youth refuges. This affected the ability of the Children's Guardian to monitor the circumstances of all of these children.

DCJ has been reporting some information to the Guardian but these reports are limited; they include only children and young people placed by DCJ in youth refuges, and the reports are quarterly, meaning the Guardian cannot use them to monitor the circumstances of individual children in real time.

As we noted in *More than shelter*, there has been a significant discrepancy over time between DCJ's quarterly reports and AIHW data on children on care and protection orders who are homeless.

We acknowledge that DCJ and AIHW use different counting rules and definitions when they collect information about children and young people in OOHC who are homeless. However, the AIHW data is more likely to indicate the actual scope of the problem of homelessness among children in OOHC. Indeed, the *More than shelter* report noted DCJ's advice that AIHW data is, if anything, likely to underestimate the number of children subject to care orders who present to homelessness services.

We compared DCJ's data with the AIHW data for 2018-19. DCJ placed 14 children and young people (aged 12-17) in refuges; in contrast, AIHW's data reported that 292 children (aged 12-15) on a care and protection order presented at a youth refuge during the period.

DCJ provides no other information about the 14 children and young people in its report, while the AIHW data shows that of the 292 children who presented to a youth SHS in 2018-19:

- 151 required a bed and 97 got one
- 46 were referred to the refuge by a child protection agency
- 126 were returning clients.

Section 3.1 provides more detailed versions of the data presented here.

There is no systematic monitoring of children in statutory OOHC who stay in youth refuges

Although DCJ has introduced new data capture arrangements, it has not established a process to ensure the timely reporting of these children to the Children's Guardian, so that she can scrutinise their circumstances. In fact, there are no requirements for DCJ and NGO OOHC providers to notify the Guardian when children in their care stay in refuges.

In contrast, there are stringent requirements on all OOHC providers to notify OCG when they place children in what is known as non-home based emergency care. This refers to placements in motels, caravans, serviced apartments or other similar short-term arrangements. Providers are required to notify OCG within 24 hours of such a placement; they must also submit a plan to transition a child out of the placement, and report to the Guardian when the placement ceases.

Similar stringent reporting requirements should apply to both DCJ and NGO OOHC providers when children in their care stay in a youth refuge.

We recommend:

4. DCJ, in consultation with the Children's Guardian, establish mandatory reporting arrangements to ensure timely reporting to the Guardian of all children in statutory out-of-home care (OOHC) who present to homelessness services.

A proposed review of homelessness affecting children in statutory OOHC is still pending

DCJ first proposed a review of the use of homelessness services by children in statutory OOHC in 2017. This year, DCJ told us it needed to finalise improvements to related data collection before commencing the review.

The new data collection arrangements are now in place, so DCJ should be in a position to initiate the review immediately.

DCJ's original rationale for the review was to enable a better understanding of the circumstances in which children are leaving their OOHC placements and accessing homelessness services, and how to respond to their needs.¹²

Given that a primary goal of statutory OOHC is to provide safe, secure and permanent placements, but significant numbers of OOHC children continue to use youth refuges, the review is well overdue.

We recommend:

5. DCJ conduct and publish a review of children in statutory OOHC staying in youth refuges and publish the results, together with any action it intends to take in response.

2.4. Has DCJ established regulatory standards for the quality of care provided by youth SHS?

DCJ's advice to us indicated that it is not proposing to introduce regulated standards for the quality of care for homeless children. Instead, the department is requiring all NSW SHS to comply with the Australian Service Excellence Standards by 2023. It is not clear whether or how these standards will govern the quality of care that SHS give to unaccompanied homeless children.

DCJ is introducing accreditation requirements for all homelessness providers

In response to *More than shelter*, DCJ told us it was working to improve regulatory standards for all Specialist Homelessness Services providers. It said that it was piloting the Australian Service Excellence Standards (ASES) with selected providers and would determine the appropriateness of these standards for youth homelessness services.

In its January 2020 progress report, DCJ told us that the ASES pilot finished in October 2019 and homelessness services with contracts starting in 2021 would be required to complete ASES accreditation by July 2023.

According to the DCJ website, the ASES is a set of standards and national quality improvement program that aims to assist non-government organisations to improve their business systems, management practices and service delivery. The Government of South Australia owns the ASES. Organisations complete a self-assessment and then undergo external assessment to achieve accreditation under the standards.

There is no evidence that the new standards are appropriate for care provision by youth SHS

DCJ has provided no information on whether the ASES are appropriate for youth homelessness services, and particularly how these standards would apply to quality of care for unaccompanied homeless children.

In June 2020, DCJ gave us a copy of the ASES evidence guides for achieving accreditation. DCJ told us the guides are not publicly available.

We found no specific standard in the evidence guides that youth SHS could adopt to govern the quality of care for homeless children.

Instead, the accreditation process requires organisations to provide their own evidence that they meet a set of standards on issues including business planning, sound governance, policy and procedures, and financial management.

For example, organisations seeking accreditation must demonstrate that they have “precise and measurable customer service standards” by providing evidence that can include “customer service standards that clearly outline expectations and inform consumers on processing times, waiting lists, rates, **quality of care** (our emphasis), responsiveness to phone calls, letters, and emails. Include reliability, punctuality and follow up standards”.

In the absence of a set regulatory standard for the quality of care, it is difficult to see how DCJ will ensure consistent compliance in this area of service provision to unaccompanied homeless children.

We recommend:

6. DCJ either:

- (a) detail, in the plan referred to in Recommendation 1, how implementation of the Australian Service Excellence Standards fully addresses our previous recommendation relating to the establishment of regulatory standards to govern the quality of care provided by youth homelessness services, or
- (a) otherwise develop and adopt its own regulated standards for the quality of care required for homeless children.

2.5. Has DCJ set performance measures to monitor and report outcomes for homeless children?

There is no evidence that DCJ has established performance measures to monitor and publicly report on service and client outcomes for homeless children. There is also no indication of when DCJ will be able to measure its capacity to respond to risk of significant harm reports from youth SHS, and to measure re-reporting of these children. In the absence of such information, it is not possible to determine how well the child protection and homelessness systems are achieving the main policy goal of keeping homeless children safe.

DCJ's arrangements for monitoring outcomes for unaccompanied homeless children are unclear

DCJ has not settled the measures it needs to monitor the performance of homelessness services and outcomes for children. Nor has it indicated when it expects to be able to do so.

In *More than shelter*, we reported that basic data on unaccompanied homeless children was either not collected or was unreliable. We said DCJ should address this by settling performance measures for appropriate monitoring of the children and services.

In its July 2018 response, DCJ told us it had a comprehensive monitoring and evaluation framework in place for the SHS program and that it had commissioned an evaluation of the Homeless Youth Assistance Program (HYAP), with evaluation reports due in 2020.

Late last year, we asked DCJ to identify the performance measures it uses to monitor the youth SHS and HYAP programs and to tell us how it uses the results to improve service responses.

DCJ did not provide the requested information.

Instead, DCJ reported that it was reviewing a draft interim evaluation report and an associated data report from a third party evaluator. It said it would use the recommendations from these reports to "strengthen the HYAP service model, in consultation with providers and the broader service system."

Although DCJ has taken a significant step by introducing new data collection arrangements – from 1 July 2020 – in the absence of clear performance measures on outcomes for children, it is still unclear how the new arrangements will contribute to improved data and monitoring.

DCJ is still developing measures of its ROSH response capacity and re-reporting of unaccompanied homeless children

Since 2018, DCJ has taken several steps towards developing a method for measuring its capacity to respond to risk of significant harm reports about unaccompanied homeless children.

Measuring DCJ's capacity to respond is a critical issue for youth SHS because the policy on unaccompanied homeless children aged 12-15 states that DCJ may not always respond for reasons including competing priorities such as case complexity or vulnerability. As we observed in *More than shelter*, where DCJ does not provide a child protection response to those homeless children who need it, the challenge is left solely to homelessness services.

At the time of *More than shelter*, the only information that DCJ published on its capacity to respond related to all children. As we reported, DCJ had made progress in lifting the proportion of all children reported at ROSH – for any reason – who received a face-to-face response, but the response rate for the December quarter 2017 was still only 32%. This meant that just one child in every three assessed

as being at ROSH was seen by a DCJ caseworker. More than two years later, DCJ data shows that for the 12 months ending 31 March 2020, caseworkers in DCJ's districts saw an average 27% of children assessed at risk of significant harm. Performance between individual districts ranged from a low of 24% to no higher than 36%.¹³

To clarify DCJ's actual capacity to respond to unaccompanied homeless children aged 12-15, we recommended that DCJ collect data to measure its capacity to respond to ROSH reports made by homelessness services, and the re-reporting of these children.

In January this year, DCJ reported that it was working towards producing data reports on child protection assessments and outcomes, to provide a measure of the department's capacity to respond to concern reports for this cohort. DCJ did not say if it also intended to measure the re-reporting of homeless children. Separately, on 1 July this year, DCJ implemented new arrangements for reporting and recording information about unaccompanied homeless children.

DCJ has not indicated when it expects to begin producing the capacity reports or how it intends to use them.

Clarification of DCJ's response capacity could contribute to development of a revised policy that includes a stronger commitment by the department to supporting youth SHS; this could also help to resolve ongoing disputes about the respective responsibilities of the department and providers to support homeless children.

The challenge for both DCJ and the youth homelessness sector will be to use the new data reports in ways that inform improvements to the response to unaccompanied homeless children.

DCJ has not committed to regular public reporting on outcomes for homeless children

In late 2019, we asked DCJ whether it intended to provide regular public reports on what happens to homeless children, and how it would do this.

DCJ did not address our questions. The department said it would release the interim and final evaluation reports for the Homeless Youth Assistance program; it said it received the draft interim report in December 2019 and the final report was due in March 2020.¹⁴

Until DCJ provides the public with regular performance reports, it will be difficult to know how well the system is working. The only current alternative is to commission, as we did, data from the national SHS collection. This information is available on a fee for service basis, because the SHS annual reports include no information about the 12-15 year old age group.

However, even the national SHS data is of limited use because it does not demonstrate particular outcomes for these very vulnerable children, including for example the number who reconnect with family, move into transitional accommodation or OOHC, or return to the streets.

We recommend:

7. DCJ:

- (a) develop and commence reporting against appropriate performance measures to monitor outcomes for unaccompanied homeless children,
- (b) commence regular reporting on DCJ's capacity to respond to risk of significant harm (ROSH) reports by youth homelessness services and the ROSH re-reporting of unaccompanied homeless children, and
- (c) commence regular public reporting on outcomes for unaccompanied homeless children.

3. Supporting information

3.1. Unaccompanied homeless children and young people

Data about unaccompanied homeless children aged 12-15

Basic information about unaccompanied homeless children was not available when we published *More than shelter* in 2018. This information gap has persisted, although DCJ has moved to address this by introducing new data capture arrangements from 1 July 2020.

Since 2017, DCJ has been providing limited information to our office and the Children's Guardian on the number of children and young people in statutory OOHC that the department says that it has placed in youth refuges. The reports are quarterly, provide only a single number on children and young people aged 12 to 17, and exclude those in placements provided by NGOs. As of 30 June 2019, non-government agencies provided placements for 55 per cent (7,928) of the 14,339 children and young people in statutory OOHC.¹⁵

The table below shows the data from DCJ's quarterly reports for 2018-19.

Table 1: Department of Communities and Justice quarterly data on children and young people in statutory OOHC placed in refuges, 2018-19

July-Sept 2018	Oct-Dec 2018	Jan-Mar 2019	Apr-Jun 2019	TOTAL
5	6	0	3	14

At the time of writing, the Australian Institute of Health and Welfare's Specialist Homelessness Services collection remains the primary source of information about homelessness and service responses to homeless people; the AIHW's annual SHS reports, however, include no information that specifically identifies the category of unaccompanied homeless children aged 12-15.

For this reason, we commissioned a special data extract from the SHS data sets for 2017-18 and 2018-19. In April 2020, we asked AIHW for data on the number of these children who presented unaccompanied at an SHS provider in NSW for each of the past two financial years, together with data on duration of stay, reasons for presenting at an SHS, and number on a care and protection order.

The tables below present the data we obtained for 2018-19. The numbers provided are from AIHW but we have calculated related percentages.

Table 2: NSW SHS clients aged 12 to 15 presenting alone, by care or protection order and accommodation nights, 2018–19

Accommodation nights	Clients with a care and protection order	% of total	Clients without a care and protection order	% of total	All clients	% of total	% of all clients accommodated
No accommodation	195	67%	1,944	85%	2,139	83%	
Up to 5 nights	19	7%	110	5%	129	5%	29%
6–45 nights	28	10%	112	5%	140	5%	31%
46–90 nights	19	7%	46	2%	65	3%	14%
91–180 nights	19	7%	50	2%	69	3%	15%
Over 180 nights	12	4%	34	1%	46	2%	10%
Total	292	100%	2,296	100%	2,588	100%	100%

Notes

1. Clients received services at an SHS agency located in NSW at least once during the reporting period. Clients may access services in more than one state or territory. Data presented by jurisdiction should be interpreted with caution as the information may not represent the clients' characteristics or services received when they attended for services in that particular jurisdiction
2. Clients aged 12 to 15 presenting alone are defined as any client aged 12–15 who presented to a specialist homelessness agency alone in their first support period.
3. A client is identified as being under a care or protection order if they are aged under 18 and have provided any of the following information in any support period (any month within the support period) during the reporting period (either the week before, at the beginning of the support period or during support):
 - they reported that they were under a care and protection order and that they had the following care arrangements:
 - residential care
 - family group home
 - relatives/kin/friends who are reimbursed
 - foster care
 - other home-based care (reimbursed)
 - relatives/kin/friends who are not reimbursed
 - independent living
 - other living arrangements
 - parents; or
 - they have reported 'Transition from foster care/child safety residential placements' as a reason for seeking assistance, or main reason for seeking assistance.
4. The length of accommodation for a client is calculated by adding each night of accommodation (short term/emergency, medium and long term accommodation) provided across all support periods during the reporting period.

Table 3: NSW SHS clients aged 12 to 15 presenting alone, by care or protection order and source of referral at the beginning of support, 2018–19

Formal referral source	Clients with a care and protection order	% of total	Clients without a care and protection order	% of total	TOTAL all clients	% of total
Child protection agency	46	16%	255	11%	301	12%
Other ^(a)	195	67%	1,844	80%	2,039	79%
No formal referral	27	9%	164	7%	191	7%
Not stated	24	8%	33	1%	57	2%
Total	292	100%	2,296	100%	2,588	100%

(a) 'Other' includes all valid formal referral sources other than 'Child protection agency'.

Notes

1. Clients received services at an SHS agency located in NSW at least once during the reporting period. Clients may access services in more than one state or territory. Data presented by jurisdiction should be interpreted with caution as the information may not represent the clients' characteristics or services received when they attended for services in that particular jurisdiction.
2. Clients aged 12 to 15 presenting alone are defined as any client aged 12–15 who presented to a specialist homelessness agency alone in their first support period.
3. A client is identified as being under a care or protection order if they are aged under 18 and have provided any of the following information in any support period (any month within the support period) during the reporting period (either the week before, at the beginning of the support period or during support):
 - they reported that they were under a care and protection order and that they had the following care arrangements:
 - residential care
 - family group home
 - relatives/kin/friends who are reimbursed
 - foster care
 - other home-based care (reimbursed)
 - relatives/kin/friends who are not reimbursed
 - independent living
 - other living arrangements
 - parents; or
 - they have reported 'Transition from foster care/child safety residential placements' as a reason for seeking assistance, or main reason for seeking assistance.

The discrepancy between the DCJ and AIHW datasets

In 2018, we reported on a significant difference between numbers provided by DCJ and AIHW on children and young people in statutory OOHC staying in refuges. The DCJ numbers were lower than AIHW's, and the department acknowledged that the AIHW data was likely to underestimate the actual number of children on care orders who presented to SHS providers.

This problem persists. As Table 1 shows, in 2018-19 DCJ placed 14 children and young people aged 12 to 17 in youth refuges. In the same period, the AIHW data shows that 97 children aged 12-15 on care orders stayed in refuges.

We acknowledge that DCJ and AIHW use different counting rules and definitions when they collect information about children and young people in OOHC who are homeless. However, the AIHW data is more likely to indicate the actual scope of the problem of homelessness among children in OOHC in NSW.

The risk profile for unaccompanied homeless children

Without comprehensive and aggregated information about the children who are the subject of this report, the trajectories that lead them into homelessness remain unknown.

However, it is possible to glean at least a partial picture from the AIHW SHS dataset and DCJ information.

The AIHW data for 2018-19 lists what children aged 12-15 reported to SHS providers as their main reasons for presenting to a service.

Table 4: NSW SHS clients aged 12 to 15 presenting alone, by care or protection order and main reasons for seeking assistance^(a), 2018–19

Rank	Reason for seeking assistance	Clients with a care and protection order	Clients without a care and protection order
1	Relationship/family breakdown	95	546
2	Disengagement with school or other education and training	31	301
3	Lack of family and/or community support	29	105
4	Housing crisis	20	108
5	Family and domestic violence	16	244
..
9	Mental health issues	10	86

(a) Top 5 main reasons, including 'Family and domestic violence' and 'Mental health issues'. Ranking is based on clients with a care and protection order (including ties).

Notes

1. Clients received services at an SHS agency located in NSW at least once during the reporting period. Clients may access services in more than one state or territory. Data presented by jurisdiction should be interpreted with caution as the information may not represent the clients' characteristics or services received when they attended for services in that particular jurisdiction.
2. Clients aged 12 to 15 presenting alone are defined as any client aged 12–15 who presented to a specialist homelessness agency alone in their first support period.
3. A client is identified as being under a care or protection order if they are aged under 18 and have provided any of the following information in any support period (any month within the support period) during the reporting period (either the week before, at the beginning of the support period or during support):
 - they reported that they were under a care and protection order and that they had the following care arrangements:
 - residential care
 - family group home
 - relatives/kin/friends who are reimbursed
 - foster care
 - other home-based care (reimbursed)
 - relatives/kin/friends who are not reimbursed
 - independent living
 - other living arrangements
 - parents; or
 - they have reported 'Transition from foster care/child safety residential placements' as a reason for seeking assistance, or main reason for seeking assistance.
4. The client's main reason for seeking assistance at the beginning of support. Where more than one reason for seeking assistance has been provided, the client chooses the main reason.

The AIHW data also shows that a third (31 per cent) of all 2,588 children presenting alone to a refuge, were repeat clients.

Table 5: NSW SHS clients aged 12 to 15 presenting alone, by care or protection order and new or returning client status, 2018–19

New or returning clients	Clients with a care and protection order	% of total	Clients without a care and protection order	% of total	All clients	% of total
New clients	166	57%	1,576	69%	1,742	67%
Returning clients	126	43%	720	31%	846	33%
Total	292	100%	2,296	100%	2,588	100%

Notes

1. Clients received services at an SHS agency located in NSW at least once during the reporting period. Clients may access services in more than one state or territory. Data presented by jurisdiction should be interpreted with caution as the information may not represent the clients' characteristics or services received when they attended for services in that particular jurisdiction.
2. Clients aged 12 to 15 presenting alone are defined as any client aged 12–15 who presented to a specialist homelessness agency alone in their first support period.
3. A client is identified as being under a care or protection order if they are aged under 18 and have provided any of the following information in any support period (any month within the support period) during the reporting period (either the week before, at the beginning of the support period or during support):
 - they reported that they were under a care and protection order and that they had the following care arrangements:
 - residential care
 - family group home
 - relatives/kin/friends who are reimbursed
 - foster care
 - other home-based care (reimbursed)
 - relatives/kin/friends who are not reimbursed
 - independent living
 - other living arrangements
 - parents; or
 - they have reported 'Transition from foster care/child safety residential placements' as a reason for seeking assistance, or main reason for seeking assistance.
4. New clients are defined as clients who only have an open support period in the reference year.
5. Returning clients are defined as clients who have an open support period in the reference year and a support period in at least one other year. (This includes clients with only 1 support period. Support periods can cross reference years.)

As part of DCJ's work to implement the *More than shelter* recommendations, the department reviewed the cases of 28 unaccompanied homeless children who were nominated by two service providers; DCJ shared some findings from the reviews with the sector and us.

The reviews found that most of the children had child protection histories dating, on average, from around the age of five, featuring risks including family violence, physical abuse and neglect.

3.2. Current policies and programs

Unaccompanied Children and Young People 12-15 Years Accessing Specialist Homelessness Services policy (October 2015)

The policy (<https://www.facs.nsw.gov.au/download?file=369515>) states that its purpose is:

“to provide parameters and guidance to Specialist Homelessness Services (SHS), Homeless Youth Assistance Program (HYAP) services and FACS in responding to unaccompanied children and young people aged 12 to 15 years who are homeless or at risk of homelessness.

This policy outlines roles and responsibilities based on the age and legal status of the child or young person.

The overriding objective of this policy is to ensure the safety and wellbeing of unaccompanied children and young people who are homeless or at risk of homelessness. It provides a framework within which SHS, HYAP, FACS and wider child, youth and family services can work collaboratively in order to improve outcomes and service quality for this client group.

This policy will be operationalised locally through the implementation of FACS district protocols. Protocols will clarify case management responsibilities, duty of care responsibilities, response timeframes, relevant business processes and key contact information at the district level.”

Specialist Homelessness Services Program

DCJ funds 185 non-government Specialist Homelessness Services across NSW to assist people who are homeless or at risk of homelessness. These services include 50 that provide supports to homeless young people; in 2019-20, the NSW Government allocated \$51.7 million to these 50 services.

Homeless Youth Assistance Program

In 2019-20, the Government allocated \$10.4 million to this program; this funded 19 non-government services to provide support and accommodation to children aged 12-15 who are homeless or at risk of homelessness. Eight of the services operate in metropolitan Sydney and 11 agencies provide services in regional or remote parts of the State. The program’s main goals are to reconnect children with their families or help children to transition to long-term supported accommodation.

Children and young people who are homeless are more likely than their peers to have experienced abuse, neglect, family violence at home, and/or mental illness. They may have been in contact with the justice system, to misuse drugs and alcohol, or to be disengaged from education.¹⁶

3.3. Relevant legislation

There are fundamental principles that underpin the delivery of services to all vulnerable children in NSW, including those who use homelessness services.

These principles include those contained in:

- the United Nations Convention on the Rights of the Child, particularly Articles 3, 19, 27 and 39;
- sections 8 and 9 of the *NSW Children and Young Persons (Care and Protection) Act 1998*; and
- the *Children’s Guardian Act 2019*.

The Convention emphasises the primacy of the best interests of the child.

Under NSW legislation, a child's safety, welfare and wellbeing is paramount.

Convention on the Rights of the Child

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Children and Young Persons (Care and Protection) Act 1998

<https://www.legislation.nsw.gov.au/~view/act/1998/157/full>

Children and Young Persons (Care and Protection) Regulation 2012

<https://www.legislation.nsw.gov.au/~view/regulation/2012/425/full>

Children's Guardian Act 2019

<https://legislation.nsw.gov.au/~view/act/2019/25>

3.4. Our 2018 *More Than Shelter* report and DCJ's initial response

Why we prepared *More than shelter*

By the time we released *More than shelter* in 2018, we had been raising concerns about the adequacy of supports provided to homeless children for more than a decade.

In 2006, we undertook a group review of children who were living in refuges while under the parental responsibility of the Minister for Community Services; that same year, the former Department of Community Services (DOCS) released a consultation draft of a policy to guide responses to unaccompanied homeless children. The department subsequently produced several draft versions of the policy, but endorsed none.

In 2009, we investigated DOCS' handling of its placement of a child in a homelessness service. Our investigation report included a recommendation that the department give us its plans and timetable for implementing the policy. DOCS consulted us on new drafts of the policy but it was not until 2014 that it published an interim version. After some revision, DOCS released the finalised version in October 2015.

In 2016, DOCS also released a template for a protocol intended to put the policy into effect in each Community Services district across NSW. The department directed its district officials and youth SHS to settle their own local protocol arrangements to guide service delivery.

We decided to inquire into the legal, policy and practice arrangements for supporting homeless children after the youth homelessness sector alerted us to questions about the extent of their legal authority to make decisions concerning children under 16.

In particular, services wanted clarity regarding the legal basis for certain decisions that they may have to make for children living in their services – such as decisions on medical or therapeutic care, school enrolment, and attendance at education-related activities.

We tabled in Parliament our report, *More than shelter – addressing legal and policy gaps in supporting homeless children*, on 21 June 2018. We addressed our recommendations to FACS, as DOCS had then become (and which is now known as DCJ).

The initial response to our *More than shelter* recommendations

Below we outline our recommendations and the response to each that the former Department of Family and Community Services (FACS) gave us on 16 July 2018.

1. The Department of Family and Community Services should provide advice to the NSW Government about a proposed framework to address the lack of decision-making authority relating to children staying in homelessness services that has been outlined in section 2 of this report.

Supported.

FACS is investigating options to amend legislation so service providers have more clarity about their decision-making authority.

2. The Department of Family and Community Services should work with youth homelessness services and other key partner agencies (e.g. Health, Education, Justice) to promptly finalise the remaining district-level *Protocols for responding to unaccompanied children and young people 12-15 years of age who are homeless or at risk of being homeless* and, where necessary, revise the existing district-level protocols to reflect the amended policy.

Supported.

FACS committed to finalising all Protocols by 30 June 2018. Since 30 June, five of seven districts have operational Protocols.

FACS is working with the sector to ensure the remaining Protocols are finalised promptly. Protocols will be maintained in consultation with the sector as working documents, and will be reviewed and updated at least annually.

3. The Department of Family and Community Services should promptly revise the *Unaccompanied Children and Young People 12–15 Years Accessing Specialist Homelessness Services* policy to:
 - (a) Include much greater clarity about, and a stronger commitment relating to, its role in supporting youth homelessness services (consistent with our observations in section 3.1 of this report).
 - (b) Commit to providing a single nominated Department of Family and Community Services contact point for youth homelessness services in each district or community services centre, and outline their specific roles and responsibilities.

Supported.

Recommendation 3a is supported in principle. The *Unaccompanied Children and Young People 12–15 Years Accessing Specialist Homelessness Services* policy will be updated to reflect any legislative amendments made in response to recommendation 1.

Recommendation 3b is supported. Since 31 May 2018, each district has established a contact point for youth homelessness services.

4. The Department of Family and Community Services should promptly revise the *Unaccompanied Children and Young People 12–15 Years Accessing Specialist Homelessness Services* policy to specify a mandated case review process for children who ‘over-stay’ in youth homelessness services (consistent with our observations in section 3.2 of this report).

Supported.

This recommendation is supported in principle. The *Unaccompanied Children and Young People 12–15 Years Accessing Specialist Homelessness Services* policy will be updated to reflect any legislative amendments made in response to recommendation 1.

5. The Department of Family and Community Services should promptly commence a review of the use of homelessness services by children in out-of-home care, to enable a better understanding of the circumstances in which children are leaving their placements, and how to respond to their needs.

Supported.

This recommendation is supported. FACS is investigating options for improving data quality and monitoring for this cohort as part of activities in response to recommendation 6.

6. The Department of Family and Community Services should work with the youth homelessness sector and the Children's Guardian, to ensure there is a robust process in place which guarantees the accuracy of data relating to children in statutory OOHC who are staying in homelessness services, as well as the timely reporting of these children to both FACS and the Children's Guardian when they enter homelessness services.

Supported.

This recommendation is supported. Options for improving data quality and monitoring for this cohort are being investigated such as adding an additional (drop-down menu) field to Helpline reports to record a child's homelessness status when reports are made by Homelessness Youth Assistance Program providers or Specialist Homelessness Services.

7. After consultation with the Children's Guardian, the Advocate for Children and Young People and the youth homelessness sector, the Department of Family and Community Services should promptly provide advice to the NSW Government about establishing regulatory standards to govern the quality of care provided by youth specialist homelessness services (consistent with our observations in section 4 of this report).

Supported.

This recommendation is supported. FACS is undertaking work to improve regulatory standards for all Specialist Homelessness Service providers. For example, FACS is piloting the Australian Service Excellence Standards (ASES) with selected providers and will determine the appropriateness of ASES for youth homelessness services.

8. In light of the observations in this report, and as part of finalising the Specialist Homelessness Services continuous improvement plan and the HYAP Evaluation Plan, that the Department of Family and Community Services should:

- (a) Promptly settle the performance measures required to adequately monitor and report on service and client outcomes for children who access homelessness services, including identifying children in statutory OOHC as a specific cohort.
- (b) Capture data to allow FACS to measure its capacity to respond to risk of significant harm reports made by homelessness services, and the re-reporting of children who have accessed homelessness services.

Supported.

Recommendation 8a is supported. A comprehensive monitoring and evaluation framework is in place for the Specialist Homelessness Services program. An evaluation of the Homelessness Youth Assistance Program has been commissioned with three reports due by mid 2020 – providing insights about service consistency, quality, implementation, outcomes and benefits. Services will continue to improve based on evaluation findings.

Recommendation 8b is supported in principle, subject to the outcome of options investigated in response to recommendation 6.

9. The Department of Family and Community Services should regularly report publicly on the client and service outcomes referred to recommendation 8 (and section 5 of this report).

Supported.

This recommendation is supported in principle. FACS will issue regular reports, as evaluation reports are received about the Homeless Youth Assistance Program.

3.5. Clarifying decision-making for unaccompanied homeless children

DCJ's options to address the gap in decision-making authority for homeless children

In section 2.1, we report that DCJ consulted the youth SHS sector in 2019 about eight options to deal with the lack of legal authority for services to make decisions on behalf of unaccompanied homeless children where consent from a parent or guardian is unobtainable.

Sector representatives rejected four options suggested by DCJ to give SHS providers new powers to exercise decision-making authority for the children. Here, we detail these options and provide some explanatory information:

- (1) Including homelessness services in the statutory definition of Voluntary out-of-home care (VOOHC).

Division 2 of the *Children's Guardian Act 2019* defines VOOHC as out-of-home care for a child arranged by a parent and provided by an authorised agency.

- (2) Establishing a new form of out-of-home care (OOHC) specific to homelessness services.

Under the *Children and Young Persons (Care and Protection) Act 1998*, (the Care Act) there are three types of OOHC – statutory OOHC; supported OOHC; and voluntary OOHC (within the meaning of the *Children's Guardian Act 2019*).

- (3) Providing homelessness services with care responsibility where parent's consent is unobtainable.

'Care responsibility' means the authority to exercise functions specified in section 157 of the Care Act. These functions include consenting to medical or dental treatment for a child, not including surgery; permitting a child's participation in activities such as school excursions; and making other decisions required for the daily care and control of a child.

- (4) Providing the services with parental responsibility where parent's consent is unobtainable.

The Care Act defines 'parental responsibility' as all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children.

Another four legal options that DCJ put to the sector reflected the department's existing powers under the Care Act. These options were:

- (5) Care plan by consent (s.38)

The Care Act defines a care plan as a plan to meet the needs of a child or young person—

- (a) that is developed through agreement with the parents of the child or young person, or
- (b) that represents a set of proposals for consideration by the Children's Court.

(6) Assumption of care responsibility followed by a care application (ss.44, 45, 61 and 71).

Section 44 of the Care Act provides the Secretary with power to assume care responsibility of a child or young person if he suspects on reasonable grounds that the child is at risk of serious harm; and is satisfied that it is not in the best interests of the child to be removed from the premises where he or she is currently located. If the Secretary assumes care responsibility of a child under section 44, he must within three working days apply to the Children's Court for a care order for, or with respect to, care and protection for the child.

(7) Alternate parenting plan (s.115)

The Care Act defines an alternative parenting plan as a plan that sets out a proposed way to meet the needs of a child due to breakdown of the relationship between the child and his or her parents. Such a plan may include proposals for matters including the allocation of parental responsibility, residential arrangements and supervision of the child. The Children's Court may make orders to approve an alternate parenting plan, or a plan may be registered with the Court.

(8) Temporary care arrangements (s.115)

The DCJ Secretary may make a temporary care arrangement for a child if the Secretary forms the opinion that the child is in need of care and protection. Under such an arrangement, the Secretary retains care responsibility for the child, and may delegate this only to an authorised carer. However, a temporary care arrangement is possible only if a parent consents to it, or in the opinion of the Secretary, the parent is incapable of consenting. The legislation sets limits on the duration of temporary care arrangements.

3.6. Acronyms and defined terms

Term	Meaning
AIHW	Australian Institute of Health and Welfare
Child	A person who is under the age of 16 years, as defined in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .
ChildStory	DCJ's information technology system for child protection records
DCJ	Department of Communities and Justice
DOCS	Department of Community Services
FACS	Department of Family and Community Services
HYAP	Homeless Youth Assistance Program
<i>More than Shelter</i>	The report of the NSW Ombudsman entitled 'More than shelter – addressing legal and policy gaps in supporting homeless children' tabled in Parliament on 21 June 2018.
OOHC	Out-of-home care
ROSH	Risk of significant harm
SHS	Specialist Homelessness Service
Young person	A person who is aged 16 years or above but who is under the age of 18, as defined in the <i>Children and Young Persons (Care and Protection) Act 1998</i> .

Endnotes

- 1 Australian Institute of Health and Welfare (AIHW), special extract from the Specialist Homelessness Services collection 2018-19.
- 2 The reference in the policy title to 'young people' is inconsistent with the terminology in the *Children and Young Persons (Care and Protection) Act 1998*, which defines a 'child' as a person under the age of 16 years and a 'young person' as a person who is 16 or above but under the age of 18.
- 3 Advice to the NSW Ombudsman from FACS, 16 July 2018.
- 4 Section 34(1) of the *Children and Young Persons (Care and Protection) Act 1998* provides that If the Secretary forms the opinion, on reasonable grounds, that a child or young person is in need of care and protection, the Secretary is to take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child or young person.
- 5 Advice to the NSW Ombudsman from FACS, 23 July 2018.
- 6 Advice to the NSW Ombudsman from DCJ, 22 January 2020.
- 7 DCJ *Summary re issues of consent when HYAP services used* November 2019.
- 8 Above n 1.
- 9 This pilot is a rebadged version of a three-year \$4.3 million pilot program announced by the former Minister for Community Services in June 2018 as an immediate response to *More than shelter*.
- 10 The Royal Commission into Institutional Responses to Child Sexual Abuse recommended the establishment of standards to make organisations safer for children.
- 11 Communities & Justice information sheet June 2020, Change to Child Protection Helpline Reporting.
- 12 *More than Shelter*, p16.
- 13 DCJ, Caseworker Dashboard, June 2020 quarter, https://public.tableau.com/profile/facs.statistics#!/vizhome/FACS_Caseworker_Dashboard/DCJCaseworkerDashboardVersion3?publish=yes
- 14 As of August 2020, these reports were not published.
- 15 DCJ, Annual Statistical Report 2018-19.
- 16 DCJ, *Our homelessness program*, DCJ's website, <https://www.facs.nsw.gov.au/providers/funded/programs/homelessness/specialist-services/our-programs>

Annexures

A. Letter from DCJ dated 25 September 2020 in response to the NSW Ombudsman's further recommendations (with enclosures)



Communities
& Justice

Monica Wolf
A/Deputy Ombudsman
Ombudsman New South Wales
Level 24, 580 George Street
SYDNEY NSW 2000

Ref: SGM20/4335

Dear Ms Wolf

DCJ response to 'More than Shelter – addressing legal and policy gaps in supporting homeless children: A Progress report (2020)'

Thank you for your letter dated 2 September 2020 the Department's feedback on the *'More than Shelter – addressing legal and policy gaps in supporting homeless children: A Progress report (2020)'* that the NSW Ombudsman will table as a special report in NSW Parliament in early October 2020.

The Department of Communities and Justice (DCJ) appreciates the opportunity to provide feedback and input on the draft progress report, and looks forward to continuing to work with the NSW Ombudsman on this very important matter.

In January 2020, the Department responded to a request from the NSW Ombudsman providing an update on progress against each recommendation, noting that some recommendations had not proceeded as anticipated and alternative options were being developed in consultation with sector members on the Under 18's Steering Committee that was established in 2018 to oversee the delivery of the recommendations in the report.

Thank you for taking the time to meet with my staff on 10 September 2020 to discuss the draft report and agreeing to consider any updates to the draft report where the Department perceives there to be factual inaccuracies and/or potential misinterpretations. The Department's comments have been marked up in the draft report enclosed for your consideration.

Please also find enclosed further advice from the Department on the progress of the nine recommendations in the *'More than Shelter'* report. DCJ request that the NSW Ombudsman consider these updates and make changes to the draft report based on this feedback where appropriate and/or for the feedback table to be included as an addendum to the final progress report that will be tabled in October 2020, as the NSW Ombudsman see fit.

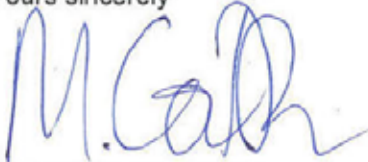
In addition the Department's response on the proposed six new recommendations detailed in the draft report is enclosed, plus its response to the seventh recommendation made on 21 September.

I understand that the NSW Ombudsman will consider both of these documents to be published with the final progress report when it is tabled.

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Should you require additional information and/or clarification for any of the information provided, please contact Ms Anne Campbell, Executive Director, Housing and Homelessness, on [REDACTED] or [REDACTED]. We would welcome the opportunity to discuss this further.

Yours sincerely



Michael Coutts-Trotter
Secretary

25 SEP 2020

More than Shelter – addressing legal and policy gaps in supporting homeless children¹: A progress report (2020)
NSW Ombudsman further recommendations (September 2020) and the Department of Communities and Justice (DCJ) response

	NSW Ombudsman further recommendations at September 2020	DCJ formal response to NSW Ombudsman further recommendations at September 2020 (Incl Support, not support and rationale)	Dependencies (e.g. other further recommendations)	Timeframe proposed to complete work (Short, medium or long term)
1	NSW Ombudsman recommend that DCJ: (a) within three months of the tabling of this report in Parliament, publish a plan that outlines what DCJ will do, and by when, to implement each of our further recommendations below; the plan should extend no further than December 2021, and (b) provide the NSW Ombudsman with a final outcomes report on its implementation of the recommendations by no later than March 2022.	Supported		Short term
2	NSW Ombudsman recommend that: DCJ determine what approach is to be taken to close the current legal gap in decision-making authority for unaccompanied homeless children, and take all necessary steps to close that gap by ensuring that legal authority is available and applied when required to meet the needs of such children.	Not supported - DCJ considers that the legal framework on decision making authority for unaccompanied homeless children is appropriate. There are adequate mechanisms under the <i>Children and Young Persons (Care and Protection) Act 1998</i> to obtain necessary decision making authority when a child is in need of care and protection. It would not be appropriate to have provisions which automatically provide specialist homelessness services (SHS) providers with parental responsibility of a child. Any change in parental responsibility for a child should be through an order of a court. DCJ also notes the SHS providers preference is to not amend the current legislation. Next Steps - DCJ will work with SHS providers to ensure there is clear policy guidance for staff and SHS providers and frontline DCJ staff to ensure there is clear policy and practice guidance about the legal framework.		Medium term
3	NSW Ombudsman recommend that: DCJ revise the policy on <i>Unaccompanied Homeless Children and Young People aged 12-15</i> , and: (a) specify in the revised policy the role and responsibilities of the 'nominated contacts' (b) include, in the revised policy, requirements for case reviews for unaccompanied homeless children who 'overstay' in youth SHS, and (c) following revision of the policy, also finalise the district protocols.	Policy review – supported – a Steering Group with key stakeholders including SHS provider representatives has been established to drive the policy review. Following the publication of the HYAP evaluation report consultation will commence and the updated policy will be finalised by June 2021. Part a – supported – nominated contacts and information about their role and responsibilities have been provided. This will be incorporated into the revised policy. Part b – supported in principle – dependent upon outcome of review and OCG support (noting that the NSW Ombudsman's intention is for the OCG to oversee case reviews). Part b – supported in principle – a review of the policy is likely to result in a review of the protocols and the mechanism itself. If the review identifies a more suitable alternative mechanism, then the alternative mechanism will replace the protocols.	2(d) – Office of the Children's Guardian	Medium term
4	NSW Ombudsman recommend that: In consultation with the Children's Guardian, establish mandatory reporting arrangements to ensure timely reporting to the Guardian of all children in statutory out-of-home care (OOHC) who present to homelessness services.	Supported - DCJ currently reports quarterly to the Office of the Children's Guardian on children in statutory out-of-home care residing in refugees, and will consult with the Office of the Children's Guardian on expanding the reporting on the placement of children in OOHC in homelessness services.	Office of the Children's Guardian	Short term
5	NSW Ombudsman recommend that: DCJ conduct and publish a review of children in statutory OOHC staying in youth refugees and publish the results, together with any action it intends to take in response.	Supported Individual case reviews – Children in OOHC are currently reviewed at least annually as part of their case plan review. Children who are not in an authorised placement have more regular reviews and may be discussed and reviewed in DCJ District High/Complex Needs Children Panels. In addition, all children and young people in statutory out-of-home care who are away from their placement and self-place in a specialist homelessness service are reviewed according to the <i>Permanency Case Management Policy and Award from Placement / Not in Placement Policy</i>		Long term/ongoing (as per case plan reviews timeframes)

More than Shelter – addressing legal and policy gaps in supporting homeless children: A progress report (2020)
NSW Ombudsman further recommendations (September 2020) and the Department of Communities and Justice (DCJ) response

	NSW Ombudsman further recommendations at September 2020	DCJ formal response to NSW Ombudsman further recommendations at September 2020 (incl Support, not support and rationale)	Dependencies (e.g. other further recommendations)	Timeframe proposed to complete work (Short, medium or long term)
<p>6</p> <p>NSW Ombudsman recommend that:</p> <p>(a) detail, in the plan referred to in Recommendation 1, how implementation of the Australian Service Excellence Standards fully addresses our previous recommendation relating to the establishment of regulatory standards to govern the quality of care provided by youth homelessness services, or</p> <p>(b) otherwise develop and adopt its own regulated standard for the quality of care required for homeless children.</p>	<p>Not supported – Publication of results. Consideration needs to be given to any publishing of results, as this would be quite a small cohort and public reporting should always be at a high enough level to ensure that data remains de-identified.</p> <p>Part a – Supported – This information is already available within <i>The ASES Policy Framework: Implementing a new quality framework for specialist homelessness services in NSW</i> which is published on the DCJ website and through the Department of Human Services South Australia ASES webpage.</p> <p>Whilst it doesn't include specific standards for youth, there are evidence requirements that youth services need to adhere to as part of ASES. DCJ will work with the intellectual property owners of ASES to incorporate additional information where relevant.</p> <ul style="list-style-type: none"> The ASES are a set of standards owned and administered by the Department of Human Services and available nationally. ASES is internationally accredited by the International Society for Quality in Health and Social Care. The ASES is underpinned by a three year continuous improvement cycle. To maintain accreditation, services are required to be externally assessed every three years and demonstrate that they continue to comply with the ASES. A wide range of organisations in the community services sector use the ASES including homelessness, mental health, neighbourhood house, low income support, employment agency, health and community centres. The ASES can be applied to any size organisation. See the Department of Human Services South Australia ASES webpage for more information. As a condition of specialist homelessness services funding in NSW, providers need to demonstrate compliance with the ASES across all elements of their organisation, including their business and financial systems, governance and management, and person centred service practices, by 30 June 2023. See the <i>ASES Policy Framework</i> for more information. The ASES is recognised by other service area contracts such as NSW Health drug and alcohol programs and by the Victorian Department of Health and Human Services. A list of ASES accredited organisations is published on the Department of Human Services South Australia website. Many are organisations related to children and young people. <p>The <i>ASES Policy Framework</i> will be updated within the coming months to reflect how the ASES is equivalent to other industry standards and accreditation systems.</p> <p>Part b – not supported – ASES is not a cohort-specific set of standards. Recent mapping shows that the NSW Child Safe Standards for Permanent Care are around 30% equivalent to the ASES. Mapping indicates that the ASES has more practice and evidence requirements than the NSW Child Safe Standards for Permanent Care.</p> <p>Under Standard 2.2 of ASES (Policy and Procedure) youth services are required to demonstrate that "The Organisation identified and documented its legislative obligations and related actions". Relevant legislation includes Child Protection, and Child Safety and Wellbeing. Examples of evidence the provider is required to produce include board handbook, acts and legislative requirements document, complaints and feedback policy and procedure, privacy policy and consent forms.</p> <p>Under the ASES, youth services are required to provide evidence of policies and procedures that support consistent provision and the safety of children, young and vulnerable people in accordance with organisational objectives, industry and legislative requirements. These include the Child Protection Act.</p>			

More than Shelter – addressing legal and policy gaps in supporting homeless children: A progress report (2020)
NSW Ombudsman further recommendations (September 2020) and the Department of Communities and Justice (DCJ) response

	NSW Ombudsman further recommendations at September 2020	DCJ formal response to NSW Ombudsman further recommendations at September 2020 (incl Support, not support and rationale)	Dependencies (e.g. other further recommendations)	Timeframe proposed to complete work (Short, medium or long term)
		<p>If additional policy requirements are identified for NSW youth services, DCJ will discuss any new NSW policy requirements that need to be noted in the ASES assessments with South Australia who own the intellectual property for ASES, and the homelessness peak bodies. This is a standard procedure and South Australia regularly engages with ASES assessors on any relevant policy and program changes impacting ASES assessments.</p> <p>In addition, DCJ would like to invite the NSW Ombudsman to be involved in a phased implementation and program improvement project being tested with a youth service provider in NSW. This project looks at reducing 'red tape' for providers with multiple accreditations.</p>		
7	<p>NSW Ombudsman recommend that DCJ:</p> <ul style="list-style-type: none"> (a) develop and commence reporting against appropriate performance measures to monitor outcomes for unaccompanied homeless children, (b) commence regular reporting on DCJ's capacity to respond to risk of significant harm (ROSH) reports by youth homelessness services and the ROSH re-reporting of unaccompanied homeless children, and (c) commence regular public reporting on outcomes for unaccompanied homeless children. 	<p>Part a – supported – information about performance and outcomes delivered by the program and the measures used to evaluate those will be provided through release of the Homeless Youth Assistance Program (HYAP) Final evaluation report. Unaccompanied minors receiving services from mainstream Specialist Homelessness Services (SHS), will be documented through the broader SHS Outcomes Framework. The recommissioning process, will collectively integrate a stronger focus on client outcomes and service quality in the new contracting terms for the recommissioning of the sector.</p> <p>Part b – supported in principle – DCJ is in the process of undertaking work to assess the quality and completeness of data being captured through the new field added to ChildStory in July 2020. Internal dashboards to monitor performance are being scoped. Provision of this information publicly will be possible once the data is assessed as "fit for reporting" based on an assessment of data quality. Reporting will also be dependent on counts being sufficiently large enough to maintain client confidentiality.</p> <p>Part c – supported – Unaccompanied minors receiving services from mainstream Specialist Homelessness Services (SHS), will be documented through the broader SHS Outcomes Framework. The recommissioning process, will collectively integrate a stronger focus on client outcomes and service quality in the new contracting terms for the recommissioning of the sector.</p>		Long term

B. Letter from DCJ dated 9 October 2020 relating to the NSW Ombudsman's further recommendation 2 (with enclosures)



Mr Paul Miller
Acting NSW Ombudsman
Level 24, 580 George Street
SYDNEY NSW 2000

Ref: EAP20/15243

9 October 2020

Attention: Monica Wolf
By email: [REDACTED]

Dear Mr Miller

Draft Report "More Than Shelter: A Progress Report"

Thank you for your letter of 30 September 2020 seeking clarification of the Department of Communities and Justice's (DCJ's) response to recommendation two that has been proposed as one of the seven further recommendations in your draft report.

I have provided some information below by way of clarification of our response to this recommendation.

DCJ acknowledges that there is no specific legislative provision that would permit or authorise a Specialist Homelessness Service (SHS) to exercise parental responsibility for a child in its care in circumstances where there is no available parent to exercise that parental responsibility. However, there is a common law principle of *in loco parentis* that may apply in these circumstances where a person or agency has needed to 'step into the shoes' of the child's parent to make decisions for a child.

Under the *Minors (Property and Contracts) Act 1970*, a child under 18 can lawfully enter into a civil contract for goods and services that benefit the child where the child has sufficient understanding to participate in the civil act (ss. 18 & 19). This includes the provision of accommodation services.

In addition, section 49 of that Act also provides that children aged 14 and above can consent to their own medical and dental treatment. Where a medical practitioner treats a child on the basis of the child's consent, they are protected in relation to any claim of assault or battery of the child.

Therefore, in circumstances where a parent or other person with parental responsibility is unavailable or unwilling to provide consent to their child's medical or dental treatment, a child aged 14 and above can provide their own consent to that treatment. A child younger than 14 may also be *Gillick*¹ competent to consent to their own medical or dental treatment. The treating medical or dental practitioner is able to determine whether a child has sufficient maturity and understanding to consent to their own treatment. This is assessed on a case by case basis.

¹ *Gillick v West Norfolk and Wisbech Area Health Authority and another* [1985] All ER 402
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Where a child does not appear to have capacity to consent to the provision of accommodation services for themselves, the homelessness service may make a report to DCJ, for example, on grounds such as, the child is homeless, and/or that the child's basic physical or psychological needs are not being met.

On receipt of a report, DCJ would make such investigations and assessments as considered necessary to determine whether the child is at risk of significant harm and/or will provide or arrange for the provision of appropriate services including residential accommodation services.

DCJ's involvement could also include contacting appropriate family members, making referrals, and taking appropriate protective action, such as, bringing a child into care, entering into a temporary care arrangement with the child's parents, or other action.

DCJ does believe that homelessness services have a critical role to play here however and that services should be required to do everything possible to engage the young person's parents and family and support restoration, whilst residing in SHS accommodation.

Consultation with stakeholders

In your letter, you correctly identify that there is no clear or adequate legal authority that vests an SHS or any other person to make decisions for under 16 year olds without express parental consent.

In 2019, DCJ conducted a scoping exercise which included consultation with relevant stakeholders. The overwhelming response of the members of the Under 18s Steering Committee was that the legislation relating to this area should not be changed as there is an adequate legal framework in place. In addition SHS providers were clear that they do not wish to have these decision-making powers and responsibilities.

SHS provider feedback was that DCJ should use the current provisions within the *Children and Young Persons (Care and Protection) Act 1998* (Care Act) when responding to these sorts of cases and reports.

SHS providers (like other health, education, justice services) can continue to deliver services without having legal decision-making authority for the child.

I understand that the current service delivery approach in relation to a child aged 12 to 15 living at a youth homelessness service, where the parents refuse to engage, support and provide consent for their child is as follows:

1. The service would first attempt to work with and engage the child's family;
2. If step 1 is not successful, then a report would be made to DCJ.

This is consistent with s.122 of the Care Act, which requires a person who provides residential accommodation for a child under 16 who is living away from home without parental permission, to report the child's whereabouts to DCJ. This is a mandatory reporting obligation that applies to residential accommodation providers (other than a friend or relative of the child, or a service that provides the accommodation on a wholly or substantially commercial basis).

Enclosed is a copy of a consent flowchart that was developed and provided to SHS providers for clarification.

Guardianship Act and consent in an emergency

In your letter you make reference to the Part 5 of the *Guardianship Act 1987*. Section 37 of that Act applies to children over 16 and adults who lack capacity to give consent to their medical or dental treatment (s. 34).

Section 37 of that Act provides that a medical practitioner or dentist can provide treatment without consent, where such treatment is urgent and is required to save the person's life, prevent serious damage to their health, or prevent the patient from suffering or continuing to suffer significant pain or distress.

These provisions are similar to s.174 of the Care Act that provides that urgent medical treatment can be provided without consent in order to save a child or young person's life or prevent serious damage to the child or young person's health.

Section 37(2) of the Guardianship Act also permits minor medical or dental treatment to be carried out without consent of the patient or the person responsible for the patient, in circumstances that include where the person responsible for the patient cannot be located or are unable or unwilling to make a decision.

In addition, under s. 37(3), in providing a patient (aged 16 and above) with minor medical or dental treatment without consent of the patient or the person responsible for the patient, the medical practitioner or dentist is required to certify in writing that:

1. the treatment is necessary; and
2. the form of treatment will most successfully promote the patient's health and well-being, and;
3. the patient does not object to the carrying out of the treatment.

Again these provisions only apply to children aged 16 and above and adults who lack decision-making capacity.

There is no similar provision in the Care Act relating to children under 16 where a parent is unable or unwilling to provide consent and where the child lacks capacity to provide their own consent. However, DCJ does not support a provision such as section 37 of the Guardianship Act be added to the Care Act.

Conclusion

In conclusion, for the above reasons, I confirm that DCJ considers that the current legal framework relating to decision-making authority for unaccompanied homeless children is appropriate.

I believe it is important that SHS services do everything possible to engage the young person's parents and family and support restoration while the young person resides with them. However, there is also more that the child protection system could be doing to support them.

Please find enclosed a copy of an email that was recently sent to frontline staff to this effect.

Rather than pursuing legislative change, DCJ work will be focused on ensuring there is clear policy guidance for staff and SHS providers about the legal framework. As previously outlined DCJ is implementing a range of strategies to ensure that children 12-15 years in SHS services receive the appropriate response to meet their needs. We will continue to monitor the effectiveness of these strategies.

If you have any further questions or would like to discuss this matter, please contact Anne Campbell on [REDACTED]

Yours sincerely



Michael Coutts-Trotter
Secretary

Encl

Dear Colleagues,

Supporting children and young people who are homeless or at risk of homelessness is important work.

Our system needs to strive to do better, because children and young people deserve to be safe and feel supported.

To this end, we've been listening to young people, your experiences in CSCs, the sector and YFoundations about how we can best support children and young people to get the right support and achieve permanency.

We've heard that there's more we can do to support unaccompanied children and young people in homelessness services. Some of these young people have very complex needs and require support from a network of people and services.

Each circumstance is different, but in some cases all other options have been exhausted and the best decision for a child or young person on their own and homeless, is to enter care.

Simply put, age shouldn't play a role in decision making about entry to care, when that is in the best interests of children and young people.

Here are our plans to help support this work:

- We will take a fresh look at the department's policies and mandates to give you better guidance and more options in your casework with children and young people who are homeless or at risk of homelessness.
- The Office of the Senior Practitioner will review its practice advice to help guide your decision-making, assessment and collaboration with specialist homelessness services.
- We're asking young people with lived experiences of homelessness to be a part of a working group to tell us what would have helped them be safe.
- There is also [some excellent advice on working with young people available on Casework Practice](#).

And we're asking you to continue working as a team in collaboration with families and service providers to make the best decisions for unaccompanied children and young people in homelessness services.

We'll write again when there are helpful updates to share.

Kind regards,



SHS & HYAP Issue Escalation Process

Pre-escalation BAU

On a day to day basis, Specialist homelessness services (SHS), Homeless Youth Assistance Program (HYAP) providers and The Department of Communities and Justice (DCJ) work together in the context of the *Unaccompanied children aged 12 to 15 years presenting to specialist homelessness services policy* and the roles and responsibilities outlined in their district protocol, to determine the best response for an unaccompanied child presenting to homelessness services.

Case coordination meetings (both formal and informal) take place between all relevant agencies associated with the child including SHS, DCJ, schools, youth services, police as well as any relevant practitioners that may be involved with the child. Occasionally there may be a disagreement between the service and DCJ regarding a decision or response related to the child. The provider may feel a different outcome or a better understanding of the decision or response can be achieved through escalation of the issue.

Escalation

Escalation Stage 1

In the first instance the service caseworker or manager should escalate the issue within the district and try to resolve the issue at the district level and if necessary escalate the issue right up to the Executive District Director.

Escalation Stage 2

On occasion service providers may decide the issue needs to escalate further. On these occasions the Chief Executive Officer or Executive Officer of the service can escalate the issue directly the Director Cross Cluster Operations and Business Support. Details below:

Samantha Gooch – Director Cross Cluster Operations and Business Support



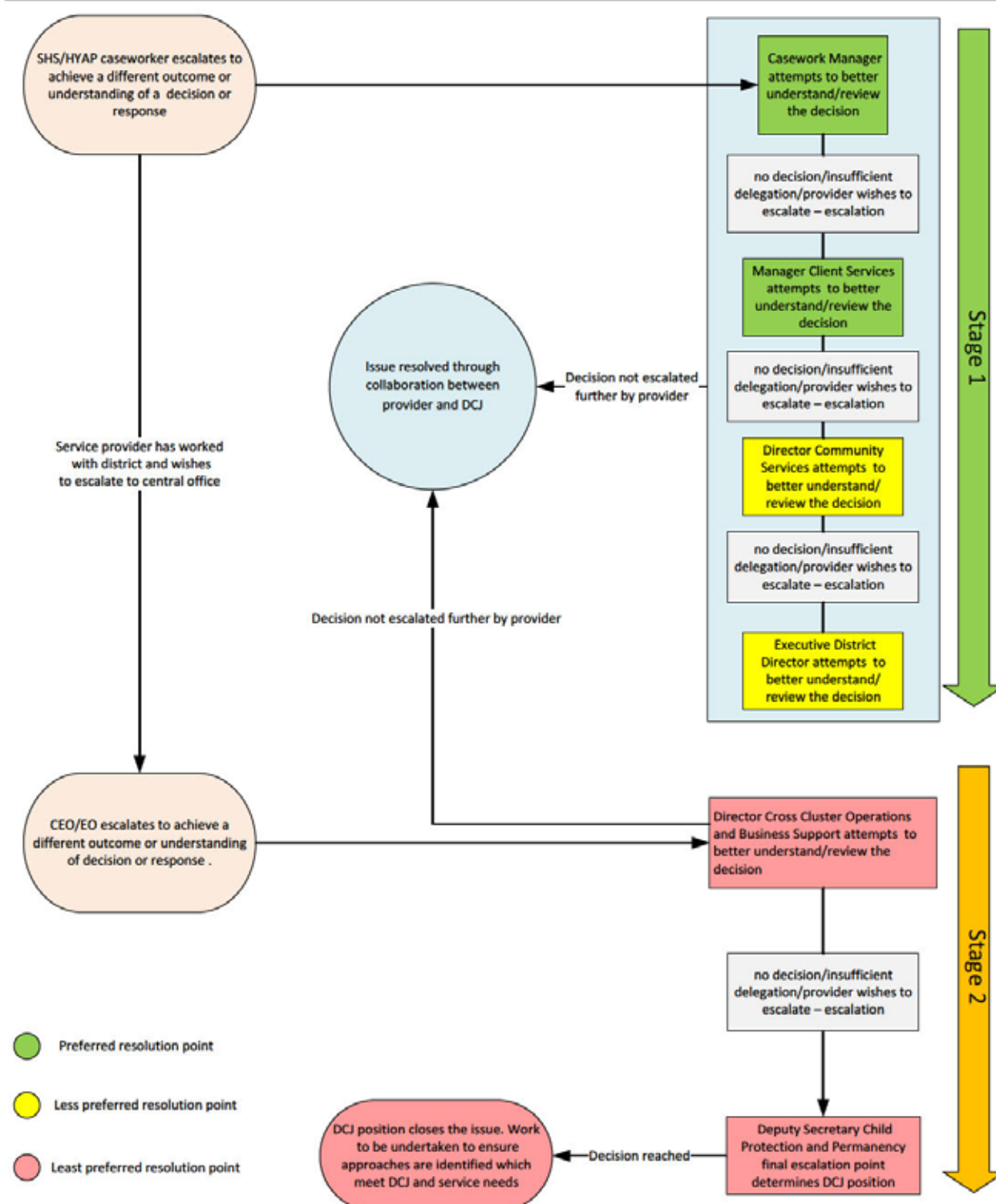
Sladjana (Jana) Vukocic - Executive Officer, Cross Cluster Operations and Business Support

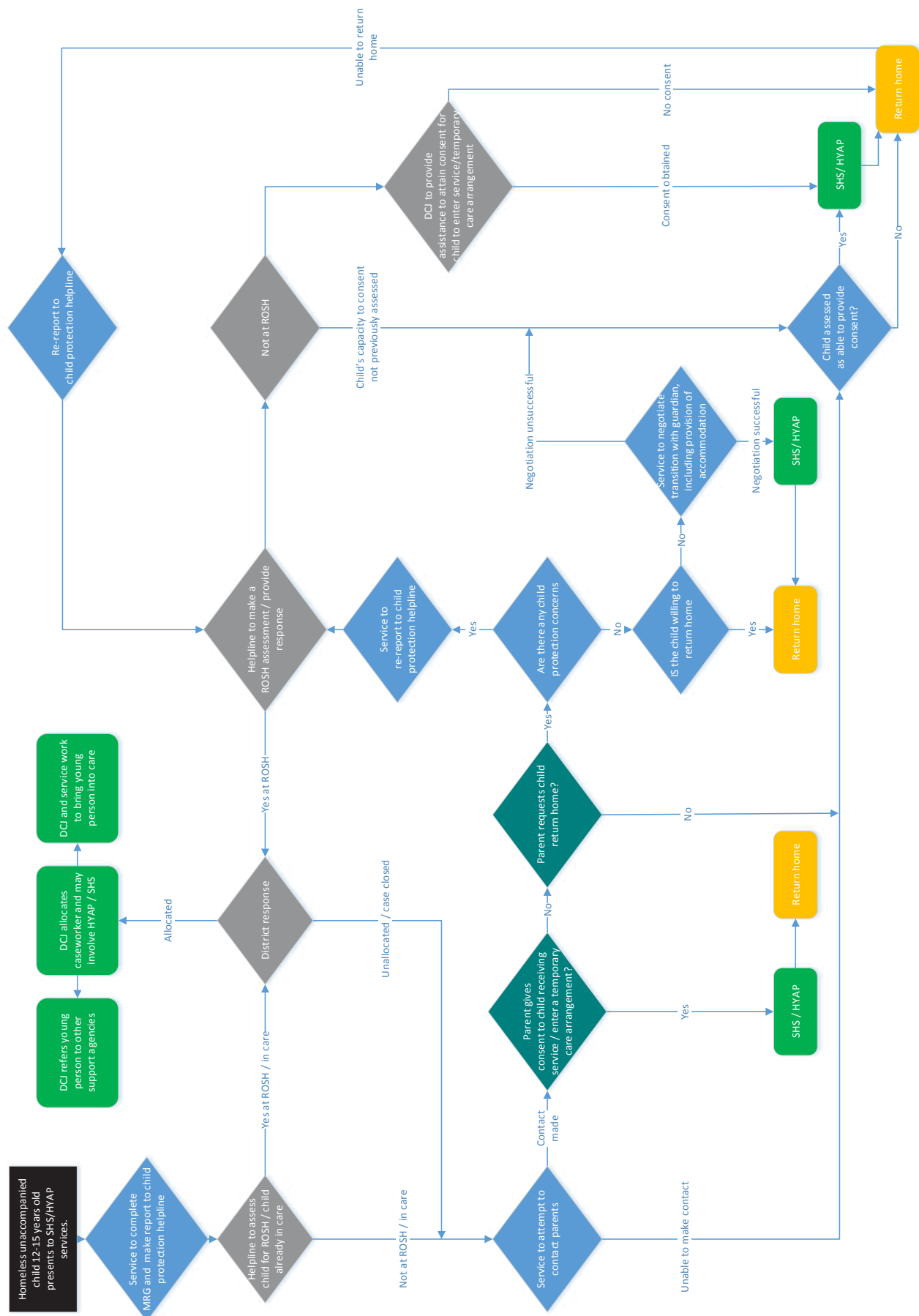


www.facs.nsw.gov.au

On a day to day basis, Specialist homelessness services (SHS), Homeless Youth Assistance Program (HYAP) providers and The Department of Communities and Justice (DCJ) work together in the context of the *Unaccompanied children aged 12 to 15 years presenting to specialist homelessness services policy* and the roles and responsibilities outlined in their district protocol, to determine the best response for an unaccompanied child presenting to homelessness services.

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