



Mr Darren Foster
Director General
Department of the Premier and Cabinet
Locked Bag 3001
WEST PERTH WA 6872

Dear Mr Foster

DISCUSSION PAPER – AN OFFICE FOR ADVOCACY AND ACCOUNTABILITY IN ABORIGINAL AFFAIRS IN WESTERN AUSTRALIA

Thank you for your letter dated 2 July 2018 seeking the views of the Health and Disability Services Complaints Office (HaDSCO) about a proposal to establish an independent statutory office to strengthen accountability to Aboriginal people and advocate for Aboriginal people's interests in government policy and performance (the proposed new office).

I have carefully considered the information contained in the Discussion Paper and make the following submission.

Benefits of independent statutory offices and the role and functions of HaDSCO

As the Director of HaDSCO, an independent statutory officer holder, I recognise the value in establishing independent statutory offices to strengthen government's accountability and to advocate for particular groups in the community.

HaDSCO is an independent statutory authority offering an impartial resolution service for complaints relating to health, disability and mental health services in Western Australia and the Indian Ocean Territories. Our jurisdiction covers both the public and private sectors, including Western Australian prisons.

Our functions are set out in our governing legislation; the *Health and Disability Services (Complaints) Act 1995*, Part 6 of the *Disability Services Act 1993* and Part 19 of the *Mental Health Act 2014*. Under these Acts, our main functions are to:

- Deal with complaints by negotiated settlement, conciliation or investigation.
- Review and identify the causes of complaints.
- Provide advice and make recommendations for service improvement.
- Educate the community and service providers about complaint handling.
- Inquire into broader issues of health, disability and mental health care arising from complaints received.

- Work in collaboration with the community and service providers to improve health, disability and mental health services.
- Publish the work of the Office.
- Perform any other function conferred on the Director by the *Health and Disability Services (Complaints) Act 1995* or another written law.

Through delivery of our functions, HaDSCO contributes to the accountability framework in Western Australia providing specialist complaint handling services for the health, disability and mental health sectors.

There are benefits in independent statutory offices such as HaDSCO having specific areas of focus covering population, demographic or cultural groups, or specialised service delivery areas.

The independence of a statutory office is a key benefit whereby the CEO, Commissioner or Director can determine the priorities and areas of focus. They can review, examine and report on issues in the public interest using an independent lens to foster stronger accountability and influence policy and service delivery for the benefit of the citizens of Western Australia.

At present, a focus of HaDSCO is to ensure our services are more accessible to Aboriginal people. Where possible, we collect information about cultural groups from people who make complaints, however, this is an area where further work is needed. There may be opportunities to work with the proposed new office to make our services more accessible to Aboriginal people. This might fit within the proposed targeted actions listed at page 10 of the Discussion Paper covering the functions of the office in 'helping government agencies engage better with Aboriginal people'.

HaDSCO contributes to systemic change through our independent complaints management function. We also contribute to broader health, disability or mental health reform, including the Sustainable Health Review (SHR) through the submission we made to the SHR Panel, as a member of the SHR Quality and Value Working Group and attending the Minister for Health's round-table forums. We bring our independent perspective on issues in the public interest and would welcome the opportunity to do this with the proposed new office, where appropriate, particularly if we can assist to minimise service delivery gaps to Aboriginal people. I note that health outcomes for Aboriginal people are one area of focus in the Discussion Paper at pages 4 and 5.

With regard to the specific issues raised in the Discussion Paper, I provide the following comments.

Functions of the new office – page 10

The Discussion Paper states that 'The new office's job would be to hold the Government accountable, and provide system-level advocacy, across government activities affecting Aboriginal people. It would also work to ensure that the Government understands and responds to the views and interests of Aboriginal people.'

To achieve these functions, there are nine targeted actions listed at page 10 which appear broad, outcomes focussed and measurable. I have provided information

above on the functions of HaDSCO which I trust might assist your Department when finalising the proposed functions for the new office. One of the functions of the Director of HaDSCO is an education function. I note that this is not specifically identified as a function of the proposed new office.

I note that it is not envisaged that the proposed new office would have a role in investigating complaints. This is supported. My office has a specific role in this regard covering both the public and private sectors. We would be delighted to provide the new office with generic complaints data and information on systemic trends should it be considering issues relating to health, disability and mental health outcomes and policy initiatives in these areas in the future.

We have a wealth of complaints data. In addition to the complaints received directly by HaDSCO, we also receive complaints data each year from 25 prescribed health service providers and 20 disability service providers in Western Australia. In total, for the 2017-18 financial year, we have information on over 10,000 complaints across the health, disability and mental health sectors.

Business of the new office – page 11

I note from the Discussion Paper that it is considered that the new office should be responsive to the needs and priorities of Aboriginal people and be free to determine which issues are relevant to the interests and well-being of Aboriginal Western Australians to focus on. As noted above, a key benefit of an independent office is the ability to determine the areas of focus, and to examine and report on those issues.

Structure and powers of the new office – page 11

In terms of the structure and powers of the proposed new office, there are benefits in establishing a new entity rather than adapting an existing one. The mandate is clear from the outset and there are no residual issues that are transferred to the new entity. Enshrining the powers and functions in legislation provides certainty about roles, responsibilities and jurisdiction and signifies the importance of the proposed new office. I have noted that it is considered that the 'term of office' should be five years with the possibility of extension. I understand that this is consistent with appointment arrangements for other independent statutory officer holders and there is merit in a similar arrangement for the proposed new office.

It is proposed that the new office should be accountable to Parliament and independent of any Minister. There are differing models in this regard, noting that the Director of HaDSCO reports to the Minister for Health. I note that it is proposed that the office should not be subject to Ministerial directions, however, the Minister should have a limited power to refer specific matters to the office. There is merit in a Minister being able to refer matters to an independent statutory office for examination and review in circumstances where it is considered that the independent office is the most appropriate body to address the issues.

The ability to table reports in Parliament at any time has merit. This enables the independent statutory office to bring to the Parliament's attention issues which are in the public interest. This signifies the importance of the issues and is a key component of the role and functions of an independent statutory office.

With regard to the issue of whether the office should have powers to obtain documents and information, it is important that the proposed new office would be able to obtain all necessary documents and information to perform its functions, to enable a full and proper consideration of a matter and to ensure evidence-based reporting.

Name of the office – page 12

I note that it is considered that the name of the office should be determined in consultation with Aboriginal people and that the Government wants to adopt a name that works best for Aboriginal people and reflects the role and structure. This approach seems practical and appropriate.

Appointment process – page 12

In terms of the appointment process, I note that it is considered Aboriginal people and organisations should have a role in the appointment process for the new office. There are many organisations to select from and there may be merit in choosing an organisation with expertise in a specific profession when recruiting for a specialised position in the proposed new office. For example, if the position is to cover health issues, organisations involved in Aboriginal health might be preferable.

Conclusion

In conclusion, there is merit in establishing independent statutory offices for particular population, demographic or cultural groups or specific service delivery areas. The proposal to establish the proposed new office would further strengthen the accountability framework in Western Australia. Information has been provided in this submission having regard to the role and functions of HaDSCO in the context of both reinforcing approaches to establish the proposed new office and how HaDSCO might contribute to future reviews or examinations that the proposed office may undertake in the health, disability and mental health sectors.

If you would like any clarification of the information contained in this letter or you wish to discuss this matter, please do not hesitate to contact me by telephone on 6551 7626 (Direct) or by email at sarah.cowie@hadsco.wa.gov.au.

Yours sincerely



**SARAH COWIE
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HEALTH AND DISABILITY SERVICES COMPLAINTS OFFICE**

6 September 2018