



# ANNUAL REPORT 2015-2016

COMMISSIONER FOR CHILDREN  
OCTOBER 2016

**Commissioner**  
for **Children**  
tasmania



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PRESIDENT  
LEGISLATIVE COUNCIL  
PARLIAMENT HOUSE  
HOBART TAS

SPEAKER  
HOUSE OF ASSEMBLY  
PARLIAMENT HOUSE  
HOBART TAS

October 2016

Dear Mr President  
Dear Madam Speaker

**Annual Report for 1 July 2015 to 30 June 2016**

The Commissioner for Children Annual Report is presented to Parliament in accordance with the *Commissioner for Children and Young People Act 2016*, section 19(2).

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Morrissey', with a long, sweeping flourish extending to the right.

**MARK MORRISSEY**  
COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

*Copy to Minister for Human Services*

# MESSAGE FROM THE COMMISSIONER



I am pleased to present my annual report for 2015-16. This will be the final annual report for the statutory office of the Commissioner for Children, with legislation establishing the Commissioner for Children and Young People commencing on 1 July 2016.

This year I have continued to advocate for and promote awareness of the rights, interests and wellbeing of Tasmania's children and young people across a range of issues. My priorities have included promoting strengthened child safe practices and culture within organisational settings, the redesign of Tasmania's child protection system, youth justice with a focus on stronger rehabilitation and children and young people's experiences of family violence. I actively promoted the critical importance of the early years. I have taken an active part in the statewide discussions on the need for reforms to the education system.

I have been privileged this year to meet again and consult with a number of children and young people from diverse backgrounds around the state. Their views, experiences and aspirations have significantly informed my work. Children and young people are the experts on their own lives and it is my firm belief that we can better respond to their needs if we promote and support their participation in decisions which affect them. The outstanding entries to our 2015 Young Creative Writers Awards beautifully demonstrate the wisdom, creativity and compassion of many of our children and young people.

The promotion of children and young people's wellbeing and best interests is greatly dependent on the continued cooperation between all of us who have a role to play in their lives – this includes government and non-government organisations, parents and communities. I remain committed to playing my part in supporting this important process. ●

A handwritten signature in black ink, appearing to read 'M. Morrissey', with a long, sweeping horizontal line extending to the right.

**MARK MORRISSEY**  
COMMISSIONER FOR CHILDREN  
AND YOUNG PEOPLE

# ABOUT THE COMMISSIONER FOR CHILDREN

## THE COMMISSIONER'S ROLE

It is important to note that this is the final Annual Report for the statutory office of the Commissioner for Children. As at 1 July 2016, new legislation – the *Commissioner for Children and Young People Act 2016* – establishes the statutory office of the Commissioner for Children and Young People and its functions and powers.

The functions and powers of the Commissioner for Children are set out in sections 79 and 80 of the *Children, Young Persons and Their Families Act 1997*.

As Commissioner for Children, I am required to act independently, impartially and in the public interest.

My role as Commissioner for Children is to advocate for the rights, interests and wellbeing of children and young people aged under 18 years throughout Tasmania. In performing this function, I am guided by the principles expressed in the United Nations' *Convention on the Rights of the Child (CROC)*. The Convention sets out a framework of the rights that are essential to the promotion and safeguarding of the best interests and wellbeing of children and young people.

As Commissioner for Children I also have an important role in raising awareness on matters relating to the health, wellbeing, care, protection and development of children in Tasmania and I provide advice to the Minister for Human Services and to other Ministers on these matters.



As part of my awareness raising and advisory roles, I also make submissions to Government and to inquiries, comment on draft legislation and on proposed policies, including those of a national character where the matter in question does or has the capacity to affect children and young people in Tasmania.

As Commissioner for Children, I can investigate some matters relating to the circumstances of individual children, but only if I am requested to do so by the Minister.

I have maintained a strong focus on advocacy for all Tasmanian children, with a particular focus on, but not restricted to, children who by virtue of their circumstances, are in particular need of additional advocacy, such as children involved with the child protection system and/or the youth justice system.

I am also an official advocate for young people who are detained under the *Youth Justice Act 1997*. In fulfilling this function I visit Ashley Youth Detention Centre (AYDC) on a regular basis to meet with the young people who are detained there.

Consultation with a wide range of children and young people across Tasmania is an important part of my role. These consultations inform my advocacy work and my advice to Government.

As Commissioner for Children I hear from members of the public about a range of issues concerning children. Information received in this way is used to inform the systemic advocacy work I undertake.

If asked to do so by the Minister, I may inquire generally into, and report on any matter relating to the health, welfare, care, protection and development of children. ○

## STRENGTHENED GOVERNANCE

My staff and I are committed to promoting and protecting the rights, wellbeing and safety of all children and young people and to engaging with individuals, agencies and organisations in a respectful manner.

In July 2015 I finalised and published a range of governance policies as part of the process to strengthen the governance framework for our work. These policies cover issues such as the need to

obtain consent when consulting with children, child safety, engaging with other agencies, digital media, personal information protection and complaints.

We ensure we promote and support the principles of child safety in organisations in all of our interactions with children and young people.

Our policies are available on my website and may be adapted for use by other organisations. ○

## TEAM STRUCTURE

Staffing has varied during 2015-2016. For the first half of the financial year I was supported by a small team comprised of a Senior Policy Consultant, two Policy Officers, and an administrative support officer. For the first half of 2016, these staff members were joined by a Manager Communications and Participation.

These staff members are State Service employees.

We aim to work together as a team and strive to have a workplace based on collaboration, mutual respect and recognition of the unique skills and expertise that each team member can contribute to the work of the Commissioner. ●

# PRIORITIES IN 2015 – 2016

## STRENGTHENING CHILD SAFE ORGANISATIONS IN TASMANIA

In September 2015 I launched my Report, “Strengthening Child Safe Organisations”.

This Report was developed in extensive and close consultation with children and young people in Tasmania. It was also informed by the views expressed at two forums (convened in April 2015 in partnership with the Department of Justice) for those working in organisations that provide services to or care for children and young people in Tasmania.

The Report does not make recommendations – the aims were to ascertain the level of awareness within organisations of the importance of adopting child safe policies and procedures, to find out what children and young people have to say and to provide some guidance on the factors generally agreed to be of crucial importance to organisations hoping to improve their level of child safety.

The Australian Children’s Commissioners and Guardians (ACCG) have developed Principles for Child Safety in Organisations with explanatory notes elaborating upon each principle. Throughout the Report reliance has been placed on the ACCG description of a child safe organisation and on ACCG principles to illustrate the themes arising from consultations with children and young people and to discuss briefly some of the research findings in this area.

A major finding of the Report is that although Tasmanian organisations are committed to promoting child safety in their day to day work with children and young people, there is a clear need for guidance, education and assistance.



Children and young people also have very clear views on what makes them feel safe or unsafe in an organisational setting; of particular importance is their clear desire for adults to listen to them more and to take their views seriously. This message is consistent with the work being done by the *Royal Commission into Institutional Responses to Child Sexual Abuse* and is reflected in Article 12 of the United Nations CROC, which deals with children's right to be heard and for their views to be given due weight according to the age and maturity of the child.

All children have the right to be protected from all forms of violence and abuse while in the care of their parents or any other person. This right is enshrined in Article 19 (protection from all forms of physical or mental violence, injury or abuse) and Article 34 (protection from all forms of sexual exploitation and sexual abuse) of the United Nations CROC.

This freedom from violence and abuse is equally applicable to children and young people while they are in the care of an organisation that provides services to them. Many children spend time in more than one organisational setting. As well as school, many children attend activities such as sport, music or dance classes, scouts, guides and youth groups.

To ensure their safety, it is vital that all organisations that care for or provide services to children and young people adopt child safe policies, practices and procedures.

The introduction of Registration to Work with Children (or "Working with Children Checks") in Tasmania is a welcome step forward however we should also consider selection processes that examine factors such as motivation for working with children, understanding of the effects of child sexual abuse, and understanding of appropriate conduct with children. It is important that pre-employment checks do not result in a false sense of safety and complacency around other protective factors.

Organisations must have significantly more strategies in place than simply a working with children check for their employees.

Many of the factors identified by research on child safe policies and practices have organisational culture at their heart. An organisation that acknowledges that abuse is a risk and talks openly about it with employees, parents and children will naturally become a safer place to be.

Policy that covers significant risk factors (such as adults being alone with children), reporting procedures, and training for staff is important, but

will have little or no effect if the entire organisation is not open about the importance of child safety and the reality of abuse.

Based on my findings and leading research in this area, I have concluded that a child rights focus, which includes teaching children about their right to safety from abuse, is key to creating child safe organisations.

I hope that my report can inform organisations and allow them to use the voices of Tasmanian children as inspiration to continue to become safer places in which children can be nurtured, educated, have fun and be safe.

Development of an effective child safety framework for an organisation should be a collaborative effort between those working with children and young people and those children and young people. [o](#)

## OTHER CHILD SAFE ORGANISATION RESOURCES

A short "child and youth friendly" pamphlet summarising the Report's Findings and a *Checklist for Parents* with advice on what to look for when choosing organisations were developed and are available on my website at [www.childcomm.tas.gov.au/publications/strengthening-child-safe-organisations-report/](http://www.childcomm.tas.gov.au/publications/strengthening-child-safe-organisations-report/).

A video of young people talking about what makes them safe in an organisational setting was produced to assist the promotion of the child safe message. The video has been widely used by organisations across Australia and is available on my website. The video is freely available for download from my website for use by any organisation wishing to promote organisational child safety. [o](#)

## FUTURE DIRECTIONS

I will continue to advocate for the adoption of robust child safe policies and practices in Tasmanian organisations that provide care or services to children and young people.

I will also continue to monitor actions taken in other states in Australia, noting responses range from awareness raising to the development of legislation which imposes obligations on organisations to develop and implement child safe policies and practices.

For example, Victoria has introduced compulsory minimum standards that will apply to organisations that provide services to children. Compliance will be phased in over two stages – organisations providing services to children that are government funded and/or regulated are required to work towards compliance from 1 January 2016, while all other organisations providing those services are required to comply from 1 January 2017.

Such an approach is to be commended.

As I found while preparing my Report, although organisations are committed to developing, maintaining and promoting child safety in organisational settings, there is a clear need to provide assistance and support to them as they develop relevant policies and procedures.

Each organisation will have risks to child safety that are peculiar to that organisation or type of organisation; this means template policies and procedures need to be varied to reflect those risks and the strategies needed to become child safe.

I believe we, as a Tasmanian community, need to continue awareness raising and education about the importance of child safety in organisations and

to provide leadership, guidance and assistance where requested to do so. However resources are needed to undertake this important work and I look forward to a positive response from Government on this important issue.

Ongoing awareness raising and capacity building across the range of government and non-government organisations that provide services to children and young people in Tasmania is important. We have an obligation to our children and young people to ensure their safety is paramount in organisational settings.

I also believe there is a role for a legislative requirement for organisations and agencies providing services to children and young people to comply with minimum child safe standards and for an agency to be given responsibility for monitoring compliance. This has occurred in other jurisdictions. [o](#)

## CHILD PROTECTION REDESIGN

In August 2015, the Tasmanian Government announced a system redesign of Child Protection Services (CPS) aimed at examining the culture, processes and structures in order to deliver long-term sustainable improvement. I was invited to contribute to the redesign through the Redesign Reference Group alongside senior government representatives and the Chair, Professor Maria Harries.

The Redesign of CPS in Tasmania, *Strong Families – Safe Kids* was released in March 2016 and provided recommendations to the Tasmanian Government to improve the delivery of CPS and ensure the safety and wellbeing of children and young people is the focus of the service response. The Report noted that there is a range of services within government agencies and non-government organisations that are intended to care for the wellbeing of children and support adults and families, but that these services tend to be fragmented and often work in silos.

The Report provided a number of recommendations across six key domains:

- Child Safety and Wellbeing is Everyone's Business
- Building a Common Understanding of Risk
- Growing Capacity and Getting Help Early
- Managing the Front Door
- Intensive Support for Children and Families at Risk of Statutory Action
- Refocusing Child Protection Services.

The *Strong Families – Safe Kids Implementation Plan*, which was released in May 2016, addresses the recommendations of the *Strong Families – Safe Kids* Report by outlining five fundamental interconnected strategies and the actions to be taken moving forward.

The Strategies are:

- Strategy 1: Placing the wellbeing of children at the centre of our services
- Strategy 2: Building a common, integrated risk assessment and planning system
- Strategy 3: Creating a single front door
- Strategy 4: Providing better support for children and their families
- Strategy 5: Redesigning the Child Protection Service (CPS) with additional support

In my opinion, high level and long term cross-agency co-operation is essential to the successful implementation of the Recommendations in *Strong Families – Safe Kids*.

Family violence is a major catalyst for children entering the child protection system; it is therefore essential that throughout the implementation process of *Strong Families – Safe Kids* there is an acknowledgement of the importance of having a common language and understanding of risk as applied to children who have been affected by family violence. I will explore this and related issues in my forthcoming Report on children and young people affected by family violence, scheduled for release in the latter half of 2016.

I look forward to continuing to be involved (in a manner consistent with my independence from Government) in the ongoing implementation of this important reform, and seeing positive outcomes for children who come into contact with the CPS (which will be renamed the Child Safety Service). ○

## COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE'S HEALTH AND WELLBEING REPORT

The role of the Commissioner for Children is to advocate for the wellbeing of all children and young people across Tasmania, and to do this work well requires an ability to review and understand key data and indicators relevant to children and young people.

To define and measure the wellbeing of children and young people in Tasmania, there is a need to collate and report on available data and present a comprehensive picture of the issues facing children, young people and their families. Access to quality data also provides essential information which allows all services and agencies – government and non-government – to work together more effectively.

The *Kids Come First* Project – initiated in March 2008 – aimed to provide government with a comprehensive way of monitoring how Tasmania's children and young people are faring and more accurately identify where additional support is required. These goals were to be achieved through the collation and publication of data across numerous domains relevant to children's wellbeing. Data relevant to the 92 indicators of child wellbeing was gathered from multiple sources and stored in a dedicated database. The 2009 *Kids Come First* Report was followed by a smaller and less comprehensive update in 2012. Due to resource constraints, this Project has not been operational for a number of years, leaving a gap in the knowledge we need to develop to target

programs and services for Tasmanian children and their families.

Although I do not have the resources to replicate the *Kids Come First* Project, in 2015-2016, I initiated the development of a report on the health and well-being of Tasmania's children, young people and their families. The first report will be released in three parts during the second half of 2016. The report will bring together publicly available national and state data on all aspects of children's health and well-being including a demographic snapshot, early childhood and the transition to school, middle childhood and adolescence, and parents, families, and communities. It is designed to assist policy makers, government agencies, and service providers to better identify and pinpoint areas in need of improvement, in order to strengthen outcomes for Tasmania's children and young people.

This work is particularly important given that Strategy 1 of the implementation plan of *Strong Families: Safe Kids: Redesign of Child Protection Services Tasmania* is to place the wellbeing of children at the centre of service provision. Two of the Actions also relate to strengthening an understanding of child wellbeing (Action 2) and the development of an annual report on child wellbeing in Tasmania (Action 25).

As a consequence, the monitoring of child health and well-being will continue to be a major focus of my work over the coming year, particularly in light of changes to the legislation regarding a broader monitoring function for the

Commissioner applicable from the 1st of July 2016. However without additional and dedicated resourcing, there will be clear limitations on my capacity to undertake this important work to the extent required. ○

## THE IMPACT OF FAMILY VIOLENCE ON CHILDREN AND YOUNG PEOPLE IN TASMANIA

A major project for this year has been to consider the effects of family violence on children and young people in Tasmania and explore ways in which we can work together to better promote their safety and wellbeing.

This project aims to build upon the excellent work of the National Children's Commissioner in her 2015 national investigation into the impact of family and domestic violence on Australian children.

Through this project, I hope to raise awareness of the impact of family violence on children and young people and of the importance of understanding that children and young people should be understood as victims in their own right. It is hoped that this in turn will encourage involvement of children and young people when developing policy and designing service

responses, so long as this is done in a way which does them no harm.

Given that over 70% of notifications to child protection services in Tasmania involve family violence, I will be looking at highlighting the strong linkages between *Safe Homes, Safe Families – Tasmania's Family Violence Action Plan* and implementation of *Strong Families: Safe Kids: Redesign of Child Protection Services Tasmania*.

My Report will be informed by submissions from individuals, organisations and agencies with knowledge of and expertise in this important area of work.

The final Report of this project will be launched in late September 2016 and will be discussed in more detail in the 2016-2017 Annual Report. ○

## YOUNG CREATIVE WRITERS AWARDS

The Young Creative Writers Awards arose from a wish to find a fun and engaging way to promote awareness and understanding of child rights among Tasmanian children and their communities. These awards also aim to promote literacy and creativity. While the Awards aim to foster and recognise children's creative expression, entrants are also encouraged to think about and explore a child rights theme in their work.

The benefits of creative writing for children are wide ranging. There are links between creative writing and improved mood and wellbeing. Writing stimulates the imagination, gives an outlet for expressing emotions and can help boost self-esteem. The writing process encourages critical thinking, literacy and problem solving.

In its inaugural year, the Awards attracted over 300 entries from young creative writers aged from 5 to 17 years. These poems and short stories were inspired by the word "play"; a theme chosen to reflect the right of all children to relax, play and to engage in a range of recreational and cultural activities (Article 31 of the United Nations CROC).

Play is fun, but it is also essential for children. Play contributes to children's social and emotional wellbeing as well as to their physical and cognitive development. Free or unstructured play stimulates the developing brain in early childhood and research shows the link between early social play and language development. Through play, children develop the skills they will need as adults such as the ability to problem solve, negotiate and co-operate. While children benefit from activities organised by adults, they also need time for free

or self-directed play. We must not forget that children need down time too to allow them to relax, recuperate and to just be themselves.

The many poems and short stories received interpreted and explored the theme in a variety of ways and impressed the guest judges, acclaimed writer Danielle Wood and newspaper editor and award winning reporter Matt Deighton, with their breadth and depth.

Talented young writers have given me a fresh view of the Tasmanian coast, shown me the corners of their playgrounds, walked me through foreign countries, taken me back to my own childhood and opened doors on brand new imaginative worlds. I was impressed not only by the writing talent on display but also by the compassion, idealism and wisdom that these young writers bring to their work.

**Danielle Wood**

The 2015 Awards were presented by Mrs Margaret Blow at a prize giving ceremony at Government House on Thursday 17th September 2015.

Particular congratulations go to the joint overall winners: Freya Cox for her beautifully moving poem *forgotten children*, and Sam Berwick for his imaginative short story, *What Happens Behind Your Back*.

The 2015 winning entries booklet is available to view and download on my website.

Entries for the 2016 Awards opened in June. The theme for 2016 is "fairness and respect"; recognising that all children and young people have the right to be treated fairly and with respect – whatever their race, religion or ability, whatever they think or say, and whatever type of family they come from.

In 2016, the Awards are supported by the Tasmanian Writers' Centre and planning is underway to provide a series of creative writing workshops across the state to support the development of young writers. The Story Island Project, local writers and University of Tasmania writing students will visit LINC's across the state during the July 2016 school holidays.

Returning judges Danielle Wood and Matt Deighton will be joined on the 2016 judging panel by Tasmania's Anti-Discrimination Commissioner Robin Banks and children's author Angelica Banks. The Awards will be announced in November 2016 at a special awards ceremony at Government House. [o](#)

Image: News Corp | News Pix



## forgotten children

they give us pencils to draw with  
feeling pleased at their generosity  
they do not wait to see the pictures  
that appear  
childish scrawls  
with haunting undertones  
of pain  
and sadness  
tears drip from the pages  
in blue crayon  
blood splatters  
in pink marker

mama said here we could play outside  
run around  
and send our voices spinning up to the  
clouds  
without being silenced in fear

i tried that once  
only once  
yelling, chasing my brother and shouting  
out to the clouds  
i got yelled at in return  
now i am silent

they tell us we are illegal  
i do not understand

i am seven  
how can i be illegal?

we used to play with kites  
dancing, swooping, vibrant birds on strings  
squares of colour against the glaring  
white sun  
anchored to our adoring hands  
flying in the open sky

now we play in the dust  
behind a fence  
that seems to shrink inwards each day  
until it closes in completely  
and crushes us

do they remember when they look at us  
that we are children  
or have they forgotten  
are we now nothing but  
other?

**Freya Cox**

## ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

I have continued to maintain a watching brief over the important work of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. In particular I will watch with interest their ongoing work on child safety in organisational settings and barriers to information sharing between institutions and across jurisdictions.

It is important that the work of the Royal Commission and its important recommendations are considered and acted upon here in Tasmania. The work of the Royal Commission is highly credible, evidence based and comprehensive. [o](#)

## DR ANNA SULLIVAN FORUM

On 2 November 2015, I convened a forum in Hobart to consider options to improve student engagement and reduce unproductive classroom behaviours.

The forum was opened by the Minister for Education, the Hon. Jeremy Rockliff MP, and was attended by more than 70 people, including academics, practitioners, policy makers, students and young people.

The forum commenced with a presentation by Dr Anna Sullivan, senior lecturer in education at the University of South Australia and recognised expert in school discipline and student behaviour. Dr Sullivan presented the findings of the Behaviour at School Study (BaSS), an Australian Research Council funded project which explored student behaviour and management in South Australian schools and investigated how schools develop and implement policies that promote productive student engagement. The study found that low-level disruptive and disengaged student behaviours are common in classrooms and it is these behaviours that teachers find most difficult to manage. It also found that controlling or disciplinary behaviour management strategies are not necessarily the most effective way to bring about improved engagement in learning, and that a focus on student engagement is more likely to lead to improved outcomes.

Dr Sullivan's presentation was followed by an interactive panel discussion where participants and the audience considered how the BaSS findings might relate to the Tasmanian context. The panel consisted of Bill Linton (Assistant General Manager, Learning Services (South) Department of Education), Kym Goodes (CEO TasCOSS), John Mula (Director Catholic Education

Office), Dr Anna Sullivan and moderator Di Henning. The panel considered a range of issues of relevance to education in Tasmania including: engagement and support, retention and transition to Years 11 and 12, the importance of community and parent partnerships with schools, and managing behaviours of students at risk of disengagement. ○

## PROFESSOR GOLDFELD FORUM

On 30 May 2016, I hosted a public forum entitled *Creating Life Opportunities: the Promise of Early Childhood* by highly-regarded paediatrician and public health physician Professor Sharon Goldfeld. Professor Goldfeld is a paediatrician at the Royal Children's Hospital's Centre for Community Child Health (CCCH) in Melbourne and Co-Group leader of Child Health Policy, Equity and Translation at the Murdoch Childrens Research Institute.

The forum was opened by the Secretary of the Department of Education, Jenny Gale, and was

attended by 60 educators, health professionals and early childhood workers.

Professor Goldfeld discussed the impact of disadvantage on Australian children leading to developmental inequities and differential outcomes that are unjust, unnecessary and preventable. She also spoke about the importance and impact of a child's early years on their future health and development, and the need to invest earlier in health, welfare and educational systems to ensure these inequities are addressed. ○

## B4 COALITION

In June 2016 I became co-chair of a new government initiative, the Early Years Coalition, B4, which is a whole of community collaborative approach to ensuring every child is valued in the early years and has the best possible start in life.

The name B4 represents the early years of a child's life from birth to four years of age as well as being a phonetic representation of 'before', acknowledging these are the years before a child begins formal schooling.

The B4 Coalition is co-chaired by the Chair of the Tasmanian Early Years Foundation, Elizabeth Daly, who is a passionate supporter of Tasmania's

children and recognises the importance of the early years in helping to shape the future of our young people.

The Coalition will see experienced and qualified Tasmanians who are committed to the early years sector work collectively to achieve outcomes through outreach, raising awareness and engaging with their peers. ●



## CONSULTING WITH CHILDREN + YOUNG PEOPLE

All of my work is informed by the views of children and young people across Tasmania. I consult regularly with children and young people through the Children & Young People's Advisory Council established under s81 of the *Children, Young Persons and Their Families Act 1997*.

I also consult with children and young people involved with specialist organisations and/or services to ensure that a diversity of experiences and perspectives are gained.

### CHILDREN AND YOUNG PEOPLE'S ADVISORY COUNCIL

Section 81 of the *Children, Young Persons and Their Families Act 1997* requires the Commissioner to establish a Children and Young People's Advisory Council.

Children and Young People's Advisory Councils have been established in the North, North West and South of the state. These groups of children and young people, aged between 8 and 18 years, meet regularly with me to:

- advise me about important issues affecting Tasmanian children and young people;
- participate in developing ideas for broader consultations with the Commissioner's School Consultation groups; and
- provide advice about the services that should be available to children and young people.



In 2016 I held consultations with the councils twice in the North, North West and South. The council members were asked to discuss various issues and put forward ideas around topics including what they would change if they were leader; what was working well within their communities; what wasn't working well; and what makes a good community.

Outcomes from these consultations will be combined with the results of an online survey, for distribution in 2016-2017. In late 2016/early 2017 I will be releasing a Report which will reflect the views of Tasmanian children and young people on issues of interest or concern to them based on the results of the survey and Council consultations.

## SCHOOL CONSULTATIONS

In 2015, children and young people under the age of 18 from schools across the state were also asked to share their views with me on particular issues affecting them.

Participants in the consultations were from primary and secondary schools in the North, North West and South.

Consultations generally use existing structures such as Student Representative Council meetings.

Participants may be asked to consult on particular issues within their wider school communities and to provide feedback.

In 2015, children and young people from 10 school groups were involved in school consultations. I have undertaken a less formal approach to consultations in 2016, with a stronger focus on engaging a broader range of children and young people.

## PROJECT O

Project O is a Big hART initiative which is piloted in Wynyard in North West Tasmania. Project O assists young women in rural communities to develop strong personal agency to help prevent family violence and build resilience.

Through Project O, young women develop new capabilities, learning how to become change-makers in their community. Project O works with a group of 20 young women each year to increase the capability and capacity of this peer group.

The project aims to create a cultural shift, to help prevent family violence in hotspot communities.

I had the opportunity to meet this dynamic group of young women who shared their views on their perception of place in society; career opportunities; regional isolation; youth suicide; teen pregnancy; the benefits of empowerment; and their plans for the future. The group also shared their perceptions of family violence and how it affects children and young people.

Young women from Project O in Tasmania will participate in the launch of my report into the impact of family violence on children and young people in Tasmania (described elsewhere in this Annual Report). ●



Image: Courtesy of Project O.

# WORKING FOR LASTING CHANGE

## ADULT ADVISORY COUNCIL

The Adult Advisory Council consists of senior members of community service organisations which provide services to children and young people across Tasmania.

Members of the Adult Advisory Council advise me on the issues, needs and service gaps impacting on the health, welfare, protection and development of children and young people in Tasmania, and about strategies that will enhance the wellbeing of Tasmania's children and young people.

During 2015-2016 the Council met on 3 occasions – 22 July 2015, 12 November 2015 and 31 March 2016. Matters discussed included the September 2015 "Strengthening Child Safe Organisations" Report, my Work Plan for 2016 and issues relevant to my 2016 major project on the effect and impact of family violence on children and young people in Tasmania.



Advisory Group members for the 2015-2016 year:

NAME	ORGANISATION
Mark Morrissey	Commissioner for Children
Daryl Lamb	Anglicare Tasmania
Catherine Viney/Cathy Hurst	Baptcare Family Services
Georgina McLagan	CatholicCare
Tenielle Moore	CREATE Foundation
Dr Becky Shelley	Colony 47
Dr Kym Backhouse	Foster Carers Association of Tasmania
Cheryl Jones	Glenhaven Family Care
Barry Titmus	Kennerley Children's Homes Inc
Noel Mundy	Mission Australia
Lisa Cuatt	Save the Children
Lindy O'Neill	Uniting Care Family Services
David Clements	National Disability Services
Heather Sculthorpe	Tasmanian Aboriginal Centre
Tom Dorey	Catholic Education Office
Dr Kat Faludi-Ball	Australian Red Cross
Rhonda McLaughlin	Life Without Barriers
Stuart Foster	Salvation Army
Alison O'Neill	Migrant Resource Centre
John Ward	Grandparents Advisory Council
Joanna Siejka	Youth Network of Tasmania
John Hooper/Jonathan Bedlow	Neighbourhood Houses
Kym Goodes	TasCOSS
Annie McLean	Senior Policy Consultant, Commissioner for Children

## LUNCHTIME FORUMS

Each month I host a forum to discuss an issue of interest and importance that affects children and young people in Tasmania. The purpose of this series of conversations is to generate discussions, broaden networks and develop possible strategies to further support or progress issues of importance to children. Invitations to the

forums are sent to a subscription list. After each monthly presentation a copy of the presentation is uploaded to my website. I am considering the inclusion of these presentations as podcasts on the website in the future.

**2015**

<b>MONTH</b>	<b>TITLE</b>	<b>PRESENTER</b>
July	Cumulative Childhood Trauma and Its Impact on Educational Outcomes	Steve Bentley Teacher, 2014 Churchill Fellow
August	Child Rights	Annie McLean and Isabelle Crompton Commissioner for Children
September	Perinatal and Infant Mental Health	Prof. Fiona Wagg CAMHS
October	Poverty and children in Tasmania	Kym Goodes TasCOSS
November	Understanding Adultism and Adult Privilege	Prof Bob Pease UTAS

**2016**

<b>MONTH</b>	<b>TITLE</b>	<b>PRESENTER</b>
February	Approaches to reducing discrimination affecting children and empowering children to take effective action	Anti-Discrimination Commissioner, Robin Banks Equal Opportunity Tasmania
March	Children's participation in proceedings to resolve their care arrangements	Pat Fitzgerald Legal Aid Commission of Tasmania
April	Surviving childhood family violence	Narelle Whatley UTAS
May	Relationships between policy and young people: why is this still a human rights issue needing urgent attention?	Dr Angela Dwyer UTAS
June	The Youth Justice Court – Is it solution focused?	Magistrate Cath Rheinberger Magistrates Court of Tasmania

## SUBMISSIONS

### E CIGARETTES: OPTIONS FOR A PUBLIC HEALTH RESPONSE TO ELECTRONIC CIGARETTES

In my July 2015 response to the above Discussion Paper canvassing options for regulation of the sale and possession of electronic cigarettes in Tasmania I focused on the impact on children of electronic cigarettes not containing nicotine.

All Australian jurisdictions ban the sale of e-cigarettes containing nicotine however the regulation of e-cigarettes not containing nicotine varies.

At the time of writing the submission, restrictions in the *Public Health Act 1997* (Tas) for tobacco products did not apply to e-cigarettes. This meant that a retailer did not need a licence to sell nicotine-free e-cigarettes and there were no restrictions on sale to children, displays in retail stores, location or storage, range of flavours offered and place of use.

Acknowledging that there are varying opinions about the safety of nicotine free e-cigarettes and about the extent to which they mimic smoking or assist smokers to quit, I relied on the following advice of the National Health and Medical Research Council (NHMRC)<sup>1</sup> :

**There is currently insufficient evidence to conclude whether e-cigarettes can benefit smokers in quitting, or about the extent of their potential harms. It is recommended that health authorities act to minimise harm until evidence of safety, quality and efficacy can be produced.**

Consequently, I concluded that to continue to allow children (those under 18 years of age) to access electronic e-cigarettes would be contrary to their best interests and inconsistent with their right to the highest attainable standard of health.

However I made it clear that I do not support criminalising children for possession of nicotine free e-cigarettes, preferring instead the approach to children and tobacco that is set out in Part 4 Division 1 of the *Public Health Act 1997*. ○

### TASMANIA LAW REFORM INSTITUTE – ISSUES PAPER NO 21 ON BULLYING

In July 2015, I provided comment on this Issues Paper, which looked at the various circumstances in which bullying can occur in Tasmania and at the associated legal and regulatory frameworks which might apply.

I noted that bullying and cyberbullying have emerged as significant issues of concern during my consultations with children and young people throughout Tasmania and acknowledged the complexities involved in responding and regulating this behaviour, particularly where it occurs online.

I emphasised the importance of adopting an approach to bullying that is community-wide and collaborative and focuses on tolerance, knowledge and empowerment rather than punitive measures. In considering the most appropriate approach to bullying between children, it is important to acknowledge that categorising children as either “perpetrators” or “victims” is not in the best interests of either child. I acknowledged the important role that schools and parents have in preventing and reacting to bullying.

Although there may be circumstances in which a criminal response is required and appropriate, I argued for adoption of a more collaborative approach designed to rebuild relationships and prevent future occurrences. In whatever we do, children’s views and perspectives on solutions should be sought and taken seriously. ○

### A HEALTHY TASMANIA

In February 2016 in response to the *Healthy Tasmania Five Year Strategic Plan – Community Consultation Draft*, I called for inclusion of a focus on the social determinants of health and on the early years, noting this was critical to improving long term population health outcomes. Families should be supported to give their children a healthy, positive start that has lasting health and wellbeing benefits and this message should be reinforced on a daily basis, particularly in schools.

Finally we need to deliver our services in a way that focuses on areas of greatest need for children and young people in Tasmania. ○

1. National Health and Medical Research Council CEO Statement: Electronic Cigarettes March 2015.

## NATIONAL COMMISSIONER'S INQUIRY – OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE (OPCAT) IN THE CONTEXT OF YOUTH JUSTICE DETENTION CENTRES

In late 2015 the National Children's Commissioner, Ms Megan Mitchell, indicated her intention to inquire into external oversight arrangements for youth justice detention centres around Australia. In late 2015, Australia completed its second Universal Periodic Review of its human rights record. A significant number of United Nations Member States recommended that Australia ratify and implement the *Optional Protocol to the Convention against Torture* (OPCAT).

Implementing OPCAT would require Australia to establish an independent National Preventative Mechanism (NPM) and identify suitable bodies to conduct inspections of all places of detention.

In May 2016 I attended an expert forum in Hobart convened by the National Children's Commissioner to examine and inquire into how the special needs and interests of children under the age of 18 in juvenile and adult correctional detention could be considered and monitored in a NPM under OPCAT. Similar forums were held in the other States and in the Territories. The findings of this Project will be contained in the National Commissioner's 2016 Child Rights Report which is to be tabled in the Federal Parliament later this year.

As part of this process, I made a short submission to the inquiry, drawing on my observations as advocate for children and young people detained at Ashley Youth Detention Centre (Ashley). I expressed the view that the current oversight, complaints and monitoring mechanisms (in particular external oversight) at Ashley are inadequate. I indicated my support for the Tasmanian Government's policy to establish a Custodial Inspector, whose jurisdiction would encompass Ashley.

I also noted that where a young person detained at Ashley wants to make a complaint about any aspect of their treatment, the onus is on the individual child or young person to know, understand and navigate the complaints mechanism. This approach to complaints handling isolates complaints to individual incidents, and does not foster an environment where systemic complaints are identified and acted upon in a routine manner.

Because children and young people in detention do not have an adequate understanding of their human rights in detention, I recommended there be more discussion about human rights to occur at Ashley, using available resources such as the *Model Charter of Rights for Children and Young People detained in Youth Justice Facilities* prepared by the Australian Children's Commissioners and Guardians (ACCG).

I acknowledged that considerable effort is now going into improving processes and practices at Ashley however it is clear that there is also a need for independent external monitoring of the sort contemplated by OPCAT, noting the relevance of moves to establish a Custodial Inspector. I have actively advocated for reforms at Ashley to be prioritised. ○

## BREAKING THE CYCLE - A SAFER COMMUNITY: STRATEGIES FOR IMPROVING THROUGH-CARE FOR OFFENDERS

In my May 2016 comment on the draft of this Strategy I highlighted the importance of the role family plays in an offender's rehabilitation and reintegration into society and the link between providing support to individuals and their families and breaking intergenerational patterns of offending.

I also pointed out that there is clear evidence that parental incarceration has a significant impact on children; they experience feelings of loss and isolation; shame, bullying and stigma; behavioural difficulties at school and impacted educational outcomes; new caring responsibilities for siblings and the remaining parent; anxiety, insecurity, anger and mental health issues; financial disadvantage; family conflict and divorce; and instability and homelessness.

There is also a general consensus that promoting parent-child contact during imprisonment where it is safe to do so leads to improved outcomes for the children of an imprisoned parent.

My comments on the draft Strategy were informed by an Advice I provided to the Attorney-General and Minister for Justice, the Hon Vanessa Goodwin, on ways in which the wellbeing of children whose parent(s) are incarcerated can be promoted - this is discussed under the Advice heading of this Annual Report. ○

## TASMANIA LAW REFORM INSTITUTE – FACILITATING EQUAL ACCESS TO JUSTICE: AN INTERMEDIARY/ COMMUNICATION ASSISTANT SCHEME FOR TASMANIA? - ISSUES PAPER NO 22

In my June 2016 submission I expressed support for adoption of a communication assistant or communication intermediary scheme in Tasmania. Adoption of an intermediary scheme would promote the enjoyment of the various rights that attach to children and young people in the legal system - whether they are defendants, victims/ complainants or witnesses.

So, for example, as explained by the Institute in the Issues Paper:

**Article 12 of the UN Convention on the Rights of the Child and Article 13 of the UN Convention on the Rights of Persons with Disabilities impose obligations to create the optimum circumstances for children and people with disabilities to give their accounts of events and to participate in criminal justice processes. These Conventions echo the right to a fair trial, the right to be treated with dignity and humanity, the right to equality before the law and the right not to be discriminated against in the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a signatory.**

Article 19 of the United Nations' CROC places an obligation on State parties to take all appropriate measures to protect the child from all forms of violence and abuse and to include in those measures procedures to provide support to the child and to assist with identification, referral, investigation and follow-up.

Article 40 of the United Nations' CROC, which deals with the rights of children as defendants under the criminal law, guarantees to child defendants procedural safeguards including the provision of assistance in the preparation and presentation of their defence.

I also expressed my strong view that children and young people who have communication difficulties arising from their age or level of maturity (as distinct from communication difficulties arising from a disability) should be able to benefit from the scheme.

Any scheme adopted in Tasmania should not depend on volunteer communication assistants - rather, those who are expertly

qualified to identify and assist with identified communication needs should act as communication assistants or intermediaries. These communication intermediaries or assistants must be – and must be seen to be – independent of police and of the prosecution.

I look forward with interest to the Institute's Final Report due for release later in 2016. ○

## SENATE EDUCATION AND EMPLOYMENT COMMITTEE

In my August 2015 submission to the Senate Committee, I emphasised the need to focus on ensuring that all children with disability:

- a. have their right to a quality education realised to ensure they meet their full potential; and
- b. are truly included with their peers so they can develop relationships and enjoy a sense of belonging and value in the same way other children do.

The access, attainment and support of children with disability in our school system are matters of critical importance not just to those children and their families, but to Tasmanian society as a whole.

I expressed my concern about the lack of accessible and detailed data on the numbers of children with disability in Tasmanian schools and the supports they receive and said that funding for students with disability should be based on need. ○

## AMENDMENT OF THE BIRTHS DEATHS AND MARRIAGES REGISTRATION ACT 1999

In April 2016, I commented on an Options Paper released by the Anti-Discrimination Commissioner entitled: *Legal Recognition of sex and gender diversity in Tasmania: Options for amendment to the Births, Deaths and Marriages Registration Act 1999*.

The Options Paper considered options for amendment of the *Births, Deaths and Marriages Registration Act 1999* (the BDMR Act) from the perspective of the legal recognition of sex and gender diversity in Tasmania.

My submission focused on the particular difficulties faced by children and young people, whose ability to register changes regarding their sex or name are exacerbated by their legal status as minors who need to rely on a parent or other adult to register such changes.

The current framework under the BDMR Act means that children and young people who are sex or gender diverse may identify and be living as a gender which is inconsistent with the registered sex and name which appears on their birth certificate but are prevented from resolving this situation.

In order to ensure consistency and predictability for transgender and intersex children and young people and their families, it is preferable that there be clarification at a national level in relation to legal recognition of sex and gender diversity. In the absence of consensus on a national approach, reform at a state level is necessary.

My views on specific issues raised in the Options Paper include the following:

- In general terms, I support the introduction of a process which would enable a mature young person to apply to change their registered sex – perhaps limited to those aged 16 and above – subject to the procedural safeguards proposed in my submission.
- Consistent with Article 12 of the United Nations' CROC younger children, below the age of 16, should be provided with the opportunity to express their wishes in respect of an application to register a change of sex made on their behalf, unless the Registrar is satisfied that they are not capable of doing so.
- It is inconsistent with the rights of a child to preclude a child who genuinely identifies as, and is living as, a gender not typically associated with their registered sex, from legal recognition on the basis they have not undergone sex reassignment surgery.
- That, at the very least, a young person aged 16 years and over should be able to make an application to register a change of name in their own right, and where appropriate the wishes of the child be obtained in circumstances where the child's age is such that an application can only be made on their behalf by a parent/parents etc. ○

## ADVICE

### ADVICE TO THE MINISTER FOR HUMAN SERVICES, THE HON JACQUIE PETRUSMA, ON THERAPEUTIC YOUTH JUSTICE DETENTION (FEBRUARY 2016)

One of my functions is to act as advocate for young people detained under the *Youth Justice Act 1997*, including at Ashley Youth Detention Centre (Ashley).

Simply because a young person is in youth justice detention does not mean they no longer have rights – especially the right to be treated with dignity and respect. The United Nations' CROC and the UN rules on the administration of youth justice (Havana Rules, 1990; Beijing Rules, 1985) state that the aim of the youth justice system is to promote the well-being and best interests of the child.

As children differ from adults in their physical and psychological development, and emotional and educational needs, they require a different and appropriate response when in conflict with the law. This may mean that the traditional objectives of criminal justice, such as repression/retribution, give way to principles of rehabilitation and restorative justice when dealing with child offenders.

Tasmania's *Youth Justice Act 1997* is based on a restorative youth justice model premised on a belief that young people who offend should be accountable and accept responsibility for their actions, whilst recognising that they are children and therefore should have the maximum opportunity for rehabilitation.

Consistent with the objectives and principles of the Act, where a child or young person is sentenced to a period of detention, their health, well-being and rehabilitation are all primary considerations in the administration of their detention. It is also important to note that the *Youth Justice Act 1997* states that a young person in detention is not to be treated more severely than an adult.

In February 2016, in my capacity as advocate for young people detained at Ashley Youth Detention Centre, I provided advice to the Minister for Human Services regarding the pressing need to implement a therapeutic approach to the provision of youth justice detention in Tasmania.

The therapeutic approach is globally accepted as best practice, and has been proven to provide better outcomes for young people in detention and upon their release. It is also entirely consistent with the principles underlying the *Youth Justice Act 1997*.

A therapeutic approach is rights-based – policies and practices are informed by an understanding of the rights of young people in detention and young people are made aware of their rights and of their fundamental responsibility to respect the rights of others.

This approach recognises the need to bring about behavioural change by facilitating and promoting personal development of young people in detention. This is not achieved by providing standalone therapeutic programs, but rather is an approach to all aspects of the detention facility. This includes staffing, the physical environment, thorough assessment of needs, policies and practices, and programs (education, recreation, counselling etc.). The environment in detention should be replicative of a family, as far as practicably possible, where young people are provided with guidance and support, a sense of self, and with safety and security to encourage growth and development.

There are differing approaches on the most appropriate way to meet these goals, and how the detention process is conceived. Youth justice detention can be conceived as a “place” or a “process”, or a combination of the two. Detention as a “place” focuses on the physical structure of detention including the buildings, bed capacity, security hardware, and square meterage, as well as the development of administrative and operational policies and procedures, all of which are essential to the day-to-day running of a facility. Detention as a “process” is equally, if not more important, as it focuses on the “how” of detention and the quality of the services, care, and relationships which are provided. The focus

on both place and process is essential to the achievement of therapeutic detention.

In my advice, I expressed my firm view for the need to implement evidence informed policies and processes for young people at Ashley. Adoption of a therapeutic approach to youth justice detention has the potential to improve the outcomes for young detainees upon their release. There is no doubt that policies and procedures which are not informed by a truly therapeutic approach have the capacity to entrench anti-social behaviour and do nothing to reduce recidivism.

I intend continuing my advocacy for adoption of a therapeutic approach to youth justice, noting the need to ensure that implementation of this approach also requires for its success youth workers and Centre Management who understand and agree with the philosophy of a therapeutic approach and have the skills to operate within an environment that does not rely on and promote a punitive approach to detention.

In response to my advice, the Government accepted all of my recommendations and, in this reporting period, allocated \$200,000 to commence the development of a therapeutic approach at Ashley. I understand there is also a commitment to implement a change management process at Ashley. I will report further on these matters in my next annual report and look forward to considerable progress being made. ○

## **ADVICE TO THE HON VANESSA GOODWIN, ATTORNEY-GENERAL AND MINISTER FOR JUSTICE, MINISTER FOR CORRECTIONS - SERVICES FOR THE CHILDREN OF PRISONERS IN TASMANIA (NOVEMBER 2015)**

The children of prisoners are a largely invisible group, yet they are significantly impacted upon by the criminal justice system.

Research has also found that the children of prisoners experience complex disadvantage (in the form of poverty, parental substance abuse, parental criminality and parental mental health issues) prior to their parent’s incarceration and that this incarceration acts to compound their disadvantage and vulnerability. It is important to understand that for many children a parent’s incarceration represents the end of one cycle of offending and upon release, the beginning of another.

There is clear evidence that parental incarceration has a significant impact on children; they experience feelings of loss and isolation; shame, bullying and stigma; behavioural difficulties at school and impacted educational outcomes; new caring responsibilities for siblings and the remaining parent; anxiety, insecurity, anger and mental health issues; financial disadvantage; family conflict and divorce; and instability and homelessness.

In this Advice, I:

- described current services for children of prisoners
- emphasised the need for measures to be taken to identify and support these children before and during their parent's incarceration and post-release
- recommended appointment of a Family Engagement Officer as a dedicated staff member at Risdon Prison
- emphasised the significance of ongoing contact between children and their incarcerated parent (where it is safe and appropriate) has for reducing re-offending and promoting children's wellbeing.

I was pleased to see that the draft Strategy *Breaking the Cycle – A Safer Community: Strategies for Improving Throughcare for Offenders* (discussed in a separate item) reflects the concerns and ideas explored in this Advice. I will continue to promote initiatives aimed at promoting the wellbeing of this group of children and young people. ○

## INDEPENDENT MONITORING OF CHILD PROTECTION AND OUT OF HOME CARE

In September 2015 I provided advice to the Minister for Human Services, the Hon Jacqui Petrusma MP, about independent external monitoring of child protection in other jurisdictions.

This Advice was prompted by my longstanding view that the absence of independent monitoring of the administration of the child protection system in Tasmania is a matter of grave concern.

In essence, and apart from the Ombudsman, there is no external and independent mechanism for ensuring that those administering the *Children, Young Persons and Their Families Act 1997* are

complying with the legislation or with relevant Departmental policies and practices.

Main points raised in the Advice include:

- To be effective, monitoring systems must be external and independent, with appropriate authority to enable rigorous scrutiny.
- Findings, both positive and negative, can be used to inform policy and practice.
- Monitoring should include follow-up audits to assess the extent to which recommendations have been acted upon.

Although enactment of the *Commissioner for Children and Young People Act 2016* substantially clarifies and increases the Commissioner's functions and powers, it cannot be said that the Commissioner has a monitoring function akin to that which exists in other States (for example, the Children's Guardian in New South Wales, the Commissioner for Children in the Northern Territory). Furthermore, I would need to be properly resourced should there be an expectation that I perform a monitoring function in relation to child protection services.

I will continue to call for appointment of an independent external body tasked specifically with oversight and monitoring of child protection systems in Tasmania. ○

## INDIVIDUAL ADVOCACY FOR CHILDREN AND YOUNG PEOPLE IN THE CHILD PROTECTION SYSTEM

In June 2016, I reiterated my advice to the Minister for Human Services calling again for independent external monitoring of child protection in Tasmania. In addition I advised that an independent advocacy function should be established for children in the out-of-home care system, so that should matters require it, they could be supported to make a complaint or seek a review of a decision.

In Queensland, for example, the Office of the Public Guardian (OPG) has specific responsibilities to provide help, support and advocacy for individual children and young people within the child protection system, including those in out-of-home care. The child advocates in the OPG are lawyers who protect and promote the rights of children and young people within the child protection system, especially where decisions are made that affect them and their care arrangements. This individual advocacy service is

offered alongside a community visitor program for children in out-of-home care.

I will continue to advocate for this or a similar service to be prioritised and made available for children and young people in out-of-home care in Tasmania. ○

## DRAFT BILLS

### COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE BILL 2015

In November 2015 the Commissioner for Children and Young People Bill 2015 was introduced into the Tasmanian Parliament. It was passed by Parliament in March 2016; the new Act will commence on 1 July 2016.

The *Commissioner for Children and Young People Act 2016* implements recommendations made in the November 2013 Report by Professor Maria Harries *Advocacy for Children in Tasmania Committee*.

In particular, the Act more clearly defines the Commissioner's role, functions and powers.

The Commissioner's functions include:

- systemic advocacy for children in Tasmania;
- monitoring and reviewing the wellbeing of children in Tasmania;
- influencing policy development relating to children in Tasmania;
- promoting the participation of children in decision making;
- advocating for detainees under the *Youth Justice Act 1997*; and
- at the request of the Minister, undertaking inquiries into specific decisions or actions relating to an individual case.

The Act makes it clear that the Commissioner's focus is on the wellbeing of all children and young people aged 0-17 years and provides that children and young people who are disadvantaged or vulnerable should be given special consideration by the Commissioner.

The Commissioner will also be able to initiate "own motion" investigations and will have the capacity

to gather the information needed to undertake the functions of the position.

The Commissioner's independence is reflected in various provisions, including those which establish that the Commissioner cannot be directed how to go about performance of his /her functions.

I was consulted at various stages throughout the drafting of the Bill.

I look forward to continuing to work collaboratively and respectfully with government and the community sector. ○

### EDUCATION BILL 2016

In May 2016 I provided comment in response to the Draft Education Bill 2016.

In my comment I welcomed the inclusion of an object in the Draft Bill to make available to each Tasmanian child a high-quality education that helps maximise his or her educational potential; and enables him or her to contribute fully to the Tasmanian community.

I commended the Bill's explicit acknowledgement of every child's right to receive an education until the completion of Year 12, and expressed support for the:

- acknowledgement of the importance of quality pre-compulsory early education and learning opportunities
- proposal to lower the compulsory school starting age by 6 months

The evidence for the provision of high quality early learning is compelling.

A major theme throughout my comment is the importance of providing children and young people with the opportunity to express their views about decisions that affect them. Specifically, I considered the extent to which the Draft Bill promotes the principles set out in Article 12 of the CROC (right to be heard) and provides adequate mechanisms to facilitate meaningful child participation in policies and decision-making which affect children and young people in the context of education.

Main points raised in my submission include:

- The importance of facilitating children and young people's participation in proposed compulsory conciliation conferences regarding school non-attendance and for their views to be taken into account and given due weight in accordance with their age and maturity. For those children who do not attend a conference but who would like to express a view, consideration should be given to providing an alternative mechanism by which this might occur.
- That students themselves have an important role in creating and maintaining a safe, positive and respectful school environment and should be consulted in the development of school behaviour management policies.
- That a school student of any age should be consulted, or at least given the opportunity to express a view, in the development and maintenance of strategies to eliminate or ameliorate risks to health and safety at school.
- That procedural rights should be provided to children and young people for whom suspension and exclusion from school is considered. For example, that the student's views should be sought and taken into account when deciding whether or not to suspend or exclude them.

I also expressed reservations about proposals to compel a parent to submit their child to a medical examination in certain circumstances and recommended that legal advice be obtained in relation to the extent to which a parent can be compelled to submit a child to a medical examination against the child's wishes or where the child is Gillick competent.

This submission emphasised that respect for the right of children and young people to participate within education is essential to the child's right to education. ○

## CUSTODIAL INSPECTOR BILL 2016

In May 2016 I commented on a draft Bill to establish the office of Custodial Inspector, with independent oversight of prison and youth justice detention operations in Tasmania, specifically the oversight of Tasmania Prison Services facilities and the Ashley Youth Detention Centre.

I welcome the proposal to establish a Custodial Inspector for Tasmania, particularly for youth justice detention, and I look forward to establishing a constructive working relationship with the Inspector once appointed. ○

## AMENDMENTS TO THE YOUTH JUSTICE ACT 1997

In March 2016 I provided comments on proposed amendments to the *Youth Justice Act 1997*.

These amendments – which I indicated in principle support for – would:

- Clarify the manner in which time served on remand for the offence being tried is taken into account when a Magistrate is making a sentence order;
- Make it clear that a Court, rather than an administrator, is to determine whether there has been a breach of a Supervised Release Order, thereby implementing a Recommendation made by the Ombudsman in a March 2014 report *Investigation into the detention of a young person following the contravention of a supervised release order*; and
- Allow a "prescribed officer" access to Ashley Youth Detention Centre and to detainees, to perform their statutory duties.

Amendments to the Youth Justice Regulations 2009 are proposed, to make the Commissioner for Children and Young People a prescribed officer and the *Commissioner for Children and Young People Act 2016* a prescribed Act. ○

## AUSTRALIAN CHILDREN'S COMMISSIONERS AND GUARDIANS (ACCG)

I am a member of the Australian Children's Commissioners and Guardians (ACCG).

The ACCG brings together the Children's Commissioners and Children's Guardians from each State and Territory in Australia, along with the National Children's Commissioner. The ACCG meets approximately every 6 months (meetings were held in November 2015 and May 2016 during the reporting period).

The ACCG aims to promote children's rights and participation and ensure the best interests of children and young people are considered in public policy and program development across Australia.

ACCG members collaborate on and submit joint submissions on matters relevant to the rights and interests of children and young people in Australia.

A Communique is issued at the end of each ACCG meeting and these are available on my website.

Membership of ACCG has expanded over the last 12 months to include the New South Wales Advocate for Children, the Office of the Public Guardian (Queensland) and the South Australia Council for the Care of Children, bringing the total membership to 13. The New Zealand Commissioner for Children also has a standing invitation to attend ACCG meetings.

A joint document developed by ACCG, entitled *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices*, was released in April 2016 highlighting current adherence to Australia's human rights obligations under CROC and the International Covenant on Civil and Political Rights (ICCPR) in the administration of youth justice detention.

The document focuses on the current legislation, policy and procedural frameworks in each of the States and Territories relating to the use of disciplinary regimes, restraint, use of force, searches, seclusion, segregation and lockdown designed to manage and control detainee behaviour. It emphasises the need for children and young people to be given special protections whilst in youth justice detention, due to their inherent vulnerability and complex needs.

The focus of youth justice detention should therefore be to support and rehabilitate young people to give them the best possible chance to successfully reintegrate within the community upon release. This position is consistent with the advice I have provided to the Minister for Human Services on a therapeutic approach to the provision of youth justice detention in Tasmania. ●

Image: Young guests at the official opening of the Tasmanian Museum and Art Gallery's *Pattern Play* exhibition.



# ADVOCACY

## ASHLEY YOUTH DETENTION CENTRE ADVOCATE FOR DETAINEES

As advocate for young people who are detained under the *Youth Justice Act 1997*, I visit Ashley Youth Detention Centre on a monthly basis and make myself available to talk with young people at Ashley on an individual basis. Young people detained at Ashley can also contact my office by telephone at any reasonable time.

Although this advocacy role is not a complaint handling function, I am available to facilitate young people's access to complaints processes and may make representations to the Minister for Human Services where an individual complaint raises a systemic issue related to the health, welfare, education, care, protection or development of detainees.

In February 2016, in my capacity as advocate for detainees, I provided Advice to the Minister for Human Services, the Hon Jacquie Petrusma MP regarding the pressing need to implement a therapeutic approach to the provision of youth justice detention in Tasmania. This advice is discussed in further detail under the Advices section of this Annual Report.

I welcome the Tasmanian Government's intention to establish a Custodial Inspector for Tasmania, particularly for youth justice detention, and look forward to establishing a constructive working relationship with the Inspector once appointed. ○



# CREATE FOUNDATION – CONSULTATION ON THE EDUCATIONAL EXPERIENCES OF CHILDREN IN OUT OF HOME CARE

In September 2015 CREATE and staff from the Commissioner for Children held focus groups and individual interviews with 30 children and young people aged between 10 – 25 years of age, who are or have been in care, about their experiences at school.

Throughout 2014, CREATE Youth Advisory Groups (YAGs) raised issues relating to the stigma and associated bullying at school experienced by children and young people in out-of-home care. Children and young people stated that they sometimes felt their teachers treated them differently from other students, and that their privacy and confidentiality were not always maintained within the school environment. Children and young people suggested this might be due to a lack of understanding or awareness amongst other children, young people, and teachers of the issues they face throughout their care experience. The consultations sought to explore these issues further and provide a voice for children and people who may have experienced these and related issues at school.

Children and young people from the South, North and North West of Tasmania took part in the consultations.

Young people were selected for this consultation via discussions at CREATE's YAG meetings in Tasmania. Those who were interested in further contributing to this topic were provided an opportunity to be consulted. Almost half (45%) of children and young people in the North and South of Tasmania had attended four or more schools while in care. Of the 30 participants, 7 identified as Aboriginal or Torres Strait Islander.

Children and young people who took part in the consultation had experienced a range of placement types including foster, kinship, and residential care, and had a varied schooling history, including experiences of both public and private schools.

The results of the consultations identified specific areas to be addressed:

- Awareness of stigma;
- Privacy, confidentiality, and control over sharing information;
- Becoming part of the school community;
- Bullying;
- Support in managing emotions;
- Education plans and balanced support with school work;
- Appropriate curriculum.

The Report of the Consultations was discussed with officials from the Departments of Education and Health and Human Services, who will also be invited to attend a session with CREATE YAG members to hear firsthand about these and related issues around schooling.

...I was overjoyed to hear that a report was underway, regarding education and I was more than happy to take part. With the report being shared, I hope to see some changes being made, such as extra training for staff on how to respond and handle behavioural problems, not treating students with a care experience differently, understanding issues, and getting extra support when needed. These changes could help give young people the chance to undergo better education, ensuring they have the knowledge to pursue their dreams in life and can live independently with the right skills.

**Brooke (aged 20), young consultant with the CREATE Foundation**

## OPINION PIECES

I regularly write opinion pieces for release to the media and for uploading to my website. Opinion pieces for the 2015-2016 year include:

- Child Protection Redesign
- Children's Week
- Poverty
- Family Violence
- Mental Health education and support for young people
- Kids Day in Risdon Prison
- Education changes a positive step forward
- Wicked Campers
- Early childhood and the Education Act ◦

## MEDIA RELEASES

- Family Violence and Children – extra investment welcomed
- Response to Ministerial statement on child protection services
- Child's Play gets its own reward
- The link between poverty and education
- Coronial findings into the deaths of six teenagers
- Parents' guide to choosing a child safe organisation
- AFL and Child Safe Organisations
- Marriage equality

- Increased family counselling services will benefit children
- National Child Protection Database
- Children and Young People's Advisory Council
- Commissioner's response to school age extension
- Safe Schools program
- Safe Schools criticism negatively affects young people
- Child Protection Re-design
- Child Protection Implementation
- New Northern officer for Youth Justice Court welcomed
- 2016 Young Creative Writers Awards
- Australia is failing its children
- New Early Years Group to be established
- New legislation for Commissioner ◦

## WEBSITE

My website ([www.childcomm.tas.gov.au](http://www.childcomm.tas.gov.au)) began a phase of updating in 2015-2016 to improve functionality including greater search capacity. Topics such as child protection, health and wellbeing; family and domestic violence; child safe organisations; education; youth justice; and participation were also added to the Home Page to allow similar material to be grouped together. As part of the Commissioner's new legislation and re-branding which takes effect from July 1, 2016, the website will continue to be updated and improved. ●



Image: Young guest at the official opening of the Tasmanian Museum and Art Gallery's *Pattern Play* exhibition. Jemima Wyman: *Pattern Bandits*

## PARTNERSHIP AND COLLABORATION

An important part of my role as Commissioner has been to work collaboratively with other individuals, organisations or agencies working to promote the wellbeing of children and young people in Tasmania.

I have been invited to be a member of the following:

- Family Violence Consultative Group
- Vulnerable Teens Project Reference Group (Anglicare)
- Statewide Youth Coalition
- Youth Action Priorities (YAP)
- Youth at Risk Strategy Expert Reference Group

I was a member of the expert Reference Group convened in late 2015 to assist Professor Maria Harries undertake the Redesign of Child Protection Services Project.

I also sit as a member of the Council of Obstetric and Paediatric Mortality and Morbidity, established under the *Obstetric and Paediatric Mortality and Morbidity Act 1994*.

Members of my team attend meetings of the TasCoss Policy Officer Network, the Mental Health in Schools Reference Group, and the Southern Regional Mental Health Group. ○



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## TASMANIAN MUSEUM AND ART GALLERY – CHILDREN’S PARTICIPATION

This year I had discussions with the Director of the Tasmanian Museum and Art Gallery (TMAG) around child-focused exhibitions and initiatives in line with the TMAG’s goal of enhancing family engagement.

In December, members of my Children and Young Persons Advisory Groups were invited to provide TMAG with advice on a new children’s trail, the program for its Children’s Festival and a

‘Kids in Museums Manifesto’ designed to outline TMAG’s commitment to ensuring visitors have a family friendly experience. I also provided advice to TMAG on the establishment of its Children’s Reference Panel.

I was invited to speak on 17 December 2015 at the launch of TMAG’s interactive family exhibition titled *Pattern Play* which celebrated the wonderful world of patterns. ○

Image: Guests listen to the Commissioner for Children, Mark Morrissey speaking at the opening of the *Pattern Play* exhibition at TMAG. Courtesy of the Tasmanian Museum and Art Gallery.



# FUTURE INITIATIVES FOR 2016-2017

## MONITORING OF HEALTH AND WELLBEING

The first *Health and Wellbeing of Tasmania's Children, Young People, and their Families Report* will be released in three parts during the second half of 2016, and will include national and state data on all aspects of children's health and well-being including a demographic snapshot, early childhood and the transition to school, middle childhood and adolescence, and parents, families, and communities.

Considering that Strategy 1 of the implementation plan of *Strong Families: Safe Kids: Redesign of Child Protection Services Tasmania* is to place the wellbeing of children at the centre of service provision, it is envisaged that the monitoring of the wellbeing of Tasmania's children will continue to be a priority for my office. ○



## THE IMPACT OF FAMILY VIOLENCE ON CHILDREN AND YOUNG PEOPLE IN TASMANIA

As mentioned previously, the main project for 2016 is the completion of my report into the impact of family violence on children and young people in Tasmania. The formal launch of the report will take place in September 2016, with distinguished guests from the Tasmanian government and from non-government organisations. The keynote

address will be delivered by Ms Rosie Batty, 2015 Australian of the Year.

A roundtable with young women from Project O will be convened on the same day, with selected key decision makers from relevant government agencies. ○

## EQUAL OPPORTUNITY TASMANIA AND THE CHILDREN'S E-SAFETY COMMISSIONER

In collaboration with Equal Opportunity Tasmania and the National Children's eSafety Commissioner I have organised a series of community presentations for professionals and the general public on children's e-safety in October 2016.

The presentations will include information on the eSafety Office's power to rapidly remove serious cyberbullying material, detail current technology trends and provide targeted safety advice to support safer and enjoyable online experiences for children and young people. ○

## COMMENCEMENT OF THE *COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE ACT 2016*

As mentioned previously in this Annual Report, the *Commissioner for Children and Young People Act 2016* will commence on 1 July 2016.

The new legislation clarifies and expands the Commissioner's functions and powers and, in particular, includes monitoring, investigative and review functions in relation to the wellbeing of children and young people generally in Tasmania.

The Commissioner will also be able to initiate "own motion" investigations and will have the capacity to gather the information needed to undertake the functions of the position. The Minister for Human Services can ask the Commissioner to undertake an investigation or review of a decision or recommendation made under any Act.

There can be no doubt that these expanded functions and powers – particularly the "own

motion" investigation function- bring with them an expectation that the Commissioner will use the associated powers to undertake an investigation into a matter of concern affecting children and young people in Tasmania, as and when that concern becomes known.

The absence of an own motion function and associated powers has been raised as a concern in the past.

Investigative and monitoring functions can be resource intensive, and, depending on the matter of concern that is to be investigated, difficult to limit in scope.

The Government has been approached in regard to resourcing for the Commissioner's functions that will enable me to more fully meet my obligations under the Act. ○



Image: Commissioner for Children and team.



# ANNUAL REPORT

## 2015-2016

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