



Children and Young People in Out of Home Care in Tasmania

“The imperative for the State as the ‘corporate parent’ is to move from ‘worker’ thinking to ‘as a good parent’ thinking, to consider how the child is, what the child thinks and aspires to, what brings meaning to the child’s life and what the child finds important and hopes for. This will require a deep human empathy and respect for the child whom, we as a community (the State) have taken on as we would our own child. With all of the responsibilities this entails.”

Mark Morrissey, Commissioner for Children and Young People (Tas)

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Functions and Powers of the Commissioner for Children and Young People, Tasmania

My functions and powers as Commissioner for Children and Young People in Tasmania are described in the *Commissioner for Children and Young People Act 2016*.

Although I am required to advocate for all children and young people in Tasmania, I am also required to give special regard and serious consideration to the interests and needs of children and young people who are disadvantaged for any reason or vulnerable.

Of particular relevance to this Report are the following functions:

- a) Researching, investigating and influencing policy development into matters relating to children and young people generally;
- b) Promoting, monitoring and reviewing the wellbeing of children and young people generally;
- (c) Promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
- (d) Assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally;
- (e) Encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.

When performing a function under the Act I am required to act independently, impartially and in the public interest; I am also required to act in accordance with the principle that the wellbeing and best interests of children and young people are paramount.



Preamble

As the Commissioner for Children and Young People in Tasmania, I have met with many young people who have lived experiences in the out of home care (OOHC) system, in its multiple forms. Many speak positively of their experiences. This group of young people is generally experiencing acceptable outcomes. The care and support they have received is appropriate and good. They transition into adulthood equipped to live healthy and happy lives.

There is also a smaller, but not inconsiderable group of children for whom the system established to parent them, has been a less than ideal parent.

I have spoken at length to many of these young people about their experiences in care. Their experiences and stories are consistent and concerning. We must listen to their experiences and respond.

Heading into my third year as Commissioner I have become increasingly concerned that Tasmania is the only jurisdiction in Australia that has not as yet established Standards or other accountability mechanisms for the OOHC sector.

The issues that I discuss in this Report are not recent occurrences but longstanding matters that we as a community have as yet not adequately addressed.

The strategies I propose will be of benefit to all children and young people in OOHC in Tasmania. Improving outcomes will require sustained, longer term commitment from both the Department and Governments.

Better supporting children and young people in OOHC is a longstanding national issue facing all jurisdictions, with some states making considerable positive progress over the last few years.

The issues have been canvassed in depth through numerous inquiries, reports and investigations, going back many years. The shortcomings identified and discussed in detail in these reports have been identified nationwide and cut across all political cycles.

This Report is intended not to be another such investigation or inquiry. It is written with the aim of offering an achievable way forward that, if adopted, will begin to improve outcomes for this group of highly vulnerable children and young people.

As governments increasingly move towards outsourcing the provision of a range of placement options required for these children, there needs to be in place strong external independent oversight, strengthened accountability processes and overall robust internal governance.

I have formed a view that for reform to be achieved in a sustainable way, a number of key strategies must be in place, to complement and strengthen the current reforms that are underway here in Tasmania.



The strategies outlined in this Report are, in my opinion, critical for success and, if adopted, will contribute to more sustainable and successful reform and enduring outcomes.

The range of strategies offered in this Report, if accepted, will contribute to addressing many of the longstanding unresolved issues in OOHC in Tasmania. They are intended to complement and build on the existing reforms currently underway in Tasmania. The Recommendations in this Report will strengthen and support the Government's current OOHC reform plans.

I am confident that the proposed strategies, if implemented, will keep children much safer, happier and healthier. It's a goal any good parent would desire for their children. The additional investment required will result in much better outcomes for this important group of young Tasmanians who deserve much better than they have experienced in their short lives.

"We want to not only be listened to – we want action. To see real improvements"

18-year-old young person recently transitioned from OOHC.

Mark Morrissey

Commissioner for Children and Young People (Tas)



Introduction

Every child is born into the world rich with great potential and hope. Each individual infant starts life as a precious and unique human being, with vast unrealised potential. They each deserve the opportunity to reach adulthood possessing the skills and abilities required to live healthy and happy lives. The positive news is that the majority of children in our community receive a great start to life. But unfortunately some do not.

For some children, their lives are fractured by events that befall their families or caregivers, who for a wide range of reasons, can no longer offer them the nurture and support that is so critical to their health and wellbeing. At times this is for a short period but in many circumstances the State is required to assume the role of parenting on a short, medium or long term basis.

These children, for whom the State becomes the “parent”, enter the OOHC system. Currently there are approximately 1,100 children in State care here in Tasmania.¹ Nationally there are over 46,000 kids in care.² Of all of the states and territories, Tasmania has the lowest recurrent expenditure per child in OOHC, and the lowest expenditure on OOHC per placement night.³

For some children and young people in care, the fracturing of relationships in their families of origin and the circumstances that brought them into care might mean that they have few, if any, adults on whom they can consistently rely. In effect the State becomes their parent.

In this Report I aim to present a number of observations, facts and findings that I hope will further contribute to our combined efforts as a community to improve outcomes for this very important cohort of children and young people.

As Commissioner for Children and Young People in Tasmania, the legislation that defines my role obliges me to provide impartial, independent and apolitical advice which promotes the best interests and wellbeing of children and young people in Tasmania. I do not provide individual advocacy for children and young people in OOHC but focus on systems and broad issues affecting children and young people.

This Report is presented in this spirit and context.

Acknowledgments

OOHC here in Tasmania is supported by many committed and passionate carers who are objectively making a positive difference in the lives of children and young people in their care. Likewise I wish to acknowledge the many Departmental staff, community sector organisations and community leaders who bring a wealth of knowledge, care and compassion to improving the lives of these children and young people.

In particular I wish to applaud young care leavers who often have clearly articulated and insightful views on ways to improve the system. Over the last two years I have met with

¹ DHHS, Annual Report 2015 - 2016

² Report on Government Services, 2017.

³ Report on Government Services, 2017.



many children and young people who have been in OOHC or have recently turned 18 and left OOHC. I have been deeply influenced by their experiences and stories, often shared with me in detail and with an honesty that cannot be ignored or overlooked.

As part of preparing this Report I held targeted consultations with a range of professionals involved in the OOHC system, including those who provide services, advocacy and expertise. I wish to acknowledge and applaud their deep commitment to improving the lives of our most vulnerable children and young people. I also wish to express my appreciation to CYS for their open and collaborative approach during the preparation of this Report.

I also wish to acknowledge the systemic reform of OOHC and of the child protection system as a whole that is actively underway here in Tasmania and more broadly across various jurisdictions in Australia and internationally.

Context for this Report

Whilst many children have positive experiences in OOHC, sadly many do not.

In my review of the numerous OOHC related reform documents that have been released in Tasmania over the last 15 years, it is apparent that there has been an ongoing and very well informed intention to reform the system that holds responsibility for our most vulnerable children and young people.

What is apparent is that despite the best efforts of successive governments, reform is often not fully realised in a transparent and sustained manner. The result is a system that is in an ongoing state of flux. In 2014 the Government released its plans to reform OOHC and acknowledged the failings of the existing OOHC system:

“The current OOHC system is stretched to capacity, unsustainable and lacks a strategic plan for its future.”

OOHC Reform Report, Tasmanian Government, November 2014.

The intent and content of this Reform document is commendable. It clearly articulates a positive way forward, that, if fully implemented, will contribute to the delivery of better outcomes for this group of children and young people for whom the State has become the parent.

Currently, across Australia far too many young people in OOHC have poor outcomes across the developmental spectrum as a result of less than ideal support from the State.

This particular issue is not unique to Tasmania.

This includes lower educational achievements, homelessness, mental health issues, anxiety and attachment issues, lower rates of employment and entry into the youth justice system. For example young people in the child protection system are 14 times as likely as their peer population to be under youth justice supervision in the same year.⁴

⁴ Australian Institute of Health and Welfare, Young people in child protection and under youth justice supervision 2014–15.



These outcomes often relate to the effectiveness of the State as “a good enough parent” or to put it another way - providing care and support “as a good parent would”.

Phase 1 of the Tasmanian Government’s OOHC Reform process focused on commissioning for the provision of Specialised Services – Sibling Group Care, Residential Care and Therapeutic Services. The new services - provided by non-government service providers - were in place by August 2015. After a further tender process, five service providers were chosen to be on a Register of Approved Providers to provide Special Care packages for children with extreme and complex needs. Phase 1 of the reforms is now complete.

Phase two – family based care reform - remains unrealised.

However there remains a need to ensure quality and transparency within the reform process. This is acknowledged in the Tasmanian Government response to Case Study 24 into OOHC, undertaken by the Royal Commission into Institutional Responses to Child Sexual Abuse.⁵

Many hundreds of reviews, inquiries, audits and recommendations have been produced nationally on OOHC over the last decade. This includes many such documents produced here in Tasmania. I can state with confidence that in 2017 we, as a society, now know more about the issues, solutions and outcomes in OOHC than we ever have before.

My Report does not attempt to cover all of the issues and findings from the vast amount of reviews, research and audits already undertaken. These documents are readily accessible and speak for themselves. There is no shortage of common will or evidence to support where funds and resources need to be directed to improve the OOHC sector in Tasmania.

What is clear is that more remains to be done to better support many of these children and their carers. This is indisputable. The question is what strategies will make the biggest differences and how do we build upon the existing work.

Acknowledging the available evidence, my Report aspires to respectfully and constructively offer and outline a number of strategies and practical steps that must be taken here and now in Tasmania to improve outcomes for children and young people in OOHC. A common theme from children and young people was that they wanted the Department:

“to do what they promised, when they promised it.”

Young person in OOHC.

This Report was prepared for those children and young people in Tasmania who have received less than ideal care and have asked that I advocate on their behalf.

⁵ <<http://www.childabuseroyalcommission.gov.au/exhibits/cde18d1b-fade-43f4-83f4-46e9af48b543/case-study-24,-june-2015,-sydney>>



Key Recommendations

REFORM

RECOMMENDATION ONE (page 10)

Prioritise the development of a strategic plan and implementation plan for the OOHC reform. Ensure the strategic plan incorporates strong governance and oversight mechanisms.

RECOMMENDATION TWO (page 12)

More closely integrate the OOHC Reform and the CPS Redesign, and provide the resourcing required for successful and ongoing implementation, including by providing dedicated funding for implementation teams.

RECOMMENDATION THREE (page 13)

Establish an independent expert oversight committee to provide assistance and guidance to those implementing the child protection and OOHC reforms, accompanied by robust reporting arrangements on progress.

EXTERNAL OVERSIGHT AND MONITORING

RECOMMENDATION FOUR (page 15)

Establish an ongoing consultative panel of young people who have had experience of the OOHC and child protection systems, and who are therefore well-placed to contribute directly to the reform processes.

RECOMMENDATION FIVE (page 16)

Establish independent external oversight and monitoring of the OOHC system, including by providing the Commissioner for Children and Young People with six-monthly reports on compliance with Standards and other agreed indicators of the wellbeing of children and young people in the OOHC system in Tasmania.

RECOMMENDATION SIX (page 19)

Ensure that mechanisms are in place to seek out and listen to the individual voices of children and young people in the OOHC system, including by:

- (A) Establishing a visiting program for individual children and young people in OOHC – which incorporates an individual advocacy component.
- (B) Reviewing the CSS Policy on visiting children in OOHC and reporting publicly on compliance with it.
- (C) Expediting the establishment of a Tribunal in Tasmania vested with jurisdiction that includes decisions made about children’s wellbeing in OOHC.

RECOMMENDATION SEVEN (page 24)

(A) The Tasmanian Government develop and adopt Standards for the provision of OOHC in Tasmania and provide regular reports on compliance with these Standards.

(B) Noting the work currently being undertaken on child wellbeing as part of the Child Protection Redesign, the Tasmanian government also develop an Outcomes Framework specific to children and young people in OOHC in Tasmania.

The rationale and context for these seven recommendations is provided below.



Prioritise the development of a strategic plan and implementation plan for the OOHC reform

Child protection services are provided to protect children and young people less than 18 years of age who are at risk of abuse and neglect within their families, or whose families do not have the capacity to protect them. Services provided include:

- Provision of family support services to strengthen the capacity of families to care safely for their children.
- Receiving and responding to reports of children who may have suffered or are at risk of abuse or neglect, including by undertaking assessments and investigations.
- Initiating statutory intervention, such as an application to the Court for a care and protection order placing a child in the care of the Secretary of the Department of Health and Human Services (DHHS) where it is decided that this action is required because a child will be at risk if left in the care of their family.
- Placing children and young people in OOHC where it is decided they cannot remain with their family due to concerns about their safety and wellbeing.

The Child Protection Service – now called the Child Safety Service (CSS) - within Children and Youth Services (CYS) in the DHHS has primary responsibility for the delivery of statutory child protection services in accordance with the [Children, Young Persons and Their Families Act 1997](#). This includes receiving and responding to reports of concerns for a child's welfare, undertaking investigations and assessments and, where necessary, seeking Court Orders which may place a child under the guardianship of the Secretary for a specified period. Child Safety Workers also make arrangements for placing a child in OOHC where that is required and have ongoing case management responsibilities to a child who has been placed in OOHC. OOHC teams are responsible for the recruitment, assessment, training and support of Departmental carers and for overall approval of all carers (government and non-government).

Significant and wide ranging reforms are underway or anticipated across the Child Protection System as a result of implementation of reforms in the *Redesign of Child Protection Services – Strong Families- Safe Kids (CPS Redesign)*,⁶ reforms to OOHC as outlined in *Out of Home Care Reform in Tasmania (OOHC Reform)*⁷ and associated CYS wide reforms such as review of the Practice Manual and strengthening practice and leadership.

In November 2014 CYS released its blueprint or framework for reform of the OOHC system.⁸ The new system would place the child and their individual needs at the centre and provide a continuum of placement types to best meet the needs of children in care. Placement options and services would be based on an understanding of the impact of trauma on children.⁹ The reform process was to proceed in two implementation phases alongside concurrent reforms

⁶ <http://www.dhhs.tas.gov.au/children/strongfamilies-safekids> for the *Redesign of Child Protection Services Tasmania Report Strong Families- Safe Kids* released March 2016 and the *Strong Families Safe Kids Implementation Plan*

⁷ Tasmanian Government, *Out of Home Care Reform in Tasmania* (2014) http://www.dhhs.tas.gov.au/children/out_of_home_care_reform_in_tasmania

⁸ Ibid.

⁹ Tasmanian Government, *Out of Home Care Reform in Tasmania* (2014), 12.



within CYS. The document clearly and concisely sets out the rationale for OOHC reform and the challenges to be overcome. There is a welcome acknowledgement of the need to address service gaps, practice gaps, gaps in the ability of CYS to rigorously evaluate services for efficacy, value or performance against KPIs and inadequacies in information management systems.

Phase 1 of the OOHC Reform focused on commissioning for the provision of Specialised Services – Sibling Group Care, Residential Care and Therapeutic Services. The new services – provided by non-government service providers - were in place by August 2015. After a further tender process, five service providers were chosen to be on a Register of Approved Providers to provide Special Care packages for children with extreme and complex needs. Phase 1 of the reforms is now complete.

Phase 2 of the OOHC Reform will focus on family based care including the provision of respite, emergency, and shared care, formal kinship care and foster care. Although it was anticipated that Phase 2 would begin with the commissioning of a provider to manage a new carer framework in late 2015¹⁰ with implementation from July 2016, progress to date is unclear.

In addition to Phase 1 and 2 of the reforms, concurrent reforms within CYS were foreshadowed in the November 2014 OOHC Reform document including:

- Commissioning Governance/Financial Structure and Controls/KPIs
- Carer Development/Support Recruitment/Training/Registration/Deregistration
- Staff Development and Leadership/ Training/ Service Delivery Structure
- Practice Reform: Signs of Safety/Service Delivery Framework and Revised Practice Manual / Needs Assessment / Care Planning.

Some of these reforms have begun to be implemented (e.g. Practice Manual Project / Signs of Safety) however the current status of each of the above areas is unclear.

One of the difficulties in assessing the progress of the OOHC reforms is that the strategic plan and shared vision envisaged in the November 2014 OOHC Reform document have not as yet been realised:

The current OOHC system has been built and maintained without any strategic or operational plan. There is currently no sense of a “whole system” but many disparate parts.There is currently no shared vision for the OOHC system.... [which] has contributed to uncoordinated and un-integrated services¹¹

The proposed strategic plan would ‘guide the reform of the OOHC system and provide clear direction on the roles of all partners involved in the delivery of OOHC services.’¹² This

¹⁰ State of Tasmania, *Response to Case Study 24 – Preventing, and responding to allegations of, child sexual abuse occurring in out of home care*, Royal Commission into Institutional Responses to Child Sexual Abuse, (2015), 5.

¹¹ Tasmanian Government, *Out of Home Care Reform in Tasmania* (2014) page 7 ; see also page 12

¹² Tasmanian Government, *Out of Home Care Reform in Tasmania* (2014),12.



strategic plan would also provide ‘the reference points through which all developments, monitoring, reviewing and financial allocation will be made.’¹³

Without this strategic plan being put in place, a baseline has not as yet been established, timeframes and responsibilities have not been made clear, and monitoring frameworks and mechanisms have not been articulated.

In my opinion, fundamental to the successful implementation of a reform such as this is the need to prioritise the development of the proposed strategic plan, accompanied by an implementation plan setting out an implementation timeframe and detailing the elements of implementation, as has been done for the CPS Redesign process.

These guiding documents will provide direction as well as the opportunity to provide updates on progress and implementation against timeframes. Without such a strategic plan and implementation plan there is effectively no way to monitor progress of the reform, and no clear articulation of how reform actions would contribute to the achievement of the proposed outcomes and vision of the reformed OOHC system.

Furthermore, this strategic plan must include oversight mechanisms - particularly external and independent mechanisms - which would contribute to the system operating safely, equitably, efficiently, transparently and in a manner that is accountable to those it serves (especially children and young people). The role of oversight mechanisms – particularly those which provide ways in which the system is accountable to children in it – is a matter I address later in this Report.

RECOMMENDATION ONE

Prioritise the development of a strategic plan and implementation plan for the OOHC reform. Ensure the strategic plan incorporates strong governance and oversight mechanisms.

Closer Integration of OOHC and Child Protection reforms

Related to the development of a strategic plan for the OOHC reforms, is the intersection and overlap between the OOHC reforms, concurrent reforms within CYS as a whole, and the CPS Redesign. The CPS Redesign process, which began in late 2015, has a particular focus on managing the “front end” of the child protection system – that is, before a child is subject to care and protection orders and placed in OOHC. Presumably, this was because the OOHC reforms were underway and would lead to the system reforms articulated in the November 2014 reform document.

However, despite the reforms apparently progressing separately, the CPS Redesign does consider elements of the OOHC system because it is an integral part of the continuum of services for children in the child protection system. The fifth outcome of the CPS Redesign,

¹³ Ibid.



for example, is that ‘children experience the OOHC service as safe, nurturing and stable, promoting ongoing family and community connections.’

In my opinion, implementation of reforms occurring in OOHC, child protection, and across CYC as a whole would benefit from an overarching strategic framework and implementation plan. Otherwise, there is a risk that actions will be implemented in isolation and without a proper appreciation of the consequences for reform in another sphere. For example, the CPS Redesign proposes restructuring child protection services into units focused on one of three areas; court tasks, short term (reunification) case management and long term (permanency) case management. This proposed restructure is clearly relevant to and will have an impact on the OOHC reforms and vis-a-versa. Without a clear concept of the shape and nature of the reformed OOHC system – and the role to be played by Child Safety Workers in relation to a child who is placed with an NGO service provider – it is difficult to see how policies and practice guides in the Practice Manual can be reviewed and updated.

Therefore, in my respectful opinion, consideration should be given to aligning all elements of child protection and OOHC related reforms underway, into one strategic framework and implementation plan to be overseen by properly resourced implementation teams.

RECOMMENDATION TWO

More closely integrate the OOHC Reform and the CPS Redesign, and provide the resourcing required for successful and ongoing implementation, including by providing dedicated funding for implementation teams.

Establishment of an independent expert oversight committee to advise and guide the reform

The Child Protection Redesign and reforms to OOHC are significant and complex reforms which, if implemented appropriately have the potential to achieve successful and lasting improved outcomes for those children and young people who enter the child safety and OOHC system. The importance of strengthened governance arrangements and robust enduring external expert oversight to guide reform cannot be overstated.

External oversight arrangements to guide and monitor reform implementation has occurred in other jurisdictions where there is an understanding that such a process is a critical factor in ensuring reform to complex service systems is sustained, enduring and accountable.

In South Australia, the South Australian Child Protection Systems Royal Commission handed its Report to Government in August 2016.¹⁴ In May 2016, the Queensland Government received the Report of the *Special Taskforce on Domestic and Family Violence* (the

¹⁴ South Australia Child Protection Systems Royal Commission, *Child Protection Systems Royal Commission Report*, (2014). <<http://www.agd.sa.gov.au/child-protection-systems-royal-commission>>



Taskforce) chaired by the Honourable Quentin Bryce,¹⁵ while in Victoria the *Royal Commission into Family Violence* delivered its recommendations in March 2016.¹⁶

I include reference to family violence reform because in my opinion implementation issues relating to family violence reform are highly comparable to those arising in the context of child protection/child safety system and OOHC reform. This is because these are issues which are complex, multi-faceted and require responses across a number of government portfolios and from the community sector.

Therefore, there is value in considering the common message occurring in each of the Reports of the above-mentioned inquiries - and that is, for reform to be successful, it must be long term, sustained, above politics and undertaken within a robust and independent governance framework.

In my respectful opinion, for implementation of the CPS Redesign and implementation of OOHC reform to be *fully* successful it is critical that we learn from and adapt implementation processes to reflect the expert and considered opinions expressed in the inquiries I have referred to.

As the Queensland Taskforce says:

Effective implementation is critical: ad hoc, misinformed, and/or ill-resourced implementation arrangements will not achieve effective reform. The motivation and momentum for implementation must be sustained over a long period, as only long-term change will bring the lasting elimination of domestic and family violence.The Taskforce therefore recommends that Government establish ongoing governance and monitoring arrangements to hold itself and the Queensland community to account for delivering recommendations in this Report and the forthcoming Strategy.¹⁷

In response to this identified need the Taskforce recommended the establishment of an independent advocacy and audit oversight mechanism, chaired by an eminent and independent Queensland and comprising representatives drawn from key sectors in the Queensland community – non-government organisations, industry, employer and employee groups and the education and social services sectors.

Similarly, the South Australian Royal Commission recommended the establishment of an across government steering committee to monitor and oversee the implementation of its recommendations. Membership proposed included representation by senior executives from relevant government agencies and at least one independent member external to the South Australian Government (Recommendation 257).¹⁸

¹⁵ Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland* (2015). <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/about/not-now-not-ever-report>>

¹⁶ Victoria, Royal Commission into Family Violence, Report and Recommendations (2014-2016).

¹⁷ Special Taskforce on Domestic and Family Violence in Queensland, above n 15, 109.

¹⁸ South Australia Child Protection Systems Royal Commission, above n 14, 611.



In Victoria, former Victoria Police acting chief commissioner Tim Cartwright has been appointed to oversee the implementation of all recommendations from the *Royal Commission into Family Violence*, in his role as Victoria's Family Violence Reform Implementation Monitor. A Family Violence Steering Committee with members drawn from police, the courts and the service sector has been established to assist Government to implement the Royal Commission's recommendations.

The Victorian Royal Commission was clear about the importance of establishing “sustainable and certain governance” for implementing its recommendations – with Recommendation 193 providing as follows:

The Victorian Government establish a governance structure for implementing the Commission's recommendations and overseeing systemic improvements in family violence policy.

The structure should consist of:

- A) Bipartisan standing parliamentary committee on family violence
- b) Cabinet standing sub-committee chaired by the Premier of Victoria
- c) Family violence unit located in the Department of Premier and Cabinet
- d) Statewide Family Violence Advisory Committee
- e) Family Violence Regional Integration Committees, supported by Regional Integration Coordinators
- f) An independent Family Violence Agency established by statute.¹⁹

Further discussion and related Recommendations can be found in Volume VI of the Royal Commission's Report.

RECOMMENDATION THREE

Establish an independent expert oversight committee to provide assistance and guidance to those implementing the child protection and OOHC reforms, accompanied by robust reporting arrangements on progress.

Directly involving young people in the design of services - they have lived experience

Listening to the voices of children and young people is fundamental to keeping them safe. This is a key finding from the Royal Commission into Institutional Responses to Child Sexual Abuse. In addition many of the young people I have consulted with have clearly articulated the importance of their voices being heard by those who provide OOHC and Child Protection.

¹⁹ Victoria, Royal Commission into Family Violence, above n 16, Vol VI, 130.



RECOMMENDATION FOUR

Establish an ongoing consultative panel of young people who have had experience of the OOHC and child protection systems, and who are therefore well-placed to contribute directly to the reform processes.

The need to establish independent, external oversight and monitoring

It is generally accepted that external independent oversight of the OOHC system is needed to ensure that services provided to children and young people are of a high quality, provide for their physical, emotional, psychological, cultural and other needs and create an environment where children are protected from abuse and neglect.

As is acknowledged in the ACT's *Out of Home Care Strategy 2015-2020*

When the territory removes a child or young person from their parent's care, it must actively exercise its duty of care to ensure that the child or young person is cared for in a safe environment and receives a better standard of care than he or she would have received at home. It is important to acknowledge that it is not possible to eliminate all risk in the provision of OOHC for vulnerable children and young people. By its very nature, provision of care services for babies through to older teenagers necessitates acceptance of a variety of risks and requires **a robust accountability and risk management framework to be wrapped around service delivery.** [my emphasis]²⁰

The Royal Commission into Institutional Responses to Child Sexual Abuse is looking at the role of independent oversight in OOHC as one mechanism for preventing child sexual abuse. There is value in extracting in full the Royal Commission's explanation of the reasons for and elements of oversight relevant to this Report:

According to the Royal Commission:²¹

Oversight in the context of service delivery and public administration carries a number of functions, including ensuring that:

- Operational processes are functioning properly
- Organisational objectives are being met
- Risks are recognised and mitigated
- Errors are uncovered and addressed
- Opportunities for improvement are identified and acted upon.

Oversight functions often require the overseeing body or individual or body to:

- Monitor operations and outcomes

²⁰ ACT Government, *Out of Home Care Strategy 2015-2020*, 44.

²¹ Consultation Paper Institutional Responses to Child Sexual Abuse Out of Home Care March 2016, 54.



- Review the quality, compliance and defensibility of processes and decisions
- Investigate critical incidents and complaints about service delivery
- Develop recommendations to improve processes, correct errors, compensate for identified failings.

In the context of OOHC, oversight typically involves:

- service providers self-assessing and continually reviewing their own policies, procedures and service delivery against relevant standards;
- lead departments reviewing their own service delivery and that of non-government agencies they engage;
- independent systemic monitoring and review;
- independent investigation and complaints handling.

In other jurisdictions across Australia a variety of mechanisms exist as part of the external, independent oversight of OOHC; these are summarised in the Table which is **Appendix A** of this Report. As is apparent from the Table the oversight and monitoring function is performed by a number of agencies with various functions which combined amount to an integrated system of external independent oversight. So, for example, in Queensland, functional responsibility for matters such as systemic oversight of the child protection system (a term which includes OOHC), individual advocacy, resolution of complaints and visiting children and young people in OOHC is spread between a number of agencies. In New South Wales, the Children’s Guardian has responsibility for various regulatory functions (such as accreditation of OOHC providers) which, combined with the work of the Ombudsman and the Advocate for Children and Young People, makes up the independent oversight and external monitoring system.

In Tasmania a complaint may be made to the Ombudsman by a person who believes they have been treated unfairly or unreasonably by a decision made by a Child Safety Worker in relation to a child’s care while in OOHC. The Ombudsman attempts to resolve the situation through discussion with the Child Safety Service. If this is unsuccessful, an investigation might be undertaken. The Ombudsman can make recommendations to the decision maker about how any problems should be resolved. However the Ombudsman cannot require the Department or any other public authority to act in a particular way. Any non-compliance with recommendations may lead to a report to Parliament.

However, in Tasmania there is as yet no process in place to register or deregister carers, no register of accredited carers and no requirement for organisations providing OOHC to be accredited or registered based on compliance with an agreed set of Standards. As discussed in the following section of the Report, children and young people in OOHC in Tasmania also need access to advocacy and assistance to make a complaint to an independent person. They also need to have access to a person who is independent of the Department and of their carer, to talk about things in their lives, both good and bad.

It is clear from the Table at **Appendix A** that Commissioners for Children and Children’s Guardians play an important independent monitoring and oversight role of the OOHC system in their respective jurisdictions. However the way in which they perform this function and the powers available to them, differs across the jurisdictions.



There is no doubt that the Commissioner for Children and Young People in Tasmania has the functions and powers required to undertake a systemic monitoring role in relation to OOHC. In accordance with its election policies, the Liberal government has delivered on its promise to provide a greater oversight role for the Commissioner for Children as per the recommendations of the review into that role undertaken by Professor Harries. The *Commissioner for Children and Young People Act 2016* commenced on 1 July 2016.

Under that Act, the Commissioner has wide functions and powers and may, for example, on his or her own motion:

(c) investigate, and make recommendations in respect of, the systems, policies and practices of organisations, government or non-government, that provide services that affect children and young people; and

(d) investigate, and make recommendations in respect of, the effects of any legislation, proposed legislation, documents, government policies, or practices or procedures, or other matters relating to the wellbeing of children and young people.²²

The Commissioner also has wide functions which include promoting, monitoring and reviewing the wellbeing of children and young people generally, although the Commissioner does not have an individual complaint handling function. The Commissioner has an individual advocacy role only in relation to children and young people detained under the *Youth Justice Act 1997*.

This welcome expansion of functions and powers has not been accompanied by provision of the additional resources required to perform the role. If these resources were provided, some form of regular systemic monitoring of OOHC services could be undertaken, perhaps through the provision to the Commissioner of regular reports against agreed standards and indicators. The issue of regular reporting of performance against standards is discussed further in that part of this Report that deals with Standards. This monitoring could complement monitoring undertaken by the DHHS as part of its contractual arrangements with providers and through child safety workers visiting children in their placements in accordance with relevant policies and procedures. This is a matter I have previously raised with Government.

RECOMMENDATION FIVE

Establish independent external oversight and monitoring of the OOHC system, including by providing the Commissioner for Children and Young People with six-monthly reports on compliance with Standards and other agreed indicators of the wellbeing of children and young people in the OOHC system in Tasmania.

²² Section 11 of the *Commissioner for Children and Young People Act 2016*



Actively seek out and listen to the voices of children and young people in OOHC - this will significantly improve their safety and promote their wellbeing

...*‘the child is a person not an object of concern’*...²³

Unlike the situation in most if not all States and Territories in Australia, in Tasmania there is no mechanism for ensuring that children and young people in OOHC have access to an independent person (i.e. independent of the CSS and of their carer/service provider) to whom they might express concerns or complaints or be supported to participate in decision making around their lives. Such mechanisms are an important element of any robust external and independent oversight of the OOHC system.

Reliance solely on systemic monitoring - whether that occurs through the Commissioner for Children and Young People or through public reporting against agreed standards and indicators - cannot provide us with information about the impact of the system on children and young people:

It is important not to gauge a system by statistics alone, and it is equally important not to rely only on governments reporting on their own achievements. A balanced view, one where the opinions of the recipients of the service— children and young people— can be heard, is imperative to ensure that any child protection system is accountable, transparent and responsive to the needs of children and young people.²⁴

As is acknowledged in the November 2014 OOHC Reform document, an OOHC system which places children firmly at the centre of policy development and service delivery is essential for the promotion of children’s wellbeing and safety.

Being ‘child-centred’ requires that we focus squarely on children’s needs and best interests, their safety, care, support and wellbeing in all decisions which may affect them.

In her 2011 review of child protection in the United Kingdom, Professor Munro articulated child-centred practice as a key principle underpinning good child protection work:

The system should be child-centred: everyone involved in child protection should pursue child-centred working and recognise children and young people as individuals with rights, including their right to participation in decisions about them in line with their age and maturity.²⁵

The [United Nations Convention on the Rights of the Child](#) (CRC) sets out the human rights that all children hold and provides what Professor Munro describes as a ‘child centred

²³ Baroness Elizabeth Butler-Sloss; Report of the Inquiry into Child Abuse in Cleveland 1987 in [The Munro Review of Child Protection: Final Report – A child centred system \(2011\)](#), p16.

²⁴ CREATE Foundation Report Card (2013), 4.

²⁵ The Munro Review, 23.



framework within which services to children are located'.²⁶ A number of Articles under the Convention have particular relevance for children in OOHC:

- Article 3 – Children’s best interests should be the primary consideration in all actions concerning them;
- Article 12 – Children have the right to express their views and to have their views considered in all matters affecting them in accordance with their age and maturity;
- Article 19 – Children have the right to protection from violence, abuse, neglect and exploitation; and
- Article 20 – Where a child is temporarily or permanently deprived of their family and whose best interests cannot be served in that environment they are entitled to special protection and assistance.

The [National Framework for Protecting Australia’s Children 2009-2020](#) (National Framework) explicitly recognises children as rights holders and signals the fundamentally important role that the CRC plays in guiding service delivery and outcomes aimed at reducing child abuse and neglect and promoting children’s safety and wellbeing. The National Framework emphasises what are known colloquially as the ‘three Ps’ of children’s rights (the rights to provision, protection and participation) in providing that:

Children have a right to be safe, valued and cared for. As a signatory to the United Nations Convention on the Rights of the Child, Australia has a responsibility to protect children, provide the services necessary for them to develop and achieve positive outcomes, and enable them to participate in the wider community.²⁷

Tasmania’s child protection legislation, the [Children Young Persons and Their Families Act 1997](#) recognises children as rights holders and provides that children are entitled to have their rights respected and ensured without discrimination (section 10D(2)). For example, the Act requires those performing a function or exercising a power under the Act to uphold a number of principles, including that:

- children must be treated in a manner which respects their dignity and their privacy (section 10D(1))
- children’s best interests must be the paramount consideration (section 10E)
- children have the right to participate in decisions which affect them, and to have their views taken into account; children should be provided with assistance to express their views (section 10F)
- Aboriginal children’s families and communities have a major, self-determining role in promoting their wellbeing (section 10G).

In my opinion, we cannot say we have a child centred system unless we ensure there are mechanisms in place to facilitate children’s participation in decision making that affects them

²⁶ The Munro Review, 16.

²⁷ [National Framework for Protecting Australia’s Children 2009-2020](#), 12.



and provide them with accessible and child friendly ways to express their views and opinions on the quality of care they are receiving.

Child Safety Workers are required by policy to visit children and young people in OOHC; the frequency of visits to any child is dependent on the type of order the child is on and the child's circumstances (if reunification is being undertaken). That policy is not publicly available and, as far as I am aware, there is no public reporting on compliance with this policy. Based on discussions I have had with children and young people and with those working in the system, for some children, these visits are not occurring in accordance with the policy. In my opinion this policy should be reviewed and compliance with it reported publicly on a regular basis.

However, and notwithstanding the importance of regular visiting by Child Safety Workers, there are strong arguments for providing children and young people in OOHC with the opportunity to speak with and receive support from persons who are independent of both the CSS and the OOHC provider.

In other jurisdictions children and young people in OOHC have access to individual advocacy and/or children's visitors programs; in most cases they can also complain to a body independent of the Department responsible for child protection and OOHC and seek reviews of decisions made about the way in which their wellbeing is promoted while in OOHC. These mechanisms and processes also form part of the external, independent oversight system of child protection/OOHC. Further information about these accountability and oversight mechanisms can be found in the **Attachments at Appendix B and Appendix C** of this Report.

The Queensland system is perhaps the most extensive insofar as the Office of the Public Guardian has specific responsibilities to provide help, support and advocacy for individual children and young people in OOHC (which includes foster care, kinship care and residential care). In that office, advocates are lawyers who can ensure that the views of young people are taken into account when decisions around their care are being made. Advocates can also support children and young people in Courts and in the Civil and Administrative Tribunal which has jurisdiction over certain aspects of a child's OOHC placement experience. This service is offered alongside a community visitors' program, which also provides an additional level of individual advocacy and monitoring of placement quality.

I am of the firm view that significant benefits would flow to children and young people in OOHC if they had access to individual advocacy on issues of concern or dispute. Children and young people in OOHC have discussed with me concerns around matters such as their placement, contact with family, quality of care issues and access to health care. Provision of an individual advocacy mechanism would, in my opinion, acknowledge that children and young people in OOHC have a right to express their views on decisions affecting them. Should matters require it, they could be supported to make a complaint or seek a review of a decision. In previous years, there have been calls for the establishment of a Children's Visitors Program or for a Guardian for Children to address this system gap in Tasmania.

In her November 2013 Report *Advocacy for Children in Tasmania* Professor Maria Harries made the following recommendations:



The Commissioner for Children work with the Ombudsman to consider the feasibility of developing, within the next five years, a visitor programme within the Office of the Ombudsman for children and young people in all forms of residential care, and;

In determining the feasibility of such an arrangement consideration needs to be given to the inclusion of all relevant residential care services, including for example disability care services.

Investigate the possibility of establishing a position for an independent child advocate within DHHS - a contracted part time position that can report directly to the Secretary. This position could explore possibilities of utilising new computer-assisted software to increase participation of children and young people in care in decision making and in communicating their concerns. Such a position would provide a means for ensuring concerns and complaints by children and young people in care are appropriately directed and dealt with. Importantly, such a position would need to be situated in a 'safe' child-friendly environment and seen to be separate from major departmental activities. Linkage arrangements with the office of the Commissioner for Children in relation to systemic issues would need to be in place.²⁸

A finding of the *Select Committee on Child Protection* (Tasmania) was:

Children in OOHC need an independent person to speak with, who is not their Child Protection Worker, or their carer, about what is happening in their lives, good or bad and who can promote their wellbeing.²⁹

The 2011 Report of the *Select Committee on Child Protection* also included a recommendation based on the Pilot Children's Visitors Program conducted by my predecessors as follows:

Linking each child in care with a Child Visitor will ensure that a child leaving State care has a significant adult in their lives and mentor beyond the age of 18. The Children's Visitors Program should be extended to all children in State care.³⁰

The Pilot Visitors Program, limited to the South, was discontinued once it became apparent it was not within the functions or powers of the Commissioner for Children.

I do not believe the *Commissioner for Children and Young People Act 2016* provides the Commissioner with the power to establish a children's visitors program; the Commissioner certainly does not have an individual complaint handling function or the power to provide

²⁸ Adjunct Professor Maria Harries, *Advocacy for Children in Tasmania*, November 2013, 5
<http://www.dhhs.tas.gov.au/children/legislative_reform/actc>

²⁹ Finding 81, Report from *Select Committee on Child Protection* (2011), 115.

<<http://www.parliament.tas.gov.au/ctee/House/Reports/Final%20Report%20CP.pdf>>

³⁰ Recommendation 71, Report from *Select Committee on Child Protection* (2011), 109.

<<http://www.parliament.tas.gov.au/ctee/House/Reports/Final%20Report%20CP.pdf>>



individual advocacy services to children in OOHC. Regardless, in my opinion provision of an individual advocacy function and/or visiting program for children in OOHC might more appropriately sit with another statutory authority or organisation independent from CYS and from those providing OOHC services in the non-government sector.

At the very least, consideration could be given to establishing within the DHHS, an Advocate for Children and Young People in OOHC, as was recommended in the Harries Report and as exists in Western Australia. The role and functions of the Advocate for Children in Care in Western Australia is summarised in **Appendix B**. A clear disadvantage of a role such as this is the lack of independence from the Department.

Taken together, independent systemic monitoring, individual advocacy programs and children's visitors programs would make it more likely that deficiencies in the standard of care provided to children in OOHC would be identified.

Even if individual advocacy was available for children and young people in OOHC, apart from the Ombudsman or internal complaints mechanisms within CYS, there is nowhere for children and young people to go should they wish to question a decision around their care. A common theme identified in my discussions with those working in the sector is that there is in effect no external accountability for decisions made by Child Safety Workers around a child's placement or elements of a case and care plan.

Ideally, children and young people should have access to an independent decision maker – such as a Tribunal – where they wish to dispute a decision made around their care. Such Tribunals vested with appropriate jurisdiction exist in Queensland, Western Australia, Victoria and the ACT. In late 2015, consideration was being given to the establishment of a single Tribunal for Tasmania, vested with jurisdiction across a range of issues.³¹ In my opinion, work on this project should be expedited and consideration given to vesting that Tribunal with jurisdiction over selected areas of OOHC practice.

In addition to the benefits individual advocacy and children's visiting programs would offer to the individual children and young people affected, this advocacy and support could, in my opinion, also contribute significantly to fostering cultural change within the system towards more child centred decision making.

“I spent most of my life in OOHC. I was frequently moved from placement to placement. I had no one I could talk to or I felt safe going to when I had a problem or needed help. All I often wanted was just someone to listen”

18 year old young person recently transitioned from OOHC.

RECOMMENDATION SIX

Ensure that mechanisms are in place to seek out and listen to the individual voices of children and young people in the OOHC system, including by:

³¹http://www.justice.tas.gov.au/justice/home/search?mode=results&queries_name_query=single+tribunal



(A) Establishing a visiting program for individual children and young people in OOHC - which incorporates an individual advocacy component.

(B) Reviewing the CSS Policy on visiting children in OOHC and reporting publicly on compliance with it.

(C) Expediting the establishment of a Tribunal in Tasmania vested with jurisdiction that includes decisions made about children's wellbeing in OOHC.

Ensure compliance against Standards and report publicly

Tasmania does not have its own Standards against which the performance of those providing OOHC (including the DHHS) can be held to account. Although a *Charter of Rights for Tasmanian Children and Young People in Out of Home Care*³² is embedded in practice, there is no public reporting specifically against the Charter.

Annual reporting against some *quantitative* indicators occurs via reports released by the Australian Institute of Health and Welfare, the Productivity Commission's Report on Government Services and, to a lesser extent, in the DHHS' Annual Report. Other indicators of equal, if not more significance, such as compliance with policy requiring visits by Child Safety Workers, should also be publicly reported upon.

The *National Standards for Out of Home Care* provide a suite of indicators to measure the quality of care provided to children and young people in OOHC. The National Standards aim to 'ensure children in need of OOHC are given consistent, best practice care, no matter where they live'.³³ Their development was informed by extensive consultation with government and non-government sectors, carers and young people with OOHC experiences.

The overarching principles for the National Standards of OOHC are:

- Children and young people in OOHC have their rights respected and are treated in accordance with the United Nations Convention on the Rights of the Child.
- Care provided to children and young people living in OOHC is focused on providing a nurturing environment, promoting their best interests, and maximising their potential.
- Children and young people living in OOHC are provided with opportunities for their voice to be heard and respected and have the right to clear and consistent information about the reasons for being in care.

³² DHHS, Charter of Rights for Tasmanian Children in Out of Home Care
<http://www.dhhs.tas.gov.au/__data/assets/pdf_file/0011/62993/Charter_of_Rights_Poster.pdf>

³³ Commonwealth of Australia, An Outline of National Standards for out of home care, 2011, 4.



- Care provided to children and young people will promote the benefits of ongoing safe, meaningful and positive connection and involvement of parents and families and communities of origin.
- Carers and their families are key stakeholders and partners in the care of children and young people, and their role is to be respected and supported.
- Children and young people living in OOHC are provided with a level of quality care that addresses their particular needs and improves their life outcomes.
- Continuous system improvements are designed to achieve better outcomes for all children and young people living in OOHC.
- OOHC for children and young people is measured, monitored and reported in a transparent, efficient and consistent manner over time.
- Aboriginal and Torres Strait Islander communities are to be involved in decisions in accordance with the Aboriginal Child Placement Principle.³⁴

The Standards focus on areas that directly impact on the experiences, wellbeing and outcomes of children in OOHC. These areas are identified as: health; education; care planning; connection to family; culture and community; transition from care; training and support for carers; belonging and identity, and safety, stability and security. Agreed and defined indicators are identified against each standard.

At the time the National Standards were developed, several states and territories had existing standards for OOHC. For example, New South Wales has had OOHC standards since 2003. Work was undertaken to ensure alignment with existing standards to minimise administrative imposts on those jurisdictions. Since the standards were introduced, jurisdictions have been reviewing their existing standards (e.g. NSW and WA) to ensure they align with the National Standards whilst other jurisdictions such as the ACT have adopted the National Standards.

Standards for OOHC in other Australian states and territories are as follows:

[ACT Children and Young People \(ACT Out of Home Care\) Standards 2016](#)

[NSW Child Safe Standards for Permanent Care \(November 2015\)](#)

[NT Standards of Professional Practice \(March 2014\)](#)

[QLD Statement of Standards - Child Protection Act 1999, s122](#)

[SA Standards of Alternative Care \(2009\)](#)

[VIC Human Services Standards \(July 2012\)](#)

³⁴ Commonwealth of Australia, An Outline of National Standards for out of home care, 2011, 6.



[WA Better Care, Better Services: Standards for children and young people in protection and care \(2007\)](#) (The WA standards are currently under review)

For Tasmania, the National Standards could play a critical role given that, apart from the *Charter of Rights for Children and Young People in OOHC*, we have no set of standards for OOHC of our own. In 2013, the *Children, Young Persons and Their Families Act 1997* was amended to include a requirement that those performing or exercising a function or power under the Act are to have regard to relevant national standards (section 10A(b)).

An action under the Third Three-Year Action Plan for the *National Framework for Protecting Australia's Children* is to examine how to continue full implementation of, and give best effect to, the National Standards for OOHC.

The Australian Institute of Health and Welfare has developed a [National Standards Report Card](#) which shows national performance against 19 indicators related to the 13 standards.

If the National Standards – or a Tasmanian version of them - are to be adopted in Tasmania, performance against the standards and against agreed indicators should be reported on publicly, and preferably live on an online dashboard which is regularly updated to ensure information is current. An international example of such a dashboard is the [Minnesota Department of Human Services](#), which provides detailed information on performance against indicators and targets. Implementing an online dashboard demonstrates a commitment to ongoing improvement, as well as transparency and accountability to the public.

This approach is supported by the [Tasmanian Government Open Data Policy](#) which embeds open data principles across the Tasmanian Government and states that by making data available, the government can 'promote transparency, participation, collaboration and innovation' and 'facilitate better public services'. This policy guides the principles under which information can be shared publicly and states that agencies 'start from a position of data openness with the expectation in favour of data release, unless there is an overriding reason for not doing so'.

The DHHS in Tasmania already has an online dashboard for [Human Services Statistics](#)³⁵ which includes point-in-time statistics for housing access, community access and the following CYS statistics for September 2016:

- Children in active transition
- Children in OOHC
- Notifications referred for investigation.

As this site already exists, it could be a potential hosting site for regular publication of reporting against agreed Standards and indicators.

Additionally, and acknowledging the systemic monitoring role of the Commissioner for Children and Young People, CYS could provide my office with regular reports as agreed.

³⁵ <<http://www.dhhs.tas.gov.au/humanservicesstats>>



A number of states, in addition to adopting Standards, have also developed Outcome Frameworks for Children in OOHC which aim to measure, monitor, and report on the performance of the OOHC system in achieving concrete positive outcomes for children in OOHC.³⁶ Indicators of performance go beyond a focus on compliance and performance management to include those which are focused on the wellbeing of children and young people in OOHC.

Many of these outcome frameworks cover key aspects of child wellbeing, which could be considered as an option for Tasmania, noting the work currently being undertaken on child wellbeing as part of the CPS Redesign Project. There is also a need to report publicly against these wellbeing indicators. This could be achieved, for example, by undertaking regular surveys of children in OOHC and /or by using children's visitors to assess children's wellbeing against a set of defined indicators.

RECOMMENDATION SEVEN

- (A) The Tasmanian Government develop and adopt Standards for the provision of OOHC in Tasmania and provide regular reports on compliance with these Standards.**
 - (B) Noting the work currently being undertaken on child wellbeing as part of the Child Protection Redesign, the Tasmanian government also develop an Outcomes Framework specific to children and young people in OOHC in Tasmania.**
-

³⁶ For example an Outcomes Framework for children and young people in OOHC in Queensland has been released but as at the date of writing was not yet available online. It is in the process of being operationalised.



Appendix A

Overview of external oversight and complaints handling in OOHC and Child Protection in Australian states and territories and New Zealand

Jurisdiction	Role	Relevant Functions	Independence
QLD	In Queensland, the Family and Child Commission provides broad oversight of the child protection system. The Ombudsman may handle complaints about government agencies providing or supervising OOHC. ³⁷ The Public Guardian provides individual support and advocacy for children in OOHC.		
	Queensland Family and Child Commission (<i>Family and Child Commission Act 2014</i>) [Systemic]	One of the functions of the Queensland Family and Child Commission (QFCC) is to provide oversight of the QLD child protection system (s 9). To deliver this function, the QFCC monitors, reviews and reports on the child protection system from a systemic perspective. The QFCC is required to provide an annual report on the performance of the child protection system. The Commissioner is not involved in any individual advocacy or investigations.	A Commissioner is subject to the directions of the Minister in performing the Commissioner's functions under the Act (s 22).
	Office of the Public Guardian (<i>Public Guardian Act 2014</i>) [Individual - advocacy]	The Public Guardian has functions to support and advocate for children on an individual basis who are in the child protection system and OOHC. Two programs are the primary vehicles for this: the Community Visitor Program and Child Advocates (lawyers). The Public Guardian does not have an inquiry or complaint function in relation to children and young people; they may however make or refer a complaint on behalf of child.	The Public Guardian may do all things necessary to perform its functions (s 14). The Public Guardian is not under the control or direction of the Minister (s 15).
	Queensland Ombudsman (<i>Ombudsman Act 2001</i>)	The Ombudsman investigates complaints about the administrative actions, practice and procedures of Queensland public agencies, including the Department of Communities, Child Safety and Disability Services, and their staff that may be unlawful, unreasonable, unjust, improperly discriminatory or	The Ombudsman is not subject to direction by any person about the way the Ombudsman performs his or her functions

³⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, Opening address by Senior Counsel assisting, 'Public hearing into preventing, and responding to allegations of, child sexual abuse occurring in out of home care, Case study 24,' Sydney, 29 June 2015, p. 7.

	[Individual - investigation]	otherwise wrong.	under the Act; or the priority given to investigations (s 13).
ACT	In the ACT, oversight of OOHC and child protection is provided by the Office of the Public Advocate and the Children and Young People Commissioner. Official Visitors oversee residential care facilities and receive and consider complaints regarding such facilities and advocate for children and young people.		
	Public Advocate and Children and Young People Commissioner, Human Rights Commission (<i>Human Rights Commission Act 2005</i>) [Systemic and individual advocacy/investigation]	<p>After a review of the Human Rights Commission, a number of structural and legislative changes have occurred. The Human Rights Commission has been expanded to include the Public Advocate.</p> <p>The Public Advocate advocates for the rights of children and young people and also has functions under the <i>Children and Young People Act 2008</i> (ACT).</p> <p>The Public Advocate undertakes individual advocacy for children involved in the child protection system. The Advocate may listen to and investigate concerns, monitor the provision of services to individual children and appear in Children’s Court proceedings.</p> <p>The Public Advocate must also be notified if any reports of abuse are made regarding a child in OOHC. It will then monitor action taken in response to the incident.</p> <p>The Children and Young People Commissioner reviews services for children and young people and provides advice to government and providers on how to improve services.</p> <p>The Commission can investigate individual complaints regarding services for children and young people.</p>	The Commission is not subject to the direction of anyone else in relation to the exercise of a function under the Act, except when directed by the Minister to inquire into and report on a particular matter (s 16).
	Official Visitor for Children and Young People (<i>Official Visitor Act 2012</i>)	Official Visitors (Children and Young People Services) inspect and report on residential care facilities. The official visitors seek to identify, monitor and resolve service issues locally, using early intervention and resolution practices, and with a view to improve service quality. They also receive and	The Act is silent regarding independence, however the OV website states they ‘work independently of government

	[Individual – advocacy and investigation]	consider complaints regarding residential care facilities, and are available to talk to children in care and anyone else who has a concern about those children.	administration. ³⁸
SA	In SA, the Guardian for Children and Young Persons oversees the circumstances of children in OOHC. The Council for the Care of Children provides advice to the Government and oversees the operation of child protection legislation. Individual complaints may be made to the Ombudsman about government agencies providing or supervising OOHC services. Complaints about non-government OOHC agencies may be made to the Health and Community Services Complaints Commissioner. ³⁹		
	Care Concerns Investigations [Individual – investigation]	In June 2016, responsibility for the investigation of serious care concerns was transferred to the Incident Management Unit in the Corporate Services business team of the Department for Education and Child Development. From that point, all serious care concerns have been investigated by experienced investigators who are independent to child protection operations staff. Investigators have expertise in child protection and law enforcement. Investigators from that unit have been transferred into the new investigation unit, now established in the Department for Child Protection. As a result of the Child Protection Royal Commission, the SA Government will initiate the Care Concern Management reform project. This project will deliver a care concern system that better identifies, records, investigates and responds to concerns about the safety of children in care.	
	Guardian for Children and Young Persons (<i>Children and Young People (Oversight and Advocacy Bodies) Act 2016</i>)	The Guardian advocates for and promotes the rights of children under the guardianship or in the custody of the Minister. The Guardian monitors the circumstances of children under the guardianship or custody of the Minister and provides advice on the quality and provision of their care. The Guardian monitors residential care through the use of surveys, reviews of records and informal visits. The Guardian may inquire into and provide	The Guardian is independent of direction or control by the Crown or any Minister or officer of the Crown (s21).

³⁸ See <http://www.publictrustee.act.gov.au/visitor-scheme>

³⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, Opening address by Senior Counsel assisting, 'Public hearing into preventing, and responding to allegations of, child sexual abuse occurring in out of home care, Case study 24,' Sydney, 29 June 2015, p. 7-8.

	<p>[Systemic and individual – advocacy and investigation]</p>	<p>advice to the Minister in relation to system reform necessary to improve the quality of care and may investigate and report matters referred by the Minister.</p> <p>The Guardian audits a sample of the annual reviews that are held for children and young people in long-term state care, monitoring the quality of their care and the effectiveness of case planning in meeting their needs.</p> <p>Observations during monitoring can sometimes lead to individual advocacy or advocacy on systemic issues.</p>	
	<p>Council for the Care of Children (Part 7B, <i>Children's Protection Act 1993</i>)</p> <p>[Systemic]</p>	<p>The Council provides advice and reports to the Minister regarding the rights and interests of children. The Council is comprised of members including chief executives of departments closely involved in issues related to the care and protection of children, and members of the community (inc l. young people with an OOHC experience). The Council reviews the operation of the <i>Children's Protection Act 1993</i> and the <i>Family and Community Services Act 1972</i> so far as the affect the interests of children.</p> <p>The Council for the Care of Children will soon be abolished with provisions <i>Children and Young People (Oversight and Advocacy Bodies) Act 2016</i> establishing a new Child Development Council to commence on a date to be proclaimed.</p>	<p>The Council is subject to direction by the Minister, however it cannot be directed to make a particular finding or recommendation (s 52F(6)).</p>
	<p>Health and Community Services Complaints Commissioner (<i>Health and Community Services Complaints Act 2004</i>)</p> <p>[Individual – investigation]</p>	<p>The Commissioner receives, assesses and resolves complaints about health and community services, including child protection and OOHC, when a direct approach to the service provider is either unreasonable or has not succeeded.</p>	<p>The Commissioner is an independent, statutory office. The Commissioner must act independently, impartially and in the public interest (s 11).</p>

	Ombudsman SA (<i>Ombudsman Act 1972</i>) [Individual – investigation]	The Ombudsman may investigate complaints about SA government agencies and conducts audits of these agencies if it considers that it is in the public interest.	The Act does not explicitly refer to independence, however the Ombudsman has the powers of a Royal Commission (s19) and the website states that the Ombudsman is an independent officer. ⁴⁰
NT	In the NT, the Children’s Commissioner has broad functions which include systemic monitoring of the care and protection of children and undertaking inquiries. Individual complaints regarding OOHC and child protection are also dealt with by the Commissioner. ⁴¹		
	Children’s Commissioner (<i>Children’s Commissioner Act 2013</i>) [Systemic and individual – investigation]	The Commissioner has broad powers, including dealing with complaints regarding the services provided to children involved in child protection or OOHC. The Commissioner may also investigate matters on the Commissioner’s own initiative that may form the grounds for making a complaint (irrespective of when the matter occurred and whether or not a complaint was made). The Commissioner also has extensive monitoring responsibilities regarding the care and protection of children, such as the implementation of government decisions, administration of the <i>Care and Protection of Children Act</i> , and the way the department deals with allegations of abuse in OOHC.	The Commissioner is an independent statutory office which is not subject to the direction of anyone in relation to the way its functions are performed (s 11).
NSW	In NSW, the Advocate for Children and Young People focuses on systemic issues affecting children in NSW, while the Children’s Guardian provides systemic advocacy for children in OOHC. The Ombudsman handles complaints and keeps under scrutiny systems involved in delivering OOHC. ⁴²		
	Advocate for Children and Young People (<i>Advocate</i>)	The Advocate was established in 2015, replacing the Commission for Children and Young People. The Advocate’s focus is systemic issues	The Act does not explicitly refer to independence however the

⁴⁰ See <http://www.ombudsman.sa.gov.au/about-us/>

⁴¹ Royal Commission into Institutional Responses to Child Sexual Abuse, Opening address by Senior Counsel assisting, ‘Public hearing into preventing, and responding to allegations of, child sexual abuse occurring in out of home care, Case study 24,’ Sydney, 29 June 2015, p. 9.

⁴² Royal Commission into Institutional Responses to Child Sexual Abuse, Opening address by Senior Counsel assisting, ‘Public hearing into preventing, and responding to allegations of, child sexual abuse occurring in out of home care, Case study 24,’ Sydney, 29 June 2015, p. 6-7.

	<p><i>for Children and Young People Act 2014)</i></p> <p>[Systemic]</p>	<p>affecting children and young people and promoting their participation. At the Minister's request the Advocate may conduct special inquiries into particular issues affecting children or young people.</p> <p>The Advocate does not have the function of dealing directly with the complaints or concerns of particular children or young people.</p>	<p>website states that the Advocate is an independent statutory office.⁴³</p>
	<p>Children's Guardian <i>(Children and Young Persons (Care and Protection) Act 1998)</i></p> <p>[Systemic]</p>	<p>The Office of the Children's Guardian promotes the interests and rights of children in OOHC particularly through the accreditation of OOHC providers. The Guardian also works to improve the protection of children in NSW by helping organisations, employers and individuals understand the meaning, importance and benefits of being child-safe. The Guardian does not deal directly with complaints or concerns of individual children.</p>	<p>Independent statutory position. Reports directly to the Minister for Family and Community Services.</p>
	<p>NSW Ombudsman <i>(Ombudsman Act 1974)</i></p> <p>[Systemic and individual – investigation]</p>	<p>The Ombudsman may handle complaints regarding community service providers, including child protection and related support services provided by Family & Community Services and OOHC.</p> <p>The Ombudsman conducts audits of OOHC and oversees the Department's handling of individual reportable conduct allegations. The Ombudsman has a youth liaison officer who provides support, advice and assistance to young people about making a complaint and develops strategies to assist young people's access to the Ombudsman's services.</p> <p>The Ombudsman also coordinates Official Community Visitors who are responsible to the Minister for Disability Services and the Minister for Community Services. The Official Community Visitors promote the best</p>	<p>The Act does not explicitly refer to independence however the website states that the NSW Ombudsman is an 'independent and impartial watchdog.'⁴⁴</p>

⁴³ See <http://www.acyp.nsw.gov.au/about>

⁴⁴ See <https://www.ombo.nsw.gov.au/>

		interests of children and young people in OOHC and children and young people and adults with a disability in care.	
VIC	In Victoria, systemic oversight in the areas of OOHC and child protection is provided by the Commission for Children and Young People. Complaints about government agencies and non-government OOHC agencies or carers may be made to the Victorian Ombudsman. ⁴⁵		
	<p>Commission for Children and Young People <i>(Commission for Children and Young People Act 2012)</i></p> <p>[Systemic/Individual]</p>	<p>The Commission provides advice to Ministers and others regarding the provision of services to children and child-safety, and may conduct inquiries into, inter alia, the safety and wellbeing of an individual or group of vulnerable children or young people. These may be systematic inquiries where the Commission identifies persistent or recurring issues in health services, human services or schools which are impacting on the safety and wellbeing of children and young people. Victoria also has a Commissioner for Aboriginal Children and Young People to oversee policies and practices that affect Aboriginal children and young people.</p> <p>The Visitor Program for Secure Welfare Services involves Commission staff visiting children in the two residential units regularly. In 2015-16, the Commission trialled an independent visitor program for residential care services.</p> <p>The Commission helps organisations to comply with compulsory minimum Child Safe Standards, and, from 2017, a new reportable conduct scheme will require centralised reporting to the Commission for Children and Young People by relevant organisations of allegations of child abuse and misconduct towards children made against their workers or volunteers.</p>	<p>The Commission must act independently and impartially in performing its functions (s 8). The Commission reports directly to the Victorian Parliament.</p>
	Victorian Ombudsman <i>(Ombudsman Act 1973)</i>	The Ombudsman has jurisdiction to investigate complaints by a child or young person who is in the care of the Secretary, Department of Health & Human Services, and is receiving care services provided pursuant to the	The Act does not explicitly refer to independence however the website states that the Victorian Ombudsman is an independent

⁴⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, Opening address by Senior Counsel assisting, 'Public hearing into preventing, and responding to allegations of, child sexual abuse occurring in out of home care, Case study 24,' Sydney, 29 June 2015, p. 8-9.

	[Systemic and individual – investigation]	<p><i>Children, Youth and Families Act.</i></p> <p>The Ombudsman can also commence an investigation into a particular matter using 'own motion' powers, without having received a specific complaint.</p>	officer of the Victorian Parliament. ⁴⁶
	<p>Victorian Children's Council</p> <p>Children's Services Coordination Board (<i>Child Wellbeing and Safety Act 2005</i>)</p> <p>[Systemic]</p>	<p>The Council provides advice to the Minister for Families and Children with expert independent advice relating to policies and services that enhance the health, wellbeing, development and safety of children.</p> <p>The Board is made up of Secretaries of relevant Departments and is responsible for coordinating and monitoring government actions which impact on children and young people to improve outcomes, particularly for those who are most vulnerable.</p>	
WA	<p>In WA, the Commissioner for Children and Young People is responsible for monitoring and reviewing legislation, policies, practices and services affecting the wellbeing of children and young people and has oversight of the handling by government agencies of complaints made by children. Individual complaints regarding OOHC are handled by the WA Ombudsman.⁴⁷</p>		
	<p>Commissioner for Children and Young People (<i>Commissioner for Children and Young People Act 2006</i>)</p> <p>[Systemic]</p>	<p>The Commissioner promotes and advocates for the wellbeing of children in WA. The Commissioner also oversees the way government agencies deal with complaints from children and young people and any trends in the nature of the complaints. The Commissioner may also conduct special inquiries into matters affecting the wellbeing of children and young people, on his or her own initiative or at the request of the Minister.</p> <p>The Commissioner does not handle individual complaints, and refers people to the Ombudsman for individual complaints by or on behalf of children and young people about a government agency.</p>	<p>The Commissioner is an independent statutory office not subject to direction by the Minister, except where the Minister has given directions in relation to general policy to be followed (ss 25, 26).</p>

⁴⁶ See <https://www.ombudsman.vic.gov.au/About/The-Victorian-Ombudsman>

⁴⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, Opening address by Senior Counsel assisting, 'Public hearing into preventing, and responding to allegations of, child sexual abuse occurring in out of home care, Case study 24,' Sydney, 29 June 2015, p. 9-10.

	<p>WA Ombudsman (<i>Parliamentary Commissioner Act 1971</i>)</p> <p>[Individual – investigation]</p>	<p>The Ombudsman receives, investigates and resolves complaints where a person feels they have been treated unfairly by a state government department, including the Department of Child Protection and Family Support. The Ombudsman recommends that people try to resolve their complaints with the relevant department prior to contacting the Ombudsman.</p>	<p>The Ombudsman is an independent officer of the WA Parliament.⁴⁸</p>
	<p>Advocate for Children in Care</p> <p>[Individual –advocacy]</p>	<p>The Advocate for Children in Care provides specialist advocacy, information and support to individual children and young people in OOHC. The Advocate supports children and young people if they want to have a decision reviewed or make a complaint.</p>	
TAS	<p>The Commissioner for Children and Young People has wide functions and powers and may investigate the systems, policies and practices of organisations that provide services which affect children and young people, and may investigate the effects of legislation, policies, practices and procedures or other matters affecting children. There is currently no visitors program or independent advocacy specifically for individual children under the guardianship or custody of the Secretary. Oversight of OOHC is provided within Child Protection Services.⁴⁹ Complaints may be made to the Ombudsman about administrative actions of government bodies. OOHC in Tasmania is currently undergoing reform.⁵⁰</p>		
	<p>Commissioner for Children and Young People (<i>Commissioner for Children and Young People Act 2016</i>)</p> <p>[Systemic]</p>	<p>The Commissioner’s functions are to advocate for and promote the rights of all children in Tasmania generally; research, investigate and influence policy development; promote, monitor and review the wellbeing of children and young people generally, promote children’s participation and provide advice to the Minister in relation to the health, welfare, care, protection and development of children.</p>	<p>The Commissioner is required to act independently, impartially and in the public interest (s8(3)).</p>

⁴⁸ See http://www.ombudsman.wa.gov.au/About_Us/Role.htm

⁴⁹ Submission by the State of Tasmania, Issues Paper 4 – Preventing Sexual Abuse of Children in Out of Home Care, 8 November 2013, p 11.

⁵⁰ State of Tasmania, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Case Study 24: Preventing, and responding to allegations of child sexual abuse occurring in out of home care, 2015, p 4-5.

		<p>The Commissioner has the power to investigate the systems, policies and practices of organisations that provide services that affect children and young people, and investigate the effects of any legislation, government policies, or practices or procedures, or other matters relating to the wellbeing of children and young people.</p> <p>The Commissioner may inquire into any matter if requested by the Minister.</p> <p>Note: The Commissioner has an individual advocacy role for young people in youth justice detention, but not for children and young people in out-of-home-care.</p>	
	<p>Tasmanian Ombudsman (<i>Ombudsman Act 1978</i>)</p> <p>[Individual – investigation]</p>	<p>The Ombudsman may investigate the administrative actions of public authorities, or those contracted to provide the functions of a public authority, to ensure that their actions are lawful, reasonable and fair.</p>	<p>The Ombudsman is an independent officer appointed by the Governor, and answerable to the Parliament.⁵¹</p>
NZ	<p>New Zealand’s Children’s Commissioner monitors the services provided under the <i>Children, Young Persons and their Families Act 1989</i>.</p>		
	<p>Children’s Commissioner (<i>Children’s Commissioner Act 2003</i>)</p> <p>[Systemic and Individual – Investigation and Advocacy]</p>	<p>The Act gives the Children’s Commissioner three functions;</p> <p>Monitoring, assessing and reporting on services provided under the <i>Children, Young Persons and their Families Act 1989</i>.</p> <p>Advocating for the interests, rights and wellbeing of children.</p> <p>Raise awareness of and advancing the United Nations Convention on the Rights of the Child.</p>	<p>The Commissioner for Children must act independently when performing his or her statutory functions (s 12(2)).</p>

⁵¹ See http://www.ombudsman.tas.gov.au/about_us/our_role

Appendix B

Individual Advocacy and complaints (other than the Ombudsman)

Western Australia

Advocate for Children in Care

<https://www.dcp.wa.gov.au/ChildrenInCare/Documents/Advocate%20for%20Children%20in%20Care/ACIC%20Service%20and%20Protocols%202015.pdf>

The Department for Child Protection and Family Support is committed to protecting and promoting the interests of children and young people in our care. The role of the Advocate for Children in Care exists to make sure they have a voice in decisions that affect them and in services provided to them, and to promote the Department's Charter of Rights for Children and Young People in Care.

The Advocate for Children in Care provides advocacy services for and on behalf of all children and young people in the care of the CEO.

The Advocate advances their right to add value to and question decisions and actions that impact their lives as individuals, and to contribute at the collective level to service evaluation and development.

The Advocate also liaises with a wide range of stakeholders and provides the Department with strategic advice which contributes to policy development and quality assurance.

The position reflects the Department's commitment to providing young people in care with meaningful participation in their care, and complies with the requirements of the *Children & Community Services Act 2004* which enshrines the principle of **child participation**.

The Act directs that where decisions are likely to have a significant impact on a child's life, then he or she should be given all relevant information together with any necessary assistance to help them:

- navigate the system
- express his or her views and wishes to decision-makers
- access information about the decisions made and the reasons for them
- have an opportunity to respond.

Extracts from SERVICE PROTOCOLS

1. The services of the Advocate for Children in Care may be requested by any child or young person in the care of the CEO. This includes children or young people who are:
 - in provisional care and protection;
 - the subject of a protection order (time-limited) or protection order (until 18);
 - the subject of a negotiated placement agreement; or
 - provided with placement services.



2. The services of the Advocate for Children in Care may also be requested by young people who are eligible for leaving care services.
3. Requests and referrals can be made in any form, including in person, by telephone, email, text message and letter.
4. Requests for service may also be made by others acting on behalf of children or young people in care, with the general proviso that the child or young person is willing and able to communicate directly with the Advocate for Children in Care.
5. Where the child or young person concerned is unable to communicate because they are too young, have a disability or special needs, they are eligible for the services of the Advocate.
6. Where the matter raised is already under review by the Courts or other appeal mechanisms, such as the Case Review Panel, the Complaints Management process, the State Ombudsman or the State Administrative Tribunal, the Advocate for Children in Care will generally decline to accept the referral unless it is made by the reviewing body itself. Exceptions may also be made where there is reason to believe that the voice of the child or young person may not be heard, or that his or her interests may not be accurately represented in the existing process.
7. The Advocate for Children in Care will provide information, referral, advice, advocacy or support as appropriate to the circumstances and as negotiated with the child or young person. Where possible and appropriate, the child or young person will be encouraged and supported to raise his or her concerns with the relevant case worker in the first instance.
8. Subject to the outcome of point 7 above, the Advocate for Children in Care may liaise with the District Office concerned to establish their position and their views about pathways for resolution. In the first instance, the Advocate for Children in Care will make an approach to the relevant District Director by telephone, email or letter. The Advocate for Children in Care may make recommendations for action at this juncture.
9. It may be possible and appropriate for the District Office to follow up and resolve the issue with the child or young person after the Advocate for Children in Care has made initial contact. In such circumstances, the District Office will notify the Advocate for Children in Care of the final outcome, and the Advocate for Children in Care will confirm this with the child or young person direct.
10. In consultation with the child or young person and the responsible District Office, the Advocate for Children in Care may take up issues with funded services or other government departments.



11. The Advocate for Children in Care is not mandated to make case management decisions: this responsibility rests with District Offices. However, the Advocate for Children may make recommendations about case practice matters.
12. The Advocate for Children in Care may make visits to the child or young person and other relevant people including the District Office, and may participate in meetings and reviews as agreed between the parties.
13. Departmental staff and those in funded services are expected to co-operate fully with the Advocate for Children in Care in the interests of children and young people. This includes making available all relevant records and personnel, and responding promptly to any enquiries.
14. Children and young people or those acting on their behalf are not to be disadvantaged or to experience disapproval because they are accessing the services of the Advocate for Children in Care.
15. In the event that no satisfactory resolution can be achieved in the course of negotiations with the relevant District Office, the Advocate for Children in Care will refer the matter to the relevant Executive Director, the Director General, or another review or advocacy service, such as the Complaints Management Unit or the Case Review Panel.

In 2015-16, the Advocate was contacted by, or on behalf of, 231 children and young people in care. Of this group, 42 per cent were Aboriginal, compared with 45 per cent of the total number referred in 2014-15.

The Advocate promotes participation by young people in care using a computer-based self-interviewing program called Viewpoint. Feedback provided through Viewpoint is used to develop individual care plans as well as to provide group feedback about the care experience. This year, 1,351 children and young people provided their views via Viewpoint. Of this group, 630 (47 per cent) were Aboriginal, compared with 48 per cent of the number who used Viewpoint in 2014-15. A significant majority of young people reported feeling safe and settled in their care arrangements, but many were concerned about their contact with family members and their access to information about their personal histories. Young people indicated that they would like more contact with their Department case managers and to have more of a say in decisions made about their lives.

Viewpoint is an interactive software program for children and young people aged between five and 17, which they can use to provide the Department with information about their experiences, wishes and worries. It is an easy-to-use, enjoyable way for children and young people to contribute to their individual care plans and to join with others in providing feedback about what is going well for them and where the Department needs to improve the services and support provided to them as partners in their care.



Queensland

Public Guardian⁵²

Annual Report 2014-2015 Queensland Public Guardian⁵³

OPG child advocates are lawyers who protect the rights of children and young people in the child protection system and ensure their voice is heard, particularly when decisions are made that affect them and their care arrangements.

Providing individual advocacy for children and young people in the child protection system was a recommendation—recommendation 12.7—of the Queensland Child Protection Commission of Inquiry. As a result, when the Office of the Public Guardian was created in July 2014 it was given special responsibilities to provide advocacy for children and young people in OOHC, including foster care, kinship care, residential care and youth detention.

Children and young people in the child protection system can get help from an OPG child advocacy officer by:

- ensuring their views are heard and taken into consideration when decisions are made that affect their care arrangements such as family group meetings, court hearings and tribunals
- providing support in court conferences and organising legal and other representation
- applying to the tribunal or court about changes to a placement, a contact decision—contact with parents and siblings—or a change to a child protection order
- helping resolve disputes with others, including making official complaints to the police, health authority or the Ombudsman
- helping resolve issues with their school regarding suspensions or exclusions from class.

A community visitor (CV) from the OPG visits children and young people to check on them while they are in care and help with issues that they might have.

If children and young people need help with a legal issue—for example if they need to apply to a tribunal to review their care arrangements or they want to have a say in court—a community visitor may organise a child advocate to help them.

They can also contact a child advocate directly if they want to..

Children and young people can contact the OPG by phone, text message (SMS), email, or quick message, through the 'Contact Us' page on the OPG website.

⁵² <http://www.publicguardian.qld.gov.au/child-advocate/opg-child-advocacy>

⁵³ http://www.publicguardian.qld.gov.au/_data/assets/pdf_file/0005/458672/annual-report-2014-15-final.pdf



The *Public Guardian Act 2014* provides that the Public Guardian has child advocate functions.

Child advocates are based in Brisbane, Ipswich, Townsville and Cairns, and operate statewide in collaboration with the child visiting program across Queensland.

Child advocacy functions are performed either by the child community visitor and their manager, or by child advocates (all who are qualified lawyers) employed by the OPG. The nature of the issue will decide which of those roles will perform that advocacy function. For example, lawyer advocates who are legally trained are those best placed to support a child or young person to apply for an application for review before QCAT and also to support a child or young person appearing in the Childrens Court of Queensland.

Practical examples of child advocacy officers performing child advocate functions include; helping a child to make an official complaint; helping a child to seek or respond to the revocation or variation of an order made under the *Child Protection Act 1999*; helping a child to initiate, or on a child's behalf initiating, an application to QCAT; and supporting a child at proceedings before a court or QCAT. That includes the ability to make submissions, call witnesses and test evidence.

During 2014-15 there have been significant commendations received from the Childrens Court, the Magistrates Court and QCAT for the actions and assistance of child advocates both individually and collectively. Significant satisfaction has also been expressed by children that, through the child advocates, their views and wishes are being effectively communicated to decision-makers.

In 2014-15 child advocates closed 351 issues. The 351 issues closed by child advocates resulted in assistance to 358 children or young people.

During September 2014- 30 June 2015 child advocates also visited children and young people, and attended court and other child and youth related meetings to advocate on their behalf, including:

- 309 visits to children
- 103 court appearances
- 68 family group meetings
- 21 court ordered conferences
- 16 QCAT hearings
- 19 other court or QCAT matters.



South Australia
Guardian for Children and Young People⁵⁴

The Office responds to concerns raised by children and young people in care themselves or by their advocates. In some cases matters are referred to a more suitable agency, while others are resolved quickly with a brief inquiry or conversation. For more intractable matters, the Office may launch an investigation and actively advocate for the best interests of the child or young person.

Children and young people in care can talk to us about:

- things that are happening where they are living now
- what might happen in the future
- being able to see their relatives and friends
- having a say in decisions that affect them
- a decision that was made that they didn't like
- finding out about their rights

The Office will:

- find out from them what is happening
- find out what they would like to happen
- if it is OK with them, find out more from other people
- help them to have a say and get things looked at.

Australian Capital Territory
Australian Human Rights Commission⁵⁵

From 1 April 2016, the ACT Human Rights Commission expanded to include the functions of the Victims of Crime Commissioner and advocacy functions of the Public Advocate.

Jodie Griffiths-Cook is the Public Advocate and Children & Young People Commissioner.

The Children and Young People Commissioner (CYPC) and Public Advocate (PA) are independent statutory offices created under the *Human Rights Commission Act 2005*. This means that the CYPC and PA are funded by the ACT Government, but is independent from the Government.

⁵⁴ <http://www.gcyp.sa.gov.au/for-young-people/>

⁵⁵ <http://hrc.act.gov.au/childrenyoungpeople/resolving-complaints-concerns/>



The CYPC has a number of roles, including:

- Consulting with children and young people
- Resolving complaints and concerns about services for children & young people
- Reviewing issues of systemic concern and providing advice to government and community organisations about how to improve services for children and young people

If children and young people have a complaint or concern about a service for a child or young person, the CYPC might be able to help them.

They can complain about a service for a child or young person if the service:

- Didn't comply with guidelines.
- Didn't meet appropriate standards of care.
- Impacted badly on a child or young person.
- Didn't comply with law.

They can also complain if a particular service for a child or young person isn't available, and they think it should be.

If they are unsure if they can make a complaint, they can just call the CYPC to talk about it. They can do this without giving their name.

Before they make a complaint to the CYPC, they should talk with the agency or person that they are unhappy with to try and fix things yourself. The CYPC can talk with them about the best way to do this.

If talking with the agency or person doesn't work, or if they don't feel that they are able to do this, then the child or young person can contact the CYPC to talk about other options – including making a formal complaint to the CYPC.

Additionally, if their complaint is about Care & Protection Services within the Community Services Directorate (CSD), the CYPC will, in the first instance, refer them back to the Office for Children, Youth and Family Support Complaints Unit within CSD for their complaint to be handled by them.

Anyone can call the CYPC with a complaint or concern, however it is easier for the Office to look into the complaint if the person making the complaint is the child or young person who received the service, or a parent or carer of the child or young person.

Complaints have to be in writing, but the Office can help with this.

If a person decides to lodge a complaint, the Office will take the complaint seriously, and listen to the person's views. They will also talk about what to expect, and will keep the person up-to-date on any decisions made.

They deal with complaints as quickly as possible, and they can be contacted at anytime to find out where a complaint is up to.



Making a complaint is free.

Northern Territory
Children's Commissioner⁵⁶

Under the Act, the Commissioner has responsibility for eight core functions including:

- To deal with complaints about services provided to vulnerable children (including the monitoring of how service providers respond to any reports).

A 'vulnerable' child includes one who:⁵⁷

- Has been notified to or is otherwise involved with child protection or OOHC services provided by the Office of Children and Families (subject of the exercise of a power or performance of a function under chapter 2 of the *Care and Protection of Children Act*).
- Is under arrest or is on bail, or has an order under the *Youth Justice Act*. This includes children in youth detention or on community based orders.
- Has sought (or for whom a family member or designated professional has sought) child related services for the prevention of harm, exploitation, protection, care or support of the child.
- Complaints apply to a young person who has left the care of the CEO of the Children and Families if they were a 'vulnerable child'. The CEO is obligated to provide some services to children who have left care.

The *Care and Protection of Children Act* specifies that a complaint can be made only on the following grounds:

- A service provider failed to provide services that could be reasonably expected to provide for a 'vulnerable child'.
- The services provided were not at an appropriate standard.

A complaint may be made by a child who is or was a 'vulnerable child' or an adult acting on behalf of a 'vulnerable child'.

The Commissioner is able to decline to deal with a complaint on a number of grounds specified in the legislation, for example, if there is another person or entity with a mechanism to deal with the complaint.

The Commissioner will seek to resolve the matter with the service provider. This may, for example, take the form of recommendations designed to initiate or to improve service provision and/or to ensure a satisfactory level of service into the future. The Commissioner is

⁵⁶ <http://www.childrenscommissioner.nt.gov.au/Comp-Make-Complaint.html>

⁵⁷ This is an abbreviated list



required to monitor the responses of service providers to any recommendations that have been made.



Appendix C

Visitor programs for children and young people in OOHC

While definitions vary, 'community visitors' or 'official visitors' can be broadly described as persons who are engaged, on a paid or volunteer basis, to observe and safeguard the standards of care and the rights and dignity of defined groups of people in their place of residence. In Tasmania, for example, the Office of the Ombudsman and Health Complaints Commissioner administers the Mental Health Official Visitors Program and the Prison Official Visitors Program.

According to the SA Guardian for Children and Young People:

Although the aims of schemes and programs vary, common purposes are improving outcomes for population groups, enhancing the voice of the consumer via firsthand information and identifying systemic issues to be addressed. Other aims include mentoring, improving knowledge about rights, ensuring agency accountability, improving conditions and monitoring the wellbeing and safety of people. Population groups who have benefited from such schemes include the aged, children in alternative care, those incarcerated and people accommodated in mental health or treatment facilities.⁵⁸

Some Australian states have developed visiting programs for children and young people in OOHC.

Victoria

The Commission for Children and Young People trialed an independent visitor program for residential OOHC services in 2015-16. The pilot program involved 27 independent community volunteers visiting children in 13 residential care houses on a monthly basis. Visitors spoke with children and young people, made general observations and asked staff about the services provided to young people. Almost a quarter of the issues raised were about maintenance and the home environment. Others issues included education, activities, behaviour management, health, case management, staff, absconding, phone and internet access, placements and safety.⁵⁹

The Commission also administers a Visitor Program for Secure Welfare Services. This program involves Commission staff visiting two residential units on a fortnightly basis. Visits involve speaking with the young people there, observing general routines and making enquires of staff around the services provided. Issues most frequently raised during 2015-16 were case management (case planning, post-release planning, information on the rationale for placement, worker contact and follow up) and health (illness, access to drug and alcohol services, and medication).⁶⁰

⁵⁸ Guardian for Children and Young People, [A Community Visitor Program for Children in State Care – Report](#), 2010, 2.

⁵⁹ [Victorian Commission for Children and Young People Annual Report 2015-16](#), 15.

⁶⁰ [Victorian Commission for Children and Young People Annual Report 2015-16](#), 15.



Queensland

One of the functions of the Office of the Public Guardian (OPG) is to provide a community visitor program for children or young people under care who are staying at a visitable home or children or young people staying at a visitable site.⁶¹

The *Public Guardian Act 2014* provides that one of the child advocate functions of the Public Guardian is to provide a community visitor program for the child or young person under care, staying at a visitable home, or children or young people staying at a visitable site (visitable child). Visitable sites for children or young people include the following places:

- foster homes and residential facilities (such as a service funded by the Department of Communities, Child Safety and Disability Services);
- detention centres;
- boot camps;
- corrective services;
- facilities authorised mental health services

The child visiting program operates across 13 zones throughout Queensland and is a critical monitoring element of the child protection system. Visiting schedules are determined based on the level of vulnerability of the children and young people, with those in residential facilities generally deemed to be among the most vulnerable. In addition, the OPG provides community education and resources to ensure that relevant children and young people are aware of the OPG, and know how to access the OPG's services. Community visitors may refer matters to an OPG advocate where there are legal or related issues requiring resolution.⁶²

Child community visitors seek to work collaboratively with child safety officers, and other stakeholders to ensure that services and supports provide the best possible outcome for the child's safety and wellbeing. Ongoing training and professionalism are key to ensuring that child community visitors are equipped and trained to the highest possible standard. Whilst many child community visitors have years of practical experience as community visitors, the OPG provides on-going training and professional development to ensure they have and maintain skills required to address the needs of vulnerable Queensland children and young people in out-of-home care.

Community visitors assess the needs of visited children against the Statement of Standards in the *Child Protection Act 1999* (QLD), section 122.

For further information, see Fact Sheet.⁶³

New South Wales

In NSW, the Official Community Visitor scheme is administered by the Ombudsman. Official Community Visitors (OCVs) are independent statutory appointees operating under the

⁶¹ [Public Guardian Act 2014 \(QLD\)](#).

⁶² [Office of the Public Guardian Annual Report 2015-16](#), p17-19.

⁶³ http://www.publicguardian.qld.gov.au/__data/assets/pdf_file/0008/447866/opg-factsheet-community-visitors-children-final.pdf



Community Services (Complaints, Reviews and Monitoring) Act 1993. Official Community Visitors are appointed by the Minister for Disability Services and the Minister for Community Services.

OCV's visit children in government and non-government services that provide full time care to children in residential OOHHC.

The role of OCVs is to promote the best interests of children and young people in out-of-home care and children, young people and adults with a disability in care. They provide advice to the Ministers and the Ombudsman about the quality of care provided to residents. Official Community Visitors:

- inform the Ministers and the Ombudsman about the quality of services
- promote rights
- identify issues raised by residents
- provide information
- help resolve issues of concern at the local level.⁶⁴

OCVs are uniquely positioned to identify and report critical issues and, where appropriate, facilitate early resolution of those issues. In 2014-2015, OCVs made 578 visits to 202 residential OOHHC services in NSW. OCVs identified 940 issues of concern in relation to residential OOHHC services. Over half (547) of the issues were resolved by services. A further 10% (83) of issues remain ongoing, with OCVs monitoring the action being taken by services to address them.⁶⁵

OCVs may at times refer concerns to other agencies (eg legal or advocacy services, child protection).⁶⁶

South Australia

In SA, the Guardian for Children and Young People advocates for and promotes the rights of children under the guardianship or in the custody of the Minister. The Guardian monitors the circumstances of children under the guardianship or custody of the Minister and provides advice on the quality and provision of their care.⁶⁷

The Guardian monitors residential care through the use of surveys, reviews of records and informal visits to residential care units. In 2015-16, advocates from the Guardian's office visited 16 residential facilities.⁶⁸

The Guardian audits a sample of the annual reviews that are held for children and young people in long-term state care, monitoring the quality of their care and the effectiveness of case planning in meeting their needs.

⁶⁴ <http://www.ombo.nsw.gov.au/what-we-do/coordinating-responsibilities/official-community-visitors>

⁶⁵ [Official Community Visitor Annual Report 2014–2015](#), p30, p42.

⁶⁶ [Official Community Visitor Annual Report 2014–2015](#), p30.

⁶⁷ [Children and Young People \(Oversight and Advocacy Bodies\) Act 2016 \(SA\)](#).

⁶⁸ [SA Office of the Guardian for Children and Young People Annual Report 2015-16](#), p21.



Observations during monitoring can sometimes lead to individual advocacy or advocacy on systemic issues.

The Guardian may inquire into and provide advice to the Minister in relation to system reform necessary to improve the quality of care and may investigate and report matters referred by the Minister.

In 2016 the [Child Protection Systems Royal Commission](#) (the Nyland Review) recommended that SA legislate for the development of a community visitors' scheme for children in all residential and emergency care facilities. The SA Government has accepted that recommendation. The Child and Young People (Safety) Bill 2016 (SA) contains provisions that enable a community visitor's scheme to be established, to apply to children in all residential and emergency facilities. The SA government will continue to engage with key partners on the form a community visitor's scheme should take in South Australia.⁶⁹

Australian Capital Territory

In the ACT official visitors for children and young people are appointed under the *Official Visitor Act 2012 (ACT)*. Official visitors aim to safeguard the standards of treatment and care and advocate for the rights and dignity of entitled people, as well as inspect and report on residential care facilities.

The objective of the scheme is to detect and prevent systemic dysfunction in the specified environments. Official Visitors achieve this by visiting visitable places, talking to entitled persons, inspecting records, reporting on the standard of facilities and reporting to the operational Minister and other public authorities.

Under the *Children and Young People Act 2008*, children and young people in a confined therapeutic protection place or accommodated in a place of care are entitled persons for the purposes of the *Official Visitor Act 2012*.

The official visitors seek to identify, monitor and resolve service issues locally, using early intervention and resolution practices, and with a view to improving service quality. They also receive and consider complaints regarding residential care facilities, and are available to talk to children in care and anyone else who has a concern about those children.

⁶⁹ [Child Protection - a fresh start](#), Government of South Australia's response to the Child Protection Systems Royal Commission report: The life they deserve



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