

# ANNUAL REPORT

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President  
Legislative Council  
Parliament House  
HOBART TAS

Speaker  
House of Assembly  
Parliament House  
HOBART TAS

August 2017

Dear Mr President  
Dear Madam Speaker

**Annual Report for 1 July 2016 to 30 June 2017**

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

Yours sincerely

**Mark Morrissey**  
**Commissioner for Children and Young People**

*Copy to Minister for Human Services*



## MESSAGE FROM THE COMMISSIONER

I am pleased to present my Annual Report for 2016/17.

The work of this Office is underpinned by the principles of the United Nations *Convention on the Rights of the Child* (CRC) and is guided by a considered reflection of the best interests of the child.

One of the most important rights that children and young people have is the right to have a say on decisions that affect them and for their views to be taken into account in decision making (this right is found in Article 12 of the CRC). Therefore, a very important part of the Commissioner's work is to seek the views of children and young people, listen to their lived experience and advocate on their behalf. I have endeavoured to do this to the best of my ability.

The highlight of the last 12 months has been the privilege of meeting with many children and young people across Tasmania and listening to what they have to say. What is apparent is that they have strong and clear views on the issues that affect them and that they value being heard. In particular the voices of many young people in the out of home care system were loud and clear. They called for change. They asked that they be listened to and for action to be taken. I reflected this request from these young people in my recent Report to the Tasmanian Government on out of home care in Tasmania.

Much of my work over the last year has been closely informed and influenced by what I have heard from children and young people.

I take this opportunity to thank my colleagues in the Commissioner for Children and Young People's office. This small team of staff has consistently produced high quality work and provided excellent support to me over the last 12 months. The team consists of 2.4 FTE professional staff and one administrative officer. It has been my privilege to work alongside them over the last year.

I also wish to acknowledge and thank the many committed individuals, agencies and organisations with whom my staff and I have collaborated over the last year. Improving the lives of all Tasmanian children and young people will be more successfully achieved through close collaboration and a shared vision of our common cause. Very few causes are more important than improving the lives of our children and young people.

I urge all agencies and organisations who work with or for children to adopt a child rights based approach in all they do.

Mark Morrissey  
Commissioner for Children and Young People

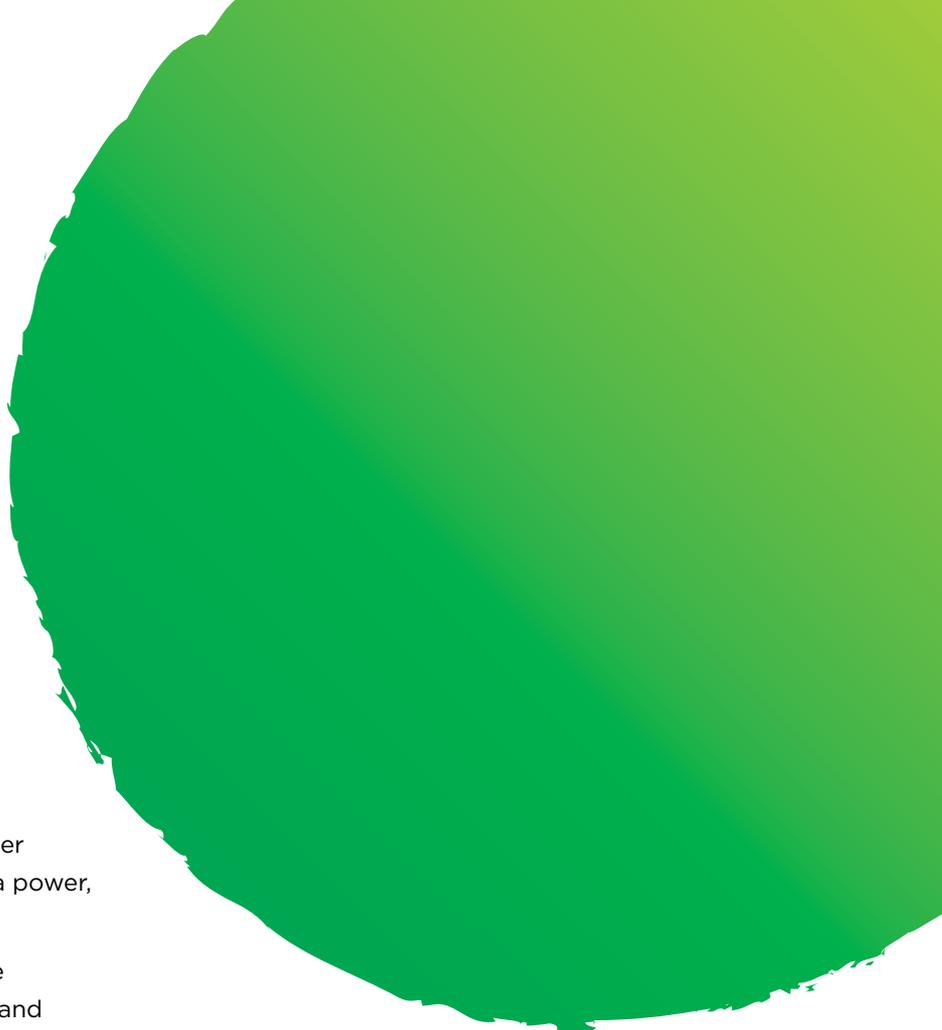
# ABOUT THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

On 1 July 2016, the *Commissioner for Children and Young People Act 2016* (“the CCYP Act”) commenced. This legislation expands and clarifies the functions and powers of the role, provides more detail around the Commissioner’s role as advocate for young people detained under the *Youth Justice Act 1997* and includes specific provisions which acknowledge the independent role of the Commissioner.

Under the CCYP Act, the Commissioner’s functions are described as follows:

- a.** advocating for all children and young people in the State generally;
- b.** acting as advocate for a detainee under the *Youth Justice Act 1997*;
- c.** researching, investigating and influencing policy development into matters relating to children and young people generally;
- d.** promoting, monitoring and reviewing the wellbeing of children and young people generally;
- e.** 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;
- f.** assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally;
- g.** 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.

Unless otherwise specified, the Commissioner must act independently, impartially and in the public interest when performing a function, or exercising a power, under the CCYP Act or any other Act.



In performing any function or power under the CCYP Act, the Commissioner (or any other person performing a function, or exercising a power, under the Act), must –

- a.** do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
- b.** observe any relevant provisions of the United Nations *Convention on the Rights of the Child*.

The CCYP Act also clarifies the ability of the Commissioner to refer matters (received or identified as part of an inquiry) to relevant authorities, including Tasmania Police, the Ombudsman, the Integrity Commission, the Custodial Inspector and the Anti-Discrimination Commissioner.

Importantly, the legislation gives the Commissioner the power to initiate an inquiry or investigation and makes it clear that the Commissioner has wide powers to compel the production of information and documents, thereby addressing major criticisms around these issues that arose under the previous legislation governing the Commissioner's role.

As was the case with the previous Commissioner for Children legislation, the Commissioner is required to establish the Children and Young People Advisory Council and the Children and Young People's

Consultative Council (the latter comprised of children aged less than 18 years). The Commissioner may establish other Committees as he/she sees fit to assist with performance of his/her functions.

Since commencement of the new legislation in July 2016 I have not sought to rely on my increased powers to compel the production of information or documents, preferring instead a co-operative and collaborative approach.

The strengthened legislation expressly enables Government agencies, and other information-sharing entities, to pro-actively provide information to the Commissioner. This flexible approach to information sharing promotes, and recognises the importance of, positive relationships between the Commissioner and others.

I understand the new legislation will be reviewed after 5 years of operation.

# PRIORITIES

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## FAMILY VIOLENCE

### Introduction

Under Tasmania's *Family Violence Act 2004*, "family violence" occurs where violent conduct (as defined) is committed directly or indirectly against a person's spouse, partner or ex-partner. A spouse or partner is another person with whom the person is, or has been, in a marriage or 'significant' relationship. While family violence can affect any person regardless of their gender, it is acknowledged that the overwhelming majority of family violence incidents are perpetrated by men against women. These women are often mothers and the impact of this violence on their children can be significant.

The progress made in recent years on how we respond as a society to address family violence has been significant. Successive Tasmanian Governments have led the way over the last decade, most recently culminating in the whole of government response, *Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015-2020*. This Action Plan outlines a coordinated, whole-of-government action plan to respond to family violence. Key Government Agencies were involved in the development phase of the Plan, which identifies 23 actions as key priorities to improving the Government's response to family violence. Actions include extending counselling services available to those affected by violence (including children), establishing of a Safe Families Coordination Unit, developing a Respectful

Relationships Program for schools and provision of crisis accommodation. Further information can be found on the website for the Department of Premier and Cabinet.

Tasmania uses the term 'family violence' to acknowledge that children who witness or otherwise experience family violence directed at one of their parents or carers have their safety, psychological wellbeing or interests affected by that violence and, as a result, are victims in their own right.

Following the release of the Action Plan, it was clear that there was scope to further explore the unique experiences of children and young people of family violence in Tasmania and make some additional findings about how services and supports can be provided to children.

As a result I decided to research and write a report entitled *Children and Young People's Unique Experiences of Family Violence: Family Violence and Children and Young People in Tasmania* to contribute knowledge from the research, the community sector, and children and young people themselves about how children and young people can best be supported. The report was informed by submissions from individuals, organisations and agencies including consultations with children and young people across the state.

## **Children and Young People's Unique Experiences of Family Violence: Family Violence and Children and Young People in Tasmania report (September 2016)**

This report built on the excellent work done by the National Children's Commissioner in her 2015 *Child Rights Report* investigating the impact of family violence on children and young people from a national perspective.

On 21 September 2016, the Premier of Tasmania, the Hon. Will Hodgman, launched my report *Children and Young People's Unique Experiences of Family Violence*. Australian of the Year and family violence campaigner Rosie Batty gave the keynote address, with a group of young women from Project O in Wynyard also participating in the launch.

The Report includes the voices of Tasmanian children and young people, and those of adult survivors of childhood experiences of family violence. It outlines the national and state policy contexts, takes particular account of the April 2016 *Final Report of the COAG Advisory Panel*, and makes

26 findings which are intended to strengthen our understanding of children and young people's needs and the responses that can be put in place to protect and support them.

The Report emphasises that **children and young people can be affected by family violence in ways which are often independent of their non-violent parent, and that their needs can be quite different to those of adults**. As victims in their own right, children and young people should be supported to recognise and disclose violence and to seek assistance. Responses must prioritise their safety and long-term wellbeing.

An important Finding of this Report – and one which carries with it a very clear message of hope – is that many children and young people who experience family violence show great resilience; it should not be assumed that their potential to succeed in life is lessened compared with those who have not experienced family violence. **But for some children, the effects can be profound, thus the need to respond better to the needs of all children and young people.**

Young women from Project O at the launch of the *Children and Young People's Unique Experiences of Family Violence* report.



Other key Findings include that:

- Services and supports for children and young people need to be tailored to their level of understanding, age, stage of development and individual circumstances.
- There is value in ascertaining and taking into account the views and experiences of children and young people – in research, and in the design and delivery of services, but always ensuring this is done in a way that does them no harm.
- An integrated service response to children and young people affected by family violence is essential – organisations and agencies need to work together with a common philosophy and understanding of the associated risks and needs for children and young people.
- The continuation of a child's secure attachment to their non-violent parent (usually their mother) has been identified as a protective factor for children exposed to family violence.

In its October 2016 Response to my Report the Tasmanian Government indicated that it was broadly supportive of all of the Findings I made.

Following the launch of the Report the Tasmanian Government invited me to participate in the October 2016 COAG *National Summit on Reducing Violence Against Women and Their Children*. The purpose of the Summit was for governments to review progress and profile best practice in our collective efforts to make Australia safer for women and their children. The Third Action Plan of the National Plan to Reduce Violence against Women and Their Children 2010-2022 was launched during the summit. The Communique released provides a summary of the outcomes from the Summit: <https://coagvawsummit.pmc.gov.au/communique>

## Tasmanian Government Response (October 2016)

In its October 2016 response to the *Children and Young People's Unique Experiences of Family Violence* Report, the Tasmanian Government indicated its broad support of the Report's finding and said that it provides "a welcome addition to the existing evidence base and provides a foundation for future work by the Tasmanian Government to address family violence and its impact on children and young people".

In its response, the Government committed to developing a Family Violence Practice Guide to strengthen understanding of family violence and of relevant referral pathways for Tasmanian organisations working directly or indirectly with those experiencing family violence. The development of this Practice Guide has been included as a new action under *Safe Homes, Safe Families* Action Plan.

The full Government's response to the Report is available at [http://www.dhhs.tas.gov.au/\\_\\_data/assets/pdf\\_file/0008/236294/95161\\_-\\_Formatted\\_Tasmanian\\_Government\\_Response\\_-\\_final\\_20161025.pdf](http://www.dhhs.tas.gov.au/__data/assets/pdf_file/0008/236294/95161_-_Formatted_Tasmanian_Government_Response_-_final_20161025.pdf)

## Children's Version of my Report (March 2017)

In early 2017 a children's version of my Report was published and distributed to relevant stakeholders. It was developed in consultation with a small group of young women from BIGhART's 20+20 Project (a legacy of Project O) in Wynyard, who were also an integral part of the launch of the full report in 2016. The young women provided input and comments on the content, design concepts and layout of this resource.

The resource provides an easy-to-read summary of the full report alongside vital information for children and young people about what family violence is, some key messages about children's experiences of family violence, and what to do if children and young people are affected by family violence or are worried about a family member or friend.

The resource was jointly launched by myself and some of the young women from Project O live on ABC radio in early March 2017.

## Other work in this important area

As part of the ongoing work of ensuring our legal system responds appropriately to family violence, in late 2016 the Tasmanian Government released a draft Family Violence Reforms Bill 2016 and a Consultation Paper entitled *Family Violence: Strengthening our Legal Responses*.

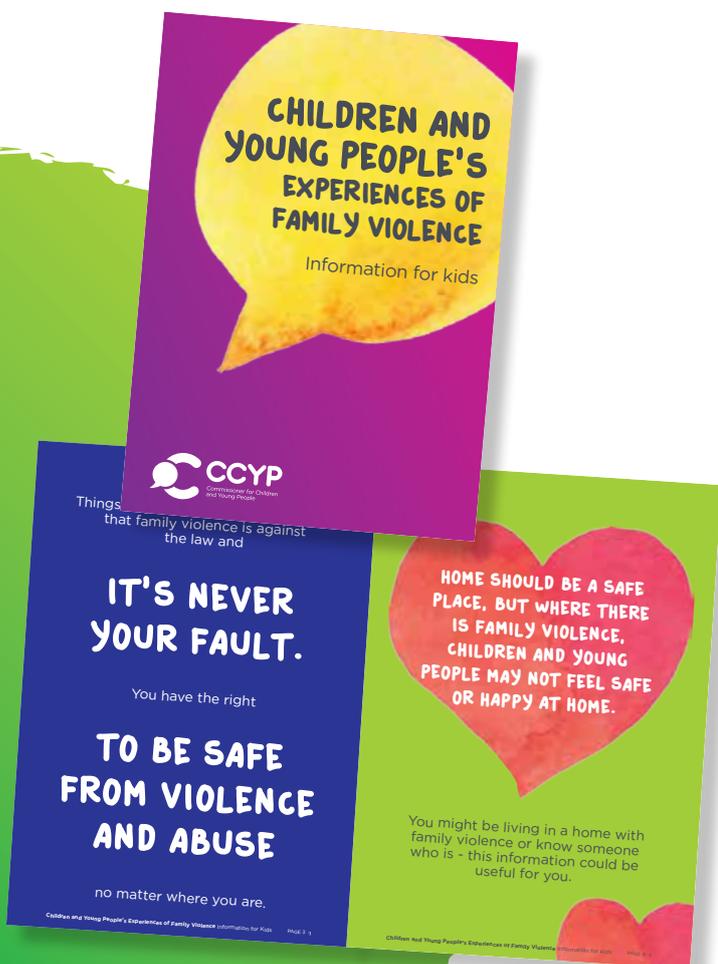
In my response to the Consultation Paper I opposed the introduction of mandatory reporting of family violence by certain occupational groups (such as dentist, psychologists, teachers) primarily because of the potential disincentive for victims to report and seek help. I supported reform of relevant laws to better accommodate the experiences of those victims of family violence who kill their violent partner in self defence. In the absence of any detailed discussion of such a complex issue, I indicated that I was not convinced of the need to expand the definition of "family violence" in the Tasmanian *Family Violence Act (2004)*.

In October 2016 I also commented on a draft Family Violence Reform Bill which sought to amend the *Corrections Act 1997*, the *Evidence (Children and Special Witnesses) Act 2001*, the *Family Violence Act 2004* and the *Police Offences Act 1935* to strengthen supports to victims and hold perpetrators to account.

I applaud the Government's decision to begin the process of developing a Family Violence Practice Guide for all service providers and practitioners who come into contact with victims and /or perpetrators of family violence. That Practice Guide was not finalised during the reporting period.

I will continue to advocate for the provision of appropriate supports and assistance to children and young people affected by family violence.

**Whilst there has been considerable progress over the last few years, there remains much work to be done in regard to our response to children and young people affected by family violence.** Children must be responded to as individuals in their own right noting that their needs can be quite different to those of adults.



# OUT OF HOME CARE

## Out of Home Care Review (January 2017)

As a result of the concerns consistently expressed to me by young people about the level of care they received while they were in out of home care (OOHC), in December 2016 I made a decision to undertake a review of OOHC in Tasmania. This review was also prompted in part by allegations made in Parliament about the quality of care being provided to children with complex high level needs by a “for profit” OOHC provider.

### **My January 2017 Report focussed on the need to put in place safeguards that will improve outcomes for children and young people in OOHC.**

I put forward seven Recommendations which the Tasmanian Government has accepted.

The Recommendations I made are as follows:

#### **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.

#### **RECOMMENDATION TWO**

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

#### **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.

#### **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.

#### **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.

#### **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:

- 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**

- 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.

These Recommendations reflect three key themes:

- the need to ensure that children are listened to;
- the need for children to have an independent umpire separate from the Department of Health and Human Services;
- the need for increased accountability and standards.

It is important to acknowledge that many children have a positive experience in OOHC. My report’s primary focus is on the need to better respond to the smaller but not insignificant group of children who do not.

I have consistently called for external independent monitoring of the child safety system (which includes OOHC) in Tasmania – a matter dealt with in my 2015-2016 Annual Report.

**Unlike the situation in other States and Territories, there is no formal requirement for those delivering OOHC in Tasmania to comply with and report publicly against an agreed set of Standards.**

**There is also a pressing need to ensure that children in OOHC are listened to and that processes to encourage and facilitate this participation are implemented.** So, for example, I recommended the establishment of an independent children's visitors program incorporating an individual advocacy component and called for a review of the existing policy governing visits by Child Safety Officers to children in OOHC.

**I also recommended that the Government establish an independent Administrative Tribunal whose jurisdiction would include certain child safety officer decisions;** this would provide children and young people in OOHC with an avenue for review around certain placement related decisions made by child safety officers. The Tribunal should have the ability to change decisions by child safety officers where appropriate. Parents and, in certain circumstances, carers, could potentially also go to this Tribunal to seek a review.

The Minister for Human Services, the Hon. Jacque Petrusma MP, has commendably stated her support for all seven Recommendations and has indicated that work implementing them is well underway. I was encouraged to learn that an amount of extra \$27.5 million dollars to better protect and care for Tasmania's most vulnerable children and young people was announced in the 2017-2018 State Budget. In particular I welcome the news that a proportion of the new funding will contribute towards implementation of all of the recommendations of my January 2017 Report. At the time of writing this Annual Report details of implementation and funding arrangements are being discussed.

Whilst these reforms will take time to fully implement, there are also certain elements that will require a prioritised response, such as regular visits through an independent children's visiting program for all children and young people in out of home care.

Promotion of children's immediate safety requires a prioritised response.

As part of the OOHC reform process, posters and a wallet booklet promoting the *Charter of Rights for Children and Young People in OOHC* are being updated by my office together with the Department of Health and Human Services and the CREATE Foundation (these resources were initially developed by Commissioner Mason in 2009).

## Public debate on Out of Home Care

While public debate around the OOHC system is really important, it also has the potential to do harm to individual children in care. I have publicly urged all of those involved in debates around the quality of care provided to children in OOHC to be aware of the potential harm their comments can cause. Great care must be taken to ensure that where an issue is raised publicly it is done so in a way which is respectful towards the children involved and to those people who are caring for them. I have stressed the need to respect and protect the privacy of children in OOHC and to ensure that by our actions we do no harm.

**Children in OOHC need everyone to work together to make things better for them. And they always must be treated with dignity and respect by everyone.**

## Reference Group for Research on Out of Home Care - Anglicare Tasmania

Staff from my office have been involved as Reference Group members in research conducted by Anglicare Tasmania on foster carers and their role in promoting educational aspiration and achievement in children in OOHC.

The research aimed to document the experiences of Tasmanian foster carers in supporting education and how they can be better supported to promote the educational aspirations and attainment of those in their care. In particular the research aimed to:

- review the research and good practice literature in this area and any relevant and accessible statistical data;
- collate the views and experiences of Tasmanian foster carers in supporting OOHC students in their educational journey;
- explore examples of good practice in building effective partnerships between carers, students, schools, caseworkers and other stakeholders which promote education; and
- make recommendations about how best to support carers in Tasmania to promote educational outcomes and aspiration.

The research was finalised in October 2016, and I launched the final Report in November 2016.

## CHILD PROTECTION REDESIGN

### Child Protection Redesign (including Child Wellbeing Symposium, Cross Sectoral Consultative Committee and Advice and Referral Service)

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

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

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

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

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

The Strategies are:

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

During the reporting period, the Redesign implementation team released three Consultation Papers:

- Advice and Referral Service.
- Wellbeing.
- Information Sharing.

I provided written submissions on these papers to Government.

The Cross Sectoral Consultative Committee has also been established. This Committee, comprised of individuals from the community sector with expertise on matters relevant to the child safety system, has been established to facilitate consultation between the implementation team and the community generally.

The importance and complexity of the redesign process cannot be underestimated. It provides us with a valuable and important opportunity to design a child safety system that promotes the wellbeing of children and young people in Tasmania. As Commissioner I have provided advice, comment, support and suggestions, consistent with my independent role, to the Redesign Implementation Team.

**It is critical that the *Strong Families - Safe Kids Implementation Plan* is fully implemented in all of its aspects, in order to achieve the necessary changes required to address this longstanding complex issue.**

Tasmania has a watershed opportunity to address this issue in a way that has the potential to place our service system at the forefront of best practice across the nation.

**Child Safety Services alone cannot address the issues faced.**

## EDUCATION REFORM IN TASMANIA

During the extensive debate around the Tasmanian Government's proposed changes to the school starting age I made it very clear through my May 2016 submission on the draft Bill (discussed in my 2015-2016 Annual Report), media releases and opinion pieces that I supported the proposed introduction of earlier access to free, high quality, play based pre-primary education.

Findings are unequivocal that the early years of a child's life present a critical and a not-to-be-missed opportunity for learning and development which will provide a child with the necessary foundation for later academic and social success. Quality play-based learning is key.

**For example, I noted the work of Professor James Heckman, Nobel Prize winning economist and researcher, who makes it very clear that there is no more important an area in which to invest than in the early years of a child's life.**

I also indicated my support for recommendations made by the reputable Mitchell Institute:

### KEY MITCHELL INSTITUTE PRIORITY RECOMMENDATIONS

1. Establish affordable access to preschool as a legislated entitlement, make a permanent commitment to funding Universal Access for 4 year olds, and commence work on extending Universal Access to 3 year olds.
2. Scale up evidence-based, high-intensity programs for the most vulnerable children, prioritising the communities in each state that are in the bottom decile for developmental vulnerability in the AEDC.
3. Ensure the National Quality Framework is achieving its objectives and is appropriately resourced to do so, and that all services are meeting the NQS, at a minimum, by mid-2017.
4. Deliver a national early childhood data strategy that establishes the information infrastructure needed to drive policy and practice improvement into the future (Mitchell Report 01/2016. Quality Education for All).

Here in Tasmania we need to improve our retention rates and provide a higher quality education for all that promotes lifelong learning from an early age. The proposed provision of free high-quality early childhood education for young Tasmanians will enable more of our children to participate in richer learning environments, sooner; this is particularly important for children who may be living in situations of disadvantage.

**The evidence clearly indicates the best start to life for a child is through play based learning up until six or seven years of age, and then followed by formal schooling.** There is strong evidence for the positive impact on a child's development of rich extended playful learning experiences. But to be effective this must be of a high quality.

The evidence points towards offering children high quality play based learning in childcare, followed by the first two years in the school environment in a rich play based school environment. Quality early learning can be offered in either a day care environment, or in the early years of school. This requires skilled and qualified early childhood educators.

This play based learning is critical to a child's ability to be school ready when they enter formal schooling.

I also noted the important role quality childcare has to play prior to children enrolling in preschool. Benefits of high quality child-care for children include greater social skills, more advanced vocabulary and greater impulse control.

I did however make it clear that my support for these changes to early learning must be on the proviso that the Government over the next three and a half years invest in early childhood teacher recruitment and training, upskilling of existing teachers where required and more work towards meeting the National Early Childhood Education and Care Standards (ECEC).

This is an evolving area of work which I will continue to monitor with great interest.

The Department of Education has commenced work on its 2018-2021 Strategic Plan. In July 2017 I was involved in consultations with children and young people to inform the plan. Further discussion regarding the consultation is below under Participation of Children and Young People.

## HEALTH AND WELLBEING

One of the key functions of the Commissioner for Children and Young People is to promote, monitor and review the wellbeing of children and young people in Tasmania. This function requires key data be reviewed, understood and reported on regularly to ensure that the situation of children and young people in Tasmania is closely monitored. Access to quality data can also provide essential information to services and agencies, both government and non-government, to assist them to determine areas in which our efforts to improve the lives of children in Tasmania may not be working as well as we would like.

As mentioned in my 2015-2016 Annual Report, although I am unable to replicate the *Kids Come First* resource previously produced by Government, I committed to develop a resource on the health and wellbeing of Tasmania's children, young people and their families. To this end, in 2016-2017 I released the first two parts of my report, *Health and Wellbeing of Tasmania's Children, Young People and their Families Report*. The first part (Early Childhood and the Transition to School) was released in July 2016 and focussed on the demographics of Tasmania's children and young people, and some of the key indicators related to early childhood and the transition to school. Some of the key findings of that report include:

### EARLY CHILDHOOD AND THE TRANSITION TO SCHOOL

- Overall socioeconomic disadvantage is higher in Tasmania than nationally, with 48% of mothers in Tasmania from the lowest socioeconomic deciles, compared to 21% nationally.
- Breastfeeding rates at birth in Tasmania are 90% (which is comparable to the national rate) however breastfeeding rates at maternal discharge from hospital have been declining since 2009.
- Smoking during pregnancy has declined in Tasmania since 2010.



- Alcohol consumption during pregnancy has declined in Tasmania since 2010.
- Over 90% of children between the ages of 12 months and 5 years are fully immunised in Tasmania.
- Tasmanian mothers are more likely to have their first antenatal visit before 14 weeks than any other state or territory.
- Three-quarters of children in Government schools are achieving all development markers in Kindergarten.

In March 2017, the second part of the report was released (Middle Childhood and Adolescence) together with an updated Part 1 (Early Childhood and the Transition to School). Some of the key findings from Part 2 include:

## MIDDLE CHILDHOOD AND ADOLESCENCE

- Approximately 30 per cent of Tasmanian children aged between 12 and 15 are overweight, and nearly 10 per cent are obese.
- Type 1 diabetes rates are higher for children aged between 0 and 14 than nationally.
- Deaths of children and young people due to intentional self-harm are higher in Tasmania than nationally.
- Tasmania's teenage pregnancy rate was 19.4 per 1,000 women aged 19 and under, which is substantially higher than the national average.
- NAPLAN results have shown that Tasmanian students are at a comparable standard for reading and writing to their national counterparts.
- Just under five per cent of students were suspended from Government schools in 2015.
- Around 60 per cent of school leavers are fully participating in education, training and/or employment. The proportion of students attaining a Year 12 certificate in Tasmanian is the second lowest of all of the states and territories.
- The number of youth offenders and young people in detention is declining in Tasmania.

The third and final part of the report will cover Parents, Families and Communities including information on child protection, homelessness, poverty, and family violence. The full report (all three parts) will be updated and released in mid-2017.

The report can be downloaded from my website: [www.childcomm.tas.gov.au](http://www.childcomm.tas.gov.au)

As mentioned in my 2015-2016 Annual Report the production of a data report on the health and wellbeing of Tasmania's children and young people is an important contribution to the implementation of *Strong Families, Safe Kids: Redesign of Child Protection* (Action 25).

### **The ongoing production and public availability of this Report is critical to the future health and wellbeing of Tasmanian children and young people.**

Publicly available data is a critical success factor if we are to improve outcomes for our children. If we don't have publicly available data resources these critical health and wellbeing issues will remain hidden and unaddressed. This information has the potential to transform how services are delivered, prioritised and understood by the broader community.

## YOUNG CREATIVE WRITERS AWARDS



The Young Creative Writers Awards arose from a desire to creatively engage with children and young people and to promote awareness and understanding of child rights. These Awards offer a great opportunity for young Tasmanians to learn about their rights and obligations, to tell their own original stories and share their unique interpretations of the theme. Through these Awards, I hope also to promote children's literacy and their engagement in the creative arts.

This year's theme was "fairness and respect", based on the right to be treated without discrimination.

In July 2016 I was delighted to support the Tasmanian Writers' Centre to offer specially designed creative writing workshops for children and young people at LINC's and libraries around the state. Around 350 young writers and story tellers from Kingston in the South to Currie on King Island took up the opportunity to work with established Tasmanian writers, the Story Island Project and writing students from the University of Tasmania.

Workshop participants explored the Awards' theme of 'fairness and respect'.

The Awards were also offered as an online Learning Destination through Tasmania's Children's University.

In 2016 the difficult job of judging the Awards was undertaken by Tasmania's Anti-Discrimination Commissioner Robin Banks, the editor of *The Mercury* Matt Deighton, and Tasmanian author Danielle Wood (who writes for children as Angelica Banks in partnership with Heather Rose).

The Awards for 2016 were announced at a presentation ceremony and afternoon tea hosted by Her Excellency Professor the Honourable Kate Warner, Governor of Tasmania, at Government House on 2 November 2016.

Aside from being so beautifully written, the outstanding entries in this year's Awards imaginatively demonstrate respect for, and understanding of, the ideas, feelings, experiences and needs of others, regardless of their background, culture, or ability. I find the compassion, empathy and ultimately the optimism shown in the entries truly inspiring.

I congratulate each child and young person who entered the Awards. All entrants received a participation certificate.

This year's outstanding entries can be read and downloaded from my website.

A very special mention goes to Aloisia Barry for her overall most outstanding entry, 'If Only...'.

## If Only...

by Aloisia Barry

A big bright animal glides across the water. Strange people, painted with white ochre greet us at the shore with smiles and a strange way of grabbing our hands and shaking them.

We show them our camps and they ask permission to use land to make camps of their own. We ask them kindly not to use our sacred land and they happily oblige.

We share meals together. Our tribe shows them our best hunting grounds, and they show us their ways of getting food. They show us some fruits that we find peculiar, and we show them berries that they thought would kill them.

We dance for them around fires with our didgeridoos, and they show us their instruments. We sing them songs and tell them stories that have been passed through our family for generations. We slowly learn each other's languages.

They live with us in peace and friendship from then until today.

... if only.



# B4 EARLY YEARS COALITION

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

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

The B4 Early Years Coalition is co-chaired by Elizabeth Daly, former Chair of the Tasmanian Early Years Foundation, and a passionate supporter of Tasmania's children and young people. The Coalition recognises the importance of the early years in helping to shape the future of our young people.

The B4 Early Years Coalition will see experienced and qualified Tasmanians who are committed to the early years sector work collectively to achieve outcomes through outreach, raising awareness and engaging with their peers.

**It has been a personal highlight to be involved in the B4 Coalition over the last 12 months.**

The membership consists of many remarkable leaders and advocates for the early years. I am confident this Coalition will go from strength to strength.

# PARTICIPATION OF CHILDREN AND YOUNG PEOPLE

All of the work I undertake is informed by the views of children and young people across Tasmania. I consult regularly with children and young people through the Children and Young People's Advisory Councils established under s13(1)(a) of the *Commissioner for Children and Young People Act 2016*.

In addition I consult with groups of children and young people associated with specialist groups and/or services including Aboriginal young people, young migrants, and children and young people in the out of home care system, to ensure that a range of voices and perspectives are gained.

## Children and Young People's Advisory Councils

Section 13 of the *Commissioner for Children and Young People Act 2016* requires the Commissioner to establish a Children and Young People Advisory Council.

Children and Young People's Advisory Councils were established in the North, North-West and South of the state. These Councils are usually made up of children and young people between the ages of 8 and 18, and meet with me to:

- Share their experiences and ideas about issues that matter to them and what they hope for in the future.
- Participate in developing ideas and suggestions on issues to inform my advocacy work.
- Provide advice about the services that are available and should be available to children and young people in Tasmania.

The Advisory Councils in the South, North and North-West met twice over the past year (July 2016, June 2017). The members were asked to discuss issues that were important to them and to put forward ideas about how they would improve the situation of children and young people in Tasmania. The focus questions of the consultations in July 2016 were:

- If you could change one thing in Tasmania what would it be?
- What makes a good society for children and young people?
- What is working well for you and other young people you know in your community?
- What is not working well for you and other young people you know in your community?



## Survey of Children and Young People

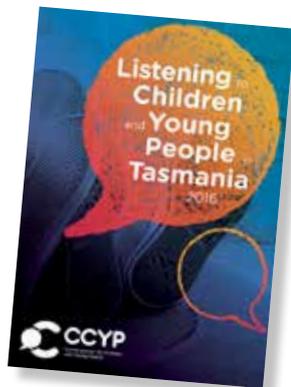
In addition to face-to-face consultations with children and young people across the state, I also created an online survey to ensure a wider group of children and young people were consulted on issues that affect them. The survey questions were consistent with questions posed to Advisory Councils. I received responses from 309 children and young people across Tasmania, with the majority from the south (67%), with 10% from the north and 23% from the north-west. Over 80 per cent of the survey participants were aged between 12 and 17, with only two participants under the age of eight participating.

The survey was not designed to be representative of all Tasmanian children and young people, rather it was used to get a general feeling amongst the population to compare with responses from the Advisory Councils.

The survey was distributed through the Youth Action Priorities mailing list, the Department of Education, Independent Schools Tasmania and the Catholic Education Office. The survey was also advertised on social media.

## Listening to Children and Young People in Tasmania

Following the consultations and survey in 2016, I published a report detailing a summary of all of the thoughts and ideas of the children and young people who participated, arranged into key themes and entitled *Listening to Children and Young People in Tasmania 2016*.



**Children and young people raised issues across eight main themes: Having a Voice, Equality and Respect, Education and Opportunities, Environment, Safety, Sport and Recreation, Transport and Health.** Children and young people in Tasmania clearly see importance in equality for all regardless of race, gender, age, nationality, sexual orientation, or disability. This theme permeated many of their responses during the face-to-face

consultations; and “equality and respect” was the most popular answer when I asked children and young people for their views on what makes a good society.

Education and career opportunities were also mentioned in many of the responses I received both through the councils and as part of the survey. While education is working well for many children and young people, they still see room for improvement. Children and young people in Tasmania want education that is relevant to future employment, want qualified and supportive teachers, and better responses to bullying and student behaviour.

Hard copies of the report are available at my office or can be downloaded from my website: [www.childcomm.tas.gov.au](http://www.childcomm.tas.gov.au)

## Project O and 20 + 20

Project O is a BigHART initiative which drives change in rural communities affected by family violence. The pilot site for the project was Wynyard in North West Tasmania. Project O assists young women to develop strong personal agency and resilience in working to prevent family violence in their own communities.

Through Project O, the young women develop new skills and capabilities and learn how to become change-makers in their own community. A legacy of Project O is 20 + 20 where each year for the next five years, 20 young women from Wynyard will be mentored to assist them to pursue their aspirations, enhance their abilities and assist them on their path towards employment, in ways that make a positive difference in their community.

I had the opportunity to meet this dynamic group of young women from Project O in 2016 and consulted with them on their aspirations and goals, as well as on how family violence affects children and young people.

I invited Project O participants to help me launch my report *Children and Young People's Experiences of Family Violence* in September 2016. A group of eight young women travelled down to Hobart to be a part of the launch. They wrote and presented a speech on their involvement in the report and their experience being a part of Project O, and took part in welcoming and speaking to the invited guests.

Following the launch event, the young women and I had a roundtable discussion with a number of influential decision makers (from the Department of Premier and Cabinet, Department of Education, and Department of Health and Human Services) on the effect of family violence on children and young people, and how Tasmanian services could better meet their needs.

As mentioned previously, I also consulted with some of the young women from Project O on the development of a child-friendly resource aimed at providing information to children and young people about family violence alongside an easy-to-read summary of my full report.

## Hear, See, Speak

Hear See Speak is a creative engagement project delivered in early 2017 in partnership with Campbell Street Primary School.

Facilitated by youth arts facilitator Brooke Everingham, this project involved the participation of six grade 5 students in eight weeks of creative workshops. During the workshops, students learned skills in photography, film making and journalism. Using their new skills and equipment available, the students formed a mini-media team to create a multi-art form exposé featuring three young Tasmanians from diverse backgrounds.

This project supports children to express their views and to share their unique opinions on issues that affect their lives. It provides them with the ability to share their stories, and the stories of others, using digital technologies. It offers a safe and supportive space for children to test and grow their creative and leadership skills.

The Hear See Speak exhibition will be officially launched at Parliament House on 27 July 2017 by the Hon. Jacque Petrusma, Minister for Human Services. The exhibition will be displayed at other venues later in 2017.

## Your Say on School Consultation

I was invited by the Department of Education to co-facilitate a consultation with students at the Tasmanian Youth Conference with Youth Network of Tasmania youth board member, Griffin Blizzard.

The Your Say on School session took place on 22 June 2017. The purpose of the session was to hear from young people about their school experiences and to identify what is working well and what could be changed to make school a more engaging place for them.

The outcomes of the consultation will inform the development of the Department of Education's 2018-2021 Strategic Plan.

## The Big Draw

The Big Draw is a collaboration between the Commissioner for Children and Young People and Contemporary Art Tasmania. The event has been registered as part of the international The Big Draw Festival.

The Big Draw is a one-day drawing workshop for children and young people guided by three professional contemporary artists. Planned for 12 July 2017, artists will create a series of activities for the participants to collaborate on one big drawing in the gallery space at Contemporary Art Tasmania.

Inspired by the theme The Future World, this day of collaborative drawing will spark imagination, creativity and an enduring connection to art. Projections and sound will fill the gallery so that it becomes a hive of creativity intended to encourage exploration, experimentation and fun.

The Big Draw will be documented through video. The Big Draw video launch will take place on 17 November at Contemporary Art Tasmania.



# OTHER SUBMISSIONS AND ADVICE

## Proposed amendments to the *Anti-Discrimination Act 1998* (12 September 2016)

In September 2016 I commented on a draft Bill proposing amendments to the Tasmanian Anti-Discrimination legislation which was released for public consultation.

That submission is available on my website.

My September 2016 media release summarises my general position on the draft Bill as sent out for consultation.

Section 17(1) of the *Tasmanian Ant-Discrimination Act 1998* (“the Act”) prohibits conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of specified protected attributes, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

These protected attributes are gender, race, age, sexual orientation, lawful sexual activity, gender identity, intersex, marital status, relationship status, pregnancy, breastfeeding, parental status, family responsibilities and disability.

Section 19 of the Act prohibits the incitement of hatred, serious contempt for or severe ridicule of a person or group of persons on the basis of race, disability, sexual orientation or lawful sexual activity or religious belief, affiliation or activity.

Section 55 of the Act provides an exception to sections 17(1) and 19 for certain conduct, including a public act done in good faith for academic, artistic, scientific or research purposes or for any purpose in the public interest.

The draft Bill released for public comment by the Government proposed changes to the exception in section 55 of the Act to introduce a reasonableness test so that the exception will apply if the public act was done reasonably and in good faith for religious purposes.

Other amendments were also proposed in relation to the way in which complaints made under s17 and s19 are to be handled by the Anti-Discrimination Commissioner.

These amendments were put forward as being necessary to correct a perceived imbalance between providing protection for freedom of speech for religious purposes and protection from unlawful discrimination in Tasmania.

In my September 2016 submission I indicated I could not support the proposed amendments and questioned the appropriateness of seeking comment on such a complicated issue without also providing a discussion of the basic principles underlying the human rights instruments being relied upon to support the proposed amendments. I also noted the absence of any explanatory information describing the existing case law.

Consistent with my statutory obligations, I expressed the view that the proposed amendments failed to acknowledge the special protections children and young people are entitled to under human rights instruments. I concluded that: the proposed amendments also failed to acknowledge the fact that human rights instruments which protect freedom of religious speech and expression also place limitations on these rights where the exercise of these rights may result in the undermining of the fundamental rights and freedoms of others – especially children and young people.

I also made it clear that in my opinion the changes proposed were unnecessary and had the potential to cause harm to children, young people and their families in Tasmania.

In my opinion, the Act in its current form does provide an appropriate balance between the right to express one's views and the necessity to ensure those views are respectful of the rights of others.

I also expressed my concern at the message we are sending children and young people, especially those who by virtue of a particular attribute are seen as “different” and can be ridiculed, harassed or insulted on the basis of that attribute. This is the essence of bullying.

If public figures are seen to be free to engage in public debate regardless of the impact on the rights of others and regardless of the hurt and offence certain members of the community may feel, we are also teaching our children that this is acceptable behaviour in our society.

If the proposed changes to the way in which the Commissioner handles complaints under sections 17 or section 19 go ahead, they may make it more likely that costly legal arguments will occur earlier in the complaint handling process.

The amendment Bill introduced into Parliament by Government differs in some respects from the draft Bill released for public consultation.

At the time of writing the Bill was before the Legislative Council.

## Submission to the House of Assembly Standing Committee on Community Development – Donor Conception Practices in Tasmania – October 2016

In October 2016 I appeared before the House of Assembly Standing Committee on Community Development which was inquiring into donor conception practices in Tasmania. I sought permission to table a letter setting out my preliminary views on the complex and sensitive issues of law and policy raised by this inquiry.

As is required by the legislation establishing the Commissioner for Children and Young People, my preliminary views were informed by a child rights analysis; I also took account of the submissions received by the Committee and the situation in other jurisdictions in Australia.

The main issues dealt with in my letter to the Committee Chair included the following:

- Tasmania should consider legislating to regulate the use of assisted reproductive technology (ART) in Tasmania and the associated issues that arise including access to information.
- In my opinion, a child born of ART has a right to know and to have information (identifying and non-identifying) about their genetic heritage – regardless of the consent of the donor, and regardless of when the procedure in question occurred. This position is consistent with and informed by a child rights analysis. However matters are complicated where the ART occurred at a time when consent to release information was not required of the donor.
- It is important to acknowledge that there is a distinction between access to identifying information and contact – a distinction most pertinent to those who were donors at a time when consent to disclose information existed.

There may be a need to include in legislation:

- a. provision for access to genetic information by a child (i.e. under 18 years) in a manner that is sensitive to the issues involved, and supportive – so for example, a child should be able to apply for access to information about a donor, perhaps with the support or guidance of an adult or a

counsellor or perhaps where a counsellor has provided counselling and advised the relevant authority in writing that the child is sufficiently mature to understand the consequences of a disclosure of information about a donor.

- b.** contact preferences available to the donor and to the donor-conceived person – which regulates contact / to not have contact as is proposed in Victoria but only for those who donated prior to introduction of the Guidelines.
- c.** a legal obligation to keep records – perhaps at a central Register such as Births, Deaths and Marriages or in an agency specific to ART (as in Victoria). Tasmania is perhaps too small to have a specific agency responsible for storing obtaining and releasing ART information.
- d.** a prohibition on destruction of records and provision made for the Agency responsible for maintaining information and regulating access to be able to require the production of donor identifying or non-identifying information.

I stress that the above represents my preliminary views only. The full text of my letter is available on the Tasmanian Parliament's website. As at the date of writing, the Committee has not released its Report.

## Comment on the draft Court Security Bill 2016

This draft Bill, which was released for public consultation via the Department of Justice website, aims to ensure those responsible for ensuring the safety of those who attend our Courts and Tribunals have the appropriate powers to do so. The draft Bill also regulates the use of electronic and recording devices and enhances the inherent power of judicial officers to control the conduct of proceedings.

In my February 2017 submission, which focussed on those aspects of the draft Bill likely to particularly affect children and young people, I raised concerns around issues including:

- The wide definition of objects which would be “prohibited objects”, possession of which “without reasonable excuse” on Court premises might amount to an offence being committed, trigger a power of arrest and search and authorise the use of reasonable force by security officers to carry out such functions.

- Apparent ambiguities in the provisions dealing with the way in which a personal search might be carried out.

I acknowledged the need to ensure that our Courts are safe and secure places for all who enter Court premises and can operate in an orderly manner. I also acknowledged the necessity to take steps to address threats to that safety or security, including through the use of personal searches. My prime concern with the draft Bill – particularly regarding children and young people – was the need to ensure the rights and freedoms enjoyed by all citizens should not be duly and disproportionately affected. I suggested that the *Court Security Act 2013* (Cth) – which operates in the Federal Court and Family Court – appears to provide an appropriate framework for ensuring both the safety of persons on Court premises and the safe and orderly operation of Courts.

## Comment on the Police Powers and Related Legislation (Evasion) Bill 2017

On 22 May 2017 I wrote to the Minister for Police and Emergency Management to outline some issues for consideration regarding the Police Powers and Related Legislation (Evasion) Bill 2017.

I acknowledged the significant public interest in seeking to address the apparent increase in the number of drivers who evade police and the inherent dangers posed by reckless and dangerous drivers seeking to avoid police interception.

The degree to which children or young people are responsible for such offending is unclear from available data. It is nevertheless clear that the Bill will impact on children and young people who come to the attention of the police for an offence under section 11A of the *Police Powers (Vehicle Interception) Act 2000* where they are aged 14 to under 18 years of age at the time of the offence.

I raised concerns that an offence for evading police would become a prescribed offence under the *Youth Justice Act 1997* for children and young people aged 14 to 17 and that diversionary options would be removed as a consequence of the amendments to that Act.

I also expressed concern that the mandatory minimum penalty provisions for 17 year olds included in the Bill have the potential to result in disproportionate outcomes that do not reflect the circumstances and gravity of the offence or the circumstances or needs of a young offender.

Additionally, I questioned the extent to which introducing set minimum penalties for evading police for 17 year olds are likely to achieve their aim. Research shows that community based approaches to youth offending are more effective than incarceration in reducing recidivism, and that treating young people as adults in criminal proceedings may in fact increase recidivism.

A further undesirable consequence of adopting a punitive approach to evading police offences will undoubtedly be to discourage young people to take personal responsibility for their behaviour.

## Comment on Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017

The Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017 sought to amend the *Sentencing Act 1997* to introduce mandatory minimum terms in relation to adult offenders as follows:

- 4 years' imprisonment for the crime of rape (section 185 of the Criminal Code) where a victim is under 17 years at the time of the offence.
- 4 years' imprisonment for the crime of maintaining a sexual relationship with a young person (section 125A of the Criminal Code) where there are circumstances of aggravation and at least one of the unlawful sexual acts is an offence of rape.
- 3 years' imprisonment for the crime of maintaining a sexual relationship with a young person (section 125A of the Criminal Code) where there are circumstances of aggravation and none of the unlawful sexual acts is an offence of rape.

- 2 years' imprisonment for the crime of sexual intercourse with a young person (section 124 of the Criminal Code) where there are circumstances of aggravation.

The circumstances of aggravation that attract minimum terms of imprisonment in relation to the crimes of maintaining a sexual relationship and sexual intercourse with a young person are outlined in section 11A of the *Sentencing Act 1997*.

The amendments did not seek to require courts to impose mandatory minimum sentences in relation to offenders who are under the age of 18 years at the time the offence was committed or offenders who have impaired mental functioning that is causally linked to the offence.

The Bill followed recommendations made by the Sentencing Advisory Council in a September 2016 Report around the general structure of a mandatory sentencing scheme and in particular around:

- a. which serious sexual offences should be subject to mandatory minimum terms of imprisonment.
- b. the level of minimum mandatory sentence to be applied.

It is clear from the Council's report that it does not support the introduction of mandatory minimum sentences in Tasmania and considers them to be inherently flawed.

As Commissioner I was not consulted on this Bill before it was introduced into the Parliament. Because the Bill has the potential to impact on child victims of serious sexual assault it is clearly a matter within the Commissioner for Children and Young People's mandate.

In a briefing to the Legislative Council, during which I indicated that I did not support the Bill, I made the following points:

- It is every child's right to live free from violence and abuse – however it is clear that child abuse including child sexual abuse occurs at significant levels within our community.
- We must do all we can to prevent and respond to sexual offending against children.

- Sexual offending against children is a serious and grave issue which has long-term social and emotional costs for children, their families and our community.
- It is very important that initiatives to prevent or respond to sexual offending against children are supported by evidence that they will have the desired effect and do not lead to unintended or undesirable consequences.
- As Commissioner I have not been convinced that minimum mandatory sentencing will deter future offending or will promote and protect the rights and wellbeing of children who have been sexually assaulted.
- Minimum mandatory sentencing has the potential to reduce a defendant's incentive to plead guilty, thus increasing the likelihood that matters such as this will have to proceed to trial.

Despite the special measures introduced over the years in recognition of the trauma that Court proceedings can cause in matters such as this, particularly where a child is the victim, it is acknowledged by those who are experts in this area that sexual offences against children are particularly difficult to prosecute and that the rate of acquittals is high.

## Comment on the Evidence and Related Legislation Amendment Bill 2017

In June 2016 the Department of Justice released a draft Bill proposing amendments to the Criminal Code and to the *Evidence Act 2001* for comment.

The Draft Bill proposed :

- a. Amending the *Criminal Code Act 1924* to:
  - establish a presumption that when two or more charges for sexual offences are joined together in the same indictment those charges are to be tried together; and
  - provide that this presumption is not rebutted merely because evidence on one charge is inadmissible in relation to another charge.
- b. Amending the *Evidence Act 2001* to provide that the issue of concoction, contamination and suggestion is not relevant to the admissibility of tendency and coincidence evidence under sections 97 and 98 of the Act.

My comments on the draft Bill – which I supported – were informed by the Australian Law Reform Commission Report *Family Violence – A National Legal Response* (ALRC), the Tasmania Law Reform Institute Report *Evidence Act 2001 Sections 97, 98 & 101 and Hoch's case: Admissibility of 'Tendency' and 'Coincidence' Evidence in Sexual Assault Cases with Multiple Complainants* (TLRI) and the work of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Where separate trials are held in relation to child sexual abuse cases involving multiple incidents and multiple complainants, children involved may be required to give evidence on multiple occasions either as the complainant or as a witness in trials all concerning the same accused. By establishing a presumption that where two or more charges for sexual offences are joined in the same indictment, they will be tried together, the potential trauma for child complainants associated with the proceedings is likely to be minimised.

The possibility that complainants may have concocted their evidence remains central to the court's consideration of the admissibility of tendency and coincidence evidence under the Evidence Act in Tasmania. So, for example, where complainants in multiple sexual assault cases are known to one another, one child's evidence will only be admissible in another child's case if the possibility of concoction is ruled out. This can be extremely difficult to establish, especially for example where complainants are siblings or students at the same school. The issue of concoction is often determined by a court following a pre-trial hearing, meaning that child complainants may be required to give evidence before the commencement of the trial. I supported the proposed amendment because of the potential to reduce the trauma and distress associated with this process.

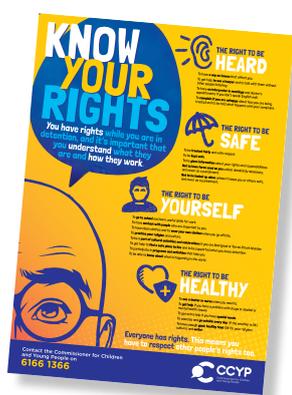
# OTHER ADVOCACY

## Advocate for children and young people detained under the *Youth Justice Act 1997*.

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

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

The *Commissioner for Children and Young People Act 2016*, which commenced on 1 July 2016, provides general guidance and clarification around how this role might be performed. So, for example, the Commissioner may, after taking account of the views and wishes of the detainee, ask a staff member a question about the detainee, inspect or take copies of a document relating to a detainee. The Commissioner's role involves listening to and giving



voice to, the concerns of a detainee and facilitating the resolution of those concerns, including by facilitating access by the detainee to support services appropriate to the detainee's needs.

Provisions in the *Youth Justice Act 1997* mean that I have a right to access Ashley Youth Detention Centre at any reasonable time and to any young person detained there. These provisions also provide for the confidentiality of communications between me and young detainees.

As Commissioner I may also assess whether the detainee has been provided with adequate information about his or her rights. Throughout the time I have been visiting Ashley, it has become apparent to me that detainees are not aware of the rights they have under the various international instruments and agreements which apply to children and young people in youth justice detention. Consequently, and in collaboration with the Department of Health and Human Services (including Ashley management) I produced for use at Ashley the following resources:

- posters describing the role of the Commissioner for Children and Young People as advocate.
- pamphlets explaining the basic rights of children and young people in youth justice detention – and emphasising that we all have rights and we must all respect each other's rights.
- a wallet card with contact information for services and assistance, especially for those young people transitioning out of Ashley back into the community.

In February 2016 I provided advice to the Minister for Human Services regarding the need to implement a therapeutic approach to the provision of youth justice detention in Tasmania. Details of that advice were described in my 2015/2016 Annual Report and that advice can be found on my website. I acknowledge the Tasmanian Government's acceptance in 2015 of my recommendations regarding the need for adoption of a therapeutic model of care at Ashley Youth Detention Centre.

**I urge that implementation of a therapeutic model of care at Ashley is prioritised. A fully implemented therapeutic approach has the potential to transform the lives of young people who have fallen into the youth justice system.** A therapeutic approach recognises the need to bring about behaviour change by facilitating and promoting personal development of young people in detention. For many it is not too late to positively turn their lives around for the better.

## OPCAT Ratification

Given the Australian Government's decision to ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("OPCAT") in December 2017, I anticipate being involved in discussions around implementation in Tasmania of the inspection mechanisms required as a result of that ratification.

OPCAT provides for independent inspections of all places of detention in the jurisdictions that ratify and implement it. OPCAT requires monitoring of places of detention to occur through two complementary and independent bodies:

- the National Preventive Mechanism (NPM), the domestic Australian entity or network responsible for inspections; and
- the UN Sub-committee on the Prevention of Torture (SPT), the UN body of independent experts responsible for conducting visits to places of detention in jurisdictions that have ratified OPCAT and for providing guidance to NPMs to assist in the performance of their duties.

Further information on the possible implications for Australia – and for individual jurisdictions like Tasmania – can be found on the website of the Australian Human Rights Commission, noting that at the time of writing this Annual Report, consultations were underway on issues relevant to implementation.

## Custodial Inspector

As I indicated in my 2015-2016 Annual Report, I had the opportunity to comment on draft legislation to establish the office of the Custodial Inspector, with independent oversight of Tasmania Prison Service facilities and Ashley Youth Detention Centre. Legislation establishing the Inspector and defining the functions and powers of that position came into effect in November 2016.

The Custodial Inspector will provide independent external scrutiny into all aspects of prisons and detention centres in Tasmania. The position has been established in the office of the Ombudsman. As Commissioner for Children and Young People I may refer a matter to the Custodial Inspector. I welcome this newly established role.

## Australian Children's Commissioners and Guardians

I am a member of the Australian Children's Commissioners and Guardians (the ACCG) which comprises national, state and territory children and young people commissioners, guardians and advocates.

The ACCG aims to promote and protect the safety, wellbeing and rights of children and young people in Australia. The ACCG strives to ensure that the best interests of children and young people are considered in public policy and program development across Australia.

The ACCG:

- promotes the rights of children and young people, including their right to participate in decisions relating to them, as articulated in the United Nations *Convention on the Rights of the Child*;
- ensures the best interests of children are considered in the development of policies and programs;
- gives voice to the views of, and encourages direct consultation with, children and young people on matters that affect them; and
- encourages systemic improvement, informed by evidence-based research, in areas that impact on the rights, interests and wellbeing of children and young people.

The ACCG meets approximately every six months. Meetings were held in November 2016 and May 2017 during the reporting period.

I had the pleasure of hosting the ACCG meeting in Hobart on 23 and 24 May 2017. Members warmly welcomed the attendance of the New Zealand Children's Commissioner Judge Andrew Becroft who presented on culturally significant approaches to youth justice in New Zealand. Members of the ACCG Officers Network joined the meeting with ACCG members on day two and met separately following the meeting to progress actions from the ACCG meeting.

At the May 2017 meeting, members identified six key priorities for ACCG:

### **PROMOTING CHILDREN AND YOUNG PEOPLE'S ENGAGEMENT AND PARTICIPATION**

Members are committed to ensuring that the voices of children and young people are actively sought and taken into account on issues of personal, local and national significance.

### **ACHIEVING BETTER OUTCOMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND YOUNG PEOPLE**

Members agreed that the significant overrepresentation of Aboriginal and Torres Strait Islander children and young people in out of home care, youth justice and child protection systems is a priority concern across all jurisdictions. There is a need to prioritise the rights, wellbeing, participation and connection of Aboriginal and Torres Strait

Islander children and young people through greater investment in tackling systemic discrimination and adapting systems and services to improve their cultural sensitivity and competency. Actions need to take account of the targets already articulated through *Closing the Gap*, and the upcoming 20th anniversary of the *Bringing Them Home* report, and be developed in partnership with Aboriginal and Torres Strait Islander people.

### **UPHOLDING THE RIGHTS OF CHILDREN AND YOUNG PEOPLE IN YOUTH JUSTICE DETENTION**

**Members highlighted serious concerns about the treatment of children and young people in youth justice detention** and the extent to which their rights are recognised as equally important as those not held in detention and upheld accordingly. Youth justice detention must be a measure of last resort; where detention does occur, it should be rehabilitative and developmentally appropriate.

### **IMPROVING THE SAFETY OF CHILDREN AND YOUNG PEOPLE IN ORGANISATIONS**

**Members discussed the ongoing need to promote and encourage organisations across all sectors to develop a culture of child safe practice.** Members are working in their own jurisdictions to support organisations to create and maintain safe environments for children and young people and are also working with the Australian Human Rights Commission as it develops a *National Statement of Principles for Child Safe Organisations* under the *National Framework for Protecting Australia's Children*.



## ENDING VIOLENCE AGAINST CHILDREN AND YOUNG PEOPLE

Children and young people have a right to live free from all forms of violence and ending all violence against children and young people is a priority.

**Members discussed the fact that children are often silent and invisible victims, in particular in the context of family violence.** Children and young people's experiences of violence are often very different from those of adults and therefore require a distinct and individualised response.

## PROMOTING CHILDREN AND YOUNG PEOPLE'S SAFETY AND WELLBEING

Members discussed and agreed on the importance of evidence-based decision-making frameworks for child protection practice. Members agreed that all services provided to children and young people should be trauma-informed and have a therapeutic focus, recognising that the individual needs of each child and young person should have precedence in making decisions about their care and support.

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

The next meeting of the ACCG will be held in Melbourne in November 2017.

## Children's e-Safety Workshops (11th, 12th 13th October 2016)

In October 2016, I collaborated with Equal Opportunity Tasmania to host a series of community information sessions by the Office of the Children's eSafety Commissioner on children's e-safety. Over 50 people attended the sessions in Hobart, Zeehan, Rosebery and Launceston. The workshops were targeted at parents, educators and other people who work with children and young people. The workshops included information on the powers of the Office of the Children's eSafety to remove cyberbullying material, current technology trends and advice on how to support children and young people to have a safe and enjoyable online experience. The workshops also included practical strategies to safeguard and minimise risk with online interactions, and on how to begin conversations with children and young people about ways to keep themselves safe online.

Helping children and young people stay safe online is something many parents are concerned about.

Knowing about the basics of the digital world their children inhabit can help parents to be proactive should they need to manage a negative situation.

## Media Releases

- New Legislation for Commissioner (18 July 2016)
- Commissioner for Children and Young People releases important snapshot of Tasmanian children (21 July 2016)
- Proposed Changes to Early Learning to Benefit Tasmanian Children (29 July 2016)
- Commissioner Supports Increase to State Care Leaving Age (29 August 2016)
- Ashley Youth Detention Centre (30 August 2016)
- Children and Young People's Unique Experiences of Family Violence (20 September 2016)
- Education Bill (21 September 2016)
- Anti-Discrimination Amendment Bill (21 September 2016)
- Children's E-Safety Workshops (26 September 2016)
- The Commissioner for Children and Young People's Young Creative Writers Awards have been announced (2 November 2016)
- Annual Report 2015-2016 (17 November 2016)
- Custodial Inspector Welcomed (21 November 2016)
- Family Violence and Children and Young People in Tasmania (29 November 2016)
- Strengthening support to children and young people in out-of-home care (31 January 2017)
- Commissioner welcomes Government commitment to children in out of home care (31 January 2017)
- Education report card (3 February 2017)
- New Resource for Kids on Family Violence (9 March 2017)
- Children in out-of-home care in Tasmania (9 March 2017)
- Putting Out-of-Home Care Kids First in Public Discourse (17 March 2017)

- Commissioner releases data report on the health and wellbeing of Tasmania's children (28 March 2017)
- Tasmanian Children Have Their Say (31 March 2017)
- Strengthened Support for Student Health and Wellbeing (17 May 2017)
- Commissioner for Children and Young People Welcomes Additional Funds for Out-of-Home Care (25 May 2017)
- Commissioner for Children and Young People Welcomes Government Investment in Education (26 May 2017)
- Coronial Inquest Findings (27 June 2017)

## Opinion Pieces

- Our modern cyber society can compound a sense of lonely alienation (*The Mercury*, 8 September 2016)
- The importance of reading and creative writing in 2016 (2 November 2016)

## Statements

- Out of Home Care Review (14 December 2016)

## Right to Information requests

The *Right to Information Act 2009* ("the Act") gives members of the public the right to obtain information contained in the records of the Government and public authorities unless it is exempt from disclosure under the Act. The Act provides a framework for disclosure of information and encourages routine disclosure of information.

The Commissioner for Children and Young People releases submissions, reports and other information routinely via the Commissioner's website.

The Commissioner for Children and Young People received 2 applications for assessed disclosure during 2016-2017, each of which was accepted and determined.

## OUTCOME OF APPLICATIONS

In relation to each application, information was provided in part however the balance was not disclosed on the basis it was exempt by virtue of the following provisions of the Act:

- s27 Internal Briefing of a Minister
- s33 Public interest test
- s35 Internal deliberative information
- s39 Information obtained in confidence.

One (1) application was determined within 20 days of the application being accepted.

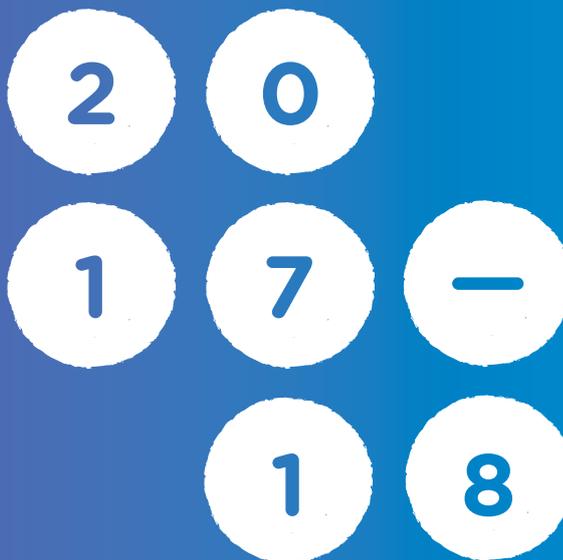
One (1) application was determined more than 20 days from acceptance pursuant to an extension negotiated under s15(4)(a) of the Act.

There was one (1) request for internal review, which resulted in the original decision being substantially upheld.

## Groups

- B4 Coalition
- COPMM – Council of Obstetric and Paediatric Mortality and Morbidity
- Underwood Centre Research Forum
- Anglicare Tasmania - Vulnerable Teens Reference Group
- Cross Sectoral Consultative Committee (Child Protection Redesign)
- Anglicare Tasmania – Reference Group on foster carers and their role in educational attainment

# FOR CONSIDERATION



## Strengthening Approaches to Keeping Children Safe in Organisations

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) will hand down its Report later in 2017. Based on the significant work undertaken into child safe organisations I expect there will be a number of Recommendations on this important issue.

In September 2015 I released a report on Strengthening Child Safe Organisations. In that Report I made a number of Findings. A major finding of the Report is that **although Tasmanian organisations are committed to promoting child safety in their day to day work with children and young people, there is a clear need for guidance, education and assistance.**

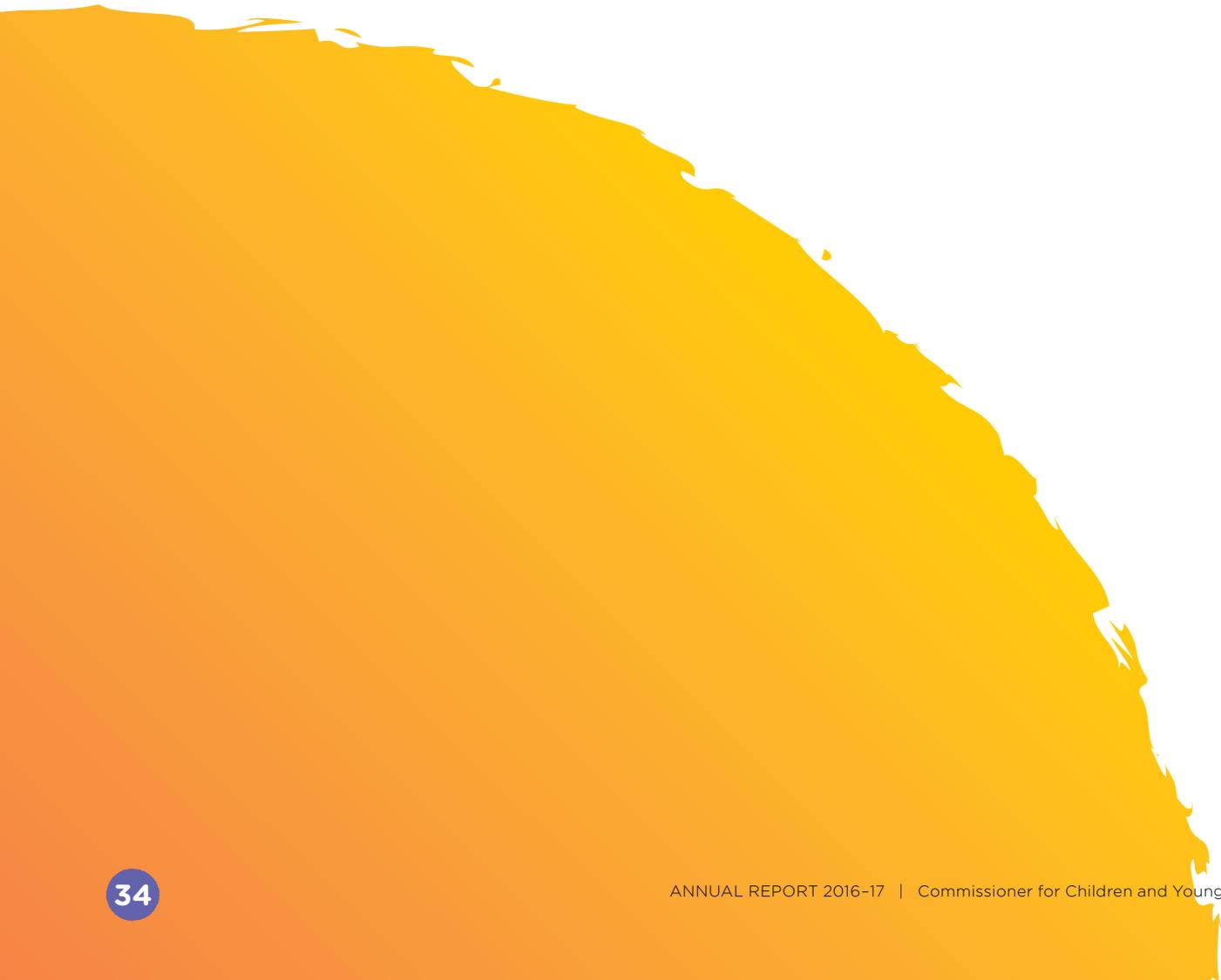
Children and young people also have very clear views on what makes them feel safe or unsafe in an organisational setting; of particular importance is their clear desire for adults to listen to them more and to take their views seriously. This message is consistent with the work being done by the Royal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

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

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

There is an ongoing need to consider how these elements should be implemented and how to better provide opportunities to build the capacity of institutions and develop mechanisms for holding institutions to account.

There is no doubt that many organisations are improving their culture and responses as we gain an increased awareness about child abuse and share a growing commitment to the welfare of children, but there is still much work to be done. **I urge that consideration be given to prioritise a child safe organisation framework here in Tasmania.**





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