



# ANNUAL REPORT 2018-19



September 2019

President  
Legislative Council  
Parliament House  
HOBART TAS 7000

Speaker of the House  
House of Assembly  
Parliament House  
HOBART TAS 7000

Dear Mr President  
Dear Madam Speaker

**Annual Report for 1 July 2018 to 30 June 2019**

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

A handwritten signature in black ink, appearing to read 'L. McLean'.

**Leanne McLean**  
Commissioner for Children and Young People

*cc Hon Roger Jaensch, Minister for Human Services*

Commissioner for Children and Young People Tasmania Annual Report 2018-19

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# Message from the Commissioner

This 2018-19 Annual Report reflects a year of change. Interim Commissioner David Clements undertook the role of Commissioner for Children and Young People from September 2017 to November 2018. Throughout that time, he represented the interests of children and young people in Tasmania, and steered the work of the office, including the establishment of a new program to independently monitor out-of-home care (OOHC) in Tasmania. I would like to acknowledge and sincerely thank David for all his important work.

Since November 2018, as Commissioner I have had both the responsibility and great pleasure of taking this work forward to promote and protect

the wellbeing and rights of children and young people in Tasmania. This has included expanding opportunities for more children and young people to have a say on matters that are important to them; continued advocacy for children and young people detained under the *Youth Justice Act 1997*; and, following the important work of former Commissioner Mark Morrissey, continuation of advice and advocacy on the ongoing reform of OOHC and child safety in Tasmania.

I've also published a new annual plan for 2019-20 to guide the work of the office.

I am deeply committed to being out in the community, travelling the State listening to the voices of children and young people and the people who support them. I am particularly mindful of those who, because of their circumstances in life, often aren't heard. To that end, I have initiated a Listening Tour and a new CCYP Ambassador Program, both of which have surpassed my expectations. There are so many children and young people who want to be heard and engaged in decisions that affect them. Since I began the CCYP Ambassador Program, I have appointed nearly 200 CCYP Ambassadors who are now helping guide my work.

I have already heard very clear messages from CCYP Ambassadors about what they consider important for children and young people in Tasmania. They have proactively shared their knowledge and ideas with me on topics including education and opportunities, climate change

and the environment, bullying and mental health, safety, access to necessities, services and support, participation and recognition of children and young people, and equity and diversity. CCYP Ambassadors help to inform my systemic advocacy on behalf of children and young people, but they also influence how I go about my work. For example, in recognition of CCYP Ambassadors' advice about the critical importance of environmental sustainability, I have decided not to order a print run of this Annual Report and I have adopted waste reduction initiatives within my office.

I've also had the pleasure of meeting with many of the stakeholders and community groups who work to support Tasmania's children. I'd like to thank them for their commitment to our young people, their openness and their willingness to collaborate.

I've had the privilege of joining an exceptional team at the Commissioner for Children and Young People's office, who have welcomed me into this role, and who work tirelessly in support of the rights and best interests of the children and young people of Tasmania.

I'm very much looking forward to continuing our work together.



Leanne McLean  
Commissioner for Children and Young People



# About the Commissioner for Children and Young People

The Commissioner for Children and Young People is an independent statutory officer responsible to the Parliament of Tasmania and established under the *Commissioner for Children and Young People Act 2016* (Tas) (the CCYP Act). The statutory office of Commissioner for Children was first established by the *Children, Young Persons and Their Families Act 1997* (Tas).

The CCYP Act sets out the guiding principles, functions and powers of the Commissioner and includes specific provisions which acknowledge the independent and impartial role of the Commissioner.



The Commissioner's general functions are:

- 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.

The CCYP Act provides a strong mandate for the Commissioner to perform their functions and exercise powers through the lens of a child-rights framework. When performing a function or exercising a power, the legislation requires the Commissioner to:

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

In essence, the Commissioner's role is to ensure that the interests, views and opinions of Tasmania's children and young people are advocated, represented and heard across Government and the community.

Importantly, the CCYP Act gives the Commissioner the power to initiate an inquiry or investigation into systemic matters and makes it clear that the Commissioner has wide powers to compel the production of information and documents.

The CCYP Act also clarifies the circumstances in which the Commissioner may refer information to relevant authorities, including Tasmania Police, the Ombudsman, the Integrity Commission and the Custodial Inspector.

The Commissioner is not permitted to deal with complaints made by or on behalf of an individual and does not have the authority to investigate or review the circumstances of individual children (unless requested to do so by the Minister). The Commissioner may, however, investigate or otherwise respond to an issue that affects the wellbeing of children more generally even if it is raised through a matter relating to a specific child.

The work of the Commissioner is currently supported by seven State Service employees with policy, review, program, research and administrative responsibilities. All staff have been provided with the opportunity to complete the Aboriginal and Torres Strait Islander Cultural Competence Course, an online training program made available by the Centre for Cultural Competency Australia.

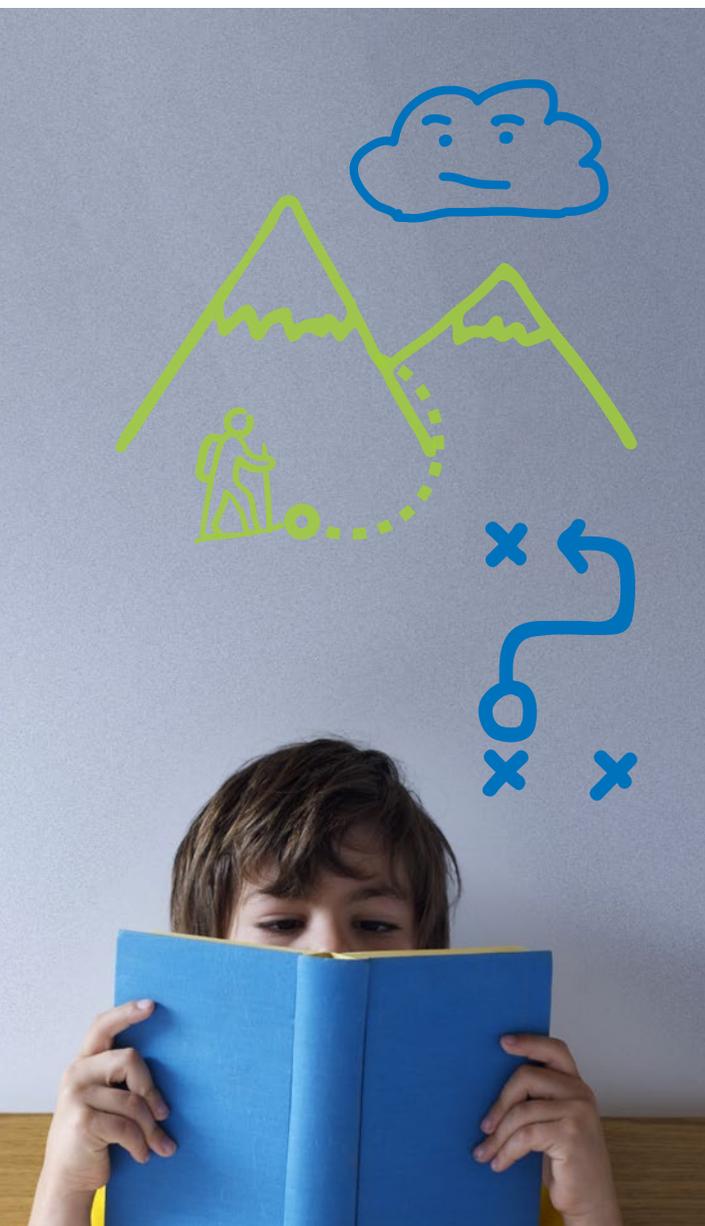
The budget for the Commissioner’s office for the 2018-19 financial year was \$1,175,700.

In the 2019–20 State Budget funding of \$112,000 per annum was provided to the Commissioner for Children and Young People for an additional resource to support strategic communication and media services. This funding is designed to facilitate the capture of the views and opinions of children and young people, encourage, promote and facilitate the expression of those views and opinions, and empower children and young people to participate in decision making processes. The Commissioner will use this resource to create a position of Senior Marketing and Communications Officer.

**Diagram 1:** Structure of the office of the Commissioner for Children and Young People



# Wellbeing of children and young people



“There are a myriad of factors that can impact on the health and wellbeing of children and young people. Access to information on how Tasmania’s children and young people are faring at a population level can assist us to better plan and deliver policy and programmatic responses aimed at promoting their wellbeing. Accurate data contribute to informed decision-making and allow us to consider how different services can work together to improve outcomes for children and young people across a range of areas.”

— Foreword to *The Health and Wellbeing of Tasmania’s Children and Young People Report 2018*, Commissioner for Children and Young People Tasmania

## Overview

Being healthy and well is vital to children and young people reaching their potential and living long and fulfilling lives. The Commissioner’s functions expressly require the Commissioner to promote, monitor and review the wellbeing of children and young people, including by ensuring that their interests and needs are brought into clearer focus across a range of strategic and policy activities of Government.

Actions of the Commissioner that addressed the wellbeing of Tasmania’s children and young people over the 2018-19 reporting period include:

- Conducting a Listening Tour.
- Researching and publishing *The Health and Wellbeing of Tasmania’s Children and Young People Report 2018*.
- Establishing the CCYP Expert Advisory Council on Wellbeing.
- Providing comprehensive comment on the Tasmanian Government *Draft Tasmanian Child and Youth Wellbeing Outcomes Framework*.
- Continuing support of the work of Tasmania’s B4 Early Years Coalition.

## Listening Tour

One of the Commissioner’s most important roles is to provide Tasmania’s children and young people with a strong, impartial and dedicated voice that reflects their hopes and dreams, the challenges they face in their everyday lives, the state of their health and wellbeing, and how well they are thriving.

To do this well, Commissioner McLean has initiated her Listening Tour – an ongoing program of engaging with and listening to children and young people, and connecting with and listening to parents, grandparents, other family members, and

service providers who provide the daily support and assistance children and young people need to thrive.

An important part of the Listening Tour is spending informal and quality time with parents and service providers in their communities. Visiting places like Neighbourhood Houses, Child and Family Centres, and organisations providing services to the Aboriginal communities in Tasmania is important to gaining an understanding of local issues from local people. The Commissioner will continue her Listening Tour into 2019–20.

## The Health and Wellbeing of Tasmania's Children and Young People Report 2018

This latest Report on the health and wellbeing of Tasmania's children and young people provides quality information for those working to ensure Tasmania's children and young people reach their full potential and live fulfilling lives. The Report brings together publicly available data from credible sources to provide an easy to use resource for government and non-government organisations, professionals, and individuals.

It is also available in a child-friendly version so that children and young people are better able to access and understand the data.

The Report includes demographic and developmental data through the stages of early childhood, the transition to school, middle childhood and adolescence. It also presents data

relating to targeted support for children and young people in Tasmania. The information in the Report tells the story of what's going well and not so well and enables a collective focus on areas needing attention and improvement.

By publishing this Report, the Commissioner aims to promote continuous improvement in the amount and range of data publicly available in Tasmania while providing an understanding of key changes in the health and wellbeing of Tasmania's children and young people over time.

The 2018 Report concluded that in the early years, Tasmania's children are doing well on a range of health and wellbeing measures. As they grow older however, areas for improvement emerge including engagement with physical activity, screen time, smoking and drinking alcohol, deaths due to self-harm, NAPLAN data relating to older students, and school retention rates.

The Report also found that although targeted supports are available, there is a high level of need in some Tasmanian communities, for example, the higher proportion than nationally of children and young people needing assistance from specialist homelessness services.

It is also recognised in the Report that there are a number of areas requiring new sources of data so that policy makers can fully respond to the needs of Tasmania's children and young people. Of particular interest is the need for a population level survey that captures information about children and young people's own perception of their health and wellbeing.



*The Health and Wellbeing of Tasmania's Children and Young People Report 2018, and child-friendly version*



## CCYP Expert Advisory Council on Wellbeing

In June 2019, Commissioner McLean established the CCYP Expert Advisory Council on Wellbeing (EACW) with a focus on supporting her work to promote, monitor and review the wellbeing of children and young people in Tasmania. Members of the EACW come from diverse medical, academic and social services backgrounds and will assist the Commissioner by providing:

- high-level strategic, conceptual and analytical advice on the wellbeing of children and young people; and
- technical and/or strategic advice to the Commissioner as needed.

Members of the EACW are:

- Leanne McLean (Chair)
- Professor David Adams (University of Tasmania)
- Professor Rufus Black (University of Tasmania)
- Professor John Burgess (Australian Medical Association Tasmania)
- Kym Goodes (Tasmanian Council of Social Service)
- Professor Maggie Walter (University of Tasmania).

The first meeting of the Council will be in July 2019.

The EACW replaces the Children and Young People Expert Advisory Council (CYPEAC) which was convened by Interim Commissioner Clements.

## The Tasmanian Child and Youth Wellbeing Framework and Draft Tasmanian Child and Youth Wellbeing Outcomes Framework

The *Tasmanian Child and Youth Wellbeing Framework*, produced by the Tasmanian Government, is an evidence-based approach to providing a common understanding of child and youth wellbeing for inclusion in services, policies and procedures by Government, non-government organisations and the private sector. The Tasmanian Government committed to developing a robust and common understanding of child wellbeing in its response to the March 2016 report *Redesign of Child Protection Services Tasmania: Strong Families – Safe Kids*.

The Wellbeing Framework identifies six domains of health and wellbeing with “descriptors” that help define what wellbeing includes; it also considers three developmental stages: four years and under, age 5–12, and 13 years and over. The domains, which are highly inter-related, are:

- Being loved and safe
- Having material basics
- Being healthy
- Learning
- Participating
- Having a positive sense of culture and identity.

The Wellbeing Framework will be supported by the *Tasmanian Child and Youth Wellbeing Outcomes Framework* which is currently under development. The Outcomes Framework will

provide the basis for monitoring and reporting progress against key wellbeing indicators and aims to provide a:

- Strong, common understanding of child and youth wellbeing.
- Framework for use by Government agencies to set goals, monitor and report on progress.
- Mechanism to hold government agencies accountable for delivering improved wellbeing for children and young people.

The Wellbeing Framework is a welcome step in the journey towards a shared and comprehensive understanding of, and robust approach to, improving and addressing the health and wellbeing of children and young people in Tasmania.

In his submission on the draft Outcomes Framework, Interim Commissioner Clements noted the need for:

- More clarity about how indicators will be identified and added where there are few or none to support the Framework.
- Development of comprehensive reporting arrangements against a full range of indicators for every outcome including targets, timeframes, and agency accountability.
- A comprehensive review of data sets held by Tasmanian Government agencies to provide access to additional data and indicators that could be included in the Outcomes Framework.

Of particular note was identification of the need for Government to commission a periodic population-level study to include data on

children and young people's subjective views and understanding of wellbeing.

As part of the reform of the OOHC system in Tasmania, an *Outcomes Framework for Children and Young People in Out of Home Care Tasmania* has also been developed by the Tasmanian Government using the same wellbeing domains as those in the *Tasmanian Child and Youth Wellbeing Framework*. This specific framework supports and promotes the wellbeing of children and young people in OOHC in Tasmania. This is discussed later in this Annual Report.

The Department of Education has also released the *2018-2021 Child and Student Wellbeing Strategy: Safe, Well and Positive Learners*, which builds on the *Tasmanian Child and Youth Wellbeing Framework* and adopts the six wellbeing domains of the Framework. In 2019, as part of its implementation, the Department is putting a spotlight on child and student mental wellbeing. In March, the Commissioner participated in a stakeholder briefing ahead of the release of the *Child and Student Wellbeing Strategy Implementation 2019: Mental Wellbeing*.

## Supporting B4 Early Years Coalition

The Commissioner for Children and Young People co-chairs the B4 Early Years Coalition (B4) with Elizabeth Daly, a highly respected educator and passionate supporter of Tasmania's children and young people. B4 brings together individuals, businesses, organisations and communities committed to the early years who want to work collectively so that every child in Tasmania has the best possible start in life.

The B4's collaborative approach is based on the Collective Impact model where organisations and individuals from diverse sectors work together to address complex social issues. The name B4 represents the period from birth to four years of age, as well as the phonetic representation of 'before', acknowledging these are the years before a child begins formal schooling.

B4 activities in 2018–19 include:

- Development of the B4 toolkit which includes resources and information including the *Early Years Story* which shares why the early years of a child's life are so important.
- Creation of a B4 mascot, Percy the Pygmy Possum. A key role of Percy is to promote the importance of the early years.
- A call for submissions for *Making Marks*, a curated children's art exhibition to celebrate, nurture and support the voice of the child through art, taking place in September 2019.

# Voices of children and young people



Members of the 2018 Children and Young People Consultative Council with Interim Commissioner David Clements

“We are the future generation so today’s decisions affect our future...Children are not just your future, we may be your best future...Everything’s better when we work together.”

– *We Can*, CCYP Short Film

## Overview

A key function of the Commissioner is to ensure children and young people’s opinions and views are sought, heard, and considered in decisions that affect them. By listening to children and young people and showing them that what they say is important, they not only learn their voice matters but also that they have rights and responsibilities as adults do. They also learn the skills to become engaged and active citizens.

The Commissioner invests time, effort and commitment into inviting the voices of children and young people into decision-making so they can contribute their ideas to adult-centric decision-making processes. Children and young people are clear they want their views to be considered and offer tips on how to best achieve this. As the fun and insightful short film, *We Can*, demonstrates, children are ready, willing, and keen to be involved.

The knowledge, thoughts and ideas of children and young people in Tasmania have been gathered, captured and promoted during the 2018-19 year through:

- Participation in the Children and Young People Consultative Council.
- Development of the *We Can* short film.
- Publishing the *Listening to Children and Young People in Tasmania 2018 Report*.
- Commencement of the CCYP Ambassador Program 2019.
- Australian Institute of Family Studies Forum on the Voices of Children in Family Law.
- Participating in the National Simultaneous Story Time event at Glenorchy Library.

## Children and Young People Consultative Council

The Commissioner’s Children and Young People Consultative Council was made up of children and young people aged 9 to 17 from diverse backgrounds and locations around Tasmania. Council members were appointed through an expression of interest process in February 2018.

In October 2018, members of the Council met with the Honourable Roger Jaensch MP, Minister

“We CAN think about things that matter to us”

—  
 “We CAN think about things differently”

—  
 “Can you see the future? We CAN!”

—  
 “Everything’s better when we work together”

watch our short film ‘We Can’



for Human Services, the Honourable Josh Willie MLC, Shadow Minister for Youth Affairs, and senior officials from the Departments of Communities and Education. This event enabled politicians and senior public servants to hear directly from Tasmanian children and young people about matters of importance to them. Regional meetings were also held in Devonport, Launceston and Hobart in December 2018 and March/April 2019.

At the meetings, Council members:

- Considered issues of importance or concern to them and their peers which also informed correspondence to state political leaders about these issues.
- Offered advice on key issues like bullying and cyberbullying to inform the Commissioner’s advocacy work on behalf of children and young people.
- Informed the development of a webpage about the participation of children and young people in decision-making.
- Provided advice on options for the Commissioner’s ongoing engagement with children and young people in Tasmania.

Members also participated in interviews with local media about their priorities for change.

### We Can

A highlight of the Consultative Council’s work this past year was the production of an engaging short film, *We Can* <https://www.childcomm.tas.gov.au/participation-2/>. The film provides insights into the value of adding children’s voices to

decision-making processes. The film was produced in conjunction with Big hART, a leading arts and social change organisation which began in Tasmania 25 years ago. Their mission is to make art, build communities and drive change.

In the film, the children speak eloquently about the talents and abilities they bring to the table. Examples of their views include:

“We CAN think about things that matter to us”

“We CAN think about things differently”

“Can you see the future? We CAN!”

“Everything’s better when we work together”

### Listening to Children and Young People in Tasmania 2018 Report

The views and input of the 46 members of the Commissioner’s 2018 Consultative Council provide a window into the many and complex issues concerning children and young people in Tasmania. Their views, ideas, knowledge, and opinions are captured in the *Listening to Children and Young People in Tasmania 2018 Report* which aims to increase the role of children and young people in shaping our society and future.

The Report recognises and brings to light key issues concerning children and young people including:

- The importance of providing opportunities to express their views and influence decisions that affect them; their commitment to becoming informed, active, empowered and engaged citizens; and access to child and young person-

friendly information to help them understand democratic processes and information about how they can effectively influence decision making.

- Improved access to programs, services and supports to enable more active involvement in their communities; for better public transport systems to meet their needs; greater access to financial assistance to participate in organised sport and recreation; to have access to low cost driving lessons and get their driver's licence; increased recreational spaces for children and young people; and more information about available services and support when needed.
- The importance for schools to adopt a flexible approach to supporting and meeting students' needs and interests including flexible teaching approaches, specialised teachers, subjects relevant to students' interests and possible career paths. Council members were keenly aware of the need to develop skills responsive to changing working environments and the future of work, and life skills education to prepare them for transition to adulthood.
- The reality of bullying and cyber-bullying and the need for support systems and methods to address, respond to and increase accountability of those who bully; and the critical importance of understanding the underlying causes of bullying behaviours. Access to social work and psychological support in schools was raised as a matter of importance.



Children and young people are clear they want their views to be considered and offer tips on how to best achieve this.

CCYP Ambassador Program, Devonport Regional Meeting, June 2019



**CCYP Ambassador Program,  
Hobart regional meeting, June 2019**

## CCYP Ambassador Program 2019

Development of the CCYP Ambassador Program has been informed by the views of members of the 2018 Children and Young People Consultative Council and the CCYP Ambassador Working Group. The Program is an opportunity for children and young people to have their voices heard on how things could be improved for them across Tasmania. Over 190 children and young people have been offered the opportunity to be CCYP Ambassadors and inform the Commissioner's understanding of what is important for them.

The CCYP Ambassador Program enables more children and young people to work directly with the Commissioner to gather information about their wellbeing and views on topical issues, and to influence policy and decision-making. CCYP Ambassadors meet with the Commissioner to:

- Share their opinions and ideas about what is important to them to help the Commissioner be a strong advocate for Tasmanian children and young people.
- Learn about and promote their rights under the UNCRC.
- Complete special projects.

They will also meet with political leaders and senior executives of the Tasmanian State Service to share their views, opinions and priorities. These priorities include:

- Education and opportunities
- Climate change and the environment
- Bullying and mental health
- Safety

- Access to necessities, services and support
- Participation and recognition of children and young people
- Equity and diversity.

The benefits for children and young people involved in the CCYP Ambassador Program include:

- Greater awareness and understanding of children's rights and the role of the CCYP.
- Leadership opportunities.
- Opportunities to meet and work with other young people across Tasmania on key issues.
- Opportunities to speak with key decision-makers in Tasmania.

The CCYP Ambassador Program replaced the Children and Young People Consultative Council from April 2019.

## Australian Institute of Family Studies Forum on the Voices of Children in Family Law

In October 2018 the Interim Commissioner partnered with the Australian Institute of Family Studies (AIFS) to co-host a forum on hearing the voices of children and young people in family law.

The event aimed to create a shared understanding of the importance of listening to the views and experiences of children and young people in the family law system, the opportunities and challenges involved in facilitating safe and effective options to participate, and implications for the Tasmanian family law community.

Discussion also informed the development of principles to guide family law practice.

AIFS Senior Research Fellow, Dr Rachel Carson, presented findings from the *Children and Young People in Separated Families Study* which investigated the experiences and needs of children and young people whose parents had separated and had accessed the family law system. Dr Carson discussed the implications for policy and practice from listening to the voices of children with a focus on developing child-inclusive practices in family dispute resolution and across the family law system.

### National Simultaneous Story Time

On 24 May 2019, 221 students from Windermere Primary, Dominic College, Austins Ferry Primary and Goodwood Primary celebrated the joy of reading with Commissioner McLean at Glenorchy Library for *National Simultaneous Story Time*. Every year a picture book by an Australian author and illustrator is read on the same day, at the same time all around the country. In 2019, the book was Matt Cosgrove's *Alpacas with Maracas*.



Commissioner  
McLean reads  
*Alpacas with Maracas*  
with primary school  
students during  
National Simultaneous  
Story Time 2019

# Children and young people in the child safety system



Successive Commissioners for Children and Young People have adopted a 'child-centred' approach to promoting the rights of children.

"Approaches to ensure the safety of children at risk of harm have evolved significantly over recent decades. Adoption of a public health approach along with recognition of the importance of listening to the voices of children and young people is growing, and service systems are beginning to respond accordingly. All children and young people should be afforded the opportunity to thrive and enjoy their childhood."

— *Out-of-Home Care Monitoring Plan 2018-19*, July 2018

## Overview

The CCYP Act requires that the interests and needs of children and young people who are disadvantaged for any reason or vulnerable should be given special regard and serious consideration by the Commissioner.

In advocating for their interests and seeking to make a difference for children and young people who are disadvantaged or vulnerable, the Commissioner explicitly shines a light on their fundamental human rights, and from this perspective critically analyses legislative and policy changes for potential impacts on their health and wellbeing.

Successive Commissioners for Children and Young People have adopted a 'child-centred' approach to promoting the rights of children to encourage all organisations concerned with children to work towards what is best for each child. This reflects Australia's obligations as a signatory to the UNCRC.

In the reporting period of this Annual Report, there has been critical analysis and input by the Commissioner as follows:

- Monitoring of OOHC.
- Developing the OOHC child-friendly fact sheet and *Being Healthy* postcard.
- Comment on outcomes frameworks and active participation in the *Strong Families - Safe Kids* system redesign.
- Comment on the *Permanency Framework for Children and Young People in the Child Safety System: Consultation Paper*.
- Comment on the *Discussion Paper Series: A Future Program for Family-Based Care*.

## Out-of-Home Care Monitoring 2018-19

In the 2017-18 Budget, the Tasmanian Government allocated \$250,000 per annum for four years for the Commissioner to provide independent

monitoring of OOHC. This commitment arose from the Tasmanian Government's decision to accept former Commissioner Morrissey's recommendations in his January 2017 report into OOHC, *Children and Young People in Out of Home Care in Tasmania*. This independent, systemic OOHC Monitoring Program is one of a number of important accountability mechanisms that can influence outcomes for Tasmanian children and young people.

Interim Commissioner Clements outlined key considerations and guiding principles for OOHC monitoring in *Laying the Foundations: A Conceptual Plan for Independent Monitoring of Out-of-Home Care in Tasmania* (April 2018). In July 2018 he released a second publication, *Out-of-Home Care Monitoring Plan 2018-19* which provides detail about the focus and implementation of the Commissioner's monitoring program for 2018-19. Following her appointment in November 2018, Commissioner McLean continued the work plan outlined in the publications, both of which are available on the Commissioner's website. As outlined in the Monitoring Plan, the focus of monitoring activities has been on:

- Monitoring overall outcomes for children and young people in OOHC and the processes or features of the Tasmanian OOHC system that contribute to those outcomes.
- Promoting the capacity and ability of children and young people in OOHC to participate in decision-making processes and express views on matters that affect their lives.

Monitoring activities for 2018-19 included:

- Regular data monitoring using publicly available data, data from the Department of Communities Tasmania and data collected from OOHC providers.
- Consideration of factors affecting the health outcomes of children and young people in OOHC and their participation in decision making.
- Visits to OOHC providers and advocacy organisations.
- Engagement with children and young people in OOHC, including through distribution of a child-friendly fact sheet, postcard, attendance at a CREATE roundtable and informal discussions facilitated by OOHC providers.

### OOHC Child-Friendly Fact Sheet

The OOHC child-friendly fact sheet, *What's going on in out-of-home care?* introduces the Commissioner to children and young people in a fun and accessible way. The fact sheet was developed in consultation with children and young people through CREATE (Tas). In it, the Commissioner explains her role in general, and specifically in monitoring OOHC. The fact sheet:

- Emphasises the independence of the Commissioner.
- Explains what she is doing for young people in OOHC.
- Explains the rights of children and young people in OOHC.
- Provides contact details for the Child Advocate and for the Commissioner for Children and Young People.



OOHC child-friendly fact sheet

The fact sheet was distributed to children and young people in OOHC through service providers, the Department of Communities Tasmania, and advocacy organisations.

### Being Healthy Postcard

The *Being Healthy* Postcard invited children and young people in out-of-home care to answer the following question: “What does ‘being healthy’ mean to you?”

The Commissioner circulated approximately 950 postcards to children and young people in OOHC through service providers, the Department of Communities Tasmania, and advocacy organisations. The distribution pack included a link to a short video of Commissioner McLean speaking about her role and inviting children and young people to let her know what ‘being healthy’ means to them.

Outcomes of the Commissioner’s OOHC monitoring activities in 2018-19 will be released in a separate report in the second half of 2019.

### Monitoring Reforms to the Child Safety System including Out-of-Home Care

Successive Commissioners for Children and Young People have been actively involved in the system redesign of Child Protection Services, now known as Child Safety Services. The redesign was initiated by the Tasmanian Government in 2015. It involved an independent review, *Strong Families – Safe Kids*, which provided recommendations to Government to improve the delivery of child safety

services and ensure the safety and wellbeing of children and young people is the focus of the service response.

Since its initiation, Commissioners for Children and Young People have been, and continue to be, members of the Cross-Sectoral Consultative Committee established to facilitate consultation between the redesign’s implementation team and the community, and in recognition that a system-wide perspective achieves the best outcomes for children and young people.

The Commissioner is also a member of the Integrated Service Governance Design Group which was established to identify a cross-sectoral governance structure to provide oversight for an integrated service alliance of government, non-government organisations and community, working together to support vulnerable children and young people in Tasmania.

Commissioner McLean participated in Our Voice, Our Future, a process designed to bring the whole service system together and enable government, non-government, and community stakeholders to find common ground and create a shared plan to give vulnerable children and young people in Tasmania the best opportunity to reach their full potential. At the state-wide conference, the Commissioner championed a group to challenge and test diverse views, ideas and possible future actions.

Ten future actions, each with a Future Action Champion, were identified in the Our Voice, Our Future process. Commissioner McLean is the Future Action Champion for Action 10, Wellbeing.



Being Healthy postcard

## Out of Home Care Outcomes Framework

As part of the reform of the OOHC system in Tasmania, and in response to former Commissioner Morrissey's 2017 report *Children and Young People in Out of Home Care in Tasmania*, the *Outcomes Framework for Children and Young People in Out of Home Care* has been developed by the Tasmanian Government.

The Framework uses the same wellbeing domains as those in the *Tasmanian Child and Youth Wellbeing Framework* to support and promote the wellbeing of children and young people in OOHC in Tasmania; and integrates the six wellbeing domains from the *Child and Youth Wellbeing Outcomes Framework* with the needs of children and young people in out-of-home care. The Outcomes Framework will assist in determining what a successful out-of-home care system looks like.

In 2019, the Tasmanian Government also released the *Companion Document to the Outcomes Framework for Children and Young People in Out of Home Care Tasmania* for comment. The Companion Document outlines the methodology to monitor and report against outcomes in the Outcomes Framework and identifies indicators to assist with monitoring and reporting processes. In her detailed comments on possible indicators and measures the Commissioner suggested that there is a:

- Responsibility to develop a consistent and comprehensive reporting framework to measure outcomes for children and young people in OOHC, and to track progress over time.

- Need to explain the interrelationship between the OOHC Outcomes Framework and its associated indicators, and the National Standards for OOHC and *Charter of Rights for Tasmanian children and young people in out of home care*.

## A Permanency Framework for Children and Young People in the Child Safety System: Consultation Paper

The Commissioner provided a comprehensive response to the *Consultation Paper: Developing a Permanency Framework for Children and Young People in the Child Safety System*. The Consultation Paper sought feedback to inform the development of a permanency framework intended to define the suite of care arrangements that will best support positive, long-lasting relationships and connections for all children who come into contact with, or are in, the child safety system, including Aboriginal and Torres Strait Islander children.

The Commissioner indicated her support for the development, implementation and appropriate resourcing of a permanency framework. Her response encouraged consideration of a range of systemic issues and emphasised the need to acknowledge that the child safety system and public health approach to child protection are predicated on supporting children to live with their parents where it is safe to do so. For this to occur, there needs to be early access to services for parents, including strengthened intensive in-home or alternative residential-based support and mentoring to families that is matched to their situation.

Other key comments included:

- Decision-making must be guided by what is in the individual child's best interests and must respect and give due weight to any views expressed by the child.
- Decision-making within Child Safety Services should be undertaken by appropriately resourced, qualified and experienced staff working within an organisational structure that supports them.
- The importance of the Tasmanian Government working in partnership with Tasmanian Aboriginal communities so they play a greater self-determining role in promoting the safety and wellbeing of their children and young people.
- The development of a permanency framework for Tasmania should be informed by the experiences of other jurisdictions.
- The importance of providing meaningful opportunities for children and young people with lived experience of OOHC to inform policy and practice development relating to permanency planning.

## A Future Program for Family-Based Care: Discussion Paper Series

The Commissioner provided a detailed response to the *Discussion Paper Series: A Future Program for Family-Based Care*, which is part of the Out of Home Care Foundations Project.

In her response to the Paper, the Commissioner:

- Sought greater clarity about, and development of, a child centred system of family-based care.

- Acknowledged that family-based carers are especially well-placed to promote children's participation and expression of opinions on matters that affect them.
- Identified the need to ensure the family-based care system operates in alignment with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and the proposed *National Principles for Child Safe Organisations*.
- Identified the importance of resourcing the implementation of the agreed model.
- Encouraged a new and different conversation in the Tasmanian community focusing on the value of children and young people in our society as part of recruiting family-based carers.
- Expressed the need for training in relation to identifying and responding to children exhibiting harmful sexual behaviours.
- Supported the need for children and young people to be consulted, provided with a suite of options for placement and to be part of a flexible system that meets their needs.
- Sought more clarity about oversight and monitoring and links to other frameworks and programs such as the Out-of-Home Care Monitoring Program undertaken by the Commissioner.
- Identified gaps relating to children and young people with a disability, Aboriginal children and young people, children and young people who are culturally and linguistically, or sex and gender diverse.

## Child Maltreatment

The Interim Commissioner provided support to the Institute for the Study of Social Change to conduct a literature review of the effects of childhood maltreatment on outcomes related to education, victimisation, offending, and incarceration; and to examine education-based interventions that may 'short-circuit' pathways to disadvantage. The review found that childhood maltreatment has significant adverse impacts and contributes to cycles of violence and disadvantage for individuals. The review also found that although some education interventions have shown promising capacity to reduce adverse impacts, more research is needed to identify causal links. Further developments in this work will be reported in the Commissioner's Annual Report 2019–20.



# Children and young people in conflict with the law



The Commissioner has a specific and important role to act as advocate for individual children and young people detained under the Youth Justice Act.

“This Charter of Rights tells you what you can expect while you are detained. The rights apply to everyone so you have to respect other people’s rights.”

— *A model charter of rights for children and young people detained in youth justice facilities, Australian Children’s Commissioners and Guardians*

## Overview

The Commissioner is required to give special regard to the needs and interests of children and young people in the youth justice system and has a particular role to advocate for individual children and young people detained under the *Youth Justice Act 1997*.

Like all children and young people, those in youth justice detention have human rights that must be recognised, respected and promoted. They also have specific rights while they are in detention.

As advocate for children and young people detained under the *Youth Justice Act 1997*, the Commissioner may access any detention centre and any detainee at the centre to provide appropriate, confidential assistance as outlined in the CCYP Act.

In 2018–19 the Interim Commissioner and Commissioner McLean undertook work in relation

to the following:

- Individual advocacy for young people detained at Ashley Youth Detention Centre (AYDC).
- Advice to the Tasmanian Government on searches of children and young people in custody in Tasmania.
- Monitoring the implementation of a therapeutic approach to youth justice in Tasmania, including for children and young people in youth justice detention.
- Monitoring and contributing to action underway to consider the appropriate minimum age of criminal responsibility.

## Advocate for Children and Young People in Youth Justice Detention

The Commissioner has a specific and important role to act as advocate for individual children and young people detained under the *Youth Justice Act 1997*. In fulfilling this role, the Commissioner must:

- Listen and give voice to the concerns and grievances of a young person and facilitate resolution of those concerns.
- Seek information and facilitate access by a detainee to support services.

- Assess whether a detainee has been provided with adequate information about his or her rights.
- Assess, in the Commissioner’s opinion, the physical and emotional wellbeing of a detainee.

Pursuant to section 135A of the *Youth Justice Act 1997* and regulation 6(a) of the Youth Justice Regulations 2009, the Commissioner is allowed access, at any reasonable time, to any detention centre (as established under s123 of the Act) and any detainee at the centre, for the purpose of performing and exercising his or her functions and powers under the CCYP Act. Section 135A of the Act also ensures that any direct or documented communication between the Commissioner and a young person remains confidential. Section 10(2) of the CCYP Act provides that the Commissioner may, after taking account of the views and wishes of the young person, ask a staff member a question about the young person, or inspect or take copies of a document relating to a young person.

Commissioner McLean makes personal visits to AYDC in Deloraine approximately every three weeks and is available via telephone to detainees wishing to raise issues, concerns or grievances. Young people can also contact the Commissioner by letter should they wish to do so.

The Commissioner has developed resources for young people at AYDC to explain their rights and inform them of options for raising concerns or complaints. Commissioner McLean consulted with young people at AYDC to inform the redesign and updating of these resources.

The Commissioner may also assist a young person to make a complaint, including to the Ombudsman, and can refer any matter to the Custodial Inspector or to the Ombudsman.

## Searches of Children and Young People in Custody in Tasmania

Media reports relating to the practice of routine strip searching of children at the Hobart Reception Prison, together with an awareness that different rules apply to searches of children and young people in custody across different custodial settings, prompted Commissioner McLean to provide an Advice to the Tasmanian Government on searches of children and young people held in custody in Tasmania.

Data released by the Department of Justice show 218 minors in Tasmania Prison Service custody were subject to a strip search in the 2018 calendar year. Department of Communities’ data reveal 203 unclothed searches were conducted at AYDC between June and November 2018 and that no contraband was found as a result of these searches.

The Advice sought to outline a framework to better promote and protect the rights and wellbeing of children and young people in custody in custodial settings by ensuring relevant legislation, policies and procedures regarding all personal searches of children and young people in custody are in line with well-established human rights standards and principles, and contemporary best practice. Seen from this perspective, the practice of routine strip searching of children and young people cannot be justified.

The Commissioner recommended that there be a single legislative basis for all searches of children and young people in custody across all custodial facilities—including police watch-houses, reception prisons and detention centres—and that decisions around when and how to search children and young people be based on a consideration of risk, and what is reasonable and necessary in particular circumstances.

In the Advice, the Commissioner made a number of recommendations in relation to searches of children and young people in custody which are summarised below:

1. The practice of routine strip searching of children and young people in custody cannot be justified and should cease; and legislation authorising searches should reflect the fundamental human right standard that searches are only conducted when reasonable, necessary and proportionate to a legitimate aim.
2. The legislative bases for all searches of children and young people in custody should be clarified and consolidated to provide a single unambiguous point of reference.
3. Consideration should be given to introducing guiding principles, a hierarchy of searches, and criteria for permissible and justified search types, into legislation.
4. Consideration should be given to investing in alternative security strategies or technologies such as body scanners.
5. Having regard to relevant human rights standards, and no matter the type of search conducted, the use of force should be limited



to circumstances of last resort and, if force is required, there should be clear lines of authorisation.

6. Regulations should clearly outline the way in which searches are to be conducted to promote dignity and self-respect and minimise any associated trauma, distress, or other harm.
7. The key elements of the legislative and regulatory framework should be provided to children and young people in an accessible format before a search is conducted and they should be informed of their right to make a complaint and how to do so.
8. All searches should be recorded on a search register which should be available for inspection or review by independent statutory officers with relevant monitoring or inspectorate functions.

### Monitoring of a Therapeutic Approach to Youth Justice

The Commissioner continues to monitor and, where appropriate, contribute to the implementation of a therapeutic model for youth justice in Tasmania, with a particular focus on youth justice detention. The need for a therapeutic approach to youth justice detention in Tasmania was highlighted by former Commissioner for Children and Young People, Mark Morrissey, in his 2016 Advice to the Honourable Jacqui Petrusma MP, the then Minister for Human Services.

Implementation of a therapeutic approach to youth justice in Tasmania is occurring through Tasmanian Government initiatives including the *Youth at Risk Strategy*, the AYDC Change Management Program, and the major redesign and

upgrade of AYDC which aims to ensure AYDC is fit for purpose and continues to improve the model of care as part of a modern, integrated statewide therapeutic youth justice model.

### Minimum Age of Criminal Responsibility

Across Australia, children under the age of 10 cannot be charged with an offence and children under 14 years are presumed incapable of crime (*doli incapax*) unless this is rebutted by the prosecution. A working group has been established by the Council of Attorneys-General to examine raising the minimum age of criminal responsibility in all jurisdictions. It is due to report before November 2019.

At the same time, the United Nations Committee on the Rights of the Child is revising General Comment No. 10 (2007) on children's rights in juvenile justice. The consultation draft of the revised General Comment states that parties are encouraged to increase their minimum age of criminal responsibility to at least 14 years. The General Comment is yet to be finalised.

The Australian and New Zealand Children's Commissioners and Guardians (ANZCCG), of which the Commissioner is a member, issued Communiqués following their November 2018 and May 2019 meetings recommending the age of criminal responsibility be raised to at least 14 years and be no lower than the internationally acceptable minimum age of 12 years. The Commissioner has endorsed this position and will continue to monitor and contribute to any work undertaken by the Tasmanian Government in relation to this issue.

# General systemic advice and advocacy



The Commissioner provides independent and apolitical advice and advocacy on issues affecting children and young people in Tasmania.

“Children rely largely on adults to meet many of their needs and to fulfil their rights. Though most people want the best for children, the fact that we live in a world where adults make most decisions means that sometimes children’s rights, wellbeing, views and opinions are not always considered to the extent they should be in decision-making... The Commissioner works to ensure the rights and wellbeing of children and young people are considered and promoted by adults when they are making decisions that may affect them.”

— Commissioner for Children and Young People Website  
<http://www.childcomm.tas.gov.au>

## Overview

It is vital that law and policy makers, and those organisations — government and non-government — delivering programs and services to children and young people in Tasmania, understand and take account of the rights and wellbeing of children and young people. To ensure this is achieved and the voices of children are heard, a core element of the Commissioner’s annual work program is the provision of impartial, independent and apolitical advice on issues affecting children and young people in Tasmania.

The Commissioner also advocates widely in the public conversation about the rights and wellbeing of children and young people, through comment in the media, making speeches, active involvement in forums, conferences, meetings and roundtables, attendance at events, participation in consultative processes and membership of working groups or other bodies.

During 2018–19, the following work was undertaken:

- Responded to the Department of Justice’s *Evaluation of the Tasmania Legal Assistance Sector: Consultation Paper*.
- Explored ways to strengthen care responses for unaccompanied homeless children in Tasmania.
- Contributed to work underway to implement the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* in Australia.
- Contributed to the work of the Select Committee on Firearms Legislation and Policy. Commissioner McLean advocated for the Tasmanian Government to stay committed to the resolutions of the National Firearms Agreement.
- Attended workshops to share children and young people’s unique experience of family



violence to inform the development of the Fourth Action Plan 2019–2022 of the *National Plan to Reduce Violence against Women and their Children (2010–2022)*.

- Reviewed the Family Violence Reforms Bill 2018.
- Monitored and contributed to the implementation processes of the Tasmanian Government's response to the Royal Commission into Institutional Response to Child Sexual Abuse.
- Recommended the establishment of an Aboriginal Children's Commissioner.
- Commented on proposed amendments to the *Births, Deaths and Marriages Registration Act 1999* in relation to gender and marriage law reform.
- Commented on proposed amendments to the *Criminal Code Act 1924* about bullying.
- Responded to drafts of the *Child Friendly Complaints Handling Good Practice Guide for Organisations*.
- Responded to the *Discussion Paper: Section 194K of the Evidence Act 2001* regarding identifying particulars in sexual offences proceedings.
- Provided comment on the *Reform Agenda for Alcohol and Drug Services in Tasmania*.
- Attended meetings of the Australian and New Zealand Children's Commissioners and Guardians.

## Evaluation of the Legal Assistance Sector

In July 2018, the Interim Commissioner responded to the Department of Justice's *Evaluation of the Tasmania Legal Assistance Sector: Consultation Paper*.

In his response, Interim Commissioner Clements promoted the fundamental right and importance of children and young people in Tasmania having access to legal services including relevant information, an effective remedy, a fair trial, to be heard, and to enjoy those rights without discrimination.

Issues raised by the Interim Commissioner specific to the experience of children and young people include:

- Increasing knowledge by mapping their legal needs.
- Understanding their legal problems.
- Appreciating the consequences of legal problems including for their mental and physical health.
- Providing specific information about the barriers they experience accessing legal services.
- Realising individual circumstances have a differential impact on their ability to access justice.

In his recommendations, the Interim Commissioner encouraged further consideration of:

- specific barriers that exist for children and young people accessing legal assistance in Tasmania; and

- strategies and service delivery models that could best address these barriers.

It was also noted that delivery of Community Legal Education in accessible settings and formats appropriate to age and maturity was vital to improving children and young people's awareness of their legal rights and obligations, and their ability to identify issues as legal issues and seek timely legal information, assistance or representation.

## Unaccompanied Children Experiencing Homelessness

In August 2018, the Interim Commissioner joined Anglicare's Social Action and Resource Centre, the Australian Research Alliance for Children and Youth, and the Youth Network of Tasmania, to host a forum to explore ways to strengthen care responses for unaccompanied homeless children in Tasmania. The forum considered practical, ethical and legal issues in providing care and accommodation for unaccompanied children under 16 years.

The forum provided important opportunities:

- to engage with those with experience of working with unaccompanied homeless children in NSW and Victoria; and
- for government and non-government sectors to come together to learn about policy, program and service design issues, and service delivery challenges and outcomes.

This collaborative work helped to inform the Interim Commissioner's Advice to the Minister for

Human Services urging the Tasmanian Government to strengthen its policy and programmatic response to children aged under 16 years who experience homelessness alone in Tasmania. Issues identified by the Interim Commissioner included:

- The challenge of capturing reliable data relating to children's unique experiences of unaccompanied homelessness.
- The role and responsibility of the Department of Communities Tasmania, especially Child Safety Services, regardless of whether a child is subject to care and protection orders.
- The role and responsibilities of other service providers across the human services and health sectors generally, including, for example, those providing support for mental health and alcohol and other drugs issues.
- Case management responsibility.
- Matters arising from the absence of an active parent or guardian in a child's life.
- The type of specialist supports required to appropriately address the unique complex needs of this cohort of children.

In his response to a survey and discussions convened to inform the development of the *Affordable Housing Action Plan 2019-2023*, Interim Commissioner Clements emphasised the urgent need to respond effectively to the needs of this group of children.

Commissioner McLean has endorsed Interim Commissioner Clements' Advice and continues to advocate for the development of a continuum of services to respond to the needs of this group of

children in Tasmania. This includes the provision of a comprehensive medium to long-term care environment for highly vulnerable children aged less than 16 years, which is augmented by intensive therapeutic and trauma informed support services and the capacity for outreach at all transition points along the continuum.

In her March 2019 media release issued in response to the Tasmanian Government's *Affordable Housing Action Plan 2019-2023*, Commissioner McLean welcomed the establishment of a Taskforce to identify and prioritise care for children under 16 years, at risk of homelessness and not in OOHC, but also called for a commitment to the delivery of a strengthened policy and program response to children under 16 who are alone and homeless.

## Implementation of OPCAT

In September 2018, Interim Commissioner Clements provided input into consultations on implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) in Australia, and specifically to the *OPCAT in Australia Consultation Paper: Stage 2*. OPCAT aims to prevent torture and cruel, inhuman or degrading treatment or punishment of persons deprived of their liberty by establishing a system of regular visits to places of detention.

OPCAT requires monitoring to occur through two complementary and independent bodies:

- National Preventive Mechanism (NPM), the domestic Australian entity or network responsible for inspections; and



- UN Sub-Committee on the Prevention of Torture (SPT), a United Nations body of independent experts responsible for conducting visits to places of detention.

In responding to the implementation issues raised, the Interim Commissioner:

- Provided in principle support for the eight Proposals on how OPCAT should be implemented.
- Noted that children and young people who are deprived of their liberty are among the most vulnerable groups of people in detention.
- Emphasised the Australian Children's Commissioners and Guardians (ACCG) view that children and young people in youth justice detention are subject to a specific set of risks and issues, and their vulnerabilities require different strategies and standards to those of adults.
- Submitted that NPM bodies require multi-disciplinary and specialist expertise on the protection and promotion of children's rights and wellbeing in detention, including Aboriginal and Torres Strait Islander children in detention.
- Emphasised the importance of meaningful and child-centred consultation and engagement with children and young people in, or with experience of, places of detention.

The Commissioner supported an initial focus on places of detention such as youth justice detention centres, police watch-houses and cells, court

holding cells, and vehicles used for transporting young people in youth justice detention. As OPCAT is further implemented, he recommended widening the focus to 'non-traditional' places of detention including in-patient health and psychiatric facilities, and disability and other care settings from which children are not free to leave.

### Select Committee on Firearms Legislation and Policy

In his submission to the Select Committee on Firearms Legislation and Policy, Interim Commissioner Clements strongly advocated for the Tasmanian Government to stay committed to the resolutions of the National Firearms Agreement (NFA), a position endorsed by Commissioner McLean in her evidence to the Committee. The NFA ensures continuing protection of Tasmanians and reduces the impacts that access to firearms and their misuse can have on the wellbeing of Tasmania's children and young people, their families and communities.

The Interim Commissioner noted that while public debate focusses largely on firearm-related homicide, the potential impacts of access to firearms on the wellbeing of Tasmania's children and young people extends to the effects of firearm suicide, accidental firearm deaths, firearm-facilitated crime, and the links between access to firearms and increased severity of intimate partner violence which can generate psychological damage for women and children.

## Children and Young People's Unique Experience of Family Violence

In September 2018 the Interim Commissioner attended workshops convened by the Commonwealth and Tasmanian Governments to inform the development of the Fourth Action Plan 2019–2022 of the *National Plan to Reduce Violence against Women and their Children (2010-2022)* (the National Plan).

In October 2018, Interim Commissioner Clements was part of the Tasmanian delegation to the 2018 Council of Australian Governments (COAG) National Summit on Reducing Violence Against Women and their Children where he emphasised the importance of improving understanding of, and strengthening responses to, children and young people's unique experiences of family violence, building on the work begun by former Commissioner Morrissey in his 2016 report *Children and Young People's Unique Experiences Of Family Violence*.

In February 2019, consultations were held across Tasmania to inform development of the next *Safe Homes, Safe Families* family violence action plan, and the proposed sexual violence action plan. The consultations followed a comprehensive review of the family violence service system and actions taken to address family and sexual violence in Tasmania.

The review process identified five priorities which shaped the topics for consultation at regional roundtables. Commissioner McLean participated

in the Southern Region where the four topics discussed were: primary prevention, early intervention, workforce development, and service system enhancements.

## Draft Family Violence Reforms Bill 2018

The Interim Commissioner acknowledged and welcomed the Tasmanian Government's commitment to reducing levels of family violence and improving the way the justice system responds to perpetrators. In particular, Interim Commissioner Clements welcomed the trial of a youth specific rehabilitation program to be administered by Colony 47.

In reviewing the Family Violence Reforms Bill 2018, the Interim Commissioner indicated in principle support for insertion of a new offence of 'persistent family violence' into the *Criminal Code Act 1924* (Tas).

The Interim Commissioner also provided in principle support for an amendment to section 125A of the Criminal Code (maintain a sexual relationship with a young person) to provide that members of the jury are not required to agree on which unlawful sexual acts constitute the unlawful sexual relationship with the young person. This in principle support notes the rationale behind Recommendation 21 of the Royal Commission into Institutional Responses to Child Sexual Abuse in its Criminal Justice Report.

In principle support was provided for a proposed amendment to the *Evidence (Children and Special*

*Witnesses) Act 2001* to prevent cross examination of a witness who is the alleged victim of family violence by a self-represented defendant. The Interim Commissioner also supported consideration of whether a legislative amendment may be needed to strengthen measures to protect witnesses who are 'affected children' within the meaning of the *Family Violence Act 2004* in appropriate cases.

## Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission into Institutional Responses to Child Sexual Abuse handed down the Final Report of its inquiry in December 2017. The Final Report, together with the Royal Commission's previous reports on Criminal Justice, Redress and Civil Litigation, and Working with Children Checks, made 409 recommendations to improve the prevention, identification and responses to child sexual abuse in institutional settings. The Tasmanian Government tabled its initial response to the Royal Commission's recommendations in June 2018 and in October 2018 released its *First Year Action Plan 2018-2019: Protecting our Children: Implementing the Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse*.

Interim Commissioner Clements and Commissioner McLean have monitored and contributed to implementation processes including by commenting on draft Bills and contributing to work undertaken at a national level as outlined below.



### Criminal Code and Related Legislation Amendment Bill 2018 (Tas)

Amendments proposed in this draft Bill sought to implement recommendations in the Criminal Justice and Final Reports of the Royal Commission into Institutional Responses to Child Sexual Abuse in Tasmania. The proposed amendments included changes to the *Children, Young Persons and Their Families Act 1997*, the *Criminal Code Act 1924*, the *Evidence (Children and Special Witnesses) Act 2001* and the *Sentencing Act 1997*. Amendments proposed include:

- Introducing a new crime of failing to report the abuse of a child.
- Broadening the categories of persons who would be subject to mandatory reporting requirements pursuant to child protection legislation to include religious ministry and members of Parliament.
- Requiring the courts, when determining a sentence for a historical child sexual offence, not to take into account the sentencing practices at the time of the offence.

In his October 2018 submission in response to the draft Bill, Interim Commissioner Clements offered in principle support for many of the proposed amendments noting that the proposed “failure to report offence” appeared to be much broader in scope than that recommended by the Royal Commission. As at the end of the reporting period, the Criminal Code and Related Legislation Amendment (Child Abuse) Bill 2018 had been introduced into Parliament but had not been the subject of debate.

### National Principles for Child Safe Organisations

Commissioners have taken, and will continue to take, a keen interest in monitoring the development and implementation of the *National Principles for Child Safe Organisations* which were developed following consultation by the National Children’s Commissioner and endorsed by members of the Council of Australian Governments in February 2019. All State and Territory Governments are responsible for determining their own compliance arrangements.

The Tasmanian Government has, in its *First Year Action Plan 2018-2019: Protecting our Children: Implementing the Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse*, foreshadowed the development of options for a child safe legislative framework in Tasmania that supports the intent of the National Principles and provides a plan for the implementation of the Royal Commission’s recommendations relating to child safe standards and a reportable conduct scheme in Tasmania. The Commissioner will contribute as appropriate to this important work and other implementation actions.

### Reform Agenda for Alcohol and Drug Services in Tasmania

In his submission in response to the consultation draft of the *Reform Agenda for Alcohol and Drug Services in Tasmania* the Interim Commissioner welcomed, and indicated strong support for, the development and implementation of a Youth Framework for the alcohol and drugs (AOD) sector. Development of such a youth framework

has the potential to provide a specialised and discrete AOD policy and service system response for young people and their families.

The Interim Commissioner identified several matters for consideration in the development of the Youth Framework so its full potential is realised. These include ensuring it is:

- Underpinned by research and best practice, informed by views of system professionals and users, and properly resourced.
- Undertaken with others with experience and expertise in the delivery of AOD and related services to children and young people and their families.
- Informed by the voices of children and young people.

Key factors identified for inclusion in the Framework included the need for:

- A strengthened focus on prevention, early intervention and/or harm reduction.
- Developmentally appropriate service provision across an integrated service system.
- Improved integration with related service systems.
- Safe, high quality and developmentally appropriate residential services to young people.

The Interim Commissioner suggested that principles identified by the Reform Agenda to guide the delivery of the AOD service system should:

- reflect the unique vulnerabilities and cultural supports that may be required to enhance the wellbeing of particular groups of children and young people; and
- recognise the important role families, carers and communities play in the care and recovery of young people from AOD issues.

The Interim Commissioner also raised the need to ensure the service system responds appropriately to those children whose parent(s) experience AOD-related issues and to young people with AOD issues who themselves are parents.

### Advice - Aboriginal Children's Commissioner

At their November 2018 meeting in Adelaide, members of the Australian and New Zealand Children's Commissioners and Guardians (ANZCCG) agreed that the significant over-representation of Aboriginal and Torres Strait Islander, and Maori, children and young people in child protection, out-of-home care and youth justice systems, is a priority concern for all jurisdictions. ANZCCG members called for the appointment of Commissioners in each jurisdiction who are indigenous and can provide particular leadership on issues disproportionately affecting Aboriginal and Torres Strait Islander, or Maori, children and young people—a position which Interim Commissioner Clements endorsed.

In November 2018, Interim Commissioner Clements provided Advice to the Minister for Human Services in which he expressed the view that the establishment of an Aboriginal Children's

Commissioner in Tasmania is critical to promoting and strengthening the Tasmanian Government's ongoing commitment to improving outcomes for Aboriginal children, young people and their families.

The Interim Commissioner expressed the strong view that the scoping and development of such a role should be undertaken through a genuinely mutual process of co-design with Tasmanian Aboriginal children and young people, their families and communities, and with organisations representing and supporting Aboriginal families and communities.

Since her appointment Commissioner McLean has been engaging in conversations around the State with Tasmanian Aboriginal community leaders and organisations to build a better understanding of the issues and priorities of Tasmanian Aboriginal communities for their children and young people.

### Marriage and Gender Law Reform

In November 2018 and March 2019, Commissioner McLean provided Advice to members of the Legislative Council on the Justice and Related Legislation (Marriage Amendments) Bill 2018 and amendments proposed to that Bill which, amongst other matters, sought to make it easier for sex or gender diverse people to register a change of gender or change of name under the *Births, Deaths and Marriages Registration Act 1999*. Changes were also proposed to the information that is or may be included on a person's birth certificate.



Commissioner McLean's comments on the amendments were informed by an understanding and appreciation of fundamental human rights principles, including the need to remove discrimination against children and young people of diverse sexual orientations and gender identities, and to better promote and protect their rights. In her Advices the Commissioner emphasised the right of children and young people to be registered at birth, to equality before the law, non-discrimination, freedom of expression, and the right to survival and development.

The Commissioner affirmed the fundamental importance of children and young people being able to express a view on matters affecting them and for those views to be respected and considered in decision-making which affects them.

The Commissioner's views were also informed by discussions with gender diverse children and young people and their families and with other important stakeholders.

Commissioner McLean also noted the following as relevant to consideration of the proposed amendments:

- Questions about practical issues of implementation, recognising that children and young people have the same human rights as adults but require additional protections due to their age and vulnerability.
- The importance of safeguards to ensure children and young people are aware of, and understand, the potential implications of an application to register a change of gender and of any decision they make as to what gender markers are to appear on their birth certificate.

- The need for the Bill to better promote the rights, wellbeing and best interests of children and young people, with 'best interests' considerations to apply in specified circumstances.

The Commissioner provided examples from other jurisdictions to strengthen aspects of the Bill in ways that better protect and promote the interests of children and young people under 18 years of age in Tasmania.

The *Justice and Related Legislation (Marriage and Gender Amendments) Act 2019* was passed by the Tasmanian Parliament in April 2019. However, amendments relating to the matters listed above were not in effect by the end of the reporting period. The Tasmania Law Reform Institute is considering matters of practical implementation arising from passage of the legislation. It released an Issues Paper in June 2019.

### Criminal Code Amendments – Bullying

Proposed amendments to the *Criminal Code Act 1924*, specifically about bullying, were provided by the Department of Justice to Commissioner McLean in January 2019 for comment. The amendments would criminalise certain serious bullying behaviours including those which involve the use of technology.

In her comments, Commissioner McLean noted that members of the Commissioner's Children and Young People Consultative Council consistently raised bullying as an issue of major concern in 2018 and favoured increased accountability for those who engage in bullying behaviour.



Commissioner McLean expressed the view that, except in the most serious of cases, children and young people under the age of 18 who engage in bullying behaviours will be more appropriately dealt with and responded to by alternative non-punitive and restorative means. For this reason, the Commissioner expressed support for the draft Bill to include a requirement that the consent of the Director of Public Prosecutions (DPP) to a prosecution for the amended offence is required, and, on that basis, indicated in-principle support for the draft Bill as a whole.

The Commissioner also acknowledged that a whole-of-community response is required to successfully reduce the occurrence of, and respond effectively to, bullying. A criminal justice response is one element of a broader societal approach to tackling bullying, with alternative non-punitive and restorative approaches considered appropriate in most cases.

### Child Focused Complaint Handling

The National Office for Child Safety is leading and coordinating the development of practical tools and resources including a *Child Focused Complaint Handling Good Practice Guide for Organisations* being developed by the NSW Ombudsman's Office. The Commissioner responded to a number of drafts of the Guide, which together with the supporting tools, will assist organisations to handle complaints about services to children and respond effectively to allegations about their mistreatment and abuse.

### Identifying Particulars in Sexual Offence Proceedings

In May 2019, the Commissioner responded to the *Discussion Paper: Section 194K of the Evidence Act 2001* which sought to promote discussion about whether section 194K strikes the proper balance between protecting complainants in sexual offence proceedings and the public interest in open justice. Section 194K of the *Evidence Act 2001* currently prohibits the identification of complainants in sexual offence proceedings without a court order, including when the person is an adult at the time of publication and consents to being identified. The provision is intended to help protect the anonymity of complainants in such proceedings.

The two key issues raised in the Discussion Paper were: Should there be strengthened protections for complainants? and Should publication be permitted with informed consent?

On the matter of strengthened protections, the Commissioner supported the introduction of strengthened legislative safeguards for children and young people who are complainants in sexual assault matters to better ensure their anonymity and to promote their recovery.

On the matter of informed consent, Commissioner McLean expressed reservations about any reform which would allow the consent of a complainant aged less than 18 years to be sufficient in and of itself to allow the publication of identifying details. The Commissioner was, however, open to a situation which would enable a mature minor to apply to the Court for leave to provide informed consent to the publication of identifying information which is otherwise prohibited.

Commissioner McLean also suggested that any contemplated reform would need to take careful account of the possibility that there may be other complainants, such as younger siblings or school friends, whose rights and wellbeing may be affected by the publication and who do not wish to waive their anonymity or are not sufficiently mature to express a view.

### **Australian and New Zealand Children's Commissioners and Guardians (ANZCCG)**

Tasmania's Commissioner for Children and Young People is a member of the ANZCCG which includes national, state and territory children and young people commissioners, guardians and advocates. In May 2018, the New Zealand Children's Commissioner was officially welcomed as a member of the group. Prior to the New Zealand Commissioner becoming a member, this group was known as the Australian Children's Commissioners and Guardians (ACCG).



The ANZCCG aims to promote and protect the safety, wellbeing and rights of children and young people in Australia and New Zealand.

ANZCCG members, November 2018.

The ANZCCG:

- Promotes the rights of children and young people.
- 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.
- Encourages systemic improvement informed by evidence-based research.

In 2018, the ACCG published its *Joint Participation Paper* which describes 14 themes and related findings that emerged from consultations with

15,000 children and young people across Australia over more than two years. Each of the themes comes with a number of findings about how to improve outcomes for children and young people.

Also, in 2018, a *Table of Functions* was published which describes the roles and functions of members and identifies key commonalities and differences in legislative and operational matters across ANZCCG members.

In 2018–19, members of the ANZCCG and senior officers met on two occasions to consider issues and actions of importance. Many of the issues are covered elsewhere in this Report. Among the issues highlighted at the November 2018 meeting were:

- Responding to the over-representation of Indigenous children and young people in disadvantage.
- Children and young people needing greater policy attention and access to specialist and mainstream program support.
- Detention of children and young people in police facilities in breach of minimum acceptable standards.
- Children and young people in immigration detention.
- Children and young people who are criminalised for behaviours related to disability or trauma.

The May 2019 meeting focussed on six priority areas:

1. Achieving better outcomes for Aboriginal and Torres Strait Islander and Maori children and young people.
2. Promoting young people’s engagement and participation.
3. Upholding the rights of children and young people in contact with the youth justice system.
4. Improving the safety of children and young people in organisations.
5. Ending violence against children and young people.
6. Promoting children and young people’s safety and wellbeing.



ANZCCG members, May 2019

## Other CCYP Activities

### Public Comment – Media Releases and Opinion Pieces

- Response to Coronial findings on the death of Rhiannon Pitchford – 17 December 2018
- Talking Point: It's time we really listened to our children and young people – 7 March 2019
- Film highlights benefits of listening to children and young people – Film Launch NW Coast – 11 March 2019
- Commissioner Releases 2018 Consultative Committee Report – 20 March 2019
- Commitment Welcome (Tasmanian Government's commitment to providing more supported accommodation for homeless children and young people) – 28 March 2019
- CCYP Ambassador Program – April 2019
- Searches of children and young people in custody in Tasmania – 7 May 2019
- Disability Funding Welcome – 23 May 2019
- Extra Budget Funding Welcome – 24 May 2019

### Speeches

- Communities for Children Conference
- Families and Children Tasmania (FACT) Annual Event
- Independent Children's Lawyers Conference
- Playgroup Tasmania – Teddy Bears' Picnic
- Tasmanian Catholic Education Office Principals' Forum
- Young Archies Awards
- Youth Homelessness Matters Forum

## Membership of Groups

- Australian and New Zealand Children's Commissioners and Guardians
- B4 Early Years Coalition
- Child and Student Wellbeing Strategy stakeholder group
- Integrated Governance Structure Design Group – link to *Strong Families–Safe Kids*
- Monash University *Exploring Churn in Family Services* Research Project Reference Group
- Council of Obstetric and Paediatric Mortality and Morbidity (COPMM) (Commissioner McLean only)
- National Mental Health Initiative, Be You Implementation and Engagement Group
- *Strong Families–Safe Kids* Cross Sectoral Consultative Committee
- Family Violence Consultative Committee (Federal Court, Family Court and Federal Circuit Court Tasmania)
- Family Violence Consultative Group – a consultative mechanism established as part of *Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015–2020*
- Magistrates Court Hobart Court Users Group
- Southern Regional Mental Health Group
- Statewide Youth Collaborative Group
- *Strong Families–Safe Kids* Champions
- Youth Action Priorities

## Right to Information Requests

The *Right to Information Act 2009* (the Act) gives 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, and encourages routine disclosure of, information.

The Commissioner releases submissions, reports and other information routinely on the Commissioner for Children and Young People website: [www.childcomm.tas.gov.au](http://www.childcomm.tas.gov.au). The Commissioner did not receive any applications for assessed disclosure of information during 2018–19.

By virtue of the *Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Act 2019*, as of June 2019 the Act does not apply to information in the possession of the Commissioner for Children and Young People unless that information relates to the administration of the Commissioner.

## Priorities for 2019–20

In accordance with the CYP Act, the Commissioner develops an Annual Plan which sets out the priorities and work program for the coming year. The Plan is provided to the Minister for Human Services by March for implementation from 1 July each year.

The Annual Plan is available on the Commissioner's website at [www.childcomm.tas.gov.au](http://www.childcomm.tas.gov.au).



Commissioner McLean with  
CCYP Ambassadors in Launceston, 2019.