



***JOINT STANDING COMMITTEE ON
THE COMMISSIONER FOR CHILDREN
AND YOUNG PEOPLE***

**REVIEW OF THE 2009-2010 ANNUAL
REPORT OF THE COMMISSIONER FOR
CHILDREN AND YOUNG PEOPLE**

**Report No. 6
in the 38th Parliament**

2011

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Joint Standing Committee on the Commissioner for Children and Young People

Review of the 2009-2010 Annual Report of the Commissioner for Children and Young People

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Report No. 6

Presented by:

Ms A.R. Mitchell, MLA and Hon H.H. Bullock, MLC

Laid on the Table of the Legislative Assembly and Legislative Council
on 7 April 2011

COMMITTEE MEMBERS

Chairman

Ms A.R. Mitchell, MLA
Member for Kingsley

Deputy Chairman

Mr M.P. Whitely, MLA
Member for Bassendean

Members

Hon H.H. Bullock, MLC
Member for Mining and Pastoral Region

Hon N.P. Goiran, MLC
Member for South Metropolitan Region

COMMITTEE STAFF

Principal Research Officer

Ms Dawn Dickinson, BSc (Hons) MURP

COMMITTEE ADDRESS

Joint Standing Committee on the Commissioner for Children and Young People
Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Tel: (08) 9222 7494
Fax: (08) 9222 7804
Email: ddickinson@parliament.wa.gov.au
Website: www.parliament.wa.gov.au

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COMMITTEE'S FUNCTIONS AND POWERS

On 26 June 2008, the Joint Standing Committee on the Commissioner for Children and Young People ('the Committee') was established pursuant to Section 51 of the *Commissioner for Children and Young People Act 2006* ('the Act'). The Committee was re-formed in the 38th Parliament on 26 November 2008. In accordance with the Act, the Committee's functions and powers were agreed to between the Houses.

It is the function of the Joint Standing Committee to:

- (i) monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People;
- (ii) to examine Annual and other Reports of the Commissioner; and
- (iii) to consult regularly with the Commissioner.

Otherwise, the Standing Orders of the Legislative Assembly relating to Standing and Select Committees are also to be followed as far as they can be applied.

The Joint Standing Committee comprises two members of the Legislative Assembly and two members of the Legislative Council.

CHAIRMAN'S FOREWORD

This report is the Committee's third review of an annual report of the Commissioner for Children and Young People.

The Committee has followed up a number of matters raised in previous reviews and has highlighted a number of the Commissioner's more recent initiatives. The Committee acknowledges the ongoing focus by the Commissioner on important issues affecting the wellbeing of children and young people in this state including the early years, youth justice and mental health. It is encouraging also that in her third year of operations, the Commissioner continues to develop the role further and exercise previously unused functions prescribed by the *Commissioner for Children and Young People Act 2006*, specifically the power to conduct inquiries into matters affecting the wellbeing of children and young people.

A particular focus of this report has been the Commissioner's capacity to influence outcomes. In the year under review, the Commissioner has clearly fulfilled the legislated requirements. However it is a more complex matter evaluating whether, in exercising those functions, the Commissioner is effecting change. As the state's first independent advocate for children and young people it is especially important to determine whether the role is having an impact. The Committee has identified scope for the Commissioner to improve the reporting of outcomes, however acknowledges that this is complicated by the indefinable nature of advocacy. As such the Committee will be exploring this matter in more detail as part of a separate study of the Commissioner's functions. The Committee has made other recommendations in this report which promote greater evaluation and follow through of certain of the Commissioner's activities. The Committee respects the Commissioner's independence and these recommendations are made in the spirit of assisting the Commissioner to achieve the best possible outcomes.

I would like to acknowledge the Commissioner, Ms Michelle Scott, and her staff for their assistance during this review and for their ongoing cooperation with the Committee's work.

I would also like to thank the other Members of the Committee for their continuing contribution, namely: the Deputy Chairman, Mr Martin Whitely, MLA (Member for Bassendean); Hon Helen Bullock, MLC (Member for Mining and Pastoral) and Hon Nick Goiran, MLC (Member for South Metropolitan). I acknowledge also the assistance provided by the Committee's Principal Research Officer, Ms Dawn Dickinson.



MS A.R. MITCHELL, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

“the Act”	<i>Commissioner for Children and Young People Act 2006</i>
“the Commissioner”	Commissioner for Children and Young People
“the Committee”	Joint Standing Committee on the Commissioner for Children and Young People
“KPI”	Key Performance Indicator

EXECUTIVE SUMMARY

It is a function of the Joint Standing Committee on the Commissioner for Children and Young People to review Annual and other Reports of the Commissioner. The state's inaugural Children's Commissioner, Ms Michelle Scott, assumed the role in December 2007 and details her third year of operations in her 2009-2010 Annual Report. This report by the Committee represents the third review of an Annual Report of the Commissioner and follows up a number of issues raised in earlier reviews and also highlights some new areas. The Committee followed a similar review procedure to previous years and conducted a public hearing with the Commissioner in October 2010. Relevant information was also drawn from briefings and quarterly hearings with the Commissioner conducted throughout the year.

In Chapter 2 the Committee revisits a number of matters highlighted in its review of the Commissioner's previous Annual Report including the 'Shout Out' online communication mechanism, establishment of advisory committees consisting of children and young people, and publication of various guidelines. The Committee focuses in particular on the Commissioner's monitoring and evaluation of guidelines developed for: assisting agencies with the drafting of new legislation; complaints by children and young people; and participation. In this regard the Committee finds that robust measures of performance are needed when evaluating the effectiveness of guidelines, and recommends that guidelines documents should be subject to continuing evaluation by the Commissioner and refinement where necessary. In relation to advisory committees, the Committee notes that the Commissioner will complete a comprehensive evaluation to determine how the inaugural advisory committees, which operated during the 2010 calendar year, achieved stated aims. That said, the Committee notes that the Commissioner has already implemented one significant change by extending the duration of the committees from one year to two as a result of early lessons taken from the process.

The Committee notes that the Commissioner has progressed a number of other initiatives that were commenced in previous years including the Wellbeing Monitoring Framework. The Committee continues to support the project which will consolidate measures of how Western Australian children and young people are faring, and is satisfied that the Commissioner is working in partnership with other agencies, and currently has sufficient access to resources to move the project forward. Another significant outcome achieved by the Commissioner during the year under review involves the completion of the wellbeing research project, which collected the views of over 900 children and young people across the state on matters affecting their wellbeing. The Committee notes the Commissioner's intention to develop a series of policy briefs to assist agencies to translate the research findings into practice. To realise the benefits of the research, the Committee finds that the policy briefs should be supported by a follow up process and recommends that the Commissioner should implement a process to track agencies' application of policy brief suggestions. Given the extent and currency of the research, the Committee has also undertaken to follow up the Commissioner's application of the research findings.

Chapter 2 also highlights the Commissioner's ongoing advocacy in relation to previously defined public policy priorities such as the early years, the wellbeing of Aboriginal and Torres Strait Islander children and young people, and mental health. In relation to the latter, the Commissioner

has initiated an inquiry under Section 19(f) of the *Commissioner for Children and Young People Act 2006* into the mental health and wellbeing of children and young people. The inquiry represents the Commissioner's first application of this particular function under the Act, which the Committee takes as a positive sign that the Commissioner is continuing to consolidate her role and test the functions prescribed by the Act. As required by its terms of reference, the Committee will separately examine the Commissioner's report on her mental health inquiry following its completion (anticipated to be in the first half of 2011).

In relation to the Commissioner's advocacy activities, the Committee notes that the Commissioner has undoubtedly exercised the functions required by the Act, however queries how effectively the Commissioner is exercising these functions and whether tangible outcomes are being achieved in a public policy context. While Chapter 3 also notes a number of new initiatives undertaken by the Commissioner in 2009-2010 including the Commissioner for a Day challenge, and the identification of the Built Environment as a new public policy priority area, the Chapter largely focuses on the capacity of the Commissioner to influence outcomes.

The Commissioner's Annual Report includes comments received from the Attorney General in accordance with Section 48 of the Act where it is suggested that the Commissioner may have overstated some of the outcomes in the Annual Report. Following consideration of the Commissioner's responses to these comments, the Committee recognises that as an advocate, the Commissioner will frequently contribute towards an outcome without being solely responsible for it. The Committee nonetheless finds that it is important for the Commissioner to qualify statements in the Annual Report and clearly differentiate between outcomes that are solely attributable to the work of the office and instances where the Commissioner's advocacy has contributed towards an outcome. The Committee considers the broader issue of how to evaluate the impact of the Commissioner's activities and identifies that this is complicated not only by the difficulty inherent in measuring advocacy but by the nature of the Commissioner's role itself. The Committee is to consider the role of the Commissioner as part of a separate examination of the Commissioner's functions, which may also consider ways in which further value might be added to the work of the Commissioner.

In concluding its review of the Commissioner's Annual Report, the Committee notes several areas which it will follow up in its next review and/or continue to monitor. Among these is a watching brief being maintained on the matter of Working with Children Checks. The Committee also notes a number of issues which it will follow up separately to the review process, specifically: the Commissioner's mental health inquiry; matters pertaining to resourcing of the Commissioner's office which will be monitored as part of the Committee's annual review of the Commissioner's budget; and the broader issue of the Commissioner's role and capacity for influencing outcomes.

FINDINGS

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Finding 1

Guidelines documents require more robust measures of effectiveness as well as ongoing evaluation by the Commissioner for Children and Young People.

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Finding 2

To maximise the benefits of the wellbeing research, the policy briefs being developed by the Commissioner for Children and Young People need to be supported by a follow up process.

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Finding 3

The nature of the Commissioner's role as an advocate makes it difficult to identify policy changes that arise solely from the Commissioner's work.

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Finding 4

It is important for the Commissioner to qualify statements in the Annual Report and differentiate between outcomes that are solely attributable to the work of the office and instances where the Commissioner's advocacy has contributed towards an outcome.

RECOMMENDATIONS

Page 8

Recommendation 1

That the Commissioner for Children and Young People undertakes ongoing evaluation of all guidelines documents and further refinement where necessary to reflect the outcomes of evaluation.

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Recommendation 2

That the Commissioner for Children and Young People implements a process to follow up agencies' application of wellbeing research policy brief suggestions.

CHAPTER 1 INTRODUCTION

1.1 Background

The Joint Standing Committee on the Commissioner for Children and Young People ('the Committee') is tasked with, among other things, examining Annual and other Reports of the Commissioner for Children and Young People ('the Commissioner'). Western Australia's inaugural Commissioner, Ms Michelle Scott assumed the role in December 2007. The Commissioner is an independent advocate for children and young people in Western Australia under the age of 18, and her functions are defined in the *Commissioner for Children and Young People Act 2006* ('the Act').

The Commissioner described her activities in 2009-2010 as having developed 'a focus on high quality research and evidence-based outcomes'.¹ This Report examines the Commissioner's activities and represents the third review of an Annual Report of the Commissioner to be undertaken by the Committee.

In September 2010 the Commissioner also released her first *Report to the Community*, which summarises her activities over the year in a highly readable format and includes the Commissioner's *Face to Face* report to children and young people. While the *Report to the Community* is not included as part of this review, the Committee notes that it complies with Section 50(1)(a) of the Act, which requires a version of the Annual Report to be published in a form suitable for children and young people.²

1.2 Process of Examination

A public hearing dedicated to reviewing the Annual Report was conducted with the Commissioner on 13 October 2010 (details at Appendix One). Questions were provided to the Commissioner beforehand although additional questions were also asked during the hearing. The full transcript of the hearing is attached at Appendix Two. In addition a number of questions were taken on notice during the hearing, the responses to which are included at Appendix Three. Information pertaining to the Commissioner's activities in 2009-2010 derived from briefings (Appendix Four) and the Committee's regular quarterly hearings with the Commissioner have also been incorporated into this review where relevant.

¹ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p5.

² Refer to Chapter 2.2(f) which discusses recent changes to the format of the *Face to Face* report.

CHAPTER 2 ISSUES CARRIED OVER FROM PREVIOUS REVIEW

2.1 Introduction

In its review of the Commissioner's previous Annual Report from 2008-2009, the Committee identified a number of issues which would require further follow up.

2.2 Issues for follow up

(a) Consulting directly with children and young people

In its previous review the Committee noted the launch of the Commissioner's online communication mechanism, 'Shout Out'. As well as being a portal for children and young people to email the Commissioner directly on any subject, in 2009-2010 Shout Out was used as a platform for four online polls on diverse topics ranging from bullying, to local neighbourhoods.³ Other similar initiatives developed by the Commissioner during the year included the 'Shout Out Crew', and 'Shout Out @ School'. Children and young people were invited to register for the Shout Out Crew and would then receive emails alerting them to polls, surveys and opportunities to participate in other consultations.⁴ Shout Out @ School involved the development of educational resources for teachers of Kindergarten to Year 7 to facilitate students having a say about their community and uploading the outcomes to the Commissioner's website.⁵

The Commissioner's Annual Report notes that the online format allows the Commissioner to report back to children and young people on the outcomes of their involvement.⁶ The Committee supports the Commissioner's use of media such as the internet to consult with children and young people however is mindful that it may only be reaching a small and not completely representative cross section of the youth demographic. Indeed the Commissioner received some confirmation of this from the Geraldton advisory committee⁷ which suggested that they are less inclined to use the web.⁸ The Committee sought information from the Commissioner regarding the effectiveness of Shout Out as a tool for consulting with children and young people. The Committee queried whether Shout Out is capturing a representative cross-section of children and young people across

³ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, pp20-21.

⁴ Information taken from Commissioner for Children and Young People, *Annual Report 2009-10*, 2010 **and** Commissioner for Children and Young People, 'Have your say', 9 February 2010. Available at: www.ccyp.wa.gov.au/have-your-say.aspx Accessed on 18 January 2011.

⁵ Information taken from Commissioner for Children and Young People, *Annual Report 2009-10*, 2010 **and** Commissioner for Children and Young People, 'Shout Out @ School', 7 December 2009. Available at: www.ccyp.wa.gov.au/article/shoutout/Shout-Out-@-School.aspx Accessed on 18 January 2011.

⁶ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p20.

⁷ Advisory committees comprising children and young people are discussed further in Chapter 2.2(f).

⁸ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p7.

the state in terms of age/gender/geographical spread, and queried its popularity. The Commissioner responded that Shout Out is one of many ways used to consult with children and young people and is also used as a mechanism for promoting information about upcoming events for children and young people, and conducting online polls. The response to online polls depends on the subject matter with some proving more popular than others.⁹

In the absence of data to demonstrate that Shout Out is capturing a representative sample, the Committee is satisfied that web consultation forms only a part of the Commissioner's overall consultation strategy, which otherwise comprises face to face consultation, school and regional visits.¹⁰

(b) Key Performance Indicators

For the first time, the Commissioner reports against Key Performance Indicators (KPIs) in the Annual Report. The indicators of effectiveness and efficiency form part of the state government's outcome based management structure whereby measures can be used by government, Parliament and the wider community to assess the agency's performance against government goals and demonstrate value for money.¹¹ The KPIs also link back to the Commissioner's strategic directions document which is intended to guide the activities of the office to 2012.¹² The measures used to quantify the Commissioner's performance comprise: total number of consultations with children and young people; number of representations made (which includes submissions); average cost per consulting exercise with children and young people; and average cost of conducting research and consultation.

In 2009-2010 the Commissioner exceeded targets for the number of consultations with children and young people, and number of representations made, and came in below targeted costs with respect to research and consultation. Targets for the next financial year have been revised so that they align more closely to what was actually achieved in 2009-2010. The revised targets better reflect the resources and capabilities of the office now that it has had a chance to operate for some time and these capabilities are better understood.¹³

As the state's first independent advocate for children and young people it is especially important that the Commissioner demonstrates the impact that her role is having. Reporting against these KPIs will go some way to assist the Commissioner to demonstrate how her activities are influencing outcomes for children and young people over time.

⁹ Ms Michelle Scott, Commissioner for Children and Young People, letter, 24 March 2011, p2.

¹⁰ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p16.

¹¹ Department of Treasury and Finance, *Treasurer's Instruction No. 904 Key Performance Indicators*, November 2009, p1. Available at: www.dtf.wa.gov.au/cms/uploadedFiles/_Treasury/Legislation/FAB.pdf Accessed on 13 January 2011.

¹² Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p12 and Commissioner for Children and Young People, *Strategic Directions 2010-2012*. Available at: www.ccyp.wa.gov.au/files/article/Strategic%20Directions%202010%20-%202012%20.pdf Accessed on 13 January 2011.

¹³ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, pp73-75.

As well as the KPIs, the Annual Report uses other measures of performance including: number of visits to communities; number of submissions made; and changes to legislation and/or policy resulting from the Commissioner's advocacy. These performance measures, particularly the latter relating to legislation and policy outcomes, are discussed further in Chapter 3.3.

(c) Guidelines for agencies

(i) Legislation assessment tool

In its previous review, the Committee reported that the Commissioner was close to completing an assessment tool which would assist agencies to develop more effective legislation. The guideline document, *Improving legislation for children and young people* was published by the Commissioner in May 2010. Developed with the assistance of several state government agencies,¹⁴ the guidelines establish an assessment process to: identify potential impacts of legislative proposals on children and young people; facilitate consideration of the best interests of children and young people; and consider alternative options where necessary. The guidelines encourage agencies to apply the assessment prior to drafting legislation in order to maximise effectiveness, and to apply the assessment in all instances regardless of whether legislation is specifically directed at children and young people or not.¹⁵ The assessment process is organised into a number of steps starting with the identification of possible impacts. A series of questions are posed and examples provided to work through the identification of impacts and means of addressing any negative impacts. The guiding principles underpinning the child impact assessment are also identified and a fully worked example is provided.¹⁶

The Commissioner indicated that the guidelines were distributed to 140 government and non-government agencies.¹⁷ The Commissioner's office also conducted a training session for Parliamentary Counsel with respect to the guidelines, and another session for 40 different agencies. Initial feedback from those agencies has demonstrated that nine out of ten believe the guidelines to be 'very good and that they had never given thought to children and young people in the development of legislation. This tool was very useful for that'.¹⁸

The Act requires the Commissioner to promote and monitor the wellbeing of children and young people, and monitor and review written or draft laws affecting the wellbeing of children and young people.¹⁹ The legislation assessment guidelines have been developed in this context.²⁰ While there is no specific statutory requirement for the guidelines, the Committee considers that

¹⁴ As detailed in Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p27.

¹⁵ Commissioner for Children and Young People, *Improving legislation for children and young people*, 2010, p5.

¹⁶ Ibid., pp6-18.

¹⁷ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p6.

¹⁸ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11.

¹⁹ Section 19(c) and Section 19(g) *Commissioner for Children and Young People Act 2006*.

²⁰ Commissioner for Children and Young People, *Improving legislation for children and young people*, 2010, p5.

child impact assessment is a significant issue and that guidelines could fulfil an important function in this regard.

For the legislation assessment tool to be most effective, it will not be sufficient to simply increase awareness of the guidelines' existence (although this too is important) but ensure that child impact assessment becomes embedded in routine agency practice.

The Commissioner's Annual Report notes that a survey evaluating the legislation assessment tool will be conducted in the future.²¹ The Committee will follow the evaluation with interest and in particular: the level of uptake of the guidelines by agencies; whether the guidelines are pitched correctly and agencies find them user friendly and beneficial; evidence that the guidelines are being applied and influencing change; and whether further refinements will be needed following the evaluation in order to increase the effectiveness of the guidelines.

(ii) Complaints guidelines for agencies

During the Committee's previous review, the Commissioner advised that she would follow up agencies' responses to the complaints guidelines launched by her office in June 2009. The Commissioner subsequently advised the Committee in October 2010 that she had worked closely with the Ombudsman and referred to a survey conducted by the Ombudsman on complaint handling practices in the WA state and local government sectors.²² Following input from the Commissioner, the Ombudsman included questions in the final survey 'relating to the accessibility and responsiveness of systems and processes to meet the needs of children and young people'.²³

The Ombudsman's report on the survey does indeed make specific mention of whether agencies make information available on complaints processes in formats suitable for children and young people, and whether agencies have arrangements in place to respond to such complaints.²⁴ The inclusion of these questions in the survey and recognition by agencies of complaints made by children is certainly a positive step which may be linked to an increased awareness generated by the Commissioner's complaints guidelines. The Ombudsman does not appear however to have specifically evaluated whether instances of accessibility/responsiveness by agencies to complaints made by children and young people were a direct result of agencies' application of the guidelines.

To evaluate the effectiveness of the complaints guidelines in this regard, the Commissioner's Annual Report notes that a project was implemented in 2009-2010 to work with state government agencies to evaluate the guidelines and collect data via a survey on the quantity and types of complaints agencies received from children and young people.²⁵ The Annual Report cites that 93

²¹ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p28.

²² Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11.

²³ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p20.

²⁴ Ombudsman Western Australia, *2009-10 Survey of Complaint Handling Practices in Western Australian State and Local Government Sectors*, 2010, pp28-29, 37. Available at: www.ombudsman.wa.gov.au/Publications/Documents/reports/OWA_2009-10_Complaint_Handling_Survey_Report_30610.pdf Accessed on 11 January 2011.

²⁵ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p20.

per cent of the 28 government agencies which responded to the survey agreed that the guidelines were useful, and 75 per cent of agencies stated that they had a child friendly complaints process. The Annual Report notes that the guidelines will be reviewed and updated where required to reflect the outcomes of the evaluation, and there will be monitoring of trends in complaints made by children and young people.²⁶ The Committee supports refinement of the guidelines where necessary to reflect the outcome of the evaluation and considers that in order to maximise effectiveness, evaluation of the guidelines should occur periodically.

(iii) Participation guidelines

In October 2009 the Commissioner launched participation guidelines to assist agencies to involve children and young people more in their work, and early feedback has been positive:

*The participation guidelines are being used by agencies. We have three very positive examples. PMH has picked them up, the new hospital; so too has the Museum and the Clinical Senate...the Mental Health Commission is now publicising them widely for agencies. The Australian youth coalition is publicising them nationally. It has said that WA is one of the few places that has participation guidelines for children and young people.*²⁷

The participation guidelines fulfil the requirement under Section 20(1)(d) of the Act for the Commissioner to develop guidelines for agencies regarding the participation by children and young people in decisions which affect them. The Annual Report notes that an annual training workshop will be conducted to further promote the participation guidelines and that a survey will be undertaken in 2010-2011 to evaluate the effectiveness of the guidelines.²⁸

(iv) Summary

The Committee is satisfied that the Commissioner is tracking the performance of all guidelines documents although considers that certain measures that have been used, such as the number of times a document is downloaded, might not be a robust measure of effectiveness. The Commissioner acknowledged this²⁹ and where this measure has been applied, the Committee is satisfied that the Commissioner will also undertake more comprehensive evaluations of effectiveness.

Overall, in relation to guidelines for legislation assessment, complaints, and participation, the Commissioner has committed to conducting training sessions for agencies.³⁰ The Committee agrees that training sessions will be valuable for promoting use of the various guidelines and encouraging better agency practice. It is equally important however that the Commissioner

²⁶ Ibid.

²⁷ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11.

²⁸ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p18.

²⁹ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11.

³⁰ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11.

undertakes ongoing periodic monitoring of the effectiveness of all guidelines and further refines guidelines where necessary to reflect the outcomes of evaluation, and in this respect the Committee will maintain a watching brief.

Finding 1

Guidelines documents require more robust measures of effectiveness as well as ongoing evaluation by the Commissioner for Children and Young People.

Recommendation 1

That the Commissioner for Children and Young People undertakes ongoing evaluation of all guidelines documents and further refinement where necessary to reflect the outcomes of evaluation.

(d) Public policy initiatives

In its review of the Commissioner's previous Annual Report, the Committee examined some of the Commissioner's strategic priorities including: early childhood; mental health; and the wellbeing of Aboriginal and Torres Strait Islander children and young people. Regarding the latter, the Committee also examined a number of specific public policy issues highlighted by the Commissioner including: alcohol restrictions; activities for children and young people; and access to services.³¹

(i) The early years

In 2009-2010, the Commissioner continued to advocate for improvements to health, education and childcare services for children in the early years (aged between birth and eight years). The Commissioner's activities focused on ensuring that a high level of focus on the early years was maintained at a departmental, government and parliamentary level via submissions made to relevant parliamentary inquiries, regular meetings with key Ministers, Directors General and non-government organisations, and publicly reinforcing the findings and recommendations of parliamentary reports in relation to child health. The early years continues to be a priority issue for the Commissioner and the Annual Report notes that the Commissioner will continue to advocate in this regard.³²

³¹ See Joint Standing Committee on the Commissioner for Children and Young People, *Review of the 2008-2009 Annual Report of the Commissioner for Children and Young People*, Report 3 in the 38th Parliament, Parliament of Western Australia, 22 April 2010, pp15-21.

³² Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, pp30-31.

(ii) Wellbeing of Aboriginal and Torres Strait Islander children and young people

In relation to Aboriginal children and young people, the Commissioner's Annual Report notes that in the year under review, a full-time Aboriginal Advisor was appointed to her staff and that the position not only assists in ensuring that Aboriginal children and young people are given special regard across all work areas, but also works directly with communities to increase their engagement with the Commissioner. In 2009-2010 the Commissioner also visited a number of regional and remote Aboriginal communities, and included the particular needs of Aboriginal children and young people in all relevant representations made during the year.³³

On a visit to Fitzroy Crossing undertaken during the year the Commissioner observed that 'it is rebuilding as a result of alcohol restrictions and community leadership in that community, so the prospects for the children in Fitzroy have turned around'.³⁴ Related to this, the Committee notes the findings of the latest report prepared for the Drug and Alcohol Office evaluating the effects of alcohol restrictions in Fitzroy Crossing. The report finds that two years after restrictions on packaged liquor were implemented, the health and social benefits for Fitzroy Crossing and Fitzroy Valley communities are continuing. The report highlights however the critical nature of support services as it finds that benefits appear to have peaked 12 months following the institution of liquor restrictions but the second 12 months has seen an erosion of these benefits. The absence of sufficient programs and support has been identified as one of the reasons for this.³⁵ The Committee notes that the Education and Health Standing Committee of the WA Parliament recently reached similar conclusions.³⁶

This finding unfortunately concurs with the Commissioner's statements³⁷ regarding the urgent need for services for children and young people and their families in regional and remote areas of the state including the Kimberley.³⁸ The Commissioner indicated that Aboriginal children, particularly in the Kimberley, experience grief, loss and trauma:

*I think that some of those services are really absent in those communities. There are multiple deaths in some of those communities, children have been traumatised by family violence and alcohol, and there are not the commensurate services to meet those specific needs as well.*³⁹

³³ Ibid., pp35-36.

³⁴ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p8.

³⁵ The Drug and Alcohol Office, *Fitzroy Valley Alcohol Restriction Report*, report prepared by The University of Notre Dame, December 2010, pp10-11. Available at: www.dao.health.wa.gov.au/ Accessed on 14 January 2011.

³⁶ Education and Health Standing Committee, *Alcohol Restrictions in the Kimberley: A 'Window of Opportunity' for improved Health, Education, Housing and Employment*, Parliament of Western Australia, Perth, 17 March 2011, pp1-308.

³⁷ This concurs also with the Committee's own observations from its travel to the Kimberley in October 2009 as detailed in its previous review.

³⁸ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p44.

³⁹ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p7.

The issues highlighted in the Committee's review of the Commissioner's previous Annual Report (i.e. access to services, activities for children and young people etc.) continue to impact the Kimberley and, more broadly, regional and remote communities across the state. The Commissioner advocated on these and other issues in 2009-2010 using submissions, speeches, media statements and meetings with government and community organisations, and will continue with these activities in the coming year. More specifically, the Commissioner has committed to: continuing regional visits and consultations relating to the provision of health and related social services in regional and remote communities; supporting the expansion of alcohol restrictions where it is supported by community members; and monitoring the implementation of the FASD Model of Care.^{40 41} The Committee will continue to monitor the Commissioner's activities in relation to this significant area of public policy.

(iii) Mental health

A particular area of service provision highlighted by the Commissioner concerns mental health services for children and young people.⁴² In 2009-2010 the Commissioner released an Issues Paper on mental health and also spoke publicly about the lack of appropriate mental health services for children and young people, especially in regional areas.⁴³ Although it falls just outside the period under review, a particularly significant project commenced by the Commissioner was the Inquiry into the Mental Health and Wellbeing of Children and Young People initiated under Section 19(f) of the Act. The inquiry, launched publicly in July 2010, will examine what needs to be done at the 'primary, secondary and tertiary level in relation to mental health services and keeping kids mentally healthy'.⁴⁴

The Commissioner invited submissions to the inquiry between July and November 2010⁴⁵ and anticipates tabling the inquiry report in Parliament within the next several weeks.⁴⁶ In terms of initial feedback, the Commissioner suggested that it was advantageous for such an inquiry to be undertaken by her office and that comments had been very positive in this regard:

That has been well received, I think, because of the independence of the role of the commissioner. This is an issue that has been around for some time that various stakeholders believe should be given priority, but they are very pleased that the

⁴⁰ The Foetal Alcohol Spectrum Disorder (FASD) Model of Care pertains to a blueprint released by the WA Department of Health to prevent and treat FASD, and to complement government and community initiatives already underway (Information taken from Department of Health, 'Foetal Alcohol Spectrum Disorder Model of Care', nd. Available at: www.healthnetworks.health.wa.gov.au/modelsofcare/fetal_alcohol_spectrum_disorder.cfm#health-professionals Accessed on 17 January 2011).

⁴¹ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, pp16, 37, 44.

⁴² Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p7.

⁴³ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, pp33, 44.

⁴⁴ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p8.

⁴⁵ Commissioner for Children and Young People, 'About the inquiry', 9 November 2010. Available at: www.ccyp.wa.gov.au/content/About-the-inquiry.aspx Accessed on 17 January 2011.

⁴⁶ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p3.

*commissioner, as an independent officer, has taken up this issue, and I think that goes to the credibility of the position.*⁴⁷

The mental health inquiry represents the Commissioner's first application of the function prescribed by Section 19(f) of the Act to 'initiate and conduct inquiries into any matter...affecting the wellbeing of children and young people'. The inquiry is a positive sign that the Commissioner is continuing to consolidate her role and test new functions under the Act. The Committee is therefore following the mental health and wellbeing inquiry with interest. Bearing in mind that it is a function of the Committee to examine *Annual and other Reports* of the Commissioner, the Committee will conduct a separate examination and comment further following the completion of the Commissioner's inquiry.

(iv) Summary

The Committee is satisfied that in 2009-2010, the Commissioner continued to advocate on these, and other, public policy issues and has committed to maintaining a focus in this regard. From the outcomes achieved during the year under review, it is evident that the Commissioner is exercising the functions required by the Act, particularly those functions required by Section 19 and Section 20 of the Act. In terms of how effectively the Commissioner is exercising these functions and whether tangible changes are being achieved in a public policy context, this is discussed further in Chapter 3.3.

(e) Wellbeing research project

The Commissioner engaged a consultant in May 2009 to collect the views of children and young people aged 5 to 18 with respect to their wellbeing, what impacts on their wellbeing, and how their wellbeing could be improved. Over 900 children participated in the research and the final report was delivered to the Commissioner in June 2009.⁴⁸ A report summarising the views of Western Australian children and young people, *Speaking out about wellbeing* was released publicly by the Commissioner in October 2010. The Annual Report notes that the Commissioner will use the research to better inform advocacy and the priority areas of the office, and that research findings will be widely disseminated to key stakeholders to promote awareness about factors impacting on the wellbeing of children and young people.⁴⁹

The wellbeing research project complies with Section 19(i) of the Act which provides for the Commissioner to 'conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing of children and young people'. The Committee queried the resourcing of the project and why the project had to be contracted out given the staffing complement of the Commissioner's office. The Commissioner advised that the project was contracted out due to the complex 'high-level' nature of the research. Whereas the Commissioner will conduct lower-level research (around a particular issue for instance) internally, the Commissioner's budget does make

⁴⁷ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p2.

⁴⁸ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p25.

⁴⁹ Ibid.

an allowance for high-level research to be contracted out.⁵⁰ The Committee accepts the Commissioner's rationale given that the research was highly customised, and also given the anticipated benefits of the work:

*We catered for the geography of Western Australia, which is very unique. We catered for the special needs of particular groups in Western Australia, such as those from other countries, kids in care and also the Aboriginal population in Western Australia...There has been a lot of interest nationally in the research that we have undertaken and from national organisations that see this as very important, because a lot of research around the world, rightly, looks at what the evidence tells us from an organisational point of view, but it has not looked at the views of children and young people. So this research was seen as adding to that, and there has been some international discussion about this issue and this research adds to that.*⁵¹

The Committee notes that the Commissioner intends to promote the use of the report by government and community organisations and, over time, will develop 'shared projects and initiatives to address the issues identified'.⁵² The research highlights a number of significant issues that impact on the wellbeing of children and young people including: family conflict; bullying; impacts of alcohol and drugs on family and friends; and for Aboriginal children and young people in particular, the loss of close family members and effects of family violence, abuse or neglect.⁵³ Given the significance of these issues, the Committee will follow the application of the wellbeing research with interest and the means by which the Commissioner may add value to the research findings.

The Commissioner has since advised the Committee that she intends to develop a series of policy briefs to translate the research into practical solutions which can then be applied by policy makers and/or service providers.⁵⁴ The Commissioner indicated that ideally any changes made by agencies should be tracked as part of a follow up process, however suggested that this would be 'too ambitious' given resource limitations.⁵⁵ The Committee considers that the potential for positive change that the wellbeing research represents would be diminished if improvements were merely suggested but not followed through. Given the comprehensive nature of the wellbeing research and the valuable resource that it represents, a similarly comprehensive application of the research is warranted. The policy briefs are a useful tool but need to be reinforced with appropriate tracking. A follow up process may also have the additional benefit of evaluating the effectiveness of the wellbeing research project and potentially help to inform future research undertaken by the Commissioner.

⁵⁰ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p3.

⁵¹ *Ibid.*, p4.

⁵² Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p25.

⁵³ Commissioner for Children and Young People, *Speaking out about wellbeing - The views of Western Australian children and young people*, 2010, p26.

⁵⁴ As at the end of March 2011, the Commissioner had published two policy briefs pertaining to: the importance of families; and the importance of families to Aboriginal children and young people respectively.

⁵⁵ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p9.

Finding 2

To maximise the benefits of the wellbeing research, the policy briefs being developed by the Commissioner for Children and Young People need to be supported by a follow up process.

The Committee recognises that such a follow up process may have resource implications for the Commissioner's office but will monitor this in the context of its annual budget briefings with the Commissioner.⁵⁶

Recommendation 2

That the Commissioner for Children and Young People implements a process to follow up agencies' application of wellbeing research policy brief suggestions.

(f) Advisory committees

In accordance with Section 52(2) of the Act, the Commissioner established two advisory committees consisting of children and young people. Two existing groups were selected to be the Commissioner's advisory committees for the 2010 calendar year: one from the metropolitan area (Beckenham Primary School); and one from a regional area (Geraldton Indigenous Youth Council). By October 2010, both committees had provided advice to the Commissioner on how her *Face to Face* reports could be improved, and input on mental health and other issues of concern to them. Feedback from the advisory committees in relation to *Face to Face* has already been reflected in the revised format of the 2009-2010 report inasmuch as it comprised more pictures and less text, and more information on what other children and young people had told the Commissioner.⁵⁷ In addition, Beckenham Primary School undertook a community project which involved a Kids Talk Fest with other schools to identify what was needed in the local community.⁵⁸

The Commissioner had intended to complete a comprehensive evaluation towards the end of 2010 to determine how the inaugural advisory committees had achieved stated aims, both from the Commissioner's and young people's perspectives.⁵⁹ While the evaluation had not yet been

⁵⁶ As discussed further at Chapter 3.2(c).

⁵⁷ Ms Michelle Scott, Commissioner for Children and Young People, letter, 24 March 2011, p2.

⁵⁸ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, pp6-7.

⁵⁹ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p17.

conducted at the time of the Committee's initial hearing in October 2010, the Commissioner had already taken some major lessons from the 2010 advisory committees. For example, it became evident that one calendar year was not a sufficient period of time for the committees to operate since it took time for the committees to get started at the beginning of the year because of school holidays. Another major lesson was that an adult support person was critical to the success of the advisory committees.⁶⁰ The process for advisory committees has already been amended inasmuch as the term of duration for the committees will be extended from one calendar year to two. Expressions of Interest were invited from children and young people in October 2010 to be part of the Commissioner's advisory committees for a two-year term commencing in January 2011.⁶¹

In March 2011, the Committee sought further information from the Commissioner regarding outcomes of her evaluation of the 2010 advisory committees. The Commissioner confirmed that changes had been made to the selection and administration of the 2011 committees as a consequence of the evaluation. This included the abovementioned trial of a two year appointment but also a new application requirement for a suitable adult coordinator to be nominated in order to provide support to the committee for the duration of their appointment. Otherwise, the evaluation demonstrated 'overwhelmingly positive feedback from the children and young people involved in the 2010 pilot project'.⁶²

The Committee will maintain a watching brief on the progress of the Commissioner's 2011-2012 advisory committees and in particular whether the revised selection and administration processes improve outcomes.

(g) Monitoring Framework for Wellbeing Indicators

As reported in the Committee's previous review⁶³ the Commissioner was looking at ways of applying her internal budget to deliver a wellbeing indicator framework for Western Australia's children and young people. The Committee continues to support the principle of consolidating measures of how children and young people in this state are faring in order to enable the better targeting of government services and programs. In the year under review, the Commissioner reported that criteria had been developed for the selection of indicators, and that relationships were being established with a number of agencies which had agreed to support the development of the monitoring framework.⁶⁴

Regarding the latter, the Commissioner advised that she had started liaising with organisations such as the Telethon Institute, Department of Health, and Department of Corrective Services which already collect some data, with a view to building on what others have done and avoiding

⁶⁰ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p6.

⁶¹ Commissioner for Children and Young People, *Commissioner's Update - Issue No. 8*, October 2010.

⁶² Ms Michelle Scott, Commissioner for Children and Young People, letter, 24 March 2011, p1.

⁶³ Refer to Joint Standing Committee on the Commissioner for Children and Young People, *Review of the 2008-2009 Annual Report of the Commissioner for Children and Young People*, Report 3 in the 38th Parliament, Parliament of Western Australia, 22 April 2010, pp11-12.

⁶⁴ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p26.

duplication. The Commissioner will also draw from similar monitoring frameworks in Victoria and Tasmania, and like those states, anticipates a biennial reporting timeframe for Western Australia, with Western Australia's first report estimated to be ready in 18 months to two years' time.⁶⁵

The Commissioner advised the Committee in March 2011 that the monitoring framework project comprised three major components including development of a set of indicators to measure how children and young people are performing across a set of eight domains. Liaison with the aforementioned agencies, along with others constituting a reference group established by the Commissioner, would assist in the selection of the domains with the aim of not only tracking Western Australian children but also assisting comparison with children interstate. The second component of the project would be a statistical profile of Western Australian children drawn entirely from Australian Bureau of Statistics data, and the final component of the project would comprise a compendium of best practice and/or promising programs and services for children and young people aged 0 to 18. Development of the latter will be undertaken by an independent consultant. The Commissioner was of the opinion that having established the project and completed the component parts, that it would be a good position for another department to continue the work.⁶⁶

With respect to funding the project, the Commissioner advised that permission had been received from the Attorney General and final approvals were being sought to draw on cash reserves over a three year period to enable the start up of the monitoring framework project. The Attorney General has approved the allocation of \$100,000 in the 2010-11 financial year and \$175,000 for each of the following two financial years.⁶⁷

The Committee is satisfied that the Commissioner will continue to work in partnership with other agencies in the coming year, and that the Commissioner currently has sufficient access to resources to progress the project. Given the anticipated benefits of the monitoring framework, the Committee will maintain a watching brief on the progress and outcomes of the project, particularly: the indicators established and how these build on and advance previous work; any measurable outcomes of the effectiveness of the project; and the long-term continuation of the project.

⁶⁵ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, pp4-5.

⁶⁶ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p2.

⁶⁷ Ms Michelle Scott, Commissioner for Children and Young People, letter, 22 November 2010.

CHAPTER 3 REVIEW OF THE 2009-2010 ANNUAL REPORT OF THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

3.1 Introduction

In addition to issues followed up in the last Chapter, this section focuses on a number of the Commissioner's activities in 2009-2010 which the Committee particularly wishes to highlight. Commentary has been organised into subsections to reflect the structure of the Commissioner's Annual Report.

3.2 Review of the Annual Report 2009-2010

(a) Promoting participation by children and young people

Although outside the period under review, in August 2010 the Commissioner launched the inaugural Commissioner for a Day Challenge. Children and young people aged between 8 and 18 years were invited to submit their ideas using their choice of media on how to stay mentally healthy. Participants were also challenged to suggest ways they would help other children to stay positive if they were Commissioner for a day.⁶⁸ The winner, 11-year-old Katie Tucker was Commissioner for a Day in late October 2010 and her activities for the day included: meetings with the Minister for Youth and the Committee; and an appearance on a radio program.⁶⁹ The outcomes of the Commissioner for a Day initiative will be included in the Committee's next review.

(b) Influencing policy, services, attitudes and outcomes

In relation to the Commissioner's strategic goal to influence policy, laws and services that affect the wellbeing of children and young people, the Commissioner advised that significant achievements in 2009-2010 included 'advice in relation to 12 legislative reforms, either in the Parliament or to government agencies; ... 25 submissions to various government inquiries; ... [and] good relationships [established] with a range of stakeholders'.⁷⁰ Some of the Commissioner's other achievements in this regard have already been examined in the previous Chapter such as the wellbeing research project, and activities relating to public policy priority areas including the early years, Aboriginal children and young people, and mental health.

⁶⁸ Ms Michelle Scott, (Commissioner for Children and Young People), *Commissioner's challenge to young people*, Media Release, Commissioner for Children and Young People WA, Perth, 5 August 2010.

⁶⁹ Commissioner for Children and Young People, 'Commissioner for a Day - Katie', 9 November 2010. Available at: www.ccyp.wa.gov.au/content/Commissioner-for-a-Day-_Katie.aspx Accessed on 18 January 2011.

⁷⁰ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p2.

The Committee notes that the Commissioner established the Built Environment as a new public policy priority area in 2009-2010. As well as running an online Shout Out poll on the subject of neighbourhoods (the 'myWAspace' poll), the Commissioner established a consultation partnership with the Curtin University School of Built Environment. This partnership led to the iBuild project where the views of children and young people on the built environment were workshopped and then translated into concepts and displays by architecture students from the university. A 3D and digital iBuild display was exhibited in October 2010. The Commissioner has undertaken to use the ideas and views expressed through iBuild to inform her work on the built environment.⁷¹ Although outside the year under review, the Commissioner also released an Issues Paper on the Built Environment in December 2010.⁷² In the coming year, the Commissioner intends to develop guiding principles for the development of child-friendly communities.⁷³ The Committee will monitor developments in this new priority area.

(c) Governance and capacity

As at 30 June 2010 the Commissioner's office employed 18 staff.⁷⁴ The Commissioner advised the Committee that the consultation requirements of her role necessitated regional travel, usually accompanied by a staff member, and that staff also undertook consultations independently including the running of information forums and discrete consultation exercises.⁷⁵ As such, the staffing complement was reasonable given the breadth of functions required by the Act:

*Although, on the face of it, 18 FTEs seems reasonable, there is a lot to cover in terms of section 19 of the act, and also to travel and be cognisant of every issue that is impacting on children and young people.*⁷⁶

The Commissioner also advised that administrative staff were required to fulfil the agency's compliance obligations (e.g. financial, record keeping, and Freedom of Information requirements). This was no different to other agencies except that it had a disproportionate impact on agencies such as the Commissioner for Children which had a small overall staffing complement.⁷⁷

Further to the issue of resourcing, the Commissioner's Annual Report states that 'there are significant resourcing issues which impact on the ongoing capacity of the Commissioner to fulfil her statutory responsibilities including extensive regional travel and the production of high-quality

⁷¹ Commissioner for Children and Young People, 'iBuild', 20 October 2010. Available at: www.ccyp.wa.gov.au/article/www.ccyp.wa.gov.au/content/shoutout/iBUILD.aspx Accessed on 19 January 2011.

⁷² Commissioner for Children and Young People, 'The Built Environment - Issue Paper 5', December 2010. Available at: www.ccyp.wa.gov.au/files/resource/Issues%20Paper%20-%20Built%20Environment%20-%20December%202010.pdf Accessed on 19 January 2011.

⁷³ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p35.

⁷⁴ *Ibid.*, p11.

⁷⁵ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, pp2-3.

⁷⁶ *Ibid.*, p12.

⁷⁷ Ms Michelle Scott, Commissioner for Children and Young People, *Briefing*, 17 November 2010.

research'.⁷⁸ When queried, the Commissioner advised that while her office had benefited from a rent-free period in 2009-2010, accommodation costs in coming years would put pressure on the budget.⁷⁹ The Commissioner has already had discussions with Treasury in this regard.⁸⁰ The Committee will continue to monitor resourcing of the Commissioner's office in the context of its annual budget briefings with the Commissioner conducted under Section 57 of the Act.⁸¹

3.3 The capacity of the Commissioner to influence outcomes

The Commissioner's activities to influence policy, services and outcomes, and other strategic goals such as promoting participation, demonstrate that the Commissioner is exercising the functions required by the Act. It is more challenging however to evaluate the effectiveness of these activities and therefore whether the Commissioner's role is having an impact.

Under Section 48 of the Act, the Commissioner is required to give a draft of each report to the Attorney General who may then issue comments to the Commissioner on the draft. The Commissioner is not required to make changes to the draft as a result of any comments received but must include a copy of any comments issued in the final version of the report. The Commissioner's Annual Report duly incorporates a letter from the Attorney General in accordance with Section 48 of the Act, which contains comments on the extent of the Commissioner's stated influence. The Attorney General suggests an overstatement of outcomes by the Commissioner pertaining to youth justice, specifically relating to the expansion of Regional Youth Justice Services; and the Prohibited Behaviour Orders Bill.⁸²

Under outcomes pertaining to youth justice, the Commissioner's Annual Report lists:

\$44 million over four years was allocated in the 2010-11 State Budget to expand Youth Justice Services in the West Kimberley, East Kimberley and Pilbara.

*The draft Prohibited Behaviour Orders Bill, introduced to Parliament on 24 June 2010, excludes young people under the age of 16 years and includes several provisions allowing for special consideration of children and young people.*⁸³

The Attorney General comments that the outcomes section of the Annual Report is 'a statement of the outcomes that can be directly and substantially attributable to the agency in question during the course of the past financial year' and indicates therefore that inclusion of the abovementioned outcomes is problematic. While the Attorney General acknowledges that the Commissioner has

⁷⁸ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p45.

⁷⁹ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p5.

⁸⁰ Ms Michelle Scott, Commissioner for Children and Young People, *Briefing*, 17 November 2010.

⁸¹ Under Section 57 the Treasurer is to have regard to any recommendation by the Committee in the determination of the budget for the Commissioner for a financial year. The Committee generally conducts an annual briefing with the Commissioner on her proposed budget before making its recommendation to the Treasurer.

⁸² Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p81.

⁸³ Commissioner for Children and Young People, *Annual Report 2009-10*, 2010, p32.

advocated generally on the issue of youth justice, he states that the Commissioner's reference to budget funding for regional youth justice services can be largely attributed to the work of other agencies. In relation to the Prohibited Behaviour Orders Bill, the Attorney General comments that the Bill was drafted following extensive consultation and its final form took all submissions into account. The Attorney General suggests that it would therefore be inappropriate for the Commissioner to list the specific provisions of the Bill as an agency outcome.⁸⁴

In response, the Commissioner advised the Committee that she had worked closely with the Department of Corrective Services over an extended period before the Budget announcement regarding expansion of regional youth justice services. She had supported expansion of the service and had also 'made many representations in public forums and to the Parliament about the need to expand [the] program to the Kimberley and Pilbara regions'. The Commissioner detailed four representations she had made directly to the Attorney General on this matter and also stated that she considers the regional youth justice strategy to be a 'positive outcome for children and young people in Western Australia'.⁸⁵

In relation to the Attorney General's comments about the Prohibited Behaviour Orders Bill, the Commissioner advised the Committee that she had argued for the scheme not to apply to children under the age of 18. While the Bill eventually introduced to Parliament did not reflect this position (rather, it only excluded young people under the age of 16 years), the Commissioner maintains that the statement in the Annual Report indicated that the Bill nonetheless represented an improved outcome for children and young people compared to what was initially proposed. The Commissioner also made the point that there were other special provisions for children in the Bill which reflected concerns put forward in her submissions.⁸⁶ The Commissioner's full response to the Attorney General's comments is reproduced at Appendix Five.

It is clear therefore that the Commissioner's advocacy activities may contribute towards an outcome without being solely responsible for it. The nature of the Commissioner's role as an advocate rather than a decision maker dictates that this will be the case with the majority of the Commissioner's work. This complicates evaluation of the extent of the Commissioner's influence. Ideally the stated outcomes in the Annual Report should be directly attributable to the work of the Commissioner but the Committee accepts that this is easier to do in some circumstances than in others. For instance it is easier for the Commissioner to measure the application of guidelines documents and identify specific instances where usage has translated into a particular outcome, than to singularly link a particular policy/legislative change to representations that have been made. That said, the Committee still considers that it is important for the Commissioner to qualify statements in the Annual Report so it is clear when an activity can be linked directly to an outcome and when an activity might instead have contributed to an outcome. Regarding the latter, it would be more reflective of the actual influence the Commissioner is having if, as demonstrated by the Prohibited Behaviour Orders Bill, the

⁸⁴ Ibid., p81.

⁸⁵ Ms Michelle Scott, Commissioner for Children and Young People, letter, 11 October 2010.

⁸⁶ Ibid.

Commissioner's contribution was more precisely stated even if the actual outcome does not reflect the outcome that was advocated for.

Finding 3

The nature of the Commissioner's role as an advocate makes it difficult to identify policy changes that arise solely from the Commissioner's work.

Finding 4

It is important for the Commissioner to qualify statements in the Annual Report and differentiate between outcomes that are solely attributable to the work of the office and instances where the Commissioner's advocacy has contributed towards an outcome.

As indicated above, evaluating the Commissioner's impact is complicated by the nature of the role itself. Although the Act provides broad functions and powers, the Commissioner must rely on other agencies to implement changes. The Commissioner emphasised that her role is limited to reporting on matters, liaising with various bodies and encouraging action but she cannot compel outcomes.⁸⁷

The Committee will consider the role of the Commissioner further when it examines the appropriateness of the Commissioner's functions. This study (to be reported separately) is intended to review the Commissioner's functions in the context of the role of similar Commissioners in other jurisdictions and is intended to ultimately inform the statutory review of the Act when this occurs.⁸⁸ As part of this examination the Committee may also consider ways in which it might add value to the work of the Commissioner.

Nonetheless the Commissioner's own view is that overall her role is having an impact:

*Our involvement is sought by government agencies and non-government agencies alike...I think that we have effective engagement with the sector. The Parliament has called on me to provide evidence on a number of occasions. I have been called on to provide advice in relation to legislation. I think that goes to the effectiveness and regard in which the role of the commissioner is held.*⁸⁹

⁸⁷ Ms Michelle Scott, Commissioner for Children and Young People, *Briefing*, 17 November 2010.

⁸⁸ Section 64 of the *Commissioner for Children and Young People Act 2006* requires the Minister to carry out a review of the operation and effectiveness of the Act as soon as is practicable after the expiry of 5 years from the commencement of the section, which will be in December 2012.

⁸⁹ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p2.

The Commissioner also believes that there is scope for her role to develop further by more fully testing the functions provided by the Act:

*...there is an extensive range of functions that I have been given under section 19. As commissioner in my third year, I have not yet fully tested all the functions...So I think it will be a number of years before we have fully utilised all the mechanisms available to me under section 19.*⁹⁰

In her reference to the functions under Section 19 of the Act, the Commissioner stated that she has undertaken or is in the process of undertaking many of the functions listed, such as conducting inquiries (i.e. the mental health inquiry conducted under Section 19(f) of the Act) and research. The power to conduct special inquiries under Part 5 of the Act has not yet been exercised by the Commissioner, however the Commissioner considers this to be more of a discretionary power compared to those prescribed by Section 19.⁹¹ As to whether or not the Commissioner should have a greater investigatory role, this matter will also be considered in the Committee's examination of the Commissioner's functions and reported separately.

3.4 Summary

This Report has identified a number of matters for follow up in the Committee's review of the Commissioner's next Annual Report, namely:

- The Commissioner's actions in relation to the wellbeing of Aboriginal children and young people;
- The outcomes of evaluation of guidelines pertaining to complaints by children and young people, participation, and drafting legislation;
- The application of findings from the wellbeing research project;
- The progress of 2011-12 advisory committees;
- Progress and outcomes of the monitoring framework project;
- Outcomes of the 2010 Commissioner for a Day initiative;
- The Commissioner's activities in relation to the Built Environment public policy priority area.

Although not revisited in this report, the Committee is still maintaining a watching brief on the matter of Working with Children Checks. Schedule 1 Clause 3 of the Act, which transfers responsibility for Working with Children Checks from the Department for Child Protection to the Commissioner, remains unproclaimed. As reported previously, this matter is to be considered as part of the statutory review (by the Minister for Child Protection) of the *Working with Children (Criminal Record Checking) Act 2004* anticipated in early 2011. As such the Committee is continuing to monitor this issue.

⁹⁰ Ibid., p2.

⁹¹ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p12.

Separate to the review of the Commissioner's next Annual Report, the Committee will also follow up:

- The outcomes of the Commissioner's mental health inquiry;
- Resourcing of the Commissioner's office (to be done as part of the Committee's annual review of the Commissioner's budget in accordance with Section 57 of the Act); and
- The broader issue of the Commissioner's role and capacity for influencing outcomes.



MS A.R. MITCHELL, MLA
CHAIRMAN

APPENDIX ONE

HEARINGS

The following public hearings were undertaken by the Committee in its review of the 2009-2010 Annual Report of the Commissioner for Children and Young People.

Date	Name	Position	Organisation
13 October 2010	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People WA
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People WA
16 March 2011	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People WA
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People WA

APPENDIX TWO

TRANSCRIPT OF HEARING

JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

REVIEW OF THE COMMISSIONER'S 2009-10 ANNUAL REPORT

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 13 OCTOBER 2010**

Members

**Ms Andrea Mitchell (Chairman)
Mr Martin Whitely (Deputy Chairman)
Hon Helen Bullock
Hon Nick Goiran**

Hearing commenced at 8.39 am

SCOTT, MS MICHELLE

Commissioner for Children and Young People, examined:

IRWIN, MS CARON HELEN

Executive Director, Commissioner for Children and Young People, examined:

The CHAIRMAN: Good morning. On behalf of the Joint Standing Committee on the Commissioner for Children and Young People, I thank you for your appearance before us today. The purpose of this hearing is to assist the committee in its examination of the 2009–10 annual report of the Commissioner for Children and Young People. For the benefit of Hansard and those observing, I will introduce myself and the other members of the committee present today. Firstly, I am Andrea Mitchell, MLA, the Chairman. The Deputy Chairman is to my left, Martin Whitely, MLA; on his left, Hon Nick Goiran, MLC; and on my right, Hon Helen Bullock, MLC. This committee is a joint standing committee of the Parliament of Western Australia. This hearing is a formal procedure of Parliament and therefore commands the same respect given to proceedings in the house itself. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings for the public record. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record. I also advise that the proceedings of this committee's hearing will be broadcast live within Parliament House, to various government agencies and via the internet. This broadcast may include documentation provided by you to assist the committee in its investigations. Before we proceed to the questions we have for you today, I need to ask you a series of questions. Have you completed the "Details of Witness" form?

Ms Scott: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

Ms Scott: Yes.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet provided with the "Details of Witness" form today?

Ms Scott: Yes.

The CHAIRMAN: Do you have any questions in relation to being a witness at today's hearing?

Ms Scott: No.

The CHAIRMAN: Would you like to introduce —

Ms Scott: This is Caron Irwin, who is my executive director.

The CHAIRMAN: Thank you, Caron and Michelle. I think we will go straight into our questions. I am going to ask the opening question for you. How effective do you think you have been in the past 12 months in your role?

Ms Scott: I think the past 12 months have been extremely busy and I think the role of the commissioner has consolidated. I think you will see in our annual report the range of activities that

we have been involved with. Just to give you some examples of the things that we have been involved in, we have provided advice in relation to 12 legislative reforms, either in the Parliament or to government agencies; we have made over 25 submissions to various government inquiries; we have established very good relationships with a range of stakeholders. Just to give you one simple example, I have a positive, constructive relationship with the Ombudsman and we have been doing some joint work around complaint processes.

In relation to mental health, members are aware of my announcement about a mental health inquiry that followed discussions with the Minister for Mental Health and the Mental Health Commission. I have a reference group for the inquiry, which involves the Mental Health Commission, which are very supportive of the inquiry and looking forward to the inquiry's outcomes. That inquiry has been very well received by a wide range of organisations in Western Australia. Ministers and directors general have written to me, and the submission period is currently open. That has been well received, I think, because of the independence of the role of the commissioner. This is an issue that has been around for some time that various stakeholders believe should be given priority, but they are very pleased that the commissioner, as an independent officer, has taken up this issue, and I think that goes to the credibility of the position.

I think that the work that we have undertaken in relation to the wellbeing research shows that we are evidence based; we have a collaborative approach. Our involvement is sought by government agencies and non-government agencies alike. We are holding our third successful children's week forum this year; RSVPs have not closed and we already have 120 people. This is the third time we have run this. We have an effective partnership with a wide range of stakeholders—in that case, the University of Western Australia.

Therefore, I think that in the past 12 months we have consolidated the position of the commissioner. I think that we have effective engagement with the sector. The Parliament has called on me to provide evidence on a number of occasions. I have been called on to provide advice in relation to legislation. I think that goes to the effectiveness and the regard in which the role of the commissioner is held. Having said that, this is only the third year of operation of a new position, and I think we have done very well. In terms of section 19 of the act, the committee is aware from previous discussions that there is an extensive range of functions that I have been given under section 19. As commissioner in my third year, I have not yet fully tested all the functions. Last year we commissioned the research, which took 12 months, into the wellbeing of children and young people; that is conducting a major piece of research. Now I am conducting an inquiry under section 19. So I think it will be a number of years before we have fully utilised all the mechanisms available to me under section 19.

The CHAIRMAN: If I can just go back, your first words were that you are very busy, and then we went on to the work that has been undertaken. If I look at your staffing structure—I know it has only recently been readdressed in the past 12 months—is this going to need to change again? I am probably looking at the part where, if we are talking about consultations on things, you have two or three people within your policy, legal and research team. If your role now needs to move up to another level, are those people going to be able to do what you are doing, or have they been doing it with you now? I guess I am just trying to work out who does what, because when I look at the trips that are done, are they done on your own? Are they doing separate things, or is everything geared around you as the person? Is it time now for the team to be doing things, albeit you have to get out—do not get me wrong—but I am wondering if this needs to change again because your position, your work, probably needs to be not just out there being seen, but actually getting that high-level stuff now with the research going on.

Ms Scott: I think that, to answer your question, the way in which we conduct the consultations, for example—some of that involves regional travel by myself, and I am always accompanied by a staff member. Some of the staff also undertake consultations separate to the work that I do. A good

example of that is that I have two staff working on the mental health inquiry. They conducted the information forums without me, some of which they did with the independent inquirer, but otherwise themselves. Around projects like the iBUILD project, other staff conduct those consultations.

The CHAIRMAN: Are they reported through the annual report, as well?

Ms Scott: Yes, they are, and they are part of our KPIs for the Office of the Auditor General for auditing purposes; yes, they are.

I think that when I refer to the role of the commissioner in the report, it is mainly because the legislation actually refers to the commissioner. It does not refer to an office of the commissioner; it actually refers to the commissioner. So when I talk about what I have done, it collectively refers to the work of the office.

Hon HELEN BULLOCK: In your report, page 25 states that you actually contracted somebody to conduct a research project. As the chair pointed out, you actually currently have 18 staff.

Ms Scott: That is correct.

Hon HELEN BULLOCK: Let us compare that with the ministers. For example, the Minister for Child Protection has only nine staff and the Minister for Youth has only 12 staff. I just thought, with the number of staff that you have, a lot can be achieved in-house. My question is: What was the reason for contracting out the research project? Was it because your office does not have the experience or the capacity?

[8.50 am]

Ms Scott: The research project that we undertook was a very significant research project and I would not have been able to do that internally. When the office was established and given that function under the act, I also was given an allocation in the budget to contract out high-level research. This particular research I regarded as high-level research. In terms of other lower-level research projects, like the research we might do around a particular issue or research we might do in relation to giving evidence to the Parliament or an inquiry, I would undertake mostly that research internally. However, this research project was a high-level research project where it involved a consortium of people, so that is why I contracted that out. The role that an office such as mine plays compared with a minister's is, I think, considerably different.

Hon HELEN BULLOCK: How many of those kinds of high-level research projects are allowed by your budget each year, roughly?

Ms Scott: Probably of that nature, one possibly each year, every two years.

Hon HELEN BULLOCK: Has the research done by other departments before you go on contracting out?

Ms Scott: Do I draw on the research?

Hon HELEN BULLOCK: No, has research been conducted by other departments or other organisations before you contracted it out? Before you went to contract out the research project, have you done a search to see if similar research has been done by different departments?

Ms Scott: Absolutely. I would not undertake anything that had been done by another agency and, in fact, my legislation says I should not duplicate the efforts of others, so I would not undertake research. I think the committee is aware that I have discussed previously the notion of inquiries and special inquiries. I have not undertaken some inquiries where another independent officer, for example, has undertaken such an inquiry. The same applies to research. I would take the use of government funds very seriously. I am closely watching my budget and I would not embark on research that had been undertaken by another government agency. Just to give you an example, before I undertook the inquiry into mental health, I met with key stakeholders in the community,

including the minister and the Mental Health Commission and a wide range of others, and said to them, "I won't embark on this inquiry if somebody else has done a similar thing, and I won't embark on an inquiry like this if you don't think it's going to add value to children and young people." The unanimous response from everybody was that they welcomed it, that this was a very important area and that no-one else was undertaking this kind of work. I think the same is true of the research that we conducted that looked at the unique views of 1 000 children throughout the state. We catered for the geography of Western Australia, which is very unique. We catered for the special needs of particular groups in Western Australia, such as those from other countries, kids in care and also the Aboriginal population in Western Australia. With that research, I met with a lot of stakeholders and talked with them about the research. There has been a lot of interest nationally in the research that we have undertaken and from national organisations that see this as very important, because a lot of research around the world, rightly, looks at what the evidence tells us from an organisational point of view, but it has not looked at the views of children and young people. So this research was seen as adding to that, and there has been some international discussion about this issue and this research adds to that.

Mr M.P. WHITELEY: I understand that the focus of the research into the wellbeing of children was basically hearing what they had to say about their own wellbeing, which is really valid. I am not critical of that at all. But we have had discussions in the past about doing something along the lines of what they are doing in Victoria, the state of the state's children report, which gives, I think—I am not as familiar with it as you would be—hard data about educational achievement, health achievement and all sorts of outcomes. From memory, I think you talked about trying to do that sort of research, but you needed some extra resources to do that. What has happened? Has that process kicked off? Were you successful with the extra resourcing—I do not think you were—and, if not, what provision has been made for doing that sort of research?

Ms Scott: You are absolutely right. It is called the monitoring framework project. I think the last time I reported to the committee I advised you that I had had some discussions with the Attorney General about using the cash reserves, or part of my cash reserves—some savings—for that project. The Attorney General indicated to me that he was agreeable to that. We are progressing that work now. I internally have dedicated some resources to doing that, and that will be very similar to what Victoria and Tasmania have undertaken. But that is another good example of whether I would do something that everybody else has done. I work very closely with the other states, as well as agencies here, to ensure that I am not duplicating the efforts of other people.

Mr M.P. WHITELEY: But that is the strength of it. I would have thought that the fact you are duplicating the same measures as Victoria and Tasmania is an absolute strength, because we can say, for instance, that our kids are doing worse in terms of some particular health measure. It is important to know that. I would think that having a template that is rolled out across Australia actually gives us a better —

Ms Scott: Perhaps I could just clarify what I meant by that. Victoria is the most advanced and they have done a lot of work there, so I am not starting from scratch. I talked to them about what I can take from what they have already done. Tasmania did a similar thing and they have some learnings from what they did, so instead of me reinventing the wheel in terms of what the template would even look like, as you described, Martin, what the measurements would be, the other thing that I —

Mr M.P. WHITELEY: Is there a move to standardise—sorry for interrupting—are you moving towards a standardisation process?

Ms Scott: There is, but it is very, very slow. There is quite a campaign nationally to have standard reporting, but it is at very early stages. Victoria has been the lead, the Australian Institute of Health and Welfare has done some work, and Tasmania has built on Victoria. But could I also just say that what I was referring to, too, is that each state collects different data. One of the things that I need to do, and we have already started, is talk to organisations, such as the Telethon Institute, that already

collect some data, the health department that already has data, the Department of Corrective Services that already has data, rather than me thinking I have to do that all myself. I am trying to use what is existing, so when I talk about duplication, that is what I am talking about. I agree we need a consistent approach in relation to the information that is gathered so we can compare state by state and we can get a really good, accurate picture, but I am drawing on what the others have done.

Mr M.P. WHITELEY: What sort of time frame do you think it will take, and is it going to be—I think in Victoria it is biennial; is that right?

Ms Scott: Every two years they report.

Mr M.P. WHITELEY: Is that going to be the same? Are we going to —

Ms Scott: That is exactly what I would like to do. The Attorney endorsed the use of the cash reserves spread out over a few years, rather than doing it all in one year, so that means that the project will take that long.

Mr M.P. WHITELEY: So when do you think the first report will come down? When can we anticipate?

Ms Scott: I would think 18 months, two years.

Mr M.P. WHITELEY: And then two years after that?

Ms Scott: Yes.

Mr M.P. WHITELEY: Okay.

[9.00 am]

Hon NICK GOIRAN: Commissioner, can I just take up on this issue of surplus?

Ms Scott: Yes.

Hon NICK GOIRAN: If I could draw your attention to page 48, the financial statements. It indicates that there was a surplus for the last financial year of just under \$85 000, which is an increase from the previous year of just over \$51 000. If we then turn to page 49, we can see that the accumulated surplus under the heading “Equity” is some \$742 000. By way of background, if I could then get you to turn to page 45, and the comment under “Resources”, which reads as follows —

The first years of operation of the Commissioner for Children and Young People’s office has included work to explore and understand the prescribed functions of the *Commissioner for Children and Young People Act 2006*. There are significant resourcing issues which impact on the ongoing capacity of the Commissioner to fulfil her statutory responsibilities including extensive regional travel and the production of high-quality research.

I just want to seek clarification from you on that because my reading of that indicates that there is a resourcing issue—in fact, significant resourcing issues—yet I do not quite understand that in light of the ongoing substantial surpluses and the significant accumulated surplus. Can I just get you to clarify that?

Ms Scott: Yes. In terms of the most recent financial year, I am really conscious of operating within my yearly budget and coming within budget. This recent financial year that we have just concluded, I received the benefit of a rent-free period in my negotiation for my lease. When that is factored into the next year’s budget, the full cost going to put me under pressure with my budget. That is one issue in relation to why we have had a surplus this year. In relation to the accumulated surplus, that is what I was referring to in terms of the cash reserves. The cash reserves actually go back to the first financial year of operation. So I took up my appointment in December 2007 and I was allocated \$2.5 million for the full year. Since that time, I have accumulated those cash reserves. That is why I put to the government that I use my cash reserves for the monitoring framework

project as a one-off substantial piece of work. That is what I have been talking with the Attorney General about and he has approved the drawing down of the cash reserves over a two or three-year period to achieve that. Does that explain it?

Hon NICK GOIRAN: Yes, that certainly confirms what I thought was the situation. I think your comment about the rent situation is helpful because, as I say, \$51 000 surplus last year, \$84 000 this year —

Mr M.P. WHITELEY: It is only in the order of two per cent or so.

Hon NICK GOIRAN: That is right; it is not significant, but in light of the significant accumulated surplus—but there is a rational explanation.

Ms Scott: With the accumulated surplus, too, there is a proper process for drawing down on it, and I have to go through that process, so it is not like it is readily available. So that is the process that I have gone through with the Attorney and with Treasury about accessing those funds.

Hon NICK GOIRAN: Thank you.

The CHAIRMAN: Thank you, commissioner. I am on page 17 of the report, and it is about the advisory committees. We remember last year that you did appoint two advisory committees, one regional and one metropolitan. I note that you have not had a chance to evaluate the effectiveness of those committees, yet at the same time you have advertised for another two and extended the time to two years, so I am assuming there is some rationale for that. Can I ask you just to comment on that? Also, it was my understanding that each of these committees was going to undertake a project; and, if that has occurred, how is that going?

Ms Scott: This year I had two advisory councils. One is the Beckenham advisory committee at the local primary school and the other is the Indigenous Youth Council attached to the Geraldton Streeties program. Both of those advisory committees were selected by a panel. What we found with both committees is that they were due to start in January and go through to December. January–February is a really quiet period, particularly for the school, and mostly even the Indigenous Youth Council involves schoolkids, so it took them quite a while to actually get up and running and active. That was really a significant reason why we have opted for two years, so that if they do not get up and running and fully operational until March, they can go through for a longer period. The committees themselves have just taken a while to work out what they are doing, and we think that that takes a few months, so the two years will be good for that. So that is a major learning.

The other major learning from the advisory committees to date is that their success partly depends on an adult support person. At Beckenham Primary School it is working very, very well because there is a very committed teacher—she is absolutely fabulous—and the principal is very supportive. Beckenham is a great school and it is in a disadvantaged community, but they are doing very good things in their local community. I have been out myself to Beckenham and met with the kids on a number of occasions. Beckenham Primary School has prepared advice for me on a number of issues. They are also now undertaking some consultation in their school on mental health to input into the mental health inquiry what they think kids need in relation to mental health and staying mentally healthy. Beckenham did receive a small amount of funds to run an Us and Community project. What the kids decided to do was hold a talkfest with a number of other schools about what they want in their community. About six or eight weeks ago I went to Beckenham and they presented me with the findings. The school, the principal and the teacher said it was just the most fabulous day where kids got together and talked about what they need in their local community. They need cars to go slower so it is safer for them on the streets, they need more bike paths, they need to feel safe in their local community, and they have done a lot of artwork. That was a fabulous project and the kids, besides coming up with some terrific ideas about what they wanted in their local community, also gained in confidence in terms of articulating what they wanted, in doing presentations at the talkfest—those sorts of things. So that is one of the projects that was

undertaken. They have also provided advice to me on my annual report and the Face to Face; they have provided advice to me on the website. So each year I have a couple of projects where I go to them and ask them for advice, as well as them giving me advice on the mental health issues. Does that —

The CHAIRMAN: Geraldton?

Ms Scott: I have been to visit Geraldton a couple of times. They have given us some very good advice on the Face to Face. They have given us good advice on mental health and the struggles that kids are facing. They are less inclined to use the web, which is good information for us in terms of who uses the web from a kid's point of view. I did not provide funds to Geraldton to do an Us and Community project because they were not able to do it in a timely way.

The CHAIRMAN: Okay. Thank you.

Mr M.P. WHITELY: Page 33 of the report states that you —

... raised the public profile of the lack of appropriate mental health services for children and young people, particularly in regional areas.

Can you specifically detail what services are lacking?

[9.10 am]

Ms Scott: It varies according to each geographical area. In some areas, services are almost non-existent. I think in my previous reports to the committee I have identified that in some of the Kimberley areas there are hardly any services. Fitzroy is a good example, where there is one child and adolescent social worker. There is no child psychologist employed by mental health in the whole of the Kimberley. In other areas, such as the Wheatbelt, services are really, really stretched, with long waiting lists for intervention in relation to parent and child behaviour issues. In some other areas, such as Northam —

Mr M.P. WHITELY: Can you just be a bit more specific about that? What sort of interventions?

Ms Scott: Counselling; managing children's behaviour where children's behaviour might be disruptive, difficult to manage in school or difficult to manage in the home—those kinds of issues; behaviour and relationship issues between parents and setting boundaries; also just giving parents basic information about parenting and how to manage children's behaviour according to their developmental needs.

So there are long waiting lists in some areas. In Northam, for example, while the mental health services have been reorientated to give priority to children and young people, there is still extensive need that is not being met, partly because many people and families from Perth are relocating to areas like Northam and just beyond Northam because of the low cost of housing. That is putting enormous pressure on agencies in those communities that have not been given additional resources to meet the growth in the population.

If I could just talk about the wellbeing report for one moment, when I brief the committee more fully, some communities obviously have particular needs. One of the things that came through strongly for some Aboriginal children, particularly in the Kimberley, was the grief, loss and trauma that they experience. I think that some of those services are really absent in those communities. There are multiple deaths in some of those communities, children have been traumatised by family violence and alcohol, and there are not the commensurate services to meet those specific needs as well.

The CHAIRMAN: Should the work also not be put then into the preventative side of things rather than the after effect, I guess? Yes, we can always do after, but if there are problems in our community, how much effort are we putting into the preventative side rather than the fixing-up-afterwards side?

Ms Scott: That is exactly my point. That is one of the terms of reference of the mental health inquiry. It is one of the things that people feel has not been paid much attention to here in Western Australia. We are hoping that from the mental health inquiry we will get a comprehensive look at what you need to do at the primary, secondary and tertiary level in relation to mental health services and keeping kids mentally healthy. Can I just add that that is not just about acute mental health services; it is about all of those things that assist in keeping kids mentally healthy. It is also not just the responsibility of the Mental Health Commission or mental health services; there are many, many agencies, such as —

Hon HELEN BULLOCK: Especially parents, I would have thought.

Ms Scott: Yes, and what additional supports parents might require to enable them to effectively parent. I absolutely agree; parenting is a critical issue. A lot of the research we already know points to attachment between a parent and a child as being critical to their mental health outcomes, and yet we do not put many resources in that, so that is very critical. With the inquiry, I am hoping that that is what the outcome will be: a series of recommendations that look at the full range of things that need to be done.

Hon HELEN BULLOCK: Just on that, it is kind of relevant. You mentioned in your report that you visited quite a few remote communities, such as Jigalong, Kununurra and Wyndham. What, in your view, does the future hold for the children and young people in those communities?

Ms Scott: I think that each community is different, and each community has some particular strengths and some challenges; it is not all the same. If I could just use an example, yesterday I was talking with a member of Parliament about Fitzroy Crossing. I know that the committee is aware of this. When I first went to Fitzroy Crossing, it was a community that was in crisis. Alcohol misuse was widespread; there was extensive family violence and considerable dysfunction in the community. The coroner had undertaken an inquiry into an extraordinary number of suicides in that community. Fitzroy today is a different community because it is rebuilding as a result of alcohol restrictions and community leadership in that community, so the prospects for the children in Fitzroy have turned around. When I visited Fitzroy, you could visibly see that, but it is also reported to me by the school and other agencies. That is not to say that Fitzroy does not still have a lot of challenges; it does. But it is a community that is turning around. Wyndham are doing some very good things, but they also have challenges. In Kununurra, alcohol is a huge issue, and I know that racing and gaming and the liquor licensing executive director are currently looking at alcohol restrictions. I know that the state government and the federal government have put in some specific initiatives in Kununurra that have been welcomed in the community. So I think we have to look at each local community and see what the future is, and that is usually how things are more effectively resolved by the local community getting very involved in what the critical issues are for their community.

Mr M.P. WHITELEY: Can I raise an issue springing off that? My electorate of Bassendean, I think—I am going to double-check this—has the highest Indigenous population in the metropolitan area. Frankly, there are significant pockets of Indigenous—when I say “pockets”, it is a house. Do you know what I mean? Let us be specific about what I am talking about. There are specific houses with kids living in unacceptable conditions—crowded houses, no routine, no involvement in school, no engagement in school; alcohol and drug abuse and probably sexual abuse issues as well. Because it is not a whole community—you can point at Fitzroy. We went up and saw Fitzroy, we saw the change, and you can address the whole community. In this sense, it is much harder with individual little pockets dotted throughout the metropolitan area. They tend to be concentrated around places like Midland, Bassendean and Armadale. But the only options that exist at the moment are that you try to support families where they are, which has limited success, or you split up families. Has any work been done at looking at a third way: actually giving kids and their families a chance to live in more of a supportive environment? Is there any work that your office has done on that problem of

isolated Indigenous disadvantage in the metropolitan area, because it is much harder to actually point and say, "Go have a look at that community"? I mean, I can drive you past the house. I suggest that the numbers are probably, in terms of absolute numbers, equivalent.

Ms Scott: The committee might be aware that my background is in social work, so I know the issues that you are talking about and worked with some of those families myself in my early career. My office has not undertaken that research, but there is a lot of research going on internationally and also in other states around—if I could just describe it—families or individuals who have complex needs that might require a wide variety of intervention to support them. The Australian Institute of Family Studies has been doing some of this work and so has the Brotherhood of St Laurence, so there is research around. Generally, the research findings are that unless there is collaboration between the relevant agencies in terms of the delivery of support for those families, then it is unlikely to significantly change.

[9.20 am]

Mr M.P. WHITELEY: Without wanting to editorialise too much, that is very difficult to deliver. Despite best efforts, it is not being delivered. It seems to me that there is a need for a third option, such as having families go to a secure environment where there is routine, safety and food in the fridge and where mum—it is usually mum—is supported. Mums are often loving, but are second or third generation dysfunctional. Interventions have to be done in the metropolitan area. It is much harder, because it is so isolated. I encourage any effort to become involved in that issue.

The CHAIRMAN: I would like to move on.

Mr M.P. WHITELEY: Perhaps I will have a chat with you as a local member at some stage.

Ms Scott: Yes. The directors general in the human services area meet on a regular basis. They, too, are concerned about this issue.

Hon NICK GOIRAN: I refer to the issue of submissions in your report, which is found on pages 42 and 43. In particular, I note that in your list of submissions there, twice is mention made of the Child Exploitation Material and Classification Legislation Amendment Bill 2009. I make the observation that the bill was amended to include the words "Child Pornography". Can you clarify why there would be two submissions on that—the first on 29 July 2009 and the second on 25 August 2009?

Ms Scott: I am thinking because—this is just my recollection, so I would have to double-check—we made an initial submission, and then they came back to us with some further requests. They took further evidence, I think, from the police and other people, and then they came back to me seeking a further submission. I think that that is what it relates to, but I would have to verify that. That is just going on my memory.

Hon NICK GOIRAN: Perhaps you can take that question on notice?

Ms Scott: I will.

Hon NICK GOIRAN: I refer to page 43 and to the submission on 17 March, 2010. You refer to a joint submission that you undertook with children commissioners and guardians from other states on the issue of the R18 + classification category for computer games. On Saturday, 9 October, I noted in the newspaper the publicity surrounding the work that you are doing. A number of quotes were taken from various children, some of which are not that remarkable. However, others were quite instructive. One in particular was from a boy aged 14. He said as follows —

What they (a particular group of young people) do is, they go to parties and then the parties turn into like fight club and they beat each other up.

My understanding of the phrase "fight club" is that it is a reference to a video-type game, a particularly violent genre of games. Obviously, you have a number of concerns about a variety of

children's issues; however, in the pecking order of things, where would you classify the impact of violent video games on children?

Ms Scott: It is hard to say where it would be in the pecking order. I am concerned about it. I provided a copy of my submission to the committee. The committee would be well aware of my strong stand in relation to that. It remains an area of concern. I also recently met with Baroness Susan Greenfield, who was a thinker in residence in South Australia. Some of you may be aware of her work, which relates to the impact of computer technology, games and usage on the organic development of the brain. She was here in Perth to give a public lecture at UWA, which was sold out. It was attended by family members who are concerned about this issue. I remain concerned about it. I think it is very important. The committee is probably aware that many other people did not agree with what I said in my submission. People do want access to those sorts of video games. I have taken the view that we should not have access and that there should be restrictions and greater controls. I am concerned about the impact this has on children and the broader community, but particularly children.

Hon NICK GOIRAN: Obviously, the matter is currently with the Standing Committee of Attorneys-General. There is the prospect that that could happen if there is unanimous consent. To what level are Australia's children commissioners concerned about that? I would find it quite remarkable if the collective group of Attorneys General decided to veto the joint submission put together by all the children commissioners in Australia, who unanimously said that it is a bad idea for children, and say that despite your contribution they are going to do it anyway. Is there genuine concern that that could happen? Are we resigned to the fact that although the children commissioners can have a say, the ball is in the court of the Attorneys General?

Ms Scott: The commissioners were sufficiently concerned to make a submission. We have another meeting in November. I imagine that we will discuss this issue at that meeting. As you are aware, the commissioners are not afraid about coming forward about particular reforms and the positive and negative impacts on children and young people. Ultimately, it is a question for the governments of the day with the Attorneys General of the country. But I have not heard any commissioner say that we should moderate our opinion on this matter. As a commissioner, I have taken a very strong stand on a number of other issues, such as alcohol restrictions, even though other individuals do not agree with me. I have taken a strong view on that, as I have with computer games.

The CHAIRMAN: I refer to page 18 and to the participation guidelines, tools and complaint guidelines. I am concerned if the outcome is measured by the number of times a guideline is downloaded from the website. To me, that is not achieving a good outcome; it is just that someone has done something. The outcome, of course, is that it is being used. I notice that the plans for the future include a survey that will be undertaken in 2010–11. I express my concern that a survey may not find out what is really going and that a more direct evaluation of that effectiveness may need to occur. It is about getting to a real effectiveness rather than just something that has been prepared and downloaded. I make that comment on those pieces that are important parts of your annual report, particularly coming through for next year.

[9.30 am]

Hon HELEN BULLOCK: On the same topic, I refer to page 18. You stated that you have developed three guidelines. Prior to the development of the complaints guidelines, the participation guidelines and the guidelines involving children and young people, were similar guidelines in place?

Ms Scott: In Western Australia?

Hon HELEN BULLOCK: Yes, from other agencies.

Ms Scott: No. It was completely new. We developed those in partnership with others. You are probably aware that the complaints one was developed in partnership with the Equal Opportunity

Commission, the Office of Health Review and the assistance of the Ombudsman. All those agencies indicated that this was very important. Can I just say about all the guidelines that we have reported on the downloads, but I absolutely agree that that is not a measure of total effectiveness. Some of the guidelines have just been produced. The participation one was produced in the past 12 months. The participation guidelines are being used by agencies. We have three very positive examples. PMH has picked them up, the new hospital; so too has the Museum and the Clinical Senate. We will evaluate them. With regards to the complaints guidelines, we have worked very closely with the Ombudsman, who has just done a survey of agencies. He and I are discussing what needs to be done further. With the complaint guidelines, 93 per cent of agencies that we did talk to said that they were very, very useful. On the legislation tool, we have run two training sessions so far. This was developed in conjunction with a wide range of agencies. One of the sessions was for 40 different agencies. The other was with the Parliamentary Counsel, which I referred to the committee the last time we met. We did seek evaluation and comment from those agencies. Nine out of 10 said that they were very good and that they had never given thought to children and young people in the development of legislation. This tool was very useful for that. Next year we will run training sessions on participation, complaints management and legislation. It will be an ongoing thing in terms of increasing the usage and increasing the understanding of these issues among agencies.

Hon HELEN BULLOCK: Did you develop those guidelines on the New South Wales model?

Ms Scott: With regard to the participation guidelines, New South Wales was the only agency. We drew on that. With regards to the complaints guidelines, no-one around Australia had done anything like that. With regards to the legislation guidelines, we looked internationally where there had been some work, but no other state had done any work. In those areas we were unique. In fact, we have been acknowledged for that. With regard to the participation guidelines, the Mental Health Commission is now publicising them widely for agencies. The Australian youth coalition is publicising them nationally. It has said that WA is one of the few places that has participation guidelines for children and young people.

Mr M.P. WHITELEY: I refer to page 37 and the first dot point. One of the outcomes is that Department for Child Protection policies and procedures have been improved to ensure the highest level of protection of vulnerable young people under the care of the department. Can you provide some detail about what changes have been made? "The highest level of protection" is a big and bold statement to make. I can understand improvements. One particular concern that I have—I may have raised it with you before—is that research from New South Wales has shown that a lot of kids in care are on a range of psychotropic medication—that is, anti-psychotics, amphetamines, a range of things. I have tried via questions on notice in Parliament to find out whether that is the case in WA. I have had no success. I have not been able to distil that. That is described as the use of chemical straightjackets in New South Wales. I consider that a form of child abuse of the most vulnerable children in our community. What concerns me in WA is that I cannot get an answer to my question about whether the rates in care are significantly different from those of the general population. There are two different streams. The first one relates to what has been improved and the second relates to whether you have any thought on that second particular specific aspect of vulnerability?

Ms Scott: I am happy to provide further information in relation to the Department for Child Protection policies and procedures, but first I will make a general comment. The government and the department have been solidly implementing the findings of the Ford review to improve policies and procedures. That reform has been significantly beneficial, but that does not mean that there are no areas for improvement. You might develop very good policies and procedures, but how are they actually being implemented on a day-to-day basis? I think that is a big challenge for the department. However, I still believe that following that significant reform of the Ford review, there have been improvements.

In relation to the medication of children in care, I have not sought that information myself. You have raised that, I think, in the committee previously. One concern that I have raised with the department is that every child has a care plan. That is in the legislation and in the policy. The question is: what is the quality of that care plan? If a child is receiving treatment or medication for a particular purpose, how is that monitored and reviewed and how do we ensure that it is safely prescribed and supervised? At that level, I have raised concerns about children's care. But it may be something that requires further investigation.

Mr M.P. WHITELY: The argument that came back was that it would take too much work to collect the information which, quite frankly, is astonishing.

scot: I remember.

Mr M.P. WHITELY: It almost strikes me as one of those things that we do not want to ask the question because we might not want to know the answer. I find that deeply disturbing. It is a question worth answering. Maybe it is one that should be asked through the mental health inquiry that you are doing.

Ms Scott: I have written to the Minister for Child Protection and the Department for Child Protection and invited them to make a submission. They have indicated that they will make a submission. I do not know whether that information will be forthcoming.

Mr M.P. WHITELY: It will not!

The CHAIRMAN: It might be something to follow up afterwards.

Mr M.P. WHITELY: It might be something that the commissioner would like to ask the department.

Hon NICK GOIRAN: Earlier today you mentioned that you have not yet tested all your functions. My question is probably a theoretical one. Is it an option to not test all the functions? If you have been endowed with these functions pursuant to the legislation, is there an obligation to fulfil all the functions or are they discretionary?

Ms Scott: I think that they are discretionary. However, I think Parliament intended that I have a wide range of functions so that I had different techniques at my disposal. Research is one thing. The other is the inquiry function. As members would be aware, section 19 of the act allows me to conduct inquiries, so the mental health inquiry is an inquiry under that function rather than under part V. I have not exercised that function yet. I suppose that is really what I was referring to. If we look at section 19, many of the functions listed in that section I have undertaken or am in the process of doing. I could spend all my time doing research or conducting inquiries. Although, on the face of it, 18 FTEs seems reasonable, there is a lot to cover in terms of section 19 of the act, and also to travel and be cognisant of every issue that is impacting on children and young people.

[9.40 am]

Hon HELEN BULLOCK: You have a wide range of powers. You have powers that allow you to monitor, promote and advocate; however, you do not have hands-on power that allows you to investigate complaints. I suppose the commissioner is set up to reflect the state's situation. Based on the circumstances in Western Australia and given that you have been on the job for three years, what is the best option to address your issues and concerns about children and young people? Should we have a commissioner with your powers or a commissioner who has the powers of the Victorian commissioner? That commissioner has hands-on power to investigate complaints. Which power do you think we need in WA?

Ms Scott: That is an issue that the committee might want to consider during the review of the act. I think when Parliament contemplated this legislation, it felt that the Ombudsman and other agencies had those investigative functions, and it specifically precluded me from doing that. I think that Victoria has a proud record in terms of the role of the commissioner and the role of the

Ombudsman. It is interesting; I have just been following the child protection issue in Victoria. The Ombudsman has undertaken a number of significant inquiries that have led to adverse findings in relation to the child protection system and the juvenile justice system. The Western Australian Ombudsman has the power to investigate all those matters, and he also has the power under his own motion to conduct an inquiry. For example, if he had a number of individual complaints, he could undertake what would be called a systemic inquiry into a broader issue that those complaints raise. Giving me those functions would be duplicating the Ombudsman's functions. At this stage I do not think it is warranted. That is something that, after five years, the committee might want to consider. One of the concerns and dilemmas for me as commissioner is the workload as it is now. If you had an investigative function, and if it was just about the child protection system, that is a very narrow, small focus, whereas I think Parliament intended this to be about all kids. I would not be able to pick up issues such as alcohol and the sexual exploitation of kids. I would not be able to pick up some of the positive things. It would be very much focused on child protection. That is a very narrow focus; it is only a small number of kids. What about the rest of the kids? That is my preliminary comment.

Hon HELEN BULLOCK: Your powers are very broad. Sometimes when you have too much power, you are thinking, "Which area should I concentrate on?"

Ms Scott: Yes.

The CHAIRMAN: I think that is something that we will be talking about over the next couple of years.

Ms Scott: Good.

The CHAIRMAN: If you do not mind, I am going to cut it off.

Mr M.P. WHITELEY: I just want to ask one last question. I believe that this year you issued a series of awards.

Ms Scott: Yes.

Mr M.P. WHITELEY: You do not have to do it now, but can you give us a rundown on the criteria, how the assessment process is undertaken and how the applicants are —

Ms Scott: Do you mean the Participate! Commissioner for Children and Young People Award and NAIDOC?

Mr M.P. WHITELEY: No, things like the lifetime achievement award for adults.

Ms Scott: Okay.

The CHAIRMAN: That can be provided by way of supplementary information.


Thank you for appearing before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

Thank you for your time today and for the information you have given us. We look forward to seeing you in a month's time.


Hearing concluded at 9.44 am

APPENDIX THREE

THE COMMISSIONER'S RESPONSES TO QUESTIONS TAKEN ON NOTICE AT THE HEARING



Commissioner for Children and Young People
Western Australia



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All enquiries
Telephone: (08) 6213 2297
Email: caron.irwin@ccyp.wa.gov.au
Our reference: 10/8297
Your reference: n/a

Ms Andrea Mitchell
Chairman
Joint Standing Committee on the
Commissioner for Children and Young People
Parliament House
PERTH WA 6000

Dear Ms Mitchell

Hearing Joint Standing Committee on the Commissioner for Children and Young People – 13 October 2010

Thank you for your letter of 18 October 2010 regarding the draft transcript of evidence of the Hearing of the Joint Standing Committee on the Commissioner for Children and Young People held on 13 October 2010. Please find attached a marked and corrected copy of the transcript for your records.

In addition I have provided below, the supplementary information requested at the Hearing.


Western Australian Citizen of the Year Awards - Lifetime Achievement Award

Early in 2009 I held discussions with Celebrate WA to develop an Award that recognised and rewards an individual's lifetime achievement in enhancing the wellbeing of children and young people.

The Western Australian Citizen of the Year Awards were inaugurated in 1972 to acknowledge the significant and enduring contribution of outstanding citizens from all fields of endeavour. Citizen of the Year Awards are presented in ten categories. In developing the Lifetime Achievement Award with Celebrate WA it was agreed that in keeping with the other Awards the Award recipient will have made a significant and enduring contribution to the Western Australian community through their work to positively influence children and young people's wellbeing. Potential recipients could come from all fields of endeavour – community service, academia, research and government to name a few.

The purpose of the Award was to acknowledge the work of exceptional individuals who throughout their life have exemplified or promoted the principles and values that are akin to those articulated in the *Commissioner for Children and Young People Act 2006* (the Act).

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The selection criteria for the Award were developed in conjunction with Celebrate WA and have some parity with the other Awards that are presented. The Lifetime Achievement Award recognises an exceptional individual whose body of work has:

- Extended over a significant period of their lifetime and demonstrated persistence
- Enhanced the wellbeing of children and young people
- Acted as an inspiration to others working with children and young people
- Promoted collaboration and the value of children and young people to the broader community.

The recipient of this Award is selected by a panel of respected leaders from nominations put forward by individuals and groups knowledgeable about children and young people's wellbeing in Western Australia. The 2009 selection panel was;

- Commissioner for Children and Young People WA - Michelle Scott
- Celebrate WA Council member - Colleen Hayward
- Respected community leader in children's issues - Hon Barbara Scott
- Young person - Elizabeth Shaw (a Celebrate WA Award recipient)
- Non Government organisation/academic - Mr Ian Carter, Chief Executive Officer Anglicare

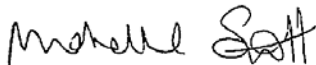
All aspects of the nomination and selection process are managed by Celebrate WA. Celebrate WA then invite finalists to attend the WA Week Presentation Dinner and the winner is announced by the Governor His Excellency Ken Michael at the Awards ceremony.

Submissions

Two submissions were prepared by my office on the *Child Exploitation Material and Classification Legislation Amendment Bill 2009*. One was in response to a request from the Joint Standing Committee on the Commissioner for Children and Young People (dated 29 July 2009) and the second was to the Legislative Council Standing Committee on Uniform Legislation and Statutes Review (dated 25 August 2009).

If the Committee requires any further clarification on any of the matters raised at the Hearing, I would be happy to provide this information.

Yours sincerely



MICHELLE SCOTT

Commissioner for Children and Young People WA

27, October 2010

APPENDIX FOUR

BRIEFINGS HELD

The following briefings assisted the Committee with its review of the 2009-2010 Annual Report of the Commissioner for Children and Young People.

Date	Name	Position	Organisation
17 November 2010	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People WA
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People WA

APPENDIX FIVE

COPY OF COMMISSIONER'S RESPONSE TO THE ATTORNEY GENERAL'S COMMENTS MADE UNDER S.48 OF THE ACT



Commissioner for Children and Young People
Western Australia

All enquiries

Telephone: (08) 6213 2297
Email: caron.irwin@ccyp.wa.gov.au
Our reference: 10/8102



Ms Andrea Mitchell, MLA
Chairman
Joint Standing Committee on the
Commissioner for Children and Young People
Parliament House
PERTH WA 6000

Dear Ms Mitchell

As required by section 48 of the *Commissioner for Children and Young People Act 2006* (the Act) a copy of the Commissioner for Children and Young People's draft Annual Report 2009-2010 (the Annual Report) was provided to the Attorney General, the Hon Christian Porter MLA.

The Attorney General replied by letter, dated 3 September 2010, providing comments on the Annual Report. I am required under section 48(5) of the Act to publish the Attorney General's comments in the final version of the Annual Report.

On 22 September 2010, I provided a final copy of the Annual Report to the Attorney General's Office for tabling in Parliament by the due date of 23 September 2010. This final version included the Attorney General's comments in full. I indicated to the Attorney General in that letter that I would be pleased to meet with him to discuss the issues he had raised in his letter of 3 September 2010.

I have been advised by the Attorney General's office that the Annual Report was tabled in Parliament on 23 September 2010.

The attachment to this letter sets out my response to each of the matters raised by the Attorney General. I have not included copies of the documents that I have referred to in the attachment. However, I would be pleased to do so should this be required by the Committee.

I look forward to providing evidence to the Committee on 13 October 2010.

Yours sincerely

MICHELLE SCOTT

Commissioner for Children and Young People WA

11 October 2010

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RESPONSE TO ATTORNEY GENERAL'S COMMENTS

MADE IN ACCORDANCE WITH SECTION 48(5) OF THE *COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE ACT 2006*

Comment 1 - Paid parental leave

Attorney General's comments:

"Firstly, the Executive Summary, in outlining positive developments in the area of children and young people over the previous financial year, makes reference to the "Introduction of a national paid parental scheme to start in 2011". This statement appears to me to be at best ambiguous. This issue was a major policy difference at the federal level between the Liberal Party of Australia and Australian Labor Party during the August 2010 General Election, the result of which is still yet to be determined as at the time of writing. My view is that it is unclear as to what national paid parental scheme you are referring. My understanding is that while the Labor Party's policy was scheduled to start in 2011, the Liberal Party policy was scheduled to start in 2012."

Commissioner for Children and Young People's comments:

I included this legislative reform in my 2009-2010 Annual Report because of the benefit to children and young people and their families and it is an area that I have been making representations in for some time. I note this was raised in my 2008-2009 Annual Report.

Generally the Annual Report refers to activities undertaken during the financial period 1 July 2009 to 30 June 2010. As at 30 June 2010 the Federal Election had not been announced. It was announced on 17 July 2010. The Paid Parental Leave Bill 2010 was passed by the Commonwealth Parliament on 17 June 2010 for implementation from 1 January 2011.¹ This followed an announcement made in May 2009 that such a scheme would be introduced.

The Liberal Party was explicit that the existing legislated scheme (implemented under the *Paid Parental Leave Act 2010*) would have remained in place until the Liberal Party's was fully operational.²

Comment 2 – Ongoing over-representation of Aboriginal young people in Western Australia's youth justice system

Attorney General's comments:

"Secondly, on page 33 your draft report refers to the "ongoing over-representation of Aboriginal young people in Western Australia's youth justice system. While I agree with your appraisal that there is an unfortunately higher proportion of Aboriginal people in the justice system than other ethnic groupings, I consider the language chosen in this part leaves the issue open to misunderstanding by a general reader. Specifically, that there is no mention of the fact of there being an equally unfortunately higher rate of offending among young Aboriginal people which leads to their increased involvement [sic] with the State's youth justice system."

¹ Media Release: *Passage of Bill for Australia's first Paid Parental Leave scheme*, 17 June 2010, viewed at: www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/bill_paid_parental_leave_18062010.aspx

² *The Coalition's Real Action Plan for Paid Parental Leave*, Coalition Election Policy, 2010, p2, viewed at: <http://www.liberal.org.au/~media/Files/Policies%20and%20Media/Community/Paid%20Parental%20Policy.aspx>

On this point I would draw your attention to comments made by the President of the Children's Court of Western Australia, His Honour Judge Reynolds, that, and specifically with respect to child offenders, Indigenous imprisonment is the direct result of Indigenous offending. His Honour has been clear in articulating that whether the Indigenous persons are children or adults, the reason they are in jail is that a court, in determining that a sentence of last resort had to be used, had no alternative but to place those persons in prison. Indeed, to quote His Honour directly "*the Aboriginal children sentenced to detention, the sentence of last resort, have been so sentenced because of the seriousness of the offending eg. aggravated robbery, grievous bodily harm, multiple burglaries, and multiple stealing of motor vehicles.*" My view, therefore, is that for balance and to prevent a misapprehension that Aboriginal youth are being improperly or unlawfully incarcerated, some reference to higher rates of Aboriginal youth offending should be made. The added benefit of such an approach is that it highlights that solutions to the problem of overrepresentation in this area are likely to be found in long term community building targeted at improved intergenerational increments in Indigenous health, welfare, education, housing and employment."

Commissioner for Children and Young People's comments:

The Annual Report is largely an overview of issues and summary of specific activities. Therefore I did not believe that an elaboration of the reasons behind the over-representation of Aboriginal children and young people in the youth justice system was necessary.

I note that this was a matter I also raised in my 2008-2009 Annual Report.

I have acknowledged in detail the complex and varied reasons for Aboriginal over-representation in the youth justice system—and the wide range of interventions that are required to address it—in many forums, including submissions and evidence to the State and Federal Parliaments.

Comment 3 – Regional Youth Justices Services in the Pilbara and Kimberley

Attorney General's comments:

"Thirdly, I make here some comment on page 34 of your draft report, being the outcomes section. This section of the report (as with other similar reports), in my understanding, is a statement of the outcomes that can be directly and substantially attributable to the agency in question during the course of the past financial year. Page 34 contains the following: the \$44 million allocated in the 2010-11 State Budget for the expansion of Youth Justice Services in West Kimberley, East Kimberley and Pilbara; and the Prohibited Behaviour Orders Bill (the PBO Bill) excluding people under the age of 16 years and including special provisions for children and young people.

I find the inclusion of these outcomes somewhat problematic. While I appreciate that you have advocated generally on the issue of youth justice, I would be very hesitant to list the allocation of budget funding for the expansion as a CCYP outcome. The reality is that this outcome was the result of the drive and robust advocacy pursued by the Department of Corrective Services and the Department of Regional Development and Lands through, among other things, detailed submissions to the Economic Expenditure Review Committee. Having been the Minister who ultimately secured the funding, I can say categorically that the role of your office in the process, in both a narrow and a broad sense, was negligible. Indeed, I am pressed to recall any discrete instances where your office advocated with me with specific respect regarding this particular budget outcome. I also would note here that the value of the relevant funds is \$49 million, not \$44 million as set out in the report."

Commissioner for Children and Young People's comments:

In the Executive Summary to my Annual Report I welcomed the State Government's investment in the Regional Youth Justice Services (RYJS). I consider the RYJS to be a positive outcome for children and young people in Western Australia.

Prior to the Government's announcement to expand the RYJS to the Kimberley and the Pilbara in the 2010-2011 Budget I worked closely with the Department of Corrective Services over an extended period and indicated my support for the expansion of the service. I also made many representations in public forums and to the Parliament about the need to expand this program to the Kimberley and Pilbara regions.

In addition, I have been represented on the cross-government Youth Justice Steering Committee since its inception which has, among other things, developed a draft Strategic Framework for Youth Justice in Western Australia which identifies expansion of the RYJS as a future strategy.

In relation to raising the issue with the Attorney General, below is a list of specific occasions at which I represented this issue directly with him:

- 29 October 2009 - Letter sent to the Attorney General regarding the need to expand the RYJS to the East Kimberley, West Kimberley and Pilbara regions.
- 15 December 2009 – Letter sent to the Attorney General with further comment on why expansion of the RYJS to the north-west of the State was necessary (sent in response to a letter from the Attorney General, dated 4 December 2009, seeking more information).
- 5 February 2010 – Submission to the Attorney General's office regarding draft Prohibited Behaviour Orders Bill 2009 supporting public investment in the RYJS.
- 9 February 2010 - Briefing note to the Attorney General with proposed agenda for next meeting with discussion of RYJS Expansion to the East Kimberley, West Kimberley and Pilbara to be raised as agenda item 1. (This meeting occurred on 2 March 2010).

The Attorney General refers to a factual error in the Annual Report regarding allocation of funds to the RYJS in the 2010-11 State Budget, stating that the actual allocation is \$49 million while the Annual Report refers to an amount of \$44 million.

The allocation of \$44 million (rounded up from \$43.9 million) is quoted from the Attorney General's press release of 20 May 2010³ following the budget announcement, the Treasurer's second reading of the Appropriation (Consolidated Account) Recurrent 2010-11 Bill 2010 in

³ Media Release: *State Budget 2010-11: \$43.9 million to expand Regional Youth Justice Services*, 20 May 2010, viewed at:
<<http://www.mediastatements.wa.gov.au/Pages/WACabinetMinistersSearch.aspx?ItemId=133516&minister=Porter&admin=Barnett>>

Parliament,⁴ and from the Budget Papers where it is listed under the Department of Corrective Services.⁵

Comment 4 - Prohibited Behaviour Orders

Attorney General's comments:

"Similar can be said for the provisions of the PBO Bill, although this Item attracts the additional comment of prematurity. As I am sure you are aware, the Bill is yet to be passed by the Parliament and, as such, the final form of its provisions are merely proposed by government until the Parliament passes the Bill into law. In addition, the Bill was drafted after a period of open community consultation and rigorous interagency discussions and the final form of the Bill took all received submissions into account. I, therefore, would again be hesitant to list the specific provisions of the Bill as a CCYP outcome. Indeed, as I recall our conversation and your correspondence on the issue, you opposed the Bill's application to young people entirely and never suggested a modification of its terms to apply only to 16 year olds and above."

Commissioner for Children and Young People's comments:

I have argued that the Prohibited Behaviour Orders scheme should not apply to children under the age of 18 years. I have also indicated in my Annual Report that the current Bill before the Parliament reflects an improved outcome for children and young people.

Prior to the introduction of the Bill into Parliament on 24 June 2010 I provided comment on the original Liberal Party policy (on invitation from the Department of the Attorney General on 22 April 2009) where there was no apparent age limit set on the application of the Prohibited Behaviour Orders scheme. I then provided comment on the draft Bill released by the Attorney General for public comment on 1 December 2009 in which the scheme was to apply to young people over the age of 14. In the final Bill presented for Parliamentary consideration the Bill applied to young people over the age of 16.

There were other special considerations for children that reflected concerns put forward in my various submissions, such as the lowering of the maximum fine.

⁴ The Hon Colin Barnett MLA, second reading of Appropriation (Consolidated Account) Recurrent 2010-11 Bill 2010, Hansard, Legislative Assembly, Parliament of Western Australia, 20 May 2010, pp3129-3130.

⁵ Western Australia State Budget 2010-11, *Budget Paper No 2 – Volume 2*, p681, viewed at: <http://www.dtf.wa.gov.au/cms/uploadedFiles/State_Budget/Budget_2010_11/bp2_vol2.pdf>