



**PSC** | Public Sector  
Commission

# ***Review of the Commissioner for Children and Young People Act 2006***

May 2013

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# Executive summary

- i. The *Commissioner for Children and Young People Act 2006* (the Act) came into operation on 10 December 2007. It provides for the establishment of the office of the Commissioner for Children and Young People (the Commissioner) which is responsible for advocating for, promoting and monitoring the best interests and wellbeing of children and young people in Western Australia. Ms Michelle Scott was appointed by the Governor as the inaugural Commissioner on 7 December 2007.
- ii. The Attorney General, Hon Michael Mischin, MLC, is required by section 64 of the Act to carry out a review of the operation and effectiveness of the Act five years after it has come into operation. The Attorney General requested that the Public Sector Commission (the PSC) review the Act and report back to him. The review of the Act commenced on 21 January 2013 with a six week submission period and 40 submissions were received. The Commissioner provided assistance to the review, particularly in arranging consultation sessions with children and young people and providing a comprehensive submission to the review. A reference group, chaired by the Public Sector Commissioner, also assisted the review by providing information and feedback relating to relevant fields of expertise. The review was, however, independent of both the Commissioner and the Review Reference Group.
- iii. An overview of the Act, including the role, functions and powers of the Commissioner is set out in Chapter 2, while Chapter 3 outlines the type of work that has been carried out to implement the purpose of the Act and the functions conferred on the Commissioner.
- iv. In reviewing the Act, a complete overhaul of its provisions was not expected or recommended, as there have been no substantial problems with its operation since commencement. Rather, the review found that the Act overall is operating effectively and achieving the purpose of promoting the wellbeing of the children and young people of Western Australia. There was overwhelming support in the submissions received, as well as the consultation conducted with children and young people, for the Act and the role of an independent Commissioner, to influence decision making to protect and improve the lives of children and young people.

- v. However, as outlined in Chapter 4, the review did identify some areas in which the operation of the Act could be improved, some of which had also been identified by the Joint Standing Committee on the Commissioner for Children and Young People (the Joint Standing Committee) which oversees the Commissioner.<sup>1</sup> These included recommendations aimed at providing greater transparency as to how the effectiveness of the Act's broad advocacy purpose is to be implemented in practice, and to clarify the operation of some of the machinery provisions of the Act.
- vi. A significant part of the review involved considering recommendation 2 of the St Andrew's Hostel Special Inquiry (the Blaxell Inquiry), which inquired into the response of public officials to allegations of sexual abuse at St Andrew's Hostel in Katanning and reported in August 2012. That recommendation related to the development of '...a function and role within or across central and independent agencies to fulfil a robust child focussed central complaints system...for any complaint concerning child abuse'.<sup>2</sup>
- vii. The review recommended a role for the Commissioner in performing this function in a way that supplements the work of the range of investigative and oversight agencies that currently deal with complaints of child abuse involving a public sector officer. The review was concerned that the Commissioner should not duplicate or interfere with the important work of these agencies by exercising a complaints investigation function. Instead, the Commissioner should utilise existing powers and functions to increase the awareness and accessibility for children and young people in the custody or care of a government agency, about how to make a complaint of child abuse. A power for the Commissioner to receive complaints disclosing alleged child abuse by a government officer (including sexual, physical, emotional or psychological abuse) and refer them to the relevant investigative agency where necessary was also recommended.
- viii. In performing the recommended child abuse complaints support function, the review also determined a role for the Commissioner in providing information and referrals to children and young people in relation to the support services available for victims of child abuse and their families.

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<sup>1</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia,.

<sup>2</sup> Blaxell, P 2012, *St Andrew's Hostel Katanning: How the system and society failed our children – A Special Inquiry into the response of government agencies and officials to allegations of sexual abuse*, Public Sector Commission, Western Australia, p. 341.

- ix. The review found that, in performing this role, greater emphasis should be given to the Commissioner's existing function under section 19(d) of the Act, to monitor the way in which government agencies investigate or otherwise deal with child abuse complaints, to ensure that they are given the priority they demand. This would enable any gaps to be identified in the internal and external review mechanisms for government services provided to children and young people.
- x. This additional function for the Commissioner is expected to make the avenues for child abuse disclosures more accessible to children and young people, and help build confidence that those disclosures will be received and appropriately dealt with by all government agencies concerned.
- xi. A list of recommendations made by the review is set out below.

# List of recommendations

## Recommendations regarding amendments to the Act

### Recommendation 2:

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That section 9(2) of the Act be amended to clarify that the broad selection process applicable to the initial appointment of a Commissioner set out in subsections 7(2)(a) and (3) of the Act is not required to be complied with where an incumbent Commissioner is proposed to be reappointed.

### Recommendation 3:

Page 42

That section 14 of the Act be amended to give the Commissioner the power to appoint a person to act in the office of Commissioner for a period of less than 13 weeks in a year, to ensure that the position is appropriately filled during any short absences by the Commissioner.

### Recommendation 4:

Page 45

That consideration be given to amending Part 6 of the Act to provide that, in addition to annual reports and reports of special inquiries, it is only reports containing recommendations for change to any written law or procedure etc, or for the taking of other action that the Commissioner considers appropriate to safeguard and promote the wellbeing of children and young people (as referred to in section 46), that the Commissioner is required to provide in draft form to the Minister and table in Parliament.

**Recommendation 5:****Page 47**

That section 52(2) of the Act be amended to replace the word 'must' with 'may', to provide the Commissioner with a discretion as to the manner in which advisory committees are established.

**Recommendation 6:****Page 53**

While the review notes that opinions among some stakeholders are divided on this issue, on the basis of the submissions to the review, the operation of the Act to date and consistency with legislation in place in other jurisdictions, the review recommends that the age range within the Act remain unaltered.

**Recommendation 7:****Page 58**

That the Act should not be amended to mandate the creation of a Deputy Commissioner for Aboriginal and Torres Strait Island children and young people, who should remain a priority of the Commissioner him or herself under the Act.

**Recommendation 9:****Page 62**

That the term of office of the Commissioner (5 years and eligible to be reappointed once) under section 9 of the Act remain unchanged.

**Recommendation 10:****Page 67**

That the Act be amended to ensure that the Commissioner's complaints related functions in sections 19 and 23 of the Act are inclusive of complaints made by an adult acting in good faith on behalf of a child or young person.

**Recommendation 11:****Page 69**

That clause 3 of Schedule 1 of the Act, regarding the *Working With Children (Criminal Record Checking) Act 2004*, be repealed.

**Recommendation 12:****Page 88**

The Commissioner should be given appropriate powers under the Act to provide a child abuse complaints support function that consists of:

- education and outreach programs for children and young people about how to disclose any child abuse that occurs while they are in the care of a government agency or service provider
- receiving complaints from children and young people, or adults acting in good faith on their behalf, about abuse alleged to have occurred in a government agency or service provider
- referring such complaints to the relevant investigative authority/s
- providing information and referrals to children and young people in relation to the support services available for victims of child abuse and their families
- monitoring the way in which government agencies deal with complaints of child abuse referred by the Commissioner or otherwise received by them.

The Commissioner should not have a role in investigating the substance of individual complaints that are received.

**Recommendation 13:****Page 91**

That the Commissioner's jurisdiction in undertaking the child abuse complaints support function extend to 'government agencies' and 'service providers' as those terms are currently defined in the Act.

**Recommendation 14:****Page 92**

That the Commissioner's jurisdiction in providing the complaints support function supplement and not duplicate the role of other relevant agencies in receiving and referring disclosures of alleged physical, sexual, emotional, or psychological abuse and neglect.

**Recommendation 15:****Page 92**

That the Act be amended to provide a specific power for the Commissioner to refer complaints received in the course of performing his or her functions to the relevant investigative or other government agency.

**Recommendation 16:****Page 93**

That the Act be amended to protect persons from civil and criminal liability when raising concerns with the Commissioner, in good faith, about the wellbeing of a child or young person.

## Other recommendations

**Recommendation 1:****Page 39**

While the review notes the overwhelming support for the broad advocacy purpose of the Act, to provide greater clarity and measurement of the outcomes to be achieved under the Act, the review concurs with recommendation 19 of the Joint Standing Committee's Report No. 11: *A Review of the Exercise of the Functions of the Commissioner for Children and Young People* that 'the Commissioner in consultation with the Under Treasurer, review the current Outcome Based Management Structure, including key performance indicators, to ensure they are appropriate and comprehensive.'

**Recommendation 8:****Page 59**

That the feasibility of the Cabinet referral process being used as a mechanism to help ensure that the Commissioner has been consulted in relation to significant policies and legislation that impact on the wellbeing of children and young people be raised with the Cabinet Secretary.

# List of acronyms and terms used

<b>Blaxell Inquiry</b>	St Andrew's Hostel Special Inquiry
<b>Blaxell Inquiry Report</b>	<i>St Andrew's Hostel Katanning: How the system and society failed our children – A special inquiry into the response of government agencies and officials to allegations of child abuse</i> (August 2012)
<b>CCC</b>	Corruption and Crime Commission
<b>Cth</b>	Commonwealth
<b>DCPFS</b>	Department for Child Protection and Family Support <sup>3</sup>
<b>Gordon Inquiry report</b>	<i>Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities</i> (July 2002)
<b>Hon</b>	Honourable
<b>Select Committee</b>	Select Committee on Advocacy for Children (Appointment of a Commissioner for Children)
<b>Joint Standing Committee</b>	Joint Standing Committee on the Commissioner for Children and Young People
<b>KPIs</b>	Key Performance Indicators
<b>MLA</b>	Member of the Legislative Assembly

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<sup>3</sup> Prior to 17 May 2013, this Department was known as the Department for Child Protection.

<b>MLC</b>	Member of the Legislative Council
<b>OCC</b>	Office of the Children's Commissioner
<b>PSC</b>	Public Sector Commission
<b>the Act</b>	<i>Commissioner for Children and Young People Act 2006</i>
<b>the Commissioner</b>	Commissioner for Children and Young People, currently Ms Michelle Scott
<b>the Ombudsman</b>	Parliamentary Commissioner for Administrative Investigations
<b>the Special Inquirer</b>	Hon Peter Blaxell
<b>the WWC Act</b>	<i>Working with Children (Criminal Record Checking) Act 2004</i>
<b>WA</b>	Western Australia
<b>WACOSS</b>	Western Australian Council of Social Service
<b>WWCC</b>	Working With Children Check
<b>YACWA</b>	Youth Affairs Council of Western Australia

# 1. Introduction

- 1.1 The review of the *Commissioner for Children and Young People Act 2006* (the Act) commenced on 21 January 2013.<sup>4</sup>

## Terms of reference

- 1.2 The review was carried out in accordance with section 64 of the Act, which stipulates that a review of the operation and effectiveness of the Act must be carried out by the Attorney General ‘as soon as is practicable after the expiry of 5 years from the commencement of this section.’ In effect, this required that the review of the Act be completed sometime after 10 December 2012. The Attorney General, Hon Michael Mischin, MLC, requested that the Public Sector Commission (the PSC) conduct the legislative review.
- 1.3 The terms of reference for the review were as follows:

*At the request of the Attorney General, the Public Sector Commission will conduct a review of the operation and effectiveness of the Commissioner for Children and Young People Act 2006 (the Act). To this end the review will:*

- 1. Examine the operation and effectiveness of the Act*
- 2. Report on the extent to which the purpose of the Act, including the advocacy, promotion and monitoring of the wellbeing of children and young people, is being achieved (specifically but not limited to section 19 of the Act)*
- 3. Examine what amendments to the Act are necessary to enable the Commissioner for Children and Young People to operate as a ‘one stop shop’ for any complaint concerning child abuse regardless of the public sector agency that the matter relates to, as per recommendation 2 of the Inquiry into St Andrew’s Hostel*

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<sup>4</sup> The full text of the *Commissioner for Children and Young People Act 2006* can be viewed at the State Law Publisher website, <http://www.slp.wa.gov.au/legislation/statutes.nsf/default.html>.

4. *Examine what amendments to the Act are necessary to facilitate recommended changes resulting from the review of the Working with Children (Criminal Record Checking) Act 2004 and any other relevant recommendations from legislative reviews or reports.*

*The review report will be provided to the Attorney General by 10 May 2013.*

## Review Reference Group

- 1.4 The PSC convened a reference group to assist the review by providing guidance, advice, comment and information. Membership of the Review Reference Group was as follows:

Mr Mal Wauchope (Chair)	Public Sector Commissioner
Ms Michelle Scott	Commissioner for Children and Young People
Ms Irina Cattalini	Chief Executive Officer, Western Australian Council of Social Service
Prof Colleen Hayward AM	Pro-Vice-Chancellor, Equity and Indigenous Head, Kurongkurl Katitjin, Edith Cowan University
Mr Terry Murphy	Director General, Department for Child Protection and Family Support
Ms Sharyn O'Neill	Director General, Department of Education
Mr Craig Comrie	Executive Officer, Youth Affairs Council of Western Australia

- 1.5 The role of the Review Reference Group was to:
- provide information relating to their field of expertise to facilitate discussion and inform the review
  - assist in reviewing and providing feedback on the review findings and recommendations.
- 1.6 The review would like to thank members of the Review Reference Group for their contribution to discussions, and feedback on the findings and recommendations.

## Methodology

- 1.7 The review commenced on 21 January 2013 with the commencement of a six week submission period. A webpage hosted by the PSC's website was established, which provided further information about the review, the Act, the submission process and the terms of reference. To assist stakeholders, a general submission guide was developed and made available online to provide background information on the review, the terms of reference and suggested topics for discussion. A second guide written specifically for children and young people was also developed and made available online.

- 1.8 To raise awareness of the review, advertisements inviting written submissions to the review were placed in the general news section of *The West Australian* newspaper on Wednesday 23 January and Saturday 26 January 2013. In addition, the Public Sector Commissioner wrote to 120 stakeholders to notify them of the review, invite their submissions and provide them with the two submission guides. The Commissioner for Children and Young People (the Commissioner) also sent out an email to over 4000 persons and organisations on her contacts database, notifying them of the review.
- 1.9 The Commissioner assisted the review by making arrangements with a range of organisations to facilitate consultation with a diverse range of children and young people. The review thanks the following agencies and the 163 children and young people who attended the consultation sessions for their valuable contribution to the review:
- Western Australian Institute for Deaf Education
  - Sacred Heart Primary School
  - Indigenous Communities Education and Awareness Foundation
  - CREATE Foundation
  - YMCA HQ and Youth Parliamentarians
  - True Colours - Uniting Care West
  - Y2Y Children of Parents with Mental Illness - Wanslea
  - Katanning Senior High School
  - Youth Affairs Council of Western Australia (YACWA)
- 1.10 The submission period closed on 1 March 2013 and a total of 40 submissions were received (see Appendix B). The review team also met with Hon Barbara Scott, former MLC, to discuss the development of the Act and the office of the Commissioner, in which she was involved.
- 1.11 Unfortunately it was not possible to consult with the Joint Standing Committee in the course of the review, as it was suspended when the Premier prorogued Parliament on 14 December 2012, prior to the general election for Western Australia and was not re-established prior to finalisation of the review report. The review did, however, have significant regard to the report *A Review of the Exercise of the Functions of the Commissioner for Children and Young People* tabled by the Joint Standing Committee in November 2012.
- 1.12 In addition to written submissions, the review considered recent reviews and features of comparable bodies in other jurisdictions, both domestically and internationally, and other relevant reviews, reports and information.

## 2. Overview of the Act

### Background and establishment

- 2.1 The establishment of a Western Australian Commissioner for Children and Young People was preceded by a children's summit organised by Hon Barbara Scott, MLC, then Shadow Minister for Children. The summit, entitled 'The State of Western Australia's Children', was held in Fremantle, Western Australia on 25 October 2002. The summit was attended by stakeholders such as Professor Fiona Stanley, the Hon David Malcolm and the New Zealand Commissioner for Children, Hon Roger McClay. The overwhelming view of the day was that Western Australia should have a Commissioner for Children.<sup>5</sup>
- 2.2 On 11 June 2003, on the motion of Hon Barbara Scott, MLC, the Legislative Council established a three person Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) (the Select Committee), to:
- ...inquire into and report on the appointment of a commissioner for children or the establishment of an independent office for children as the most appropriate means of establishing an advocate for children to ensure government and the Parliament are aware of the needs of children and that those needs are reflected in government policy and practice.<sup>6</sup>*
- 2.3 After extensive consultation and the receipt of written submissions, the Select Committee tabled the *Final Report of the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children)* on 2 July 2004. The key features of the role recommended by the Committee and of most relevance to the current review were:

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<sup>5</sup> For more information, see Parliament of Western Australia 2004, *Explanatory Memorandum: Commission for Children and Young People Bill 2004*.

<sup>6</sup> Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) 2004, *Final Report of the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children)*, Report No.2, Legislative Council, Parliament of Western Australia, p. 1.

- The Commissioner should be autonomous and free from Government direction and control (and a majority recommended oversight by a parliamentary committee).
- The role should have responsibility for the interests of all children and young people, not just those considered at risk.
- The Commissioner should focus on providing systemic advocacy for children and young people, but have discretion to investigate a complaint from an individual in exceptional circumstances, if in the Commissioner's view it is in the public interest.
- The Commissioner should consider and provide comment on the adequacy of complaints handling systems in government agencies to ensure that they are accessible to children and young people and meet their needs.
- Section 16(2) of NSW's equivalent legislation should be replicated, allowing the Commissioner to refer a child to an appropriate agency for programs and services.<sup>7</sup>

2.4 The establishment of a Commissioner had also been recommended in 2002 by the *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* report. (the Gordon Inquiry report). Specifically it was recommended that '...a Children's Commissioner be established which is independent and reports directly to the Premier.'<sup>8</sup>

2.5 On 1 June 2005 Hon Sheila McHale, then MLA and Minister for Community Development, introduced the Commissioner for Children and Young People Bill 2005 into the Western Australian Parliament.<sup>9</sup> The Bill was passed by Parliament on 26 September 2006 and granted Royal Assent on 4 October 2006. The Act was proclaimed on 20 November 2007 to come into effect (other than Schedule 1, clause 3) on 10 December 2007.<sup>10</sup> The Act as passed has not been subject to any substantive legislative amendments to date.

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<sup>7</sup> *ibid*, pp. 74 - 86.

<sup>8</sup> Gordon, S, Hallahan, K & Henry, D 2002, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of the Premier and Cabinet, Western Australia, p. 411.

<sup>9</sup> For more information, see Hon Sheila McHale, MLA 2005, *Children's Commission legislation to be introduced* (Media Statement), viewed on 2 April 2013, <http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsGallop&StatementId=9816>.

<sup>10</sup> Schedule 1 clause 3 relates to the *Working with Children (Criminal Record Checking) Act 2004* and has not yet come into operation (see paragraphs 4.120 – 4.126 of this report).

- 2.6 The Act was drafted following extensive consultation with a broad range of government, non-government and community organisations, including expert stakeholders, operational groups and young people from metropolitan and regional areas of Western Australia.<sup>11</sup> The development of the Act also had regard to the Final Report of the Select Committee tabled in Parliament on 2 July 2004.
- 2.7 The aim of the Act, as was expressed in the second reading speech, is to provide ‘a mechanism that is dedicated to enhancing the best interests and wellbeing of all children.’<sup>12</sup> The wellbeing of children and young people is defined in section 5 of the Act to include the care, development, education, health and safety of children and young people. The model adopted in the Act was selected after consideration of children’s commissioner models in place in other jurisdictions. Hon Sheila McHale noted that ‘[t]he keystone of this model is that the commissioner’s paramount consideration, to be set in the legislation, is acting in the best interests of children’<sup>13</sup> and the features of the model include ‘the wellbeing of all children, independence, a broad focus on systemic issues, comprehensive statutory powers, the avoidance of duplication, and an emphasis on accessibility.’<sup>14</sup>
- 2.8 Ms Michelle Scott was appointed by the Governor as the inaugural Commissioner on 7 December 2007. Prior to that, Ms Scott held the position of Public Advocate in Western Australia.

### **Models in other jurisdictions**

- 2.9 Every Australian state and territory now has a Commissioner and/or Guardian who represents children and young people (see Table 1 below).

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<sup>11</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 1 June 2005, *Parliamentary Debates* (Hansard), p. 1 of pp. 2582b-2585a.

<sup>12</sup> *ibid*, p. 1 of pp. 2582b-2585a.

<sup>13</sup> *ibid*, p. 1 of pp. 2582b-2585a.

<sup>14</sup> *ibid*, p. 3 of pp. 2582b-2585a.

**Table 1: Australian Children’s Commissioners and Guardians**

<b>Jurisdiction</b>	<b>Title of Office</b>	<b>Enabling Legislation</b>
Australia	National Children’s Commissioner <sup>15</sup>	<i>Australian Human Rights Commission Amendment (National Children’s Commissioner) Act 2012</i>
Australian Capital Territory	Children & Young People Commissioner	<i>Human Rights Commission Act 2005</i>
New South Wales	Commissioner for Children and Young People	<i>Commission for Children and Young People Act 1998</i>
	Children’s Guardian	<i>Children and Young Persons (Care and Protection) Act 1998</i>
Northern Territory	Children’s Commissioner	<i>Care and Protection of Children Act 2007</i>
Queensland	Commissioner for Children and Young People and Child Guardian	<i>Commission for Children and Young People and Child Guardian Act 2000</i>
South Australia	Guardian for Children and Young People	<i>Children’s Protection Act 1993</i>
Tasmania	Commissioner for Children	<i>Children, Young Persons and Their Families Act 1997</i>
Victoria	Commissioner for Children and Young People <sup>16</sup>	<i>Commission for Children and Young People Act 2012</i>

2.10 The Commissioner’s submission to this review demonstrated that other jurisdictions, including South Australia, the Northern Territory, Victoria, New South Wales and England have considered expanding the role of their Commissioners, noting the need for attention on wider issues. The Commissioner also noted that ‘[a]cknowledging the efforts of other jurisdictions (and nations) to establish a Commission/er with the equivalent powers and functions as that which already exists in Western Australia, the Western Australian Act is seen as a leader nationally and internationally.’<sup>17</sup>

<sup>15</sup> Ms Megan Mitchell, the NSW Commissioner for Children and Young People, was appointed the inaugural National Children’s Commissioner on 25 February 2013.

<sup>16</sup> As of March 2013, the office of the Victorian Child Safety Commissioner was replaced by the Commission for Children and Young People, under the *Commission for Children and Young People Act 2012* (VIC).

<sup>17</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 41.

## Role of the Commissioner

2.11 The primary role of the Commissioner is to advocate for children and young people, who are defined in section 5 of the Act to mean people under 18 years of age. The Commissioner's role is also to '...investigate, advise and report independently to Parliament about issues that concern children and young people.'<sup>18</sup> Commissioners and Guardians in some jurisdictions have a more limited remit, as they are required to focus primarily on children and young people in the child protection system. As intended by Parliament, the Act does not limit the WA Commissioner's role in this way. The Final Report of the Select Committee recommended that the Commissioner should have responsibility for all children and young people, not just those at risk.<sup>19</sup> It said:

*In the Committee's view, it is not surprising that the Australian states with children's commissioners are focussed on child protection and children at risk, given that NSW established a children's commission as a response to the Wood Royal Commission and Queensland revitalised its children's commission after the Forde Inquiry.<sup>20</sup>*

2.12 'Advocacy' is not defined in the Act, but the Select Committee adopted a description of advocacy given by the New South Wales Parliament's Standing Committee on Social Issues in 1996, that advocacy is:

*not simply about providing representatives to speak on a child's behalf, or about providing opportunities to incorporate a child's view. It also involves ensuring appropriate systems exist to recognise the rights and needs of all children and young people, and respond to them appropriately.<sup>21</sup>*

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<sup>18</sup> Parliament of Western Australia 2013, *Committee System of the Legislative Council and Legislative Assembly*, viewed on 18 April 2013,

<http://www.parliament.wa.gov.au/webcms/webcms.nsf/content/home-committee-system-of-the-legislative-council-and-legislative-assembly>.

<sup>19</sup> Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) 2004, *Final Report of the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children)*, Report No.2, Legislative Council, Parliament of Western Australia, p. 86.

<sup>20</sup> *ibid*, p. 78.

<sup>21</sup> Parliament of NSW, Legislative Council, Standing Committee on Social Issues, *Inquiry into Children's Advocacy*, September 1996, p. 20, quoted in *ibid*, p. 7.

- 2.13 In a recent review of the exercise of the functions of the Commissioner, the Joint Standing Committee agreed that this was a useful definition<sup>22</sup> and also suggested that advocacy could be taken to mean ‘...supporting children and young people through consulting with, and listening to, them and making recommendations on their behalf to improve their wellbeing.’<sup>23</sup> When consulted, the Western Australian Parliamentary Commissioner for Administrative Investigations (the Ombudsman), Mr Chris Field, suggested to the Joint Standing Committee that the Commissioner’s advocacy function was:

*potentially to advocate to me [the Ombudsman] and to contact me and say, “We would like you to have a look at something.” That is an entirely proper role for the children’s commissioner... [and can extend to] all forms of government and presumably also to the private sector as well.*<sup>24</sup>

- 2.14 During the second reading speech for the Bill, Hon Sheila McHale, MLA, summarised how it was envisioned the Commissioner would operate:

*The Commissioner for Children and Young People will have a broad mandate to consider the full range of issues affecting children and young people. The commissioner will have the function of promoting and monitoring the overall wellbeing of children. She or he also will be able to recommend changes to relevant legislation, policies, practices and services. The commissioner will be able to establish and conduct inquiries at his or her discretion. The commissioner has powers to establish his or her advisory committees so that he or she can gain leverage from other relevant experts in their field. Other functions include the provision of training, research, public education, information and advice to children and young people.*<sup>25</sup>

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<sup>22</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 26.

<sup>23</sup> *ibid*, p.13.

<sup>24</sup> *ibid*, p.14.

<sup>25</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 1 June 2005, *Parliamentary Debates* (Hansard), p. 2 of pp. 2582b-2585a.

## Independence

2.15 The Commissioner is a statutory authority, independent from the day to day control of the government or the Minister responsible for administration of the Act.<sup>26</sup> It is not an office in the Public Service or a Senior Executive Service organisation. The Commissioner is, however, accountable to the Minister in terms of administration of the Act and also to Parliament through a Joint Standing Committee. The Commissioner reports directly to Parliament rather than through the responsible Minister, although the Act requires that the Commissioner must provide the Minister with a copy of draft reports, to give the Minister the opportunity to comment on the draft. The role of the Joint Standing Committee is examined later in this chapter.

2.16 The Commissioner's independence was an issue examined during Parliamentary debate on the Commissioner for Children and Young People Bill 2005. Hon Sheila McHale, MLA, stated that:

*[t]he commissioner will be independent and free from direction or control in the performance of his or her functions... [and will have] independence and freedom to advocate for the wellbeing of children and to be inclusive of their views, while maintaining appropriate levels of ministerial responsibility and accountability.*<sup>27</sup>

2.17 The Commissioner advised the Joint Standing Committee in 2010 that she believes her role is independent and this provides credibility to the issues and matters she examines.<sup>28</sup> Submissions to the review provided a high degree of support for the independence of the Commissioner's role, noting that it was critical and fundamental to the Commissioner's ability to undertake her functions effectively.

### Relationship with the Minister

2.18 Section 25 of the Act expressly states that the Commissioner is not subject to direction by the Minister or any other person in the performance of his or her functions. The exception to this is section 26 which allows the Minister to give written directions to the Commissioner in relation to the general policy to be

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<sup>26</sup> The exception to this is section 26 of the Act, which allows the Minister to give written directions to the Commissioner. This is discussed at 2.18.

<sup>27</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 1 June 2005, *Parliamentary Debates* (Hansard), p. 2 of pp. 2582b-2585a.

<sup>28</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p.10.

followed in the performance of his or her functions. The Commissioner must comply with the direction unless he or she considers there are reasonable grounds for refusal. The Minister can also request information from the Commissioner in accordance with section 27.<sup>29</sup>

## Joint Standing Committee

2.19 Section 51 provides for the establishment of a joint standing committee in relation to the Commissioner, comprising an equal number of members from each House of Parliament. On 26 June 2008, the inaugural Joint Standing Committee was established.

2.20 The Joint Standing Committee was established to ensure the independence of the Commissioner, and its function is:

*one of oversight, which involves monitoring, reviewing and reporting to Parliament on the exercise of the functions of the Commissioner... [which ensures] that the independence of the Commissioner is maintained and that there is sufficient focus on the important work performed by this Office.<sup>30</sup>*

2.21 As required by section 51, the functions and powers of the Joint Standing Committee were agreed to between the Houses, as follows:

- (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.<sup>31</sup>*

2.22 The role of the Joint Standing Committee 'is an important accountability mechanism of Parliament'.<sup>32</sup> It has published 11 reports, the most recent in November 2012 which was entitled *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*.

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<sup>29</sup> Part 4 of the *Director of Public Prosecutions Act 1991 (WA)* contains a similar relationship model.

<sup>30</sup> Parliament of Western Australia 2013, *Committee System of the Legislative Council and Legislative Assembly*, viewed on 18 April 2013, <http://www.parliament.wa.gov.au/webcms/webcms.nsf/content/home-committee-system-of-the-legislative-council-and-legislative-assembly>.

<sup>31</sup> *ibid.*

<sup>32</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 2.

2.23 The Joint Standing Committee was dissolved on 30 January 2013 due to a State Election<sup>33</sup> and was re-established by the 39<sup>th</sup> Parliament on 22 May 2013. The new members of the Committee are Ms Lisa Baker MLA (Chair), Hon Robyn McSweeney MLC (Deputy Chair), Hon Dr Sally Talbot MLC and Ms Helen (Eleni) Evangel MLA.

## Functions of the Commissioner

2.24 Part 3 of the Act concerns the functions of the Commissioner, which are set out in section 19 as follows:

### **19. Functions**

*The Commissioner has the following functions —*

- (a) to advocate for children and young people;*
- (b) to promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity;*
- (c) to promote and monitor the wellbeing of children and young people generally;*
- (d) to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint;*
- (e) to monitor the trends in complaints made by children and young people to government agencies;*
- (f) to initiate and conduct inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people;*
- (g) to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people;*
- (h) to promote public awareness and understanding of matters relating to the wellbeing of children and young people;*
- (i) to conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing of children and young people;*
- (j) to conduct special inquiries under Part 5;*
- (k) on the Commissioner's own initiative or at the request of the Minister or the Standing Committee, to advise the Minister on any matter relating to the wellbeing of children and young people;*

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<sup>33</sup> Parliament of Western Australia 2013, *Committee Details*, viewed on 3 April 2013, <http://www.parliament.wa.gov.au/parliament/commit.nsf/WAssemblyCurrent/169B50C58F1D9C5F48257831003B04A4?OpenDocument>.

- (l) *to consider, and make recommendations in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Standing Committee;*
- (m) *[(m) deleted]*
- (n) *to consult with children and young people from a broad range of socio-economic backgrounds and age groups throughout Western Australia each year;*
- (o) *to do anything which the Commissioner considers is necessary or convenient to further the principle in section 3 or any of the guiding principles in section 4;*
- (p) *to perform any other function conferred on the Commissioner by or under this Act or any other written law.*

2.25 Advocacy, promotion and monitoring are the principal functions of the Commissioner as set out in subsections 19(a)-(e), (g) and (h) of the Act.

### **Best interests, guiding principles and relevant matters**

2.26 In performing the functions under the Act, the Commissioner or any other person must regard the best interests of children and young people as the paramount consideration, as required by section 3 of the Act. The ‘best interests of children and young people’ is not defined in the Act, however, ‘wellbeing’ is defined in section 5 to include the care, development, education, health and safety of children and young people.

2.27 The guiding principles contained in section 4 underpin the approach the Commissioner is to take in exercising the functions and powers under the Act:

- (a) *children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation*
- (b) *the contributions made by children and young people to the community should be recognised for their value and merit*
- (c) *the views of children and young people on all matters affecting them should be given serious consideration and taken into account*
- (d) *parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.*

- 2.28 These guiding principles are reflective of the principles set out in the United Nations *Convention on the Rights of the Child*, which Australia signed on 22 August 1990.<sup>34</sup>
- 2.29 In addition to section 4, further guidance on attaining the ‘best interests of children and young people’ is provided in section 20(1), which states that the Commissioner, in performing functions under the Act, must:
- (a) *give priority to, and have special regard to, the interests and needs of —*
    - i. *Aboriginal children and young people and Torres Strait Islander children and young people; and*
    - ii. *children and young people who are vulnerable or disadvantaged for any reason;*
  - and*
  - (b) *have regard to the United Nations Convention on the Rights of the Child;*
  - and*
  - (c) *develop means of consulting with children and young people that are appropriate to their age and maturity; and*
  - (d) *develop guidelines for government agencies and non-government agencies regarding the participation by children and young people in decisions which affect them; and*
  - (e) *adopt work practices that —*
    - (i) *ensure the Commissioner is accessible to children and young people; and*
    - (ii) *encourage the participation of children and young people in decision-making by the Commissioner;*
  - and*
  - (f) *work in cooperation with, and consult with, other government agencies and non-government agencies; and*
  - (g) *take reasonable steps to avoid the duplication of functions performed by other government agencies*

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<sup>34</sup> United Nations Treaties Collection 2013, *Convention on the Rights of the Child*, viewed on 5 April 2013, [http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-11&chapter=4&lang=en#EndDec](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en#EndDec). For more information, see Office of the United Nations High Commissioner for Human Rights, *Convention on the Rights of the Child Preamble*, 20 November 1989, p. 1.

## Powers of the Commissioner

2.30 Section 21 is a broad provision of the Act and states that the Commissioner has the power to do all things necessary or convenient to perform the functions under the Act. In addition, the Commissioner has the power to request the disclosure of information from a government agency or service provider (defined in section 22(1) of the Act as ‘a person or body who or which provides services for, or on behalf of, a government agency’), in accordance with section 22. The purpose of section 22 is ‘[t]o facilitate the review of legislation, policies, practices, planning and delivery of services affecting children... [and] creates a right of access to information for the commissioner.’<sup>35</sup>

2.31 As set out in section 19, the Commissioner can also conduct general and special inquiries under the Act, but is limited by section 23(1) which precludes the Commissioner from investigating or otherwise dealing with a complaint made by, or a matter relating to, a particular child or young person. Section 23(2) however does not preclude the Commissioner from:

- (a) *providing a child or young person or his or her family with information about government and non-government programs and services; or*
- (b) *referring a child or young person or his or her family to such programs or services; or*
- (c) *investigating or otherwise dealing with any matter affecting the wellbeing of children and young people generally which is raised through a matter relating to a particular child or young person.*

2.32 It was noted in the second reading speech for the Bill that the intention of this limitation in section 23(1) was:

*to help avoid duplication and overlapping with the investigatory functions of other competent agencies, as well as to help avoid a potential conflict with the commissioner’s key advocacy role... [where] a case of an individual child raises systemic issues or matters relevant to other children, this may be the subject of an inquiry or special inquiry.*<sup>36</sup>

2.33 The scope of the Commissioner’s investigation powers is discussed further in Chapters 4 and 5.

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<sup>35</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 1 June 2005, *Parliamentary Debates* (Hansard), p. 2-3 of pp. 2582b-2585a.

<sup>36</sup> *ibid*, p. 2 of pp. 2582b-2585a.

2.34 Part 5 of the Act allows for the establishment of a special inquiry at the Commissioner's own initiative, or the Minister's request. Unlike other jurisdictions, it was the intention of Parliament that 'the commissioner's discretion to hold a special inquiry not be subject to control by the minister... [making] the commissioner's role the most powerful of its type in Australia.'<sup>37</sup> The Act also sets out the notice and general conduct requirements for a special inquiry, and confers on the Commissioner the power to: hold hearings; issue a summons for a person to attend a hearing, produce a document for inspection, take an oath or make an affirmation, and/or answer any questions; and enter premises.

## Advisory Committees

2.35 The Act provides for the establishment of advisory committees and reference groups to assist the Commissioner. Section 52 allows the Commissioner to establish advisory committees comprising children and young people, and representatives of non-government agencies concerned with the rights, interests and wellbeing of children and young people. There has been deliberation over whether the language used in section 52 makes this ability discretionary or obligatory, and this issue is examined in Chapter 4. Pursuant to section 54, the functions of an advisory committee are determined by the Commissioner, and they are obliged to comply with any direction given by the Commissioner.

## Reports of the Commissioner

2.36 Part 6 of the Act requires the Commissioner to produce annual and special inquiry reports, and permits the Commissioner to produce reports on other matters, such as an inquiry, review or research. All draft reports must be provided to the Minister for comment and, although the Commissioner is not required to make any changes to the report, section 48 requires that any comments received from the Minister be attached to the report. The Commissioner is required to table all reports in Parliament within 21 days of finalising the report. Once a report has been tabled in Parliament, section 50 requires the Commissioner to publish a version suitable for children and young people. Issues relating to the operation of Part 6 are examined in Chapter 4.

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<sup>37</sup> *ibid*, p. 2 of pp. 2582b-2585a.

## Appointment of the Commissioner

### Selection process

- 2.37 The Commissioner is appointed by the Governor in accordance with section 7. The Premier is required to advertise throughout Australia for expressions of interest and, uniquely, children and young people must be involved in the selection process.

### Removal or suspension

- 2.38 The Commissioner may be suspended or removed from office by the Governor due to incapacity, incompetency, bankruptcy or misconduct, pursuant to section 8.

### Term of office

- 2.39 Pursuant to section 9, the Commissioner can be appointed for a maximum five year term, and is then eligible for one reappointment.

### Acting Commissioner

- 2.40 The Governor may appoint an Acting Commissioner when the office is vacant or when the current Commissioner is absent from the State, or unable to perform the functions of the office.

### Oath or affirmation of office

- 2.41 The Commissioner is required by section 15 to take an oath or make an affirmation, which is administered by the Governor, that he or she will faithfully and impartially perform the functions of the office and will not disclose information unless it is in accordance with the Act.
- 2.42 Matters relating to the appointment of the Commissioner are examined further in Chapter 4.

## 3. The Act in practice

- 3.1 Since 2008, the Commissioner has undertaken research projects, developed programs and guidelines, conducted inquiries, and consulted with government, non-government and private sector organisations, as well as a range of children and young people across the State. The Commissioner noted that there are many agencies and individuals who work in the interests of children and young people, and she strives to collaborate with agencies to form partnerships and aggregate resources to achieve better results.<sup>38</sup> This chapter outlines the types of initiatives and projects that have been implemented by the inaugural Commissioner in performing the functions under the Act. It is noted that the submissions to the review demonstrated overwhelming support for the Act and for the work undertaken by the Commissioner to date.

### Advocacy function

- 3.2 Consistent with the intention of Parliament and the broad scope of section 19(a) of the Act, the Commissioner has advocated for all children and young people, not just those at risk. However, section 20(1) of the Act enables the Commissioner to focus more sharply on the interests and needs of Aboriginal children and young people, and vulnerable or disadvantaged children and young. As discussed earlier, advocacy is the primary role of the Commissioner and she advised the Joint Standing Committee in 2012 that ‘broadly all of the work of my office fulfils this function.’<sup>39</sup>

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<sup>38</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 61.

<sup>39</sup> Submission No. 2 from Commissioner for Children and Young People, 2 October 2012, ‘Report against the Functions of the *Commissioner for Children and Young People Act 2006*’, quoted in Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 26.

- 3.3 An objective of the Commissioner is to ‘...influence policy by engaging with government, non-government and private sector organisations to improve policies, laws and services that impact on the wellbeing of children and young people.’<sup>40</sup> The Commissioner has approached this function by meeting regularly with Ministers, Directors General, independent office holders and the chief executive officers of non-government agencies; and by establishing priority work areas, such as mental health and reducing alcohol-related harm.<sup>41</sup>
- 3.4 The Commissioner cites as one of her achievements her advocacy (through formal submissions, appearances at hearings, media appearances, and an issues paper) for an increase in the number of child health nurses.<sup>42</sup> She welcomed the State Government’s announcement in 2012 of funding for an additional 100 child health nurses.<sup>43</sup>
- 3.5 The operation and effectiveness of the advocacy function of the Act is further examined in Chapter 4.

## Promotion function

- 3.6 The Commissioner’s promotion functions are set out in sections 19(b), (c) and (h) of the Act and, as identified in the Commissioner’s submission, a number of recent initiatives exemplify these functions as set out below.

### Promoting the participation and wellbeing of children and young people

#### Guidelines for the government, non-government and private sectors

- 3.7 In 2009, the Commissioner published the *Involving children and young people: participation guidelines*, which aim to assist organisations ‘whether government, non-government or private, to involve children and young people in decision making about their services and activities... [and are] based on best practice and on the experience of others.’<sup>44</sup> In June 2009, the Commissioner worked with the Equal Opportunity Commissioner and the Health and Disability Services Complaints Office to produce *Are you listening? Guidelines for making complaints*

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<sup>40</sup> Commissioner for Children and Young People 2012, *Annual Report 2011-2012*, Commissioner for Children and Young People, Western Australia, p. 28.

<sup>41</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 7.

<sup>42</sup> *ibid*, p. 18.

<sup>43</sup> Commissioner for Children and Young People 2012, *Annual Report 2011-2012*, Commissioner for Children and Young People, Western Australia, p. 8.

<sup>44</sup> Commissioner for Children and Young People 2009, *Involving Children and Young People: Participation Guidelines*, Commissioner for Children and Young People, Western Australia, p. 4.

*systems accessible and responsive for children and young people.*<sup>45</sup> These guidelines examine the key elements and benefits of a child-friendly complaints system, and are discussed further at paragraph 3.22.

- 3.8 In addition, the Commissioner published the second edition of *Improving legislation for children and young people: guidelines for assessing the impact of proposed legislation on children and young people* in January 2013. These guidelines were developed to ensure that legislation better meets the needs and interests of children and young people, and since being updated also apply to policy initiatives.<sup>46</sup>
- 3.9 To support and promote the various guidelines, the Commissioner conducts seminars and webinars for agencies seeking further information and training in each area.<sup>47</sup> The development of these three guidelines also addresses the Commissioner's obligations under section 20(1)(d) of the Act to develop guidelines for government and non-government agencies regarding the participation by children in decisions which affect them.

### **Reducing Alcohol-Related Harm project**

- 3.10 Reducing alcohol-related harm is one of the Commissioner's priority areas and in 2011 the Commissioner published a report entitled *Speaking out about reducing alcohol-related harm on children and young people - The views of Western Australian children and young people*. This report summarised:

*the views of nearly 300 young people aged 14 to 17 years from a variety of backgrounds who participated in a consultation on what influences their decisions around drinking alcohol and what they believe would be effective strategies in reducing the harm associated with alcohol consumption.*<sup>48</sup>

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<sup>45</sup> Commissioner for Children and Young People 2009, *Are you listening? Guidelines for making complaints systems accessible and responsive for children and young people*, Commissioner for Children and Young People, Western Australia, p. 5.

<sup>46</sup> Commissioner for Children and Young People 2013, *Improving legislation for children and young people: Guidelines for assessing the impact of proposed legislation on children and young people*, Commissioner for Children and Young People, Western Australia, p. 2.

<sup>47</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, pp. 9, 14, 18.

<sup>48</sup> Commissioner for Children and Young People 2011, *Speaking out about reducing alcohol-related harm on children and young people - The views of Western Australian children and young people*, Commissioner for Children and Young People, Western Australia, p. 3.

## Thinker in Residence

- 3.11 The intention of the Thinker in Residence initiative run by the Commissioner's office is 'to invite an internationally renowned expert to Western Australia each year for a short residency to focus on an important public policy issue that affects the wellbeing of children and young people.'<sup>49</sup> Mr Paul Collard was appointed as the first Thinker in Residence in 2011, and the resulting *Report of the 2011 Thinker in Residence: Unlocking Creativity* was published in 2012.<sup>50</sup> The Commissioner noted that the 2011 residency '...sparked a collaborative across-sector desire to improve the creative and cultural experiences of our children and young people.'<sup>51</sup> The 2012 Thinker in Residence was Dr Stuart Shanker and the resulting *Report of the 2012 Thinker in Residence: Self-regulation in children* was also published in 2012.<sup>52</sup> The 2012 residency was described by the Commissioner as 'very successful, generating much debate about the critical link between self-regulation and a child's wellbeing.'<sup>53</sup>
- 3.12 To promote the participation of children and young people in programs, services and processes, the Commissioner has also formed partnerships with and influenced agencies in a number of ways, including:
- forming a partnership with Curtin University to run a collaborative project on the built environment between children and young people and architecture students
  - providing a submission to the Joint Select Committee on Cyber-Safety encouraging them to ensure they consult with children and young people, which the Committee subsequently undertook.<sup>54</sup>

## Promoting public awareness and understanding

- 3.13 The Commissioner's promotion function tends to overlap with her advocacy function, but it is noted nonetheless as an important function because it provides the Commissioner with 'a range of options in terms of the issues she can choose to prioritise and the manner in which these issues are 'promoted'.'<sup>55</sup>

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<sup>49</sup> Commissioner for Children and Young People 2012, *From the Commissioner*, viewed on 17 April 2013, <http://www.cyp.wa.gov.au/content.aspx?cld=578>.

<sup>50</sup> Commissioner for Children and Young People 2011, *2011 Thinker in Residence*, viewed on 7 April 2013, <http://www.cyp.wa.gov.au/forumThinker.aspx?cld=461>.

<sup>51</sup> *ibid.*

<sup>52</sup> Commissioner for Children and Young People 2012, *2012 Thinker in Residence*, viewed on 7 April 2013, <http://www.cyp.wa.gov.au/forumThinker.aspx?cld=568>.

<sup>53</sup> Shanker, Stuart Dr 2012, *Report of the 2012 Thinker in Residence: Self-regulation in Children*, Commissioner for Children and Young People, Western Australia, p. 3.

<sup>54</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 10.

<sup>55</sup> *ibid.*, p. 20.

3.14 The Commissioner advised that she has promoted public awareness and understanding of matters relating to the wellbeing of children and young people by hosting or co-hosting a series of events to stimulate debate, build local knowledge, promote positive images of children and young people, facilitate networks, and inspire collaboration.<sup>56</sup> These events include the:

- appointment of 15 Ambassadors for children and young people to ‘increase community awareness and understanding of factors which impact children and young people’s wellbeing.’<sup>57</sup>
- the *Children and Young People Lifetime Achievement Award* which was established in 2010 to recognise an individual whose work ‘has made a significant and enduring contribution to the enhancement of the wellbeing of children and young people in WA, and proved an inspiration to others.’<sup>58</sup>
- the *Children’s Week Forums* which bring together key stakeholders and ‘highlight positive research, policy and programs making a difference to the lives of Western Australia’s children.’<sup>59</sup>

3.15 A database of around 4000 individuals and organisations has also been developed by the Commissioner and she distributes publications, such as quarterly newsletters, to these contacts.<sup>60</sup>

## Monitoring function

3.16 Examples of recent initiatives consistent with the Commissioner’s monitoring functions in sections 19(c), (d), (e), and (g) of the Act are set out below.

### Monitoring wellbeing

3.17 The Commissioner has developed the Wellbeing Monitoring Framework ‘to monitor and report on the wellbeing of Western Australian children and young people.’<sup>61</sup> This is comprised of the three reports discussed below:

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<sup>56</sup> *ibid*, p. 20.

<sup>57</sup> Commissioner for Children and Young People 2012, *Ambassadors for Children and Young People*, viewed on 10 April 2013, <http://www.cyp.wa.gov.au/content/Ambassadors-for-Children-and-Young-People.aspx>.

<sup>58</sup> Commissioner for Children and Young People 2012, *Lifetime Achievement Award 2012*, viewed on 10 April 2013, <http://www.cyp.wa.gov.au/content/Lifetime-Achievement-Award.aspx>.

<sup>59</sup> Commissioner for Children and Young People 2009, *Children’s Week Forum - 2008*, viewed on 17 April 2013, <http://www.cyp.wa.gov.au/content/Children's-Week-Forum--2008.aspx>.

<sup>60</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 20.

<sup>61</sup> Commissioner for Children and Young People 2013, *Wellbeing Monitoring Framework*, viewed on 17 April 2013, <http://www.cyp.wa.gov.au/content/Wellbeing-Monitoring-Framework.aspx>.

### **1. Profile of Children and Young People in Western Australia**

3.18 This report was published in 2011, and provides information about Western Australia's children and young people:

*through a range of socio-demographic factors and statistical information. It describes the population of all children and young people in WA, their distribution across the regions of our state, recent population developments and projected growth.*<sup>62</sup>

The profile data was recently updated in April 2013 and published online.<sup>63</sup>

### **2. The State of Western Australia's Children and Young People – Edition One**

3.19 The purpose of this report was to address '[t]he difficulty in accessing comprehensive information about the wellbeing of children and young people'.<sup>64</sup> The report provides '[a] single, collated overview of children and young people's wellbeing [and] is a vital starting point to improving the wellbeing of children and young people'.<sup>65</sup> The report, which was developed with the assistance of a Wellbeing Monitoring Framework Reference Group, identifies 33 key measures of children and young people's wellbeing<sup>66</sup> and was tabled in the Legislative Assembly of the Western Australian Parliament on 29 February 2012.

### **3. Building Blocks: Best Practice programs that improve the wellbeing of children and young people – Edition One**

3.20 The Commissioner contracted the Australian Institute of Family Studies to 'undertake research to identify best practice and promising programs positively influencing children and young people's wellbeing'.<sup>67</sup> This report provides:

*a selection of programs with information and data that will assist government, non-government agencies and the private sector to make informed decisions about evidence-based programs and thereby achieve maximum benefits with limited resources.*<sup>68</sup>

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<sup>62</sup> Commissioner for Children and Young People 2012, *Profile of Children and Young People in Western Australia*, Commissioner for Children and Young People, Western Australia, p. 1.

<sup>63</sup> The updated profile data can be viewed at <http://www.ccyp.wa.gov.au/maps/>.

<sup>64</sup> Commissioner for Children and Young People 2012, *The State of Western Australia's Children and Young People – Edition One*, Commissioner for Children and Young People, Western Australia, p.16.

<sup>65</sup> *ibid*, p. 16.

<sup>66</sup> *ibid*, p. 4.

<sup>67</sup> Commissioner for Children and Young People 2012, *Building Blocks: Best practice programs that improve the wellbeing of children and young people – Edition One*, Commissioner for Children and Young People, Western Australia, p. 9.

<sup>68</sup> *ibid*, p. 4.

- 3.21 The report '[l]ists and describes 82 best practice and promising programs from WA and other states and territories.'<sup>69</sup> This report was tabled in the Legislative Assembly of the Western Australian Parliament on 28 February 2012.

### Monitoring complaints

- 3.22 Following preliminary research and meetings with agencies, the Commissioner identified a gap in agencies' knowledge around making complaint processes 'child-friendly'. To address this gap the Commissioner, in collaboration with the Equal Opportunity Commissioner and the Health and Disability Services Complaints Office, developed *Are you listening? Guidelines for making complaints systems accessible and responsive for children and young people*.<sup>70</sup> The guidelines highlight the key elements of a child-friendly complaints process and encourage organisations to review their processes to '...make their systems more accessible and responsive to children and young people.'<sup>71</sup> In 2009 the Commissioner implemented a project to work with State Government agencies to evaluate the effectiveness of the guidelines.<sup>72</sup>

### Monitoring trends in complaints

- 3.23 The Commissioner has noted that in reality not many agencies receive complaints from children and young people, which has restricted her ability to develop a comprehensive complaints monitoring process. Therefore the work of the Commissioner has focussed primarily on improving complaints system so that more children, young people and adults feel comfortable making a complaint.<sup>73</sup>
- 3.24 As part of the Commissioner's project in 2009 to evaluate the *Are you listening?* complaints guidelines discussed above, the Commissioner also used a survey to collect data 'about the volume and types of complaints agencies received from children and young people.'<sup>74</sup> The Commissioner has also collaborated with the Ombudsman to request data from state and local government agencies on the number and types of complaints made by children and young people to

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<sup>69</sup> Commissioner for Children and Young People 2013, *Wellbeing Monitoring Framework*, viewed on 17 April 2013, <http://www.ccp.wa.gov.au/content/Wellbeing-Monitoring-Framework.aspx>.

<sup>70</sup> Commissioner for Children and Young People 2009, *Are you listening? Guidelines for making complaints systems accessible and responsive for children and young people*, Commissioner for Children and Young People, Western Australia, p. 5.

<sup>71</sup> *ibid*, p. 5.

<sup>72</sup> Commissioner for Children and Young People 2010, *Annual Report 2009-2010*, Commissioner for Children and Young People, Western Australia, p. 20.

<sup>73</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 15.

<sup>74</sup> Commissioner for Children and Young People 2010, *Annual Report 2009-2010*, Commissioner for Children and Young People, Western Australia, p. 20.

government agencies. Following consultation with the Commissioner, the Ombudsman's complaint management questionnaire included questions 'relating to the accessibility and responsiveness of systems and processes to meet the needs of children and young people.'<sup>75</sup>

- 3.25 In addition, the Commissioner advised that she records and monitors all complaints received by her office to monitor any systemic issues or trends.<sup>76</sup>

### **Monitoring written laws, draft laws, policies, practices and services**

- 3.26 The Commissioner has monitored and reviewed policy areas through a range of means, including research; consultation with children and young people and other stakeholders; and considering options evidence through reviewing national and international comparisons.<sup>77</sup>

- 3.27 The Commissioner advised the Joint Standing Committee in 2009 that she is 'not just monitoring what is already there; [she is] initiating and challenging what should be there, and raising the bar.'<sup>78</sup> Examples of the different instruments and practices the Commissioner has monitored and reviewed are outlined below.

- 3.28 Report 11 of the Joint Standing Committee noted that during 2011/2012 the Commissioner made 69 submissions on a number of matters, including Paid Parental Leave and the implementation of the National Planning Agreement on Early Childhood Education.<sup>79</sup>

### **The *Mental Health Act 1996***

- 3.29 In anticipation of proposed reforms to Western Australia's mental health legislation, the Commissioner published a position statement regarding the proposed provisions of the draft Mental Health Bill and provisions of the *Criminal Law (Mentally Impaired Accused) Act 1996*, 'to ensure that the specific interests and needs of children and young people are taken into account in the formulation of new mental health laws.'<sup>80</sup>

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<sup>75</sup> *ibid*, p. 20.

<sup>76</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 15.

<sup>77</sup> *ibid*, p. 17.

<sup>78</sup> Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p. 12, quoted in Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 70.

<sup>79</sup> *ibid*, p. 152-3.

<sup>80</sup> Commissioner for Children and Young People 2011, *Position statement on the Mental Health Act 1996 (WA) and the Criminal Law (Mentally Impaired Accused) Act 1996 (WA)*, Commissioner for Children and Young People, Western Australia, p. 1.

## Prohibited Behaviour Orders Bill 2010

3.30 The Commissioner provided comment on this Bill during its development, raising concerns about the impact of the Bill on young people, and was pleased that the *Prohibited Behaviour Orders Act 2010* didn't apply to children and young people under the age of 16.<sup>81</sup>

## Metropolitan Youth Bail Service

3.31 In 2012, the Commissioner released a media statement highlighting that children and young people were being '...remanded in custody because of their circumstance rather than their crime'<sup>82</sup>, because a 'responsible person' could not be located for when they were granted bail. In response, the Commissioner recommended to the Police Commissioner that the mandatory practice should be that the Metropolitan Youth Bail Service is contacted for assistance.<sup>83</sup> Following negotiations, the Police Operational Manual was amended in November 2012 to put this new practice in place.<sup>84</sup>

## Other functions

### Conducting inquiries and special inquiries

3.32 Section 19(f) empowers the Commissioner to initiate and conduct inquiries into any matter affecting the wellbeing of children and young people. In July 2010 the Commissioner announced an Inquiry, which would:

*report on the mental health and wellbeing of children and young people and make recommendations that provide clear direction for action on how to strengthen mental health and wellbeing from pregnancy through to adulthood.*<sup>85</sup>

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<sup>81</sup> See *Prohibited Behaviour Orders Act 2010*, s 6(4)(b); Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 17.

<sup>82</sup> Commissioner for Children and Young People 2012, *Bail service use should be mandatory* (Media Statement), viewed on 18 April 2013, <http://www.cyp.wa.gov.au/files/resource/Media%20statement%20-%20Bail%20service%20must%20be%20fully%20-%20Related%20to%20speech%20at%20AIJA%20conference%20Queensland.pdf>.

<sup>83</sup> *ibid.*

<sup>84</sup> Commissioner for Children and Young People 2013, *Submission to the Inspector of Custodial Services: Inquiry into the Banksia Hill incident*, Commissioner for Children and Young People, Western Australia.

<sup>85</sup> Commissioner for Children and Young People 2011, *Inquiry into mental health and wellbeing*, viewed on 10 April 2013, <http://www.cyp.wa.gov.au/content/Inquiry-into-mental-health-and-wellbeing-.aspx>.

- 3.33 A Reference Group and Independent Reviewer were appointed to assist the Commissioner by providing advice, comment and information throughout the process.<sup>86</sup> The Commissioner implemented a series of consultation strategies, including consultation with the Commissioner's two 2010 Advisory Committees; direct staff contact with key organisations and professionals working with children and young people; and funding of a special consultation project.<sup>87</sup>
- 3.34 The *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia* was tabled in the Legislative Assembly of the Parliament of Western Australia on 17 May 2011. The Commissioner's submission to this review advised that significant progress has been achieved in relation to the 54 recommendations, and she continues to monitor their progress.<sup>88</sup>
- 3.35 The Commissioner has also initiated an ongoing inquiry in regard to DCPFS's Secure Care Centre, and she has requested a copy of reports submitted by the Independent Assessors, so she can follow up on matters as she sees fit with the Director General of DCPFS.<sup>89</sup>
- 3.36 It is also a function of the Commissioner, under section 19 (j), to conduct special inquiries. It was noted in the second reading speech that the provisions under Part 5 are 'major powers and they should not be triggered lightly or used often.'<sup>90</sup> Although the Commissioner has not exercised this power as yet the Joint Standing Committee recommended that this clause should be retained<sup>91</sup> because this function is an important strength of the Act, and a 'means by which the Commissioner is able to demonstrate and maintain her independence from government.'<sup>92</sup>

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<sup>86</sup> Commissioner for Children and Young People 2011, *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia*, Commissioner for Children and Young People, Western Australia, p. 23-4.

<sup>87</sup> *ibid*, p. 25.

<sup>88</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 16.

<sup>89</sup> *ibid* p. 16.

<sup>90</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 1 June 2005, *Parliamentary Debates* (Hansard), p. 2 of pp2582b-2585a.

<sup>91</sup> See Recommendation 13; Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 133.

<sup>92</sup> *ibid*, p. 118.

## Conducting and promoting research

3.37 The Commissioner advised that research is a fundamental part of the policy work undertaken by the Commissioner's office in accordance with section 19(i).<sup>93</sup> In 2009, the Commissioner initiated a research project which asked children and young people what is important to their wellbeing. This project was the first of its size conducted in Western Australia and 'heard the views of nearly 1000 children and young people aged between 5 and 18 from diverse cultural, socioeconomic, geographical and situational backgrounds.'<sup>94</sup> A product of the research project was a report entitled *Speaking out about wellbeing - The views of Western Australian children and young people*, published in 2009. The Commissioner noted that she has used this report to advocate for improved support, programs, services and policies for children and young people.<sup>95</sup>

3.38 Other research work undertaken by the Commissioner includes the Reducing Alcohol Related Harm Project (see 3.10) and Thinker in Residence (see 3.11).

## Providing advice and making recommendations

3.39 Section 19 (k) allows the Commissioner to provide advice to the Minister on any matter relating to the wellbeing of children and young people, either on the Commissioner's own initiative or at the request of the Minister or the Joint Standing Committee. In undertaking this function, the Commissioner has provided research and specific advice to the Minister on a range of issues, including:

- Review of the *Commissioner for Children and Young People Act 2006*
- Prohibition on publication of names of children in criminal proceedings
- Youth justice services in the Kimberley
- Establishment of the Joint Standing Committee
- Working with children checks
- Classification issues and R18+ computer games.<sup>96</sup>

3.40 In addition to providing advice, the Commissioner, on referral by the Minister or Joint Standing Committee, is also required to examine and make recommendations on laws, reports, policies, practices, procedures or other matters which relate to the wellbeing of children and young people in accordance

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<sup>93</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 21.

<sup>94</sup> Commissioner for Children and Young People 2009, *Speaking out about wellbeing - The views of Western Australian Children and Young People*, Commissioner for Children and Young People, Western Australia, p. 3.

<sup>95</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 13.

<sup>96</sup> *ibid*, p. 23.

with section 19(l). The Commissioner has provided advice and/or recommendations to the Minister and Joint Standing Committee on a range of issues, including:

- The Human Rights Commission report titled *Sex Files: the legal recognition of sex in documents and government records*, on referral from the Minister
- The Parliamentary Commissioner Amendment Bill, on referral from the Joint Standing Committee
- The Child Exploitation Material and Classification Legislation Amendment Bill 2009, on referral from the Joint Standing Committee.

### Consulting with children and young people

3.41 In accordance with sections 19(n) and 20(c), the Commissioner has engaged with children and young people, through extensive travel to visit children and young people across the state, and utilising information and communication technologies to develop a website that is 'child friendly and can easily facilitate feedback, comments or complaints from children and young people.'<sup>97</sup>

3.42 The Commissioner also advised that from 2007 to 2012 she has consulted with over 4000 children and young people as shown in Table 2 below.

**Table 2: The Commissioner's consultations with children and young people<sup>98</sup>**

Reporting period	Regional	Metropolitan	Number of children and young people consulted		
			Project related	Other consultations	Total
2011/2012	18	25	300 <sup>99</sup>	408	708
2010/2011	9	16	700 <sup>100</sup>	260	960
2009/2010	11	18	959 <sup>101</sup>	412	1371
2008/2009	~5	~9	-	550	550
2007/2008	~5	~5	-	>500	>500
<b>Total</b>	~48	~73	1959	2130	4089

<sup>97</sup> *ibid*, p. 25.

<sup>98</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 44.

<sup>99</sup> The reducing alcohol related harm project.

<sup>100</sup> The inquiry into mental health and wellbeing.

<sup>101</sup> The wellbeing research project.

3.43 The Commissioner is also empowered by section 52 of the Act to establish advisory committees, which give children and young people the opportunity:

*to have their views heard at the highest level...[and the Commissioner] will use the views and perspectives provided by the Advisory Committees to advocate on behalf of all children and young people to the opinion leaders and decision-makers of our community.*<sup>102</sup>

3.44 Advisory committees comprise existing groups of children and young people, including Aboriginal (such as Geraldton's Indigenous Youth Council) and vulnerable or disadvantaged children and young people (such as children and young people from the Metropolitan Migrant Resource Centre). There were two advisory committees in 2012, two in 2011/2012, and four in 2013.<sup>103</sup>

3.45 The 'Commissioner for a Day Challenge' is an initiative established by the Commissioner in 2010, which asked children and young people to provide information on their experiences with mental health and their ideas on how to help others stay mentally healthy.<sup>104</sup> In 2011, young people aged between 12 and 17 provided ideas on how to keep safe from alcohol related harm<sup>105</sup> and in 2012 contributed their ideas on media and advertising.<sup>106</sup> The Commissioner noted that '[t]he opinions and concerns of children and young people that I received through the Challenge are very important and will help guide my work.'<sup>107</sup>

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<sup>102</sup> Commissioner for Children and Young People 2009, *Kids get a voice on the big issues* (Media Release), viewed on 17 April 2013, <http://www.cryp.wa.gov.au/files/resource/Media%20release%20-%20Announcement%20of%20Advisory%20Committees%20-%20December%202009.pdf>.

<sup>103</sup> Commissioner for Children and Young People 2013, *Commissioner's Advisory Committees*, viewed on 10 April 2013, <http://www.cryp.wa.gov.au/content/Commissioner's--Advisory-Committees-.aspx>.

<sup>104</sup> Commissioner for Children and Young People 2011, *Commissioner for a Day Challenge*, viewed on 16 April 2013, <http://www.cryp.wa.gov.au/content/shoutout/Commissioner-for-a-Day-Challenge.aspx>.

<sup>105</sup> Commissioner for Children and Young People 2012, *2011 Commissioner for a Day Challenge*, viewed on 16 April 2013, <http://www.cryp.wa.gov.au/content/2011-Commissioner-for-a-Day-Challenge.aspx>.

<sup>106</sup> Commissioner for Children and Young People 2012, *The 2012 Commissioner for a Day Challenge*, viewed on 16 April 2013, <http://www.cryp.wa.gov.au/content/The-2012-Commissioner-for-a-Day-Challenge.aspx>.

<sup>107</sup> Commissioner for Children and Young People 2013, *Commissioner Ciara speaks out about media and advertising* (Media Release), viewed on 10 April 2013, <http://www.cryp.wa.gov.au/files/resource/Media%20statement%20-%20Ciara%20has%20a%20say%20as%20Commissioner%20for%20a%20Day%20-%2024%20October%202012.pdf>.

## Priority to Aboriginal, vulnerable and disadvantaged children and young people

- 3.46 Pursuant to section 20(1)(a), the Commissioner must, in performing the functions of the Act, give priority and have special regard to the interests and needs of Aboriginal, Torres Strait Islander, and vulnerable or disadvantaged children and young people.
- 3.47 The Joint Standing Committee noted that the Commissioner's Participation Strategy would aim to involve children and young people who do not usually participate in consultations, and consultations methods would be carefully selected to ensure the method was appropriate for engaging those children and young people.<sup>108</sup> As noted above, the Commissioner has also sought the views of these priority groups by selecting existing groups as her advisory committees in 2010, and 2011-2012.<sup>109</sup>
- 3.48 The Commissioner noted that a key focus for her has been the disadvantage that Aboriginal and Torres Strait Islander children and young people continue to face, and as such has 'maintained a strong focus on developing and building relationships with Aboriginal communities and non-government agencies responsible for services to these communities.'<sup>110</sup> The Joint Standing Committee noted that the Commissioner's own inquiries and reports have recognised and publicised the ongoing disadvantage experienced by this group.
- 3.49 Since the Gordon Inquiry report proposed that a Deputy Commissioner position be created with responsibility for issues in relation to Aboriginal children and young people<sup>111</sup>, there has been some debate about whether such a position should be established. This matter is examined further in Chapter 4.

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<sup>108</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 35.

<sup>109</sup> Commissioner for Children and Young People 2013, *Commissioner's Advisory Committees*, viewed on 10 April 2013, <http://www.ccyp.wa.gov.au/content/Commissioner's--Advisory-Committees-.aspx>.

<sup>110</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 35.

<sup>111</sup> Gordon, S, Hallahan, K & Henry, D 2002, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of the Premier and Cabinet, Western Australia, p. 494

## Reporting

3.50 Section 19(p) requires the Commissioner to perform any other function conferred by the Act, which includes reporting obligations set out in Part 6. Under the Act, the Commissioner is required to prepare annual reports (section 42), special inquiry reports (section 43), and is permitted to prepare reports on any inquiry, review or research undertaken (section 48).

3.51 Since 2007, the Commissioner has produced a range of reports including:

- five annual reports
- one inquiry report
- five research reports
- two Thinker in Residence reports
- 18 regional visit reports.

## 4. Operation and effectiveness of the Act

- 4.1 Term of reference 1 required the review to ‘examine the operation and effectiveness of the Act’ and term of reference 2 required it to ‘report on the extent to which the purpose of the Act, including the advocacy, promotion and monitoring of the wellbeing of children and young people is being achieved (specifically but not limited to section 19 of the Act).’
- 4.2 Terms of reference 1 and 2 are the subject of this chapter. This chapter also examines term of reference 4, which relates to amendments necessary to facilitate recommended changes to the Act resulting from the review of the *Working With Children (Criminal Record Checking) Act 2004* (the WWC Act) and any other relevant recommendations from legislative reviews or reports.

### Purpose of the Act

- 4.3 As established in Chapter 2, the primary purpose of the Act, as evidenced in the second reading speech is to provide ‘a mechanism that is dedicated to enhancing the best interests and wellbeing of all children’ and to promote ‘a better future for all Western Australians.’<sup>112</sup> Consistent with this very broad purpose, the model provided for in the Act establishes a Commissioner with a very broad mandate to, *inter alia*:
- regard the best interests of children and young people as the paramount consideration (section 3)
  - advocate for children and young people (section 19(a))
  - promote and monitor the wellbeing of children and young people (section 19(c)).
- 4.4 The broad advocacy goals of the Act above are supplemented by a range of more specific means by which the goal of advocating for children and young people can

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<sup>112</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 1 June 2005, *Parliamentary Debates* (Hansard), p. 1 of pp. 2582b-2585a.

be achieved by the Commissioner, such as to:

- monitor the way in which a government agency investigates or otherwise deals with a complaint received (section 19(d))
- monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people (section 19(g))
- conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing of children and young people (section 19(i))
- advise the Minister on matters relating to the wellbeing of children and young people (section 19(k))
- give priority and have special regard to the interests of Aboriginal children and young people and other groups of vulnerable children and young people (section 20(1)(a))
- report to Parliament on any matter arising in the performance of the Commissioner's functions (sections 44 and 49).

4.5 The second reading speech for the Bill acknowledged that:

*the wellbeing of children cannot be legislated for. This will depend on many elements: the contribution of parents and acceptance by them of their primary responsibility; the contribution of young people themselves and their willingness and ability to grow and learn; and the support of family, community, the environment, schools, the health system and the justice system. Although government does have a role to play, it is a supporting role, helping to provide the opportunities needed for the wellbeing of children.*<sup>113</sup>

4.6 There is an inherent difficulty in defining and measuring the Act's aim of improving the 'wellbeing' of children and young people. In considering whether the Act is achieving its purpose, the review focused instead on whether it has achieved the purpose of advocating for children and young people, which is considered to be the primary role of the Commissioner.

4.7 As discussed in Chapter 2, 'advocacy' is taken to have the general meaning of supporting children and young people through consulting with, and listening to, them and making recommendations on their behalf to improve their wellbeing.

4.8 This leaves open the question of to whom the Commissioner should advocate and make recommendations to? This matter is not defined in the Act. On one

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<sup>113</sup> *ibid*, p. 3 of pp. 2582b-2585a.

interpretation, the advocacy function could be regarded as meaning advocacy to the Government, which would be consistent with the Commissioner's functions in sections 19(k) and (l) of the Act, relating to the provision of advice and recommendations to the Minister.

- 4.9 The second reading speech, however, suggests a broader scope for the advocacy function:

*Importantly, the commissioner will also be able to inform government and the community when children and young people are not getting a fair go and how things could be improved for them.*<sup>114</sup>

- 4.10 Consistent with Parliament's intention, the Commissioner interprets the scope of the advocacy function as being to advocate to the community, government and the Parliament. For instance, in evidence to the Joint Standing Committee in November 2012, Ms Scott said:

*There has been tremendous support in the community from a whole range of people who are pleased that Parliament passed this legislation and that now someone has been given this authority to comment publicly, but also to monitor the wellbeing of children and young people and provide advice to the community and to government and to the Parliament about what we require here in Western Australia.*<sup>115</sup>

- 4.11 It is noted, however, that the Act clearly contemplates in section 19(k) a role for the Commissioner in providing advice to the Government, in particular to the Minister, on any matter relating to the wellbeing of children and young people. The Government of the day has responsibility for determining and/or implementing a broad range of public policies, legislation and programs across the spectrum of ministerial portfolios (most relevantly health, education, child protection and justice) which directly and fundamentally impact on all children and young people. In these circumstances, the provision of advice, information and assistance by the Commissioner to the Government of the day, through the Minister, can be seen as the most direct, and potentially most effective, means of advocating to improve the wellbeing of children and young people.

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<sup>114</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 1 June 2005, *Parliamentary Debates* (Hansard), p. 2 of pp. 2582b-2585a

<sup>115</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 46.

- 4.12 The review considers that there is much potential for the effectiveness of the Commissioner's advocacy role to be strengthened through the provision of advice and assistance directly to the responsible Minister, either on the Commissioner's own initiative or in response to a request from the Minister or the Joint Standing Committee, in relation to matters affecting the wellbeing of children and young people that are of concern to the Commissioner.

## Achievement of the purpose of the Act

- 4.13 Chapter 3 provided an overview of the work which the Commissioner advised the review has been undertaken in performing the functions under the Act. This included a variety of strategic policy and consultation projects.
- 4.14 Although this review is of the operation of the Act and not the Commissioner's performance, the two are inextricably linked. The Act is focused entirely on the establishment, functions and powers of the statutory office of the Commissioner and matters related directly thereto. The Commissioner is the primary vehicle through which the purposes of the Act are to be achieved. The achievement of those purposes will depend to a large extent, therefore, on the interpretation of the Act, powers and functions adopted by the Commissioner of the time; the priorities that they determine for their role; and their performance in executing those priorities.
- 4.15 The extent to which the Act has achieved its purpose of advocating for children and young people involves consideration of the extent to which the work of the Commissioner has influenced the Government and other key stakeholders in relation to matters affecting the wellbeing of children and young people. This is, however, difficult to assess.
- 4.16 Difficulties in measuring the outcomes of the Act were noted by the Joint Standing Committee in the context of its examination of the Commissioner's Key Performance Indicators (KPIs). The Joint Standing Committee's recent report referred to the consideration it gave to this issue in March 2009, when it asked the Commissioner how she intended to measure her work and the impact it was having on children and young people in Western Australia. The Commissioner had responded that it:

*is a challenge to create something whereby we can claim responsibility for having achieved a change of policy or legislation, but I think we can do that. We are working on doing that and on measuring our capacity to influence others to do their job better for children and young people. My position is*

*about influencing others and the key is how to measure that.*<sup>116</sup>

4.17 The Commissioner had further advised in 2009 that:

*I could recount to the committee the many things that we have done over the past 12 months that have played a very significant role in leading the debate on particular issues and have contributed significantly to those issues being in the public domain among the relevant stakeholders, the government and the community generally. ... The challenge for me is how I will measure that... .*<sup>117</sup>

4.18 The Joint Standing Committee expressed the view that ‘there needs to be a measure of the Commissioner’s effectiveness in influencing government and others in relation to matters impacting upon the wellbeing of children and young people.’<sup>118</sup>

4.19 The Commissioner’s Outcome Based Management Structure provides for the following Outcomes and Key Effectiveness Indicators, as set out in the Joint Standing Committee report.<sup>119</sup>

<b>Government Goal: Outcome based service delivery. Greater focus on achieving results in key service delivery areas for the benefit of all Western Australians</b>	
<b>Agency Level Desired Outcome(s)</b>	<b>Key Effectiveness Indicators</b>
The views and issues of children and young people are heard and acted upon	The extent to which children and young people in various regions of the state are consulted  The extent to which issues impacting upon children and young people are identified through consultation and research
<b>Service(s)</b>	<b>Key Efficiency Indicators</b>
Consultation, research and promotion of the wellbeing of children and young people	Average cost per consultation exercise with children and young people  Average cost of conducting research and consultation

<sup>116</sup> *ibid*, p. 179.

<sup>117</sup> *ibid*, p. 179.

<sup>118</sup> *ibid*, p. 178.

<sup>119</sup> Commissioner for Children and Young People 2012, *Annual Report 2011-2012*, p. 12.

4.20 Having regard to the range of functions performed by the Commissioner under the Act and the associated areas of activity, the Joint Standing Committee's assessment was that the Commissioner's KPIs above 'do not provide a comprehensive representation of the major activities of the Commissioner. A more comprehensive set of KPIs would give her an enhanced opportunity to demonstrate progress in the key areas of her activities.'<sup>120</sup> It noted that the Commissioner appeared to share this assessment, referring to the following evidence the Commissioner gave to the Committee in November 2011:

*I do not think you could ever have key performance indicators that capture everything I am required to do under section 19 of the Act. However, I do think that it gives a good indication of what the priorities are for us coming from the legislation.*<sup>121</sup>

4.21 However, the Commissioner also advised the Committee in 2011 that:

*The key performance indicators obviously were set with the Auditor General and the relevant government agencies. They are satisfied that the performance indicators that we have are an effective measure.*<sup>122</sup>

4.22 Having regard to the difficulties associated with measuring the extent to which the advocacy purpose of the Act is being achieved given its broad nature, the KPIs are considered to be the primary means of providing some measurable outcomes in relation to the Act. In particular, the review considers there is potential for them to be used as a means of measuring the Commissioner's effectiveness in influencing government and others in relation to matters impacting on the wellbeing of children and young people. The KPIs will also require modification if the complaints support function recommended for the Commissioner in Chapter 5 is adopted. Accordingly, the review agrees with the recommendation of the Joint Standing Committee that:

*The Commissioner, in consultation with the Under Treasurer, review the current Outcome Based Management Structure, including key performance indicators, to ensure they are appropriate and comprehensive.*<sup>123</sup>

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<sup>120</sup> *ibid*, p. 177.

<sup>121</sup> *ibid*, p. 177.

<sup>122</sup> *ibid*, p. 180.

<sup>123</sup> *ibid*, p. 182.

## Recommendation 1

While the review notes the overwhelming support for the broad advocacy purpose of the Act, to provide greater clarity and measurement of the outcomes to be achieved under the Act, the review concurs with recommendation 19 of the Joint Standing Committee's Report No. 11: *A Review of the Exercise of the Functions of the Commissioner for Children and Young People* that 'the Commissioner in consultation with the Under Treasurer, review the current Outcome Based Management Structure, including key performance indicators, to ensure they are appropriate and comprehensive.'

- 4.23 Although the Joint Standing Committee identified some difficulties in describing and measuring the Commissioner's key performance indicators,<sup>124</sup> having regard to the work of the Commissioner's office in fulfilling her advocacy function (outlined in more detail in Chapter 3 of this report) it found that:

*It is very clear to the Committee that the Commissioner takes her advocacy role very seriously and recognises the importance of working to ensure that children and young people in Western Australia are listened to and to advocate for their health and wellbeing.*

*The Committee is reassured by all the good work the Commissioner does in fulfilling her advocacy function. There is no doubt that advocacy is the primary focus of the Commissioner's work.*<sup>125</sup>

- 4.24 The general view that emerged from the submissions, the recent Joint Standing Committee report and other information considered by the review is that the Act provides the necessary functions and powers to enable the advocacy purpose of the Act to be achieved.
- 4.25 The information considered by the review did, however, give rise to five categories of amendments that will help to further improve the operation and effectiveness of the Act:
- A. Machinery amendments identified by the Commissioner
  - B. Substantive amendments raised in submissions to the review
  - C. Other amendments identified in the Joint Standing Committee's recent review of the exercise of the functions of the Commissioner

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<sup>124</sup> *ibid*, see pp. 171-182.

<sup>125</sup> *ibid*, p. 46.

- D. Amendments to facilitate recommended changes to the Act resulting from the review of the WWC Act and any other relevant legislative reviews or reports
- E. Amendments to provide the Commissioner with a child abuse complaints support function

4.26 Categories (A) to (D) are discussed below. The Amendments required to provide the Commissioner with a child abuse complaints support function (category E above) are discussed in Chapter 5.

## A. Machinery amendments identified by the Commissioner

### Clarification of the process for reappointment of the Commissioner (section 9(2))

- 4.27 Section 9(2) of the Act provides that the Commissioner is eligible for reappointment once but does not expand on how this is to be undertaken. The Commissioner's submission reports that this has given rise to the situation whereby the complete, comprehensive appointment process (as stipulated in section 7 and which includes nationwide advertising and involvement of children and young people) is required to be undertaken for any reappointment.
- 4.28 The Commissioner suggested that this was not the intention of Parliament and recommended that this section be amended to clarify the process of reappointment of a Commissioner.
- 4.29 There is considerable cost associated with a nationwide recruitment exercise and full selection process. The review considers that this is an unnecessary expense and procedure where a government is proposing that an incumbent Commissioner be reappointed. It should be open to a government to elect not to undertake a full selection process to recommend to the Governor the reappointment of an incumbent Commissioner in these circumstances. The requirement in section 7(2)(b) to consult with the leader of any political party with at least two members in either House should, however, continue to apply where a reappointment is proposed.

### Recommendation 2

That section 9(2) of the Act be amended to clarify that the broad selection process applicable to the initial appointment of a Commissioner set out in subsections 7(2)(a) and (3) of the Act is not required to be complied with where an incumbent Commissioner is proposed to be reappointed.

## Power for the Commissioner to appoint an Acting Commissioner for short periods of time (section 14)

- 4.30 Section 14 prescribes that when the office of Commissioner is vacant, the Governor may appoint a person to act in the office of Commissioner (an Acting Commissioner). This is the only way under the Act for an Acting Commissioner to be appointed and it is a process which the Commissioner has not exercised during her term. The Commissioner's submission states that it has not been considered practicable, nor necessary, to involve the Governor in appointing acting arrangements for short time periods (such as four weeks annual leave or during short periods of illness or absence).
- 4.31 The Commissioner for Children and Young People Bill 2005 as introduced into Parliament provided for the appointment of an Acting Commissioner by the Minister. The Minister sponsoring the Bill stated that the provision was deliberately drafted to enable the Minister to appoint an Acting Commissioner because:

*We are talking about a period of time that could be very short. It could be annual leave, sick leave or some other reason that renders the commissioner unable to fulfil his functions. Typically, we are talking about periods of annual leave or sick leave. To recommend that we elevate the decision making or the endorsement to the Governor is unnecessarily onerous. It is very different if we are talking about filling the permanent position. If we are talking about filling the position when a person goes on leave or goes overseas to a conference of children's commissioners, we want to act quickly to get someone into the position. It is fair comment that an executive council meeting could be organised very quickly. I do not think it is necessary to have the Governor's agenda clogged further with endorsing what will be the minister's recommendation anyway for a period of two to four weeks. I see them as different; I absolutely agree that the appointment be a Governor's appointment. It is not necessary to require the Governor to sign off on a two or four-week sick leave or vacation period. It is unnecessarily onerous.*<sup>126</sup>

- 4.32 The Commissioner's submission points out that this provision was, however, amended in the Legislative Council to replace 'Minister' with 'Governor' because of concern that the appointment provisions were inconsistent.<sup>127</sup>

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<sup>126</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 16 August 2005, *Parliamentary Debates* (Hansard), p. 30 of pp. 3975b-4012a.

<sup>127</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013. p. 47.

- 4.33 It is noted that the *Inspector of Custodial Services Act 2003* (section 12) allows the Inspector to appoint a person to act in the office of the Inspector for restricted time periods (no more than 4 weeks at a time and no more than 6 weeks in a year). It also stipulates that the Acting Inspector is subject to all the same provisions under the Act as the Inspector proper.<sup>128</sup>
- 4.34 Similarly, the *Public Sector Management Act 1994* gives the Public Sector Commissioner the authority to appoint a person to act in the office of Commissioner for a period of less than 13 weeks in a year.<sup>129</sup>
- 4.35 The Commissioner's submission recommended that the Act be amended to allow the Commissioner to appoint an Acting Commissioner for a short and restricted time period. The review considers this to have merit: to provide an efficient and effective process to ensure that an Acting appointment is in place during short absences of the Commissioner.

### Recommendation 3:

That section 14 of the Act be amended to give the Commissioner the power to appoint a person to act in the office of Commissioner for a period of less than 13 weeks in a year, to ensure that the position is appropriately filled during any short absences by the Commissioner.

### Clarification of the meaning of 'reports' that are to be submitted to the Minister for comment (section 48) and tabled in Parliament (section 49)

- 4.36 Part 6 of the Act deals with three types of report that the Commissioner can produce:
- annual reports (section 42)
  - reports on special inquiries (section 43)
  - reports on other matters (section 44).
- 4.37 Section 48 of the Act provides that the Commissioner must give the Minister a draft of each report and that the Minister may make comments on any report received. Under section 48(4) the Commissioner is not required to make any changes suggested by the Minister, but the Commissioner must include a copy of any comments made by the Minister on the draft report (section 48(5)).

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<sup>128</sup> *Inspector of Custodial Services Act 2003*, sections 12-14.

<sup>129</sup> *Public Sector Management Act 1994*, section 29A.

4.38 Section 49(1) of the Act states that the Commissioner must table a report in each House of Parliament within 21 days after finalisation of the report. The meaning of ‘report’ for the purposes of these sections is very broad. As defined in section 45, it means ‘any report prepared under Division 1’ of the Act.

4.39 The Commissioner’s submission refers to the large range of reports that could potentially fall within the broad definition of ‘reports’ in section 45, stating:

*While the inclusion of annual reports and reports on special inquiries are obvious, ‘reports on other matters’ as described in section 44 is so broad that it arguably includes all reports produced by the Commissioner.... ‘all reports’ could include issues papers, policy briefs, Speaking Out reports and a range of other publications that, in the view of the Commissioner, would not be appropriate to provide to the Minister for comment prior to publication or to table in the Parliament.<sup>130</sup>*

4.40 Following discussion with the State Solicitor’s Office, the Commissioner has interpreted section 44 of the Act to mean ‘substantial reports and those reports that may include significant recommendations for policy or program change.’<sup>131</sup>

4.41 Referring to the requirement that all of the Commissioner’s reports must go to the Minister in draft form, the Joint Standing Committee noted ‘that providing the Minister with all of these types of documents was not what was intended by the legislation.’<sup>132</sup>

4.42 The Act does not, however, make any distinction in sections 48 or 49 between reports with or without recommendations.

4.43 The review considers that the requirement to provide the Minister with a copy of a draft report is aimed at ensuring that the Minister is not ‘caught by surprise’ and is aware of and in a position to respond to any substantive issues that may be raised at the time that any such report is tabled in Parliament or otherwise made public. This is consistent with the doctrine of ministerial accountability. It also provides the Minister an opportunity to provide the Commissioner with any additional information, such as in relation to government policies or programs, that the Commissioner may not be aware of.

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<sup>130</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p 54.

<sup>131</sup> *ibid*, p. 55.

<sup>132</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, pp. 167-169.

- 4.44 If, however, the Commissioner was required to refer all minor publications that could nevertheless constitute a 'report' to the Minister, it would potentially lead to inefficiencies in both the Commissioner's and Minister's offices, without any significant benefit to either in return.
- 4.45 The requirement for reports to be tabled in Parliament is a means of raising awareness of the Commissioner's priorities, concerns, findings and recommendations at the highest level. It also enhances the opportunity for those issues to be debated and responded to by the members of Parliament, as well as examined by the Joint Standing Committee that oversees the Commissioner. The tabling of reports is an important aspect of the Commissioner's advocacy role, by bringing Parliament's and the community's attention to issues considered by the Commissioner to be of significance to the wellbeing of children and young people.
- 4.46 The review considers, however, that greater clarity is required in relation to the meaning of 'report' in the Act.
- 4.47 In this regard it is noted that section 46 of the Act provides that '[a] report may include recommendations for changes to any written law, draft law, policy, practice or procedure, or for the taking of other action, that the Commissioner considers appropriate to safeguard and promote the wellbeing of children and young people.' This would appear to provide a reasonable threshold for the types of reports that are required to be provided to the Minister in draft form prior to finalisation, and to be tabled in Parliament. That is, reports that contain any recommendations for policy, legislative or program changes.
- 4.48 It is considered that clarifying in the Act that only reports that fall within section 46 of the Act are required to be provided to the Minister in draft form and tabled in Parliament will bring greater efficiency and effectiveness to the Commissioner's reporting functions. The Commissioner should retain a discretion to table any report in Parliament that he or she sees fit, a draft of which will be required to be provided to the Minister.
- 4.49 It is noted that section 25 of the *Commission for Children and Young People Act 1998* (NSW) provides an example where there is a link between the reports that are required to be provided to the Minister for comment and those that are to be tabled in Parliament.
- 4.50 The review is cognisant, however, that the issue of when reports should be tabled in Parliament is a matter that should most appropriately be determined by the Parliament. Accordingly, the Attorney General may wish to obtain the views of the Joint Standing Committee prior to forming a response to this recommendation.

#### Recommendation 4:

That consideration be given to amending Part 6 of the Act to provide that, in addition to annual reports and reports of special inquiries, it is only reports containing recommendations for change to any written law or procedure etc, or for the taking of other action that the Commissioner considers appropriate to safeguard and promote the wellbeing of children and young people (as referred to in section 46), that the Commissioner is required to provide in draft form to the Minister and table in Parliament.

- 4.51 The Commissioner's submission also contends that the requirement to provide the Minister with an opportunity to make comments on the Commissioner's annual report is unusual. It was noted that there is no such requirement in relation to the Ombudsman, Equal Opportunity Commission, Auditor General or the Corruption and Crime Commission.<sup>133</sup> Nor does any such requirement apply to the PSC. The review is not, however, aware of any particular problems to which the requirement to provide the Minister with the annual report in draft form gives rise, although matters of timing may be a potential concern. In this regard it is noted that section 25 of the *Commission for Children and Young People Act 1998* (NSW) referred to above also provides a timeframe within which ministerial comment is to be sought prior to a report being tabled.

#### Clarification of the discretion to establish advisory committees, and their composition (section 52)

- 4.52 Section 52 of the Act outlines the requirement for the Commissioner to establish advisory committees. Section 52(1) states:

*Subject to subsection (2), the Commissioner **may** establish advisory committees and reference groups to assist in the performance of the Commissioner's functions. [emphasis added]*

Section 52(2) states:

*The Commissioner **must** establish advisory committees consisting of children and young people, who the Commissioner considers are from a broad range of socio-economic and cultural backgrounds and age groups, to assist in the performance of the Commissioner's functions. These committees should be established in regional areas as well as the metropolitan area. [emphasis added]*

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<sup>133</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 55.

Section 52(3) states:

*The membership of advisory committees and reference groups should include representatives of non-government agencies concerned with the rights, interests and wellbeing of children.*

4.53 The contradictory terms 'may' and 'must' in sub-sections (1) and (2) have caused some ambiguity about the nature and membership of these advisory committees and the level of discretion afforded to the Commissioner in establishing them. The Commissioner has requested that consideration be given to amending section 52(2) to replace the word 'must' with 'may'.

4.54 The Commissioner's submission explains that:

*On the face of it, it could be read that section 52(1) gives the Commissioner discretion to establish any advisory committees but that if an advisory committee were to be established then it must comprise a broad cross-section of children and young people.*

*However, an alternate reading of the Act is that establishing advisory committees of children and young people is a mandatory function for the Commissioner but that establishing other types of advisory committees is discretionary. This is the interpretation the Commissioner has adopted and reflects the intent as expressed during debates in Parliament on the Commissioner for Children and Young People Bill 2005: that each subclause is a stand alone with section 52(1) being discretionary and section 52(2) being a requirement.<sup>134</sup>*

4.55 The Joint Standing Committee recommended that section 52 be amended to make its meaning 'clear and unambiguous.'<sup>135</sup> It found that 'an amendment of section 52(2) from 'must' (mandatory) to 'may' (discretionary) could assist in unlocking creativity in the establishment of advisory committees that better reflect the intent of obtaining advice from a broad spectrum of children and young people.'<sup>136</sup>

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<sup>134</sup> *ibid*, p. 57.

<sup>135</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 157.

<sup>136</sup> *ibid*, see finding 18, p. 157.

- 4.56 The review concurs with the recommendation of the Commissioner and the Joint Standing Committee. It is desirable that independent statutory office holders such as the Commissioner should have discretion over the manner in which they undertake consultation. In this regard, reference is made to the view of the Select Committee which preceded the establishment of the Act that 'it is vital to keep any supporting legislation sufficiently flexible so that a Commissioner can be creative in obtaining the views of children and young people to be fully informed.'<sup>137</sup>

#### Recommendation 5:

That section 52(2) of the Act be amended to replace the word 'must' with 'may', to provide the Commissioner with a discretion as to the manner in which advisory committees are established.

## B. Substantive amendments raised in submissions to the review

### The age range of 'children and young people' covered by the Act

- 4.57 Section 5 of the Act defines 'children and young people' as people under 18 years of age. This is the position for all Commissioners and Guardians in all Australian jurisdictions. The Commissioner's submission notes that this has sometimes been an issue, particularly for some youth sector agencies whose mandate is to represent young people up to 24 or 25 years of age.<sup>138</sup>
- 4.58 In its recent review, the Joint Standing Committee heard evidence from Mr Wooller, Chairman of YACWA. One issue discussed was the differing age groups under the remit of YACWA, which represents young people aged 12 to 25, and that of the Commissioner.<sup>139</sup> Mr Wooller, stated:

*In many ways, I daresay, it would be useful for the commissioner to have responsibility for youth as well as for children because we have to interface with two different groups within government for our*

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<sup>137</sup> Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) 2004, *Final Report of the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children)*, Report No.2, Legislative Council, Parliament of Western Australia, , p. 71-2.

<sup>138</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 42.

<sup>139</sup> Joint Standing Committee on the Commissioner for Children and Young People 2011, *Examining the Exercise of the Functions of the Commissioner for Children and Young People, Transcript of Evidence taken at Perth Wednesday, 10 August 2011, Session Two*, Parliament of Western Australia, p. 2.

*population.*<sup>140</sup>

4.59 During the Commonwealth Senate Inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010 it was argued that the Commonwealth Commissioner's mandate should extend to young people aged up to 25 years because:

*The Commonwealth has lead or sole responsibility for matters relating to higher education, housing, housing assistance, income support, primary health care, employment and labour market assistance. These are all areas within which young people aged 18 to 25 could benefit from the independent analysis that a Commissioner could provide.*<sup>141</sup>

4.60 The ensuing *Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012* (Cth) that was recently passed by the Commonwealth Parliament, however, provides that 'children' means people under 18 years of age.<sup>142</sup> It is noted that no Australian State or Territory has extended the general definition of children and young people to those beyond 18 years.

4.61 Some jurisdictions have, however, provided the relevant commissioner with responsibilities relating to young people over 18 years if they are particularly vulnerable or disadvantaged. For example:

- The recent *Commission for Children and Young People Act 2012* (VIC) provides the Victorian Commissioner with additional functions in relation to 'vulnerable children and young persons.' Relevantly, these are defined in section 5 of that Act as including '(g) a person under the age of 21 years who is leaving, or who has left, the custody or guardianship of the Secretary to live independently.'
- The proposed Office of the Children's Commissioner in England would have some responsibilities relating to 18 to 24 year olds who live away from home or receive social care.<sup>143</sup>

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<sup>140</sup> *ibid*, p. 3.

<sup>141</sup> Berry Street, *Submission 74*, p. 4, quoted in the Senate Legal and Constitutional Affairs Legislation Committee 2011, *Commonwealth Commissioner for Children and Young People Bill 2010*, Department of the Senate, Parliament of Australia, p. 21.

<sup>142</sup> *Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012*, Clause 1, Schedule 1.

<sup>143</sup> Secretary of State for Education 2012, *Reform of the Office of Children's Commissioner: draft legislation*, The Stationery Office Limited, London, p. 26.

- The Representative for Children and Youth in British Columbia is also preparing for a potentially expanded mandate that will allow the Representative to ‘provide advocacy services to young adults between 19 and 24 years of age who are transitioning into the Community Living BC system and/or have received a reviewable service within 15 months of their 19th birthday.’<sup>144</sup>

4.62 The majority of submissions to the review did not comment on whether the current age range in the Act is appropriate or should be extended. Of those which did, opinions were fairly evenly divided on the issue, as summarised below:

- Anglicare WA considered that up to 18 years is appropriate.<sup>145</sup>
- The Department of Education commented that whilst there are some young people over 18 who retain the characteristics of children, the Department’s view is that they are protected by other relevant legislation.<sup>146</sup>
- The view of Community Health Nurses WA was that the age range of the Commissioner's responsibilities should not be expanded to include young adults, otherwise her primary role may be diluted.<sup>147</sup>
- The Department of Sport and Recreation’s view was that the age limit of less than 18 years is appropriate and in line with other States.<sup>148</sup>
- The Office of Multicultural Interests noted the variation in the defined age range and focus in relation to children and young people across different agencies that work with this cohort and queried whether inconsistency may undermine or prevent good outcomes for children and young people. It queried whether the ABS statistical standards for defining children (0-14 years) and youth/young people (15-24 years) could be used to adopt a consistent approach.<sup>149</sup>

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<sup>144</sup> Representative for Children and Youth 2012, *2011/2012 Annual Report and 2012/13 - 2013/14 Service Plan*, Representative for Children and Youth, British Columbia, p. 16.

<sup>145</sup> Anglicare WA, Submission to the Review, 26 February 2013, p. 1.

<sup>146</sup> Department of Education, Submission to the Review, 26 February 2013, p. 1.

<sup>147</sup> Community Health Nurses WA, Submission to the Review, 28 February 2013, p. 2.

<sup>148</sup> Department of Sport and Recreation, Submission to the Review, 7 March 2013, p. 2.

<sup>149</sup> Office of Multicultural Interests, Submission to the Review, 19 February 2013, p. 1.

- YACWA said that the Act should be sensitive to the developmental capacities and needs of children and young people and recommended that the age range be extended, at least in relation to vulnerable groups.<sup>150</sup>
- The consultation sessions with children and young people undertaken for the review gave rise to a variety of views. Some participants thought the age range should be lower ('If you're a teenager, an old teenager, then you want adult choices but we're talking about young kids so I think it should be 0 – 15' girl, 11<sup>151</sup>), some thought it should be increased to 25 ('people over 18 might need help from the Commissioner if they are disadvantaged' boy, 16; 'in America you aren't an adult until you're 21' boy, 15<sup>152</sup>) and others thought it should stay the same ('because it is the legal age and you have rights and responsibilities and are able to vote' girl, 15<sup>153</sup>; 'I don't think it should be changed because everyone sees people under 18 as a child'<sup>154</sup>). One suggestion was that there should be different commissioners for different age groups because each age has different needs and vulnerabilities ('maybe there is a need for a Commissioner for Young Adults and one for Young People'<sup>155</sup>; 'should be different age groups 1 – 6, 7 – 12, 12 – 18' boy, 14<sup>156</sup>). The submission from the CREATE Foundation noted that some young people who participated in the consultation session thought that the current age limit does not allow for the transition period from teenager to adult ('it should be at least to 20' boy, 15<sup>157</sup>).
- The submission from the Kids Matter/Mind Matters Reference Group said that consideration should be given to increasing the age range of people classified as youth to include those up to 21 years, to take into account those who may still be studying within the school system, and those transitioning from youth mental health services to adult services.<sup>158</sup>

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<sup>150</sup> Youth Affairs Council of Western Australia, Submission to the Review, 27 February 2013, p. 4.

<sup>151</sup> Sacred Heart Primary School, Consultation with children and young people – report, 19 February 2013, p. 7.

<sup>152</sup> CREATE Foundation, Submission to the Review, 1 March 2013, p.14.

<sup>153</sup> *ibid*, p. 14.

<sup>154</sup> WA Institute for Deaf Education, Consultation with children and young people – report, 12 February 2013, p. 5.

<sup>155</sup> *ibid*, p. 5.

<sup>156</sup> YMCA Perth (HQ), Consultation with children and young people – report, 23 February 2013, p. 8.

<sup>157</sup> *ibid*, p.13.

<sup>158</sup> Kids Matter/Mind Matters Reference Group, Submission to the Review, 1 March 2013, p.1.

- The submission from the Western Australian Council of Social Service (WACOSS) noted the inconsistency in the definition of ‘young people’ across different arenas, as well as the expansion of the age limit in some circumstances in Victoria. WACOSS was cognisant of the resource implications of increasing the age range, but contended there are advantages in applying consistent definitions across the government and community sectors, to improve the relevance and quality of the data gathered.<sup>159</sup>

- 4.63 The Commissioner’s submission notes that during her term the definition of children and young people as under 18 years has never precluded her from advocating for young adults where necessary. For example, in the *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia*, the Commissioner was clear that for the purposes of the Inquiry ‘children and young people’ included those up to 25 years of age<sup>160</sup> and a dedicated chapter on ‘Transition to Adulthood’ which outlined the transitional services required for young people aged 16 to 25 years was included.<sup>161</sup>
- 4.64 The Commissioner considers that ‘most issues that impact young people between the ages of 18 to 25 years also have some (if not equal) impact upon young people under the age of 18 years, and therefore fall comfortably within the scope of the Commissioner’s work’.<sup>162</sup>
- 4.65 The Commissioner’s submission also notes that the current definition of children and young people in the Act aligns with the legal status of adulthood – that is, those under 18 years of age. It also aligns with the United Nations Convention on the Rights of the Child which has been signed by all but two countries in the world and applies only to people under the age of 18 years.<sup>163</sup> The Commissioner’s submission also suggested, however, that consideration could be given to providing the Commissioner with a discretion to refer to young people up to 25 years of age in some circumstances.

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<sup>159</sup> Western Australian Council of Social Service, Submission to the Review, 8 March 2013, p.6.

<sup>160</sup> Commissioner for Children and Young People 2011, *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia*, Commissioner for Children and Young People, Western Australia, p. 30.

<sup>161</sup> *ibid*, p. 157.

<sup>162</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 44.

<sup>163</sup> *ibid*, p. 44.

- 4.66 While the age limit may not be significant in practice in relation to the exercise of the Commissioner's broad advocacy functions, it could be significant to the exercise of some of the Commissioner's more specific functions. In particular, it would be relevant if the Commissioner is given a child abuse complaints support function. For example, the target audience of the information and awareness raising element of that function would vary in accordance with any change to the age range within the Act's jurisdiction. In addition, persons over the age of 18 would not commonly be regarded as able to be victims of 'child abuse', and certainly not within the meaning of the relevant terms in the *Children and Community Services Act 2004* or the Criminal Code.
- 4.67 The review considers that persons over the age of 18 years are generally regarded as adults who are entitled to vote and are capable of otherwise self advocating for their best interests, safety and wellbeing. While the review acknowledges that there are some vulnerable members of the community who may benefit from representation by the Commissioner up to the age of 25, it is considered that the issues facing these groups (for example homelessness, mental health and disability) are capable of being addressed as part of the Commissioner's advocacy functions with respect to vulnerable children and young people generally. As the Commissioner has identified, most issues that impact people aged between 18 and 25 years may also have equal impact on children and young people under 18 years of age. The Commissioner's experience has demonstrated that the age definition in the Act has not precluded the interests of vulnerable people up to 25 years of age being addressed as a corollary of the exercise of the Commissioner's advocacy functions in relation to children and young people under 18 years.
- 4.68 On the basis of the submissions to the review, the broad operation of the Act to date and consistency with legislation in place in other jurisdictions, the review does not consider that there are compelling reasons why the age range under the Act should be increased. In addition, there may be a risk of diverting the Commissioner's focus and resources if the age range of persons within the Act's remit is expanded.
- 4.69 The review notes that the issue of whether the current age range of children and young people within the Act's remit should be increased does not appear to have been considered by the Joint Standing Committee to date.

## Recommendation 6:

While the review notes that opinions among some stakeholders are divided on this issue, on the basis of the submissions to the review, the operation of the Act to date and consistency with legislation in place in other jurisdictions, the review recommends that the age range within the Act remain unaltered.

### Power to appoint a Deputy Commissioner (no provision in the Act at present)

- 4.70 The Commissioner's submission explained that over the years there has been some debate as to whether there should be a Deputy Commissioner for Children and Young People with responsibility for issues in relation to Aboriginal and Torres Strait Islander children and young people. This proposal has its genesis in the 2002 Gordon Inquiry report. At paragraph 144 of Chapter 5, the Gordon Inquiry report recommended 'that a Children's Commissioner be established which is independent and reports directly to the Premier'<sup>164</sup> and that 'the proposed Children's Commissioner should have a Deputy Children's Commissioner with responsibility for issues in relation to Aboriginal children.'<sup>165</sup>
- 4.71 As the Commissioner's submission points out, this recommendation was made in recognition of Aboriginal children's vulnerability and because of the level of family violence and child abuse within Aboriginal communities.<sup>166</sup>
- 4.72 In the course of developing the model for the children's commissioner, the Select Committee considered whether there should be a Deputy Commissioner for Aboriginal children and young people. It stated that it had received:

*support for the concept of a deputy commissioner from two sources. The Hon David Malcolm AC, Chief Justice of Western Australia, said a deputy would be useful because of the commissioner's numerous functions. The YLS [Youth Legal Service Inc Western Australia] said it endorses recommendation 145 of the Gordon Inquiry Report which proposed a "...Deputy Children's Commissioner with responsibility for issues in relation to Aboriginal children".<sup>167</sup>*

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<sup>164</sup> Gordon, S, Hallahan, K & Henry, D 2002, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of the Premier and Cabinet, Western Australia, p. 494.

<sup>165</sup> *ibid*, p. 494.

<sup>166</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 48.

<sup>167</sup> Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) 2004, *Final Report of the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children)*, Report No.2, Legislative Council, Parliament of Western Australia, p. 48.

4.73 However, the Select Committee did not recommend that a position of Deputy Commissioner be established. The Committee:

*while recognising the particular disadvantages experienced by Aboriginal children and young people, rejected the call for a deputy commissioner to specifically represent them. The Committee resolved that a commissioner for all children was the best option.*<sup>168</sup>

4.74 Recently, the Joint Standing Committee had regard to whether the Act should provide for a Deputy Commissioner position with an emphasis on Aboriginal children and young people. In addition to the above mentioned reports, the Joint Standing Committee referred to Parliamentary debate on the issue during the passage of the Commissioner for Children and Young People Bill 2005.

4.75 The Joint Standing Committee noted that Hon Dr Elizabeth Constable, MLA, argued that the Bill should be amended to include a 'dedicated deputy commissioner for the needs of Aboriginal children', stating that:

*it is really important, because there are so many issues that many of us are concerned about to do with Aboriginal children. ... There is deep concern with all aspects of the welfare of Aboriginal children, including education, drugs and health. To have that dedicated person would be a great follow-on from the Gordon report and a very important part of the office of the Commissioner for Children and Young People.*<sup>169</sup>

4.76 Then Minister for Community Development, Hon Sheila McHale, MLA, did not endorse the Gordon Inquiry report's recommendation for a Deputy Commissioner, saying that she wanted:

*the issues of Aboriginal children elevated to the role of the commissioner, not necessarily the role of the deputy commissioner. Issues affecting Aboriginal children are significant and they do not necessarily affect other vulnerable groups, such as children with disabilities, although the disability lobby group might claim that people with disabilities should have a special person, as might people from non-English speaking or culturally and linguistically diverse groups.*<sup>170</sup>

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<sup>168</sup> *ibid*, p. 50.

<sup>169</sup> Hon Dr Elizabeth Constable, MLA, Western Australia, Legislative Assembly 16 August 2005, *Parliamentary Debates* (Hansard), p. 27 of pp. 3975b-4012a.

<sup>170</sup> Hon Sheila McHale, MLA, then Minister for Community Development, Western Australia, Legislative Assembly 16 August 2005, *Parliamentary Debates* (Hansard), p. 27 of pp. 3975b-4012a.

4.77 The WA Parliament ultimately legislated to establish a Commissioner for all children and young people. However, it also directed the Commissioner to give priority and special regard to the interests and needs of Aboriginal and Torres Strait Islander children and young people (section 20(1)(a)).

4.78 The Commissioner's submission summarises the divergent views in relation to whether the Act should mandate the appointment of a Deputy Commissioner as follows:

*those in support of a Deputy Commissioner argue that the specific needs of Aboriginal children are so great that they require a dedicated person to attend to them. Those who do not favour this approach believe that the Commissioner should be a Commissioner for all children, and consider there is a risk that Aboriginal children's needs would be delegated to the Deputy Commissioner rather than being a priority of the Commissioner.*<sup>171</sup>

4.79 This issue attracted a reasonable degree of comment in the submissions to the review, which is summarised as follows:

- Anglicare WA said it would prefer to see an increased emphasis on vulnerable children and young people in general.<sup>172</sup>
- The Mental Health Commission said rather than a Deputy Commissioner position being established, which may marginalise rather than mainstream the interests of Aboriginal children and young people, consideration should be given to what additional resources would work best to more effectively promote and improve their wellbeing. This would ensure that the work to address Aboriginal and Torres Strait Islander disadvantage would remain central to the work of the Commissioner as a whole.<sup>173</sup>
- The Aboriginal Legal Service called for a permanent advisory committee on issues affecting Aboriginal children and young people to be established, to help the Commissioner maintain focus on this priority group.<sup>174</sup>

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<sup>171</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 48.

<sup>172</sup> Anglicare WA, Submission to the Review, 26 February 2013, p. 5.

<sup>173</sup> Mental Health Commission, Submission to the Review, 6 March 2013, p. 3.

<sup>174</sup> Aboriginal Legal Service, Submission to the Review, 28 February 2013, p. 2.

- Community Health Nurses WA supported the introduction of this role to be responsible for Aboriginal and Torres Strait Islander infants, children and young people.<sup>175</sup>
- WACOSS supported the inclusion in the Act of a provision similar to that within the *Commission for Children and Young People Act 2012* (VIC), which provides for an additional principal Commissioner to be appointed as and when required. This would provide a mechanism to ensure that the interests of Aboriginal and Torres Strait Islander children and young people are addressed at the Commissioner level.<sup>176</sup>
- The Department of Sport and Recreation supported the introduction of a Deputy Commissioner role, to give voice to this under represented group.<sup>177</sup>
- Save the Children Australia said that the special status of Aboriginal and Torres Strait Islander people as the First Peoples of Australia could be recognised by a dedicated role such as Deputy Commissioner.<sup>178</sup>
- The Royal Australasian College of Physicians' view was that the interests of Aboriginal and Torres Strait Islander children and young people should be primarily supported by the Commissioner, assisted by a Deputy Commissioner, with culturally appropriate consultation undertaken with Aboriginal and Torres Strait Islander children and young people.<sup>179</sup>
- The submissions from YACWA and the KidsMatter/MindMatters Reference Group supported the appointment of a Deputy Commissioner for Aboriginal and Torres Strait Islander children and young people, but said that the needs of other vulnerable and disadvantaged children and young people may also require specific representation.<sup>180</sup>

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<sup>175</sup> Community Health Nurses WA, Submission to the Review, 28 February 2013, p. 3.

<sup>176</sup> Western Australian Council of Social Service, Submission to the Review, 8 March 2013, pp. 7-8.

<sup>177</sup> Department of Sport and Recreation, Submission to the Review, 7 March 2013, p. 3.

<sup>178</sup> Save the Children Australia, Submission to the Review, 10 March 2013, p. 10.

<sup>179</sup> Royal Australasian College of Physicians WA, Submission to the Review, 11 March 2013, p. 2.

<sup>180</sup> Youth Affairs Council of Western Australia, Submission to the Review, 25 February 2013, p. 7; KidsMatter/MindMatters, Submission to the Review, 1 March 2013, p. 2.

- 4.80 The Joint Standing Committee's view was that, rather than resulting in Aboriginal interests being sidelined, a Deputy Commissioner for Aboriginal children and young people 'might actually strengthen the overall work of the Commissioner by having that senior person.'<sup>181</sup>
- 4.81 The Act contains a number of mechanisms to ensure that the issues affecting Aboriginal and other groups of vulnerable children and young people are afforded appropriate priority by the Commissioner. In particular, section 20 obliges the Commissioner, in performing his or her functions under the Act, to give priority to, and have special regard to, the interests and needs of:
- (i) *Aboriginal and Torres Strait Islander children and young people; and*
  - (ii) *Children and young people who are vulnerable or disadvantaged for any reason.*
- 4.82 This elevates the needs and interests of these groups of children and young people to the highest level under the Act. The Mental Health Commission submitted that this broad reference to 'vulnerable or disadvantaged for any reason' is preferable to prescribing a list of additional categories of children, so that the Commissioner can consider the term in its widest and multiple senses.<sup>182</sup>
- 4.83 The review considers that advisory committees under section 52 also provide a potential mechanism for the Commissioner to ensure that the interests of particular groups of children and young people are taken into account in the performance of the Commissioner's functions. One means of ensuring that the Commissioner remains in an ongoing position to advocate for and address the needs and interests of Aboriginal and Torres Strait Islander children would be through the formation of an advisory committee with representatives of non-government agencies concerned with the rights, interests and wellbeing of Aboriginal and Torres Strait Islander children and young people. It would also be open to the Commissioner to form advisory committees to represent the needs and interests of other groups of vulnerable children and young people if the Commissioner considered this would assist his or her obligation under the Act to have special regard to those needs and interests.

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<sup>181</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 33.

<sup>182</sup> Mental Health Commission, Submission to the Review, 6 March 2013, p. 1.

- 4.84 It is noted that neither the *Public Sector Management Act 1994* nor the *Corruption and Crime Commission Act 2003* provide for a Deputy Commissioner as a statutory position. The *Auditor General Act 2006* and the *Parliamentary Commissioner Act 1971*, however, both provide for a statutory deputy position.
- 4.85 There is not, however, anything in the Act to prevent the Commissioner from administratively establishing a position of Deputy Commissioner within his or her office structure and allocating it such functions and responsibilities as the Commissioner sees fit.
- 4.86 The review considers that mandating a Deputy Commissioner position in the Act risks detracting focus from or marginalising Aboriginal children and young people, and that they should remain the priority of the Commissioner herself. It is also considered that the Commissioner should retain the discretion to decide the structure of his or her office in accordance with relevant areas of need and priority.
- 4.87 Rather than mandating the establishment of a position of Deputy Commissioner, the review considers that the Commissioner should retain the discretion and flexibility to use the existing mechanisms available under the Act to ensure that the interests of Aboriginal and Torres Strait Island children and young people, or other priority groups, are addressed. These include the establishment of advisory committees under section 52 of the Act and the administrative creation of a position of Deputy Commissioner within the Commissioner's office structure, where there is a demonstrated need, and resulting funding, for such.

#### **Recommendation 7:**

That the Act should not be amended to mandate the creation of a Deputy Commissioner for Aboriginal and Torres Strait Island children and young people, who should remain a priority of the Commissioner him or herself under the Act.

#### **Process to ensure the Commissioner's opportunity to comment on draft policies and legislation**

- 4.88 Section 19(g) of the Act provides that the functions of the Commissioner include 'to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people.' Related to this, section 19(l) provides that the Commissioner is also 'to consider, and make recommendations in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Joint Standing Committee.'

- 4.89 A number of submissions<sup>183</sup> received by the review referred to the need to ensure that the Commissioner is given the opportunity to review and comment on draft legislation and policies, consistent with her function to do so under section 19(g) of the Act.
- 4.90 Mandating in the Act a requirement for government agencies to refer all draft policies and legislation that impact on children and young people to the Commissioner for comment would be resource intensive for agencies and the Commissioner and problematic in operation.
- 4.91 Agencies are subject to a requirement, in the Cabinet Handbook, to consult with relevant stakeholders in the course of developing proposals that are to be submitted for Cabinet's consideration, to ensure that all relevant information and views are provided for Cabinet to make an informed decision. In relation to proposed policies and other initiatives that will have an impact on children and young people, this will include consultation with the Commissioner. The Cabinet Secretariat has a role in ensuring that relevant consultation has occurred prior to a matter being presented for Cabinet's consideration.
- 4.92 Governments have in the past used the Cabinet referral process to ensure that the impacts on priority groups of policies and legislation submitted for Cabinet's consideration are identified and addressed prior to finalisation. In this way, the Cabinet Secretariat could perform a quality assurance role, to ensure that the Commissioner has been consulted in relation to high level policies and legislation that impact on children and young people.

#### **Recommendation 8:**

That the feasibility of the Cabinet referral process being used as a mechanism to help ensure that the Commissioner has been consulted in relation to significant policies and legislation that impact on the wellbeing of children and young people be raised with the Cabinet Secretary.

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<sup>183</sup> For example: Hon Barbara Scott, Submission to the Review, 26 February 2013, Attachment titled 'Requirement to Seek Views of the Commissioner', pp. 1-2; Professor Stephen Zubrik, Submission to the Review, 25 February 2013, p.1; Telethon Institute for Child Health Research, Submission to the Review, 27 February 2013, p. 1; Anglicare WA, Submission to the Review, 26 February 2013, p. 2.

## C. Other amendments identified in the Joint Standing Committee’s recent review of the exercise of the functions of the Commissioner

### The term of the Commissioner’s office (section 9)

4.93 Section 9 of the Act provides that the term of office for the Commissioner for Children and Young People is up to five years, renewable once. The table below indicates the term of office for the equivalent positions in other jurisdictions.

**Table 3: Terms of office for Australian Children’s Commissioners and Guardians**

Position	Term of Office (as specified in relevant legislation)
National Children’s Commissioner	The Commissioner may be appointed for a term of up to seven years and, in accordance with section 33AA of the <i>Acts Interpretation Act 1901</i> (Cth), is eligible for reappointment. <sup>184</sup>
NSW Commission for Children and Young People	The Commissioner may not be appointed for a term that exceeds five years and may not be appointed for more than two successive terms of office. <sup>185</sup>
NSW Children’s Guardian	The Children’s Guardian may not be appointed for a term that exceeds five years and may not be appointed for more than two successive terms of office. <sup>186</sup>
ACT Children & Young People Commissioner	The Children and Young People Commissioner must not be appointed for a term of longer than five years. <sup>187</sup>
QLD Commissioner of Children and Young People and Child Guardian	The term of the Commissioner must not be longer than five years. <sup>188</sup>

<sup>184</sup> *Australian Human Rights Commission Act 1986* (Cth), section 46MD.

<sup>185</sup> *Commission for Children and Young People Act 1998* (NSW).

<sup>186</sup> *Children and Young Persons (Care and Protection) Act 1998* (NSW).

<sup>187</sup> *Human Rights Commission Act 2005* (ACT).

<sup>188</sup> *Commission for Children and Young People and Child Guardian Act 2000* (QLD).

Position	Term of Office (as specified in relevant legislation)
SA Guardian for Children and Young People	The Guardian holds office for the term (not exceeding 5 years) stated in the instrument of appointment and is then eligible for re-appointment. <sup>189</sup>
TAS Commissioner for Children	The Commissioner holds office for such term, not exceeding 3 years, as is specified in the instrument of appointment. <sup>190</sup>
VIC Commission for Children and Young People (as of March 2013)	The Principal Commissioner or a Commissioner holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment and is eligible for re-appointment. <sup>191</sup>
NT Children's Commissioner	The Commissioner holds office for the period (not exceeding 5 years) specified in the appointment and is eligible for re-appointment. <sup>192</sup>

4.94 As the table shows, a five year term is the most frequent term of office for Commissioners and Guardians in other jurisdictions.

4.95 The Joint Standing Committee had regard to this common five year term. However, it went on to recommend that the Act should be amended to provide for a single term of office for the Commissioner for Children and Young People of eight years, stating that it would 'increase the Commissioner's independence.'<sup>193</sup>

4.96 Few submissions commented on this aspect of the Act. Of those which did:

- the Commissioner did not hold a strong view about whether the tenure of the office for the Western Australian Commissioner should remain as five years or be increased.<sup>194</sup>

<sup>189</sup> *Children's Protection Act 1993* (SA).

<sup>190</sup> *Children, Young Persons and Their Families Act 1997* (TAS).

<sup>191</sup> *Commission for Children and Young People Act 2012* (VIC)

<sup>192</sup> *Care and Protection of Children Act 2007* (NT)

<sup>193</sup> See Recommendation 4; Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, pp. 23–24.

<sup>194</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 46.

- Anglicare WA said that a five year term is appropriate and two terms is sufficient.<sup>195</sup>
- the Department of Sport and Recreation said that a five year term is appropriate as it allows for sufficient progress, review and evaluation work to be undertaken.<sup>196</sup>
- YACWA recommended an eight year term to provide greater confidence to implement long term strategies over changing political landscapes.<sup>197</sup>

4.97 It is noted that some other independent statutory office holders in Western Australia, namely the Public Sector Commissioner, Corruption and Crime Commissioner and the Ombudsman are appointed for five year terms.<sup>198</sup> Others are appointed for a longer term: the Inspector of Custodial Services is appointed for up to seven years<sup>199</sup>, the Auditor General, is appointed for a (non-renewable) term of 10 years<sup>200</sup> and the Freedom of Information Commissioner is appointed for a term of up to seven years<sup>201</sup>.

4.98 Given the consistency of the five year term of office with other jurisdictions and the lack of any evidence or suggestion that a five year term has impeded the independence or operations of the Commissioner or otherwise been problematic, it is recommended that section 9 remain unchanged.

#### Recommendation 9:

That the term of office of the Commissioner (5 years and eligible to be reappointed once) under section 9 of the Act remain unchanged.

<sup>195</sup> Anglicare WA, Submission to the Review, 26 February 2013, p. 1.

<sup>196</sup> Department of Sport and Recreation, Submission to the Review, 7 March 2013, p. 2.

<sup>197</sup> Youth Affairs Council Western Australia, Submission to the Review, 27 February 2013, p. 5.

<sup>198</sup> See *Public Sector Management Act 1994*, section 17; *Corruption and Crime Commission Act 2003*, Schedule 2, clause 1, *Parliamentary Commissioner Act 1971*, section 5(3).

<sup>199</sup> *Inspector of Custodial Services Act 2003*, section 6.

<sup>200</sup> *Auditor General Act 2006*, Schedule 1, clause 1(4).

<sup>201</sup> *Freedom of Information Act 1992*, section 56(2).

## Whether the Commissioner's functions under section 19 are mandatory or discretionary

4.99 One of the issues considered in the Joint Standing Committee's recent report *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*<sup>202</sup> was whether the functions of the Commissioner set out in section 19 of the Act are mandatory or discretionary. As outlined in Chapter 2 of this report, section 19 provides the Commissioner with a list of 15 functions.

4.100 The Joint Standing Committee had regard to evidence presented to it by the Commissioner that she considered her functions under the Act to be discretionary: 'if I wanted to do everything completely, fully, under section 19, I would probably have a very large department.'<sup>203</sup>

4.101 The Joint Standing Committee noted that the issue of whether or not the Commissioner's functions were discretionary was not debated when the Bill was passed by Parliament. Its own observation was that:

*It does not seem reasonable that the Commissioner could consider, for example, function 19(a) 'to advocate for children and young people' or function 19(d) concerning monitoring of government agencies' handling of children and young people's complaints as discretionary.*<sup>204</sup>

4.102 The Joint Standing Committee noted that it would not be reasonable to expect a Commissioner to fulfill all of the section 19 functions in the first few years of office but commented that 'it does not consider that the functions intended by Parliament should be discretionary, or if that is the intention, they should be clearly identified as such.'<sup>205</sup>

4.103 The review disagrees with the view of the Joint Standing Committee set out above. Consistent with advice that has been received on the matter from the State Solicitor's Office, the review considers that the Commissioner has a discretion to determine how and when to carry out his or her functions. It is not possible and nor would it be necessary for the Commissioner to be carrying out all of their functions all of the time. The review considers that the Commissioner must carry out his or her functions as he or she sees fit having regard to the purpose

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<sup>202</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia.

<sup>203</sup> *ibid*, p. 20.

<sup>204</sup> *ibid*, p. 20.

<sup>205</sup> *ibid*, p. 20.

served by the Commissioner, his or her assessment of need, and budget and staffing allocations.

- 4.104 Responding to a request for advice to be given to the Minister made by the Minister or the Joint Standing Committee pursuant to section 19(k), however, is not a matter which is discretionary.
- 4.105 The Committee was also concerned that there is a degree of duplication in the Commissioner's functions set out in section 19(k) and section 19(l), which provide as follows:

*Section 19(k):*

*On the Commissioner's own initiative or at the request of the Minister or the Standing Committee, to advise the Minister on any matter relating to the wellbeing of children and young people.*

*Section 19(l):*

*To consider, and make recommendations in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Standing Committee.*

- 4.106 The Joint Standing Committee considered that the words 'or at the request of the Minister or the Joint Standing Committee' in section 19(k) are redundant as they duplicate the capacity under section 19(l).<sup>206</sup> The operation of these two subsections, however, is different. Whereas section 19(k) is focussed on the situation where the Commissioner is to provide advice to the Minister in relation to a matter that is referred to them, section 19(l) does not specify to whom any resulting recommendation may be made in relation to a matter referred to the Commissioner.

### **The scope of the Commissioner's complaints functions**

- 4.107 As outlined in Chapter 2, section 23(1) of the Act provides that it is not a function of the Commissioner to investigate or otherwise deal with a complaint made by, or any other matter relating to, a particular child or young person. Subsection 23(2)(c) provides an exception to the ban on investigating individual complaints, providing that the Commissioner is not precluded from 'investigating or otherwise dealing with any matter affecting the wellbeing of children and young people generally which is raised through a matter relating to a particular child or young person.'

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<sup>206</sup> *ibid*, p. 21.

- 4.108 The extent to which the Commissioner is able to investigate complaints from or in relation to children and young people was an issue of concern to the Joint Standing Committee in its recent report on *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*.
- 4.109 In the above mentioned review, the Joint Standing Committee had regard to Parliamentary debate at the time that the Act was passed about the extent to which it should provide for the Commissioner to investigate individual complaints from children and young people. This is the subject of further discussion in Chapter 5.
- 4.110 The Joint Standing Committee also considered evidence from the Commissioner, and the Ombudsman, in relation to the potential duplication of the functions of other investigative agencies, as well as the detraction from the Commissioner's broader systemic advocacy functions, which would potentially result if the Commissioner were to exercise an individual complaints handling function. Despite the Commissioner's concerns about those matters, the Joint Standing Committee remained of the view that the Commissioner should be able to exercise an individual complaints investigation function, at least as a person of 'last resort'.<sup>207</sup>
- 4.111 Following consideration of the limits on the scope and capacity of other complaint handling agencies, the Joint Standing Committee saw a potential gap in the existing processes available to children and young people, or people wishing to raise concerns on their behalf. The Committee's view was that:

*While the Committee does not see the Commissioner as the agency responsible for receiving and investigating all complaints from or relating to children and young people in Western Australia, it considers that there may be occasions when the Commissioner should be able to receive such a complaint and investigate it. Rather than being a specific preclusion in the CCYP Act, this should be a discretionary function of the Commissioner.*

*In addition to this, the Commissioner, as an agent of last resort, should be able to investigate individual cases or circumstances – not just complaints – that come to her attention. It is important that the Commissioner's functions do not preclude her from being able to scrutinise individual matters.*<sup>208</sup>

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<sup>207</sup> *ibid*, p. 139.

<sup>208</sup> *ibid*, p. 144.

4.112 The Joint Standing Committee did not go on to make any recommendation that the Act be amended to provide the Commissioner with a power to investigate individual complaints, in exceptional circumstances or otherwise.

4.113 The Joint Standing Committee did, however, focus on the scope provided in section 23(2)(c) for the Commissioner to investigate individual cases where the Commissioner considers that they raise systemic issues. The Report states that:

*The Committee appreciates the apparent reluctance of the Commissioner to undertake this [section 23(2)(c)] function in a more direct or involved way, and her concerns about duplicating the functions of other agencies such as the Ombudsman or the Department for Child Protection.*

*Nevertheless, the Committee notes that agencies such as the Ombudsman and the Equal Opportunity Commission have a complaints resolution function, whereas what is required of the Commissioner is to be alert to individual cases and circumstances, and the possibility that they may be symptomatic of a greater underlying systemic issue.<sup>209</sup>*

4.114 Relevantly, the Joint Standing Committee recommended that:

*The Commissioner for Children and Young People Act 2006 be amended to clarify that the Commissioner has the power to investigate matters arising from children and young people's complaints or individual circumstances when such matters impact generally on the wellbeing of children and young people and to remove any perceived ambiguity in relation to section 23(2)(c).<sup>210</sup>*

4.115 To assist the review in determining whether section 23(2)(c) requires amendment to address any ambiguity, the review sought advice from the State Solicitor's Office. Having regard to that advice, the review does not consider that there is any ambiguity in section 23(2)(c) or otherwise in the Act that needs to be addressed in relation to the extent to which the Commissioner is able to investigate individual complaints.

4.116 Subsections 19(d) and 19(e) of the Act each refer to 'complaint/s made by children and young people'. Subsections 23(1) and 23(2)(c) relate to a complaint made by, or a matter relating to, a particular child or young person. That is, the complaints functions of the Commissioner are centred on complaints made by

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<sup>209</sup> *ibid*, p. 146.

<sup>210</sup> *ibid*, p. 147.

children and young people themselves. This was an issue of concern to the Joint Standing Committee:

*Children and young people, particularly those with serious complaints, may not know how to complain. An agency may have a best-practice complaints handling process but still not be accessed by children and young people. It may also be the case that children and young people would feel more comfortable and less vulnerable in making a complaint to the Commissioner for Children and Young People. Consideration also needs to be given to the fact that children and young people may want to raise a matter or make a complaint about the very agency to which the Commissioner is required to refer them.<sup>211</sup>*

4.117 The review shares the Joint Standing Committee's concern that these sections are limited to complaints and matters raised by children and young people themselves. The Commissioner's function is to advocate for and support the best interests of children and young people and at times adults will need to lodge complaints on behalf of children and young people who are not capable or comfortable in doing it themselves. Indeed, some of the government agencies monitored by the Commissioner in relation to the way in which they deal with complaints made by a child or young person may be more likely to receive complaints from adults acting on their behalf.

4.118 Consistent with this view, the child abuse complaints support function recommended for the Commissioner in Chapter 5 includes an ability to receive child abuse complaints from children or adults acting in good faith on their behalf.

#### **Recommendation 10:**

That the Act be amended to ensure that the Commissioner's complaints related functions in sections 19 and 23 of the Act are inclusive of complaints made by an adult acting in good faith on behalf of a child or young person.

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<sup>211</sup> *ibid*, p. 141-2.

## D. Amendments to facilitate recommended changes to the Act resulting from the review of the WWC Act and any other relevant legislative reviews or reports

### Repeal of clause 3 of Schedule 1 in relation to the WWC Act

4.119 Clause 3 of Schedule 1 to the Act contains amendments to the WWC Act which if proclaimed would have the effect of transferring responsibilities in relation to the Working With Children Check (WWCC) from the DCPFS to the Commissioner. Because this clause has not been proclaimed, DCPFS has administered the WWCC since the WWC Act commenced in January 2006.

4.120 The Commissioner's submission refers to advice that she received from DCPFS in February 2011 that a team of approximately 40 to 45 staff within DCPFS currently carry out the screening, administration and community education roles associated with the WWCC.<sup>212</sup>

4.121 The Commissioner's submission also noted that:

*Since her appointment the Commissioner has presented the view to the Attorney General and to the Standing Committee that the WWCC is not an appropriate function for her office... the role of the Commissioner, as stipulated in sections 19 and 20 of the Act, is primarily to be an advocate for the wellbeing of children and young people throughout Western Australia. The application of an administrative function – particularly one as extensive as the WWCC – would likely divert the focus and resources of the office away from its advocacy role.<sup>213</sup>*

4.122 To coincide with a statutory review being undertaken of the WWC Act, the Joint Standing Committee examined this issue in *Report No. 8, Report on the Functions of the Commissioner for Children and Young People: Working with Children Checks*. The Committee found that 'the administration of the [WWC Act] is not an appropriate function for the Commissioner for Children and Young People.'<sup>214</sup>

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<sup>212</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 64.

<sup>213</sup> *ibid*, p.64.

<sup>214</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *Report on the functions of the Commissioner for Children and Young People: Working with children checks*, Legislative Assembly, Parliament of Western Australia, p. 6.

- 4.123 The report on the *Review of the Working With Children (Criminal Record Checking) Act 2004* was tabled in Parliament in July 2012. The report concurred with the view of the Joint Standing Committee that clause 3 of Schedule 1 should be repealed.<sup>215</sup>
- 4.124 Of the submissions to the review that commented on this issue, there was unanimous support for the repeal of clause 3 of schedule 1 of the Act.
- 4.125 The review concurs with the view of the Joint Standing Committee and the review of the WWC Act that clause 3 of Schedule 1 of the Act should be repealed, as undertaking the WWCC role is not an appropriate function for the Commissioner.

#### **Recommendation 11:**

That clause 3 of Schedule 1 of the Act, regarding the *Working With Children (Criminal Record Checking) Act 2004*, be repealed.

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<sup>215</sup> Guest, L 2012, *Review of the Working With Children (Criminal Record Checking) Act 2004*, Western Australia.

# 5. Amendments to provide the Commissioner with a child abuse complaints support function

## Background

5.1 Term of Reference 3 required the review to:

*Examine what amendments to the Act are necessary to enable the Commissioner for Children and Young People to operate as a 'one stop shop' for any complaint concerning child abuse regardless of the public sector agency that the matter relates to, as per recommendation 2 of the Inquiry into St Andrew's Hostel.*

Term of reference 3 is the subject of this Chapter.

## The Inquiry into St Andrew's Hostel

5.2 In November 2011 the Public Sector Commissioner appointed the Hon Peter Blaxell (the Special Inquirer) to conduct a Special Inquiry under section 24H of the *Public Sector Management Act 1994* into the response of public officials to allegations of sexual abuse at St Andrew's Hostel in Katanning (the Blaxell Inquiry). The Terms of Reference for the Blaxell Inquiry were:

1. *Examine when any allegations were made, who they were made to, what action was taken in response to those allegations, and the appropriateness of any action taken.*
2. *Consider any evidence of allegations of sexual abuse by any person at or connected with the hostel or related organisations.*
3. *Report with:*
  - *Findings about why the behaviour of staff the subject of allegations at St Andrew's Hostel was able to continue for an extended period; and*
  - *Recommendations on:*
    - *any disciplinary action that should be taken against any public official as a consequence of the findings; and*
    - *any changes that should be made to the policies, procedures or operations of relevant government agencies as a consequence of the findings.*

*Any issues which go to criminal behaviour that arise in the course of the inquiry will be referred to the WA Police.*

- 5.3 The report *St Andrew's Hostel Katanning: How the system and society failed our children* (the Blaxell Inquiry Report) was tabled in Parliament on Wednesday 19 September 2012.<sup>216</sup> The Blaxell Inquiry Report considered evidence in relation to abuse in a number of hostels around Western Australia but is confined principally to abuse at the St Andrew's Hostel in Katanning while it was under the wardenship of Mr Dennis McKenna.
- 5.4 The Blaxell Inquiry Report makes a considerable number of findings in relation to the failure of public officials to act on allegations of abuse within the hostel. The Special Inquirer found that systemic factors which contributed to the abuse occurring, and continuing for so long, related to the general environment at the time, factors specific to the victims that made it difficult for them to report the abuse, and factors relating to the people who received allegations and failed to respond.
- 5.5 Factors noted by the Special Inquirer that contributed to the difficulties for victims in raising their concerns were: shame; lack of terminology for sexual abuse; lack of avenues to make a complaint and lack of knowledge about how or who to make a complaint to and fear of retribution, of getting in trouble or of not being believed.
- 5.6 Factors relating to people who received allegations and failed to act were: disbelief; desire to uphold the reputation of the Hostel (or other program benefits); and fear of defamation proceedings.
- 5.7 The Blaxell Inquiry Report acknowledged that there had been a significant shift in community attitudes toward child abuse, as well as the responses of government agencies to such offending. However, it also identified areas where government policies and operations could be improved to help protect against future instances of abuse. Recommendation 2 of the Blaxell Inquiry Report is the subject of Term of Reference 3 of this review and is:

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<sup>216</sup> Hon Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly 19 September 2012, *Parliamentary Debates* (Hansard), p. 4 of pp. 6137b-6142a. Available at: [http://www.publicsector.wa.gov.au/sites/default/files/documents/st\\_andrews\\_hostel\\_katanning\\_-\\_2012\\_report.pdf](http://www.publicsector.wa.gov.au/sites/default/files/documents/st_andrews_hostel_katanning_-_2012_report.pdf).

*That the State Government develop a function and role within or across central and independent agencies to fulfil a robust child focussed central complaints system that is a 'one stop shop' for any complaint concerning child abuse regardless of the public sector agency that the matter relates to.*

*A central agency taskforce should be established to consider and recommend the most appropriate agency or agencies to be responsible for fulfilling this function, and to recommend the steps necessary for ensuring that complainants/informants utilising such a system do not fear legal liability as a result of contacting the agency.<sup>217</sup>*

5.8 The Blaxell Inquiry Report made a number of additional comments regarding the purpose and function of the 'one stop shop' complaints system (see Note on terminology below) proposed in Recommendation 2, stating:

*Such a role within an existing agency or in conjunction with other appropriate central bodies must:*

- Promote disclosure of complaints by providing appropriate and diverse avenues. This would include use of technology, ensuring multiple mechanisms for complaints, and promoting an open and approachable avenue for all individuals.*
- Recognise the potentially different needs and access levels for children and young people in regional areas with consideration of regular visitor programs that enable the building of relationships and confidence in the system.*
- Be able to receive complaints of child abuse related to public sector programs and services run or contracted by public sector agencies. This would include facilities contracted by any agency which provides services on behalf of Government to children and young people.*
- Provide independence from the agency the subject of a complaint and enable determination of the initial response to the complaint independently of that agency.*
- Facilitate referral of the complaint to an appropriate existing agency and oversee this referral as well as the outcome of the process.*
- Provide or facilitate support for the individual making the complaint (throughout the complaint process and its immediate aftermath) and allow self-identification of their needs.*

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<sup>217</sup> Blaxell, P 2012, *St Andrew's Hostel Katanning: How the system and society failed our children – A Special Inquiry into the response of government agencies and officials to allegations of sexual abuse*, Public Sector Commission, Western Australia, p. 341.

- *Ensure when a complaint is made in the belief that it is or may be true that the person making the complaint is protected from civil or criminal liability in respect of the same (similar to voluntary reporting provisions of the Children and Community Services Act 2004).*<sup>218</sup>

5.9 When tabling the Blaxell Inquiry Report in Parliament, the Premier accepted all of the Inquiry's recommendations. In relation to recommendation 2 the Premier said:

*The Government has selected the Commissioner for Children and Young People as the preferred body to perform the one stop shop complaints role recommended by the inquiry to prioritise the welfare of children in any government facility. This does not replace or duplicate current reporting options. It provides a mechanism to support children or young people in making such a complaint. In some cases a child or young person may feel more comfortable in making a complaint directly to the Commissioner as this office is removed from direct service delivery. The Commissioner is a child-friendly advocate for children and young people and is well placed to support any person requiring assistance to make a complaint of child abuse independent of the investigative bodies to whom such complaints may be referred. The community must have faith that allegations of child abuse will be given the serious attention they deserve by the relevant government agencies and investigative bodies.*<sup>219</sup>

5.10 The Premier's comments provide some indication of the Government's reasoning at the time in selecting the Commissioner as the preferred body to provide the independent source of referral and support for child abuse complainants that was recommended by the Inquiry, namely:

- the child friendliness of the Commissioner
- the independence of the Commissioner from other bodies to whom child abuse complaints may be referred
- the need to not duplicate the role of other investigative agencies.

5.11 The aims in conferring a complaints function on the Commissioner were identified by the Premier as:

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<sup>218</sup> *ibid*, p. 340.

<sup>219</sup> Hon Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly 19 September 2012, *Parliamentary Debates* (Hansard), p. 3 of pp. 6137b-6142a.

- helping to prioritise the welfare of children in government facilities
- increasing community confidence that allegations of child abuse in government facilities would be given the serious attention they deserve.

5.12 In subsequent correspondence to the Joint Standing Committee, the Premier advised that he envisaged the key elements of the Commissioner's proposed new role as including:

- *Assisting and supporting children and young people, including those in regional areas, who seek to make a complaint of child abuse;*
- *Performing an education and awareness raising function in relation to the Commissioner's child abuse complaints functions;*
- *Promoting the receipt of complaints of child abuse through diverse means, including those that involve the use of technology commonly used by young people;*
- *Referring complaints of child abuse to relevant authorities;*
- *Oversighting the way in which relevant authorities, including those mentioned above, investigate or otherwise deal with complaints of child abuse, whether referred by the Commissioner or otherwise;*
- *Accessing information held by government agencies, their service providers and other relevant authorities, for the purpose of performing the child abuse complaints functions;*
- *Reporting independently to Parliament on the effectiveness of responses to complaints referred to relevant authorities by the Commissioner; and*
- *Ensuring that persons who seek assistance in good faith from the Commissioner to make a complaint of child abuse are protected from civil and criminal liability in so doing.<sup>220</sup>*

5.13 Note on terminology

Several submissions to the review identified that the term 'one stop shop' used in the Blaxell Inquiry Report to describe the recommended complaints function is misleading and could be misinterpreted, given that there are a number of agencies with a role in child abuse investigation. This was a concern that was shared by the review Reference Group, which resolved to adopt the term 'child focussed complaints support' rather than 'one stop shop' to describe the function recommended by the Inquiry. This is the terminology that has been adopted in this report.

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<sup>220</sup> Hon Colin Barnett, MLA, Premier of Western Australia 11 October 2012, Letter to the Joint Standing Committee on the Commissioner for Children and Young People.

## Scope of the Commissioner's complaints function at present

5.14 Consideration of whether the Commissioner should be given a child abuse complaints support function needs to have regard to the complaints functions which the Commissioner already has under the Act.

5.15 Firstly, the following sections provide the Commissioner with complaints monitoring functions:

Section 19(d)

*to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of that complaint.*

Section 19(e)

*to monitor the trends in complaints made by children and young people to government agencies.*

5.16 As described in Chapter 4, the review has recommended (see Recommendation 10) that these sections be amended to clarify their application to complaints made by an adult on behalf of a child or young person.

5.17 Secondly, section 23 defines the scope of the Commissioner's complaints investigation powers:

*Section 23*

**Commissioner not to deal with individual cases**

- (1) *It is not a function of the Commissioner to investigate or otherwise deal with a complaint made by, or any other matter relating to, a particular child or young person.*
- (2) *Subsection (1) does not preclude the Commissioner from –*
  - (a) *Providing a child or young person or his or her family with information about government and non-government programs and services;*
  - (b) *Referring a child or young person or his or her family to such programs or services; or*
  - (c) *Investigating or otherwise dealing with any matter affecting the wellbeing of children and young people generally which is raised through a matter relating to a particular child or young person.*

5.18 As the Joint Standing Committee has noted:

*the distinction being made in these two subsections [subsections 23(1) and (2)] of the CCYP Act is important. The Commissioner is not able to investigate or deal with complaints or other matters relating to particular children or young people, but is able to deal with issues raised through particular cases or matters.*<sup>221</sup>

5.19 The scope of the Commissioner's complaints investigation powers was the subject of considerable debate at the time that the Act was passed by the Western Australian Parliament. When introducing the Bill to Parliament, the (then) Minister for Community Development stated that:

*Complaints made by, or on behalf of, children will continue to be investigated by the existing complaint bodies. However, because it will be highly visible to children and young people, the Commissioner for Children and Young People will undoubtedly function as a referral point for children and help them access effective channels for complaint...*

*As is the case with the children's commissioner in New South Wales and those proposed for or established in England and Scotland, the commissioner is not to investigate complaints of an individual child. This is intended to avoid duplication and overlapping with the investigatory functions of other competent agencies, as well as to help avoid a potential conflict with the Commissioner's key advocacy role. However, the Commissioner will have extensive referral powers to deal with such complaints. In addition, if a case of an individual child raises systemic issues or matters relevant to other children, this may be subject of an inquiry or special inquiry.*<sup>222</sup>

5.20 The Government of the time rejected an amendment to the Bill put forward by the then Opposition to enable investigation of individual complaints where it is in the public interest. The Opposition had been concerned that 'no power is provided in the legislation for the commissioner to be able to investigate individual cases of child abuse or other matters of serious concern about an individual child.'<sup>223</sup> Hon

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<sup>221</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 135.

<sup>222</sup> Hon Sheila McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly 1 June 2005, *Parliamentary Debates* (Hansard), p.2 of pp. 2582b-2585a.

<sup>223</sup> Hon John Day, MLA, Western Australia, Legislative Assembly 16 August 2005, *Parliamentary Debates* (Hansard), p. 1 of pp. 2975b-4012a.

John Day, MLA, said that it should not be the Commissioner's usual or routine role to investigate individual cases, as 'the office would be completely overwhelmed if that were to occur.'<sup>224</sup> Rather, it was argued that the Commissioner should have the ability to 'investigate a special individual case, should the need arise.'<sup>225</sup>

5.21 Hon Colin Barnett, MLA, reiterated that:

*We do not want the commissioner inundated with thousands of inquiries. That is not the commissioner's role. It is the department's role to deal with individual cases of abuse of boys and girls or whatever else.*<sup>226</sup>

5.22 As noted above, in the form in which the Act was passed the Commissioner is not empowered to investigate individual complaints. However, individual cases can be the catalyst for a more general inquiry where the Commissioner is concerned that the issues raised may be systemic in nature. As stated above, section 23(2)(c) contemplates that the Commissioner may investigate or otherwise deal with a systemic matter that is raised through an individual complaint.

### **Views of submissions as to scope of the Commissioner's complaints function**

5.23 Of those submissions that commented on Term of Reference 3 of the review, there was a significant degree of support for the Commissioner having a role in providing the child focussed complaints support function recommended by the Blaxell Inquiry. Key reasons why the Commissioner was considered appropriate for this role were:

- the Commissioner's focus on engaging children and young people makes the office well suited to performing this role
- the Commissioner's independence from the agencies providing services and programs to children and young people will help build confidence in the complaints system.

5.24 For instance, in supporting the Commissioner as an easily accessible and trustworthy complaints mechanism for children and young people, the submission from YACWA said:

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<sup>224</sup> *ibid*, pp. 1 and 4 of pp. 2975b-4012a.

<sup>225</sup> *ibid*, p. 4 of pp. 2975b-4012a.

<sup>226</sup> Hon Colin Barnett, MLA, Western Australia, Legislative Assembly 16 August 2005, *Parliamentary Debates* (Hansard), p. 11 of pp. 2975b-4012a.

*It is reasonable to suggest that children and young people may be more apprehensive about voicing their concerns due to decreased knowledge regarding the extent and protection of their rights. It is thus imperative to ensure that children and young people have easily accessible and trustworthy complaints mechanisms that they can approach with regards to their concerns.*<sup>227</sup>

5.25 Of those submissions which commented on term of reference 3 and did not support the Commissioner exercising a complaints support role, a key concern was that it would compromise the Commissioner's ability to perform the broader advocacy and policy functions under the Act, which it was urged should have priority. Save the Children Australia, for example, said it 'could easily overwhelm and distract the office from its key strategic functions.'<sup>228</sup> WACOSS said that it would be a significant change in the role of the Commissioner were they to be responsible for the complaints support function and further consideration was warranted on how such a role would operate and dovetail with the Commissioner's other functions.<sup>229</sup>

5.26 The range of public sector mechanisms already in place to deal with child abuse was also raised as a factor against the Commissioner having a role in this area. For instance, in its submission, the Department of the Premier and Cabinet referred to the range of policy and legislative processes already in place to support Western Australia's child abuse reporting system and concluded:

*Given the comprehensive processes in place for the reporting and investigating of child abuse complaints, it would appear on balance that there is no need to amend the Commissioner for Children and Young People Act 2006 to act as a 'one stop shop' for these complaints, and that this role could be better undertaken by the Office of the Ombudsman which already has sufficient resources and processes in place to undertake this function.*<sup>230</sup>

5.27 Even among submissions that supported the Commissioner having a complaints support function, some expressed caution that it not be at the expense of the Commissioner's broader advocacy functions. Centrecare, for example, supported the Commissioner taking on a complaints support function but urged this to be balanced against the Commissioner's important role in promoting and advocating

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<sup>227</sup> Youth Affairs Council of Western Australia, Submission to the Review, 27 February 2013, p. 6.

<sup>228</sup> Save the Children Australia, Submission to the Review, March 2013, p. 8.

<sup>229</sup> Western Australian Council of Social Service, Submission to the Review, 8 March 2013, p. 14.

<sup>230</sup> Department of the Premier and Cabinet, Submission to the Review, 25 February 2013, p. 3.

the needs of children and young people, and assisting the community to appreciate its collective responsibility to protect and develop children. It said:

*There are too many examples where a government entity has taken on functions that are essentially contradictory. The end result is an entity that is conflicted in its function and unable to do any of its jobs properly ...*

*The addition of the proposed 'one stop shop' may inadvertently create a confusion of the role for the Commissioner and her office. The functions associated with dealing with allegations of abuse, referring such complaints and then monitoring the process seems to have the potential to significantly and negatively impact on the Commissioner's current role of advocacy and promotion ...*

*Centrecare, therefore, urges caution in accepting the Government's idea to attach the 'one stop shop' function to the Commissioner for Children and Young People. Such a change has potential to significantly affect the current culture and positioning of the Commissioner and her office. It could also have the unintended consequence of siphoning effort and resources from the developmental aspect of the Commissioner's work. Centrecare considers this work to be essential to our efforts not only to combat child abuse but to maximise on our children's potential.<sup>231</sup>*

- 5.28 The review has been cognisant of the need to ensure that any complaints support function for the Commissioner must be modelled in such a way as to maximise the assistance available for persons wishing to disclose alleged child abuse in a government agency in a manner that is consistent with the Commissioner's existing functions under the Act and which does not duplicate the existing role of relevant investigative agencies.
- 5.29 Submissions to the review differed as to how a child abuse complaints support function for the Commissioner should operate in practice and in particular, whether the Commissioner should be involved in investigating individual complaints received. Some submissions, such as those from Anglicare WA<sup>232</sup> and the Royal Australasian College of Physicians<sup>233</sup> saw the role as encompassing an ability for the Commissioner to investigate complaints from individuals, as well as oversee referrals to relevant agencies. The Department of Education recommended that the Commissioner's jurisdiction should be limited to the receipt

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<sup>231</sup> Centrecare, Submission to the Review, 5 March 2013, pp. 5-6.

<sup>232</sup> Anglicare WA, Submission to the Review, 26 February 2013, p. 3.

<sup>233</sup> Royal Australasian College of Physicians WA, Submission to the Review, 11 March 2013, p. 3.

and referral of complaints and supporting and advocating for children and young people, because dealing with individual cases would detract from the overall functions of the Commissioner.<sup>234</sup>

- 5.30 Hon Barbara Scott, former MLC, recommended in her submission that the Commissioner be given power to investigate complaints in 'exceptional cases', which could include for example where a complaint raises issues of public interest or systemic significance.<sup>235</sup> If the Commissioner is to exercise a complaints handling function, Ms Scott also called for amendments to enhance the independence of the office, to:

*become fully a Parliamentary Commissioner in the same manner as the Ombudsman and the Corruption and Crime Commission. Links in the Act to the Executive must be removed, especially the ability of the Minister to direct the Commissioner and to make regulations governing the Commissioner. This must become the sole responsibility of the Parliament through the Standing Committee.*<sup>236</sup>

- 5.31 YACWA's submission recommended a consulting system whereby the Commissioner can receive individual complaints and assess whether to investigate or refer the complaint.<sup>237</sup> The Australian College of Children and Young People's Nurses<sup>238</sup> and WACOSS<sup>239</sup> noted that a complaints function must be independent from the agency subject of complaint.

- 5.32 The Commissioner's submission to the review recommended that the Act be amended to enable the Commissioner to exercise a complaints function to:

- *Establish a complaints information, inquiry and referral service: a dedicated service accessible via telephone, SMS, on-line website, email, fax or post for children and young people or adults acting on their behalf to receive complaints in regard to children and young people and to provide information and referral to relevant agencies.*
- *Undertake a visiting service that includes education about making complaints, including for children and young people in residential facilities and regional communities.*

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<sup>234</sup> Department of Education, Submission to the Review, 26 February 2013, p. 4.

<sup>235</sup> Hon Barbara Scott, Submission to the Review, 19 February 2013, p. 1.

<sup>236</sup> *ibid*, p. 1.

<sup>237</sup> Youth Affairs Council of Western Australia, Submission to the Review, 25 February 2013, p. 6.

<sup>238</sup> Australian College of Children and Young People's Nurses, Submission to the Review, 1 March 2013, p. 1.

<sup>239</sup> Western Australian Council of Social Service, Submission to the Review, 8 March 2013, p. 13.

- *Monitor relevant agencies' responses to complaints from children and young people.*
- *Provide advice to agencies on the development of complaints mechanisms that are accessible and responsive to children and young people for relevant public sector and other agencies.*
- *Provide or facilitate support and advocate for the individual making the complaint.*
- *Investigate individual complaints in limited and exceptional circumstances.*<sup>240</sup>

5.33 The Commissioner's submission notes that preliminary work has been undertaken to perform such of the above roles as are within the scope of the Act at present.

5.34 The key issues emerging from the submissions and other material in relation to the scope of a complaints support function for the Commissioner, which have been considered by the review, can be summarised as:

- whether the Commissioner should have any role in receiving complaints of child abuse by a government officer from individual children and young people and adults acting on their behalf
- if so, whether the Commissioner should have any role in investigating the complaints received
- if so, whether the Commissioner should have power to investigate the complaints received only in 'exceptional circumstances'
- in monitoring the way in which complaints are dealt with by other agencies, whether the Commissioner should have a role in assessing the merits of an agency's outcome in relation to a complaint referred to or otherwise received by it.

### **Models in place in other jurisdictions**

5.35 At the time that the Western Australian Bill was developed and passed, particular regard was had to the NSW Commission for Children and Young People, which has a broad advocacy remit to promote the safety, welfare and wellbeing of children. It does not have power to deal directly with the complaints or concerns of children, but can provide advice, information and make referrals.<sup>241</sup> In all other Australian jurisdictions, the relevant children's commissioner has at least a discretion to investigate individual complaints in some circumstances.<sup>242</sup>

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<sup>240</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 75.

<sup>241</sup> *Commission for Children and Young People Act 1998* (NSW), section 16.

<sup>242</sup> See Appendix E.

- 5.36 In Victoria, as from 1 March 2013 the Office of the Child Safety Commissioner was replaced by the Commissioner for Children and Young People. The Victorian Commissioner has general functions under the *Commission for Children and Young People Act 2012* (VIC) in relation to the promotion of the interests of children and young people, as well as specific functions, including to conduct inquiries in relation to the safety and wellbeing of vulnerable children and young people. The Commissioner's functions also include monitoring Victoria's out of home care system and promoting child inclusive decision making.<sup>243</sup>
- 5.37 In other recent developments, following a recent review of the Children's Commissioner for England, draft legislation to establish an Office of the Children's Commissioner (OCC) for England is currently before the UK Parliament.<sup>244</sup> The primary function of the OCC will be to promote and protect the rights of children in England.<sup>245</sup> The OCC will be required to have particular regard to the rights of children living away from home or receiving social care and other groups whom the Commissioner considers to be at particular risk of having their rights infringed. Consistent with the approach currently taken in WA, the proposed OCC for England would not be able to conduct an investigation of the case of an individual child in the discharge of the primary function, but would have power to enter premises and conduct interviews for the purpose of observing the standard of care provided to children living away from home or receiving social care.<sup>246</sup>
- 5.38 A review by the UK Parliament's Joint Committee on Human Rights of the draft legislation to establish the OCC noted that:

*The remit of the Children's Commissioner will not include a quasi-judicial role in relation to complaints, because this would detract from its strategic role.... We accept that it would be unrealistic for the reformed Children's Commissioner to take on the role of an ombudsman with jurisdiction to hear individual complaints without a substantial increase in the resources available to the office. Assuming that increased resources are not an option in the current economic climate, we agree that there is a risk that the Commissioner would become overwhelmed by the sheer volume of complaints and that this would detract from their strategic role. We welcome, however, the Commissioner's power to consider or research the availability and effectiveness of both complaints procedures and*

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<sup>243</sup> *Commission for Children and Young People Act 2012* (VIC), Part 4.

<sup>244</sup> Dunford Review, Cm 7981, is accessible online at:

<https://www.education.gov.uk/publications/eOrderingDownload/Cm-7981.pdf>

<sup>245</sup> *Children and Families Bill 2013* (UK), Clause 77. Current progress of the Bill can be viewed at <http://services.parliament.uk/bills/2012-13/childrenandfamilies.html> (viewed on 9 May 2013).

<sup>246</sup> *ibid*, clause 79

*advocacy services, and we encourage the Commissioner to make early use of these powers.*<sup>247</sup>

### **The broader complaints system at present**

- 5.39 There are a number of agencies in Western Australia that deal with complaints received from, or on behalf of, children and young people about the services provided to them. The Joint Standing Committee has identified these as including the Ombudsman, Equal Opportunity Commissioner, Health and Disability Services Complaints Office, DCPFS, Department of Commerce, Telecommunications Industry Ombudsman and the Financial Ombudsman Service.<sup>248</sup> The Inspector of Custodial Services has jurisdiction to enter detention centres and police lock ups to investigate the treatment of and complaints by children and young people.
- 5.40 The submission from the Commissioner to the review included a chart summarising the roles and functions of *Western Australian Agencies with a Complaints or Investigative Function or Oversight Role in Relation to Children and Young People*.<sup>249</sup> A copy of that chart is at Appendix C to this report.
- 5.41 The principal bodies with responsibility for the receipt and investigation of complaints of child abuse in Western Australia are the WA Police Service and DCPFS. The WA Police Service enforces the criminal law pertaining to child abuse and DCPFS has authority under the *Children and Community Services Act 2004* to investigate whether a child is in need of protection and if so to obtain a Protection Order to protect that child from harm.<sup>250</sup> Doctors, nurses and midwives, teachers and police officers have a duty to report suspected child abuse to DCPFS.<sup>251</sup>
- 5.42 In respect of allegations that a public officer has abused a child or young person, the agency at which that officer is employed will also have a role in taking any necessary disciplinary or other employment action in respect of the officer. It is noted that the principal government agencies that provide services and programs

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<sup>247</sup> House of Lords House of Commons Joint Committee on Human Rights 2012: *Reform of the Office of the Children's Commissioner: draft legislation, Sixth Report of Session 2012-13*, The Stationery Office Limited, London, p. 25.

<sup>248</sup> Joint Standing Committee on the Commissioner for Children and Young People 2012, *A Review of the Exercise of the Functions of the Commissioner for Children and Young People*, Report No.11, Legislative Assembly, Parliament of Western Australia, p. 137.

<sup>249</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, Table 8, p. 85.

<sup>250</sup> *Children and Community Services Act 2004*, Part 4.

<sup>251</sup> *ibid*, section 124B.

for children have professional conduct units in place responsible for receiving, assessing and investigating allegations of improper conduct on the part of employees. Such units are located, for example, in:

- DCPFS (Standards and Integrity Division)
- Department of Corrective Services (Professional Standards Division)
- Department of Education (Standards and Integrity Directorate)
- Department of Health (Ethical Standards Unit)
- WA Police Service (Employee Relations Unit)

5.43 All government agencies are subject to oversight of the manner in which they conduct their operations by a number of independent accountability agencies, principally the CCC, the Ombudsman, the Inspector of Custodial Services, the Auditor General and the PSC. Each of these bodies has a potential role in reviewing the manner in which a government agency responds to any allegation of criminal or other improper conduct on the part of its officers.

5.44 In the context of allegations of child abuse committed by a government officer, a key plank of the oversight regime is the statutory duty for all public sector agencies to notify the CCC, as soon as reasonably practicable, of any suspected misconduct on the part of a public officer.<sup>252</sup> This will include where a complaint leads an agency to suspect that an employee may have abused a child or young person. The CCC then has a role in ensuring that the allegation is dealt with by the agency concerned in an appropriate way.<sup>253</sup> The CCC's powers in ensuring that allegations are dealt with in an appropriate way include investigating or taking other action itself, or referring the allegation to a relevant independent agency or appropriate authority (for example the WA Police Service) so that they can take action themselves or in cooperation with the CCC. The CCC also has power to monitor the way in which independent agencies and appropriate authorities take action in relation to allegations.<sup>254</sup>

5.45 The Ombudsman has a role in resolving complaints about the decision making and practices of public authorities where the complaint relates to a matter of public administration and affects the complainant personally.<sup>255</sup> The Ombudsman has power to initiate investigations about significant public sector issues and make recommendations aimed at improving the standard of public

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<sup>252</sup> *Corruption and Crime Commission Act 2003*; see meaning of term "misconduct" in section 4 and "certain officers obliged to notify misconduct" in section 28.

<sup>253</sup> *ibid*; see "Misconduct function" in section 18(1).

<sup>254</sup> *ibid*; see "Misconduct function" in section 18(2).

<sup>255</sup> *Parliamentary Commissioner Act 1971*, section 14.

administration.<sup>256</sup> The Ombudsman has, for example, in the past conducted investigations into the complaints management processes in the Department of Education,<sup>257</sup> as well as the treatment of young people in residential care.<sup>258</sup> Although less common or likely in the context of how complaints of child abuse are dealt with, the PSC, the Inspector of Custodial Services and the Auditor General also each have power to conduct investigations, reviews or inquiries into aspects of the operations of government agencies that are within the scope of their oversight jurisdiction.

5.46 The above mentioned oversight bodies form an important part of the broader complaints system, by helping to ensure that government agencies take immediate and appropriate action when they become aware of an allegation of child abuse on the part of an employee.

5.47 Relevantly, the recent *Report of the Legislative Review of the Children and Community Services Act 2004* found that:

*There is a significantly increased awareness and reporting of child sexual abuse and improved systems for responding to abuse at a legislative, policy and service delivery level ... In practice, all relevant government agencies and many non-government and community organisations now have robust child protection policies and guidelines requiring staff to report concerns and/or allegations of child abuse and neglect.*<sup>259</sup>

### **Avoid overlap with existing investigative agencies**

5.48 The Premier's statement to Parliament when tabling the Blaxell Inquiry report indicated that the complaints support function of the Commissioner would not 'replace or duplicate current child abuse reporting options.'<sup>260</sup> As noted above, a number of submissions received by the review also cautioned the need for the Commissioner's role not to duplicate that of other complaints handling or investigation agencies. The review concurs that it is important that the Commissioner's complaints support function must not duplicate the roles of other agencies in investigating complaints of child abuse by a public official.

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<sup>256</sup> *ibid*, section 16.

<sup>257</sup> Parliamentary Commissioner for Administrative Investigations 2006, *Report by the Ombudsman on complaints management processes in the Department of Education and Training*, Western Australia.

<sup>258</sup> Parliamentary Commissioner for Administrative Investigations 2006, *Report on Allegations Concerning the Treatment of Children and Young People in Residential Care*, Western Australia.

<sup>259</sup> Department for Child Protection 2012, *Report of the Legislative Review of the Children and Community Services Act 2004*, Western Australia, p. 40.

<sup>260</sup> Hon Colin Barnett, MLA, Premier, Western Australia, Legislative Assembly 19 September 2012, *Parliamentary Debates* (Hansard), p. 3 of pp. 6137b-6142a.

- 5.49 The discussion above demonstrates that a significant number of agencies have a potential role in investigating complaints regarding the conduct of public officials who deal with children. In these circumstances, it is not considered necessary or desirable for the Commissioner to assume a complaints handling or investigation function. To confer a complaints handling or investigation role on the Commissioner would risk causing duplication and confusion with the existing mechanisms for investigation of complaints of child abuse, and impede the efficiency and effectiveness of those processes.
- 5.50 Conferral of investigative powers on the Commissioner would risk amounting to a policing type function, which can also be seen to be incompatible with, and detract from, the Commissioner's primary purpose under the Act of advocating and promoting the wellbeing of children and young people generally. As DCPFS's submission points out, expanding the Commissioner's role to include an individual complaints function creates the potential for a conflict between the Commissioner's duty to promote the best interests of children and young people and balanced complaints management standards.<sup>261</sup> As a number of submissions have pointed out, a complaints handling function would also require the addition of significant resources.
- 5.51 As canvassed above, whether the Commissioner should be empowered to investigate individual cases or complaints was the subject of considerable analysis and debate in the lead up to the Act. The position that was ultimately taken by Parliament, and reflected in the Act, was that the primary task of the Commissioner should be systemic advocacy for all children and young people and not the investigation of individual complaints, even in 'exceptional circumstances'. The reasons that have been raised against the Commissioner having an investigative function include:
- there is difficulty in defining or otherwise limiting 'exceptional circumstances', resulting in a potential for the power to be exercised broadly
  - the Commissioner's office would become 'clogged' by complaints.
  - investigating individual complaints is inconsistent with the primary focus of advocacy
  - providing the Commissioner with an investigative function would duplicate the work of existing agencies.

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<sup>261</sup> Department for Child Protection (now DCPFS), Submission to the Review, 8 March 2013, p. 6.

- 5.52 The review concludes that the WA Police Service and DCPFS are the appropriate agencies to carry out the expert task of investigating complaints of child abuse and it is considered that there is not any basis on which the Commissioner should be given a complaints handling or investigative role. Indeed, the relevant recommendation of the Blaxell Inquiry Report is not considered to contemplate a complaints handling or investigative role for the Commissioner. It is noted that the submission to the review from the Hon Peter Blaxell proposed a number of amendments to the Act to enable the Commissioner to exercise the proposed complaints support function. These did not include any amendments to confer any additional investigation powers on the Commissioner.<sup>262</sup>
- 5.53 The avoidance of duplication in the performance of the Commissioner's function is also consistent with section 20(1)(g) of the Act, which states that the Commissioner must 'take reasonable steps to avoid the duplication of functions performed by other government agencies.'

## **Features of the proposed complaints support function for the Commissioner**

- 5.54 This section outlines the features of the proposed child abuse complaints support function recommended for the Commissioner and provides relevant context and information about how the proposed role would operate.
- 5.55 Based on the findings of the Blaxell Inquiry Report, the primary purpose of the proposed child abuse complaints support function is to ensure that children and young people in the care of a government agency have a trusted avenue in which they can raise their concerns, and help ensure that those concerns are heard and reviewed appropriately.
- 5.56 Consistent with the discussion above, rather than investigating individual complaints of child abuse, the review considers that an important role does exist for the Commissioner in helping to increase the accessibility of the existing complaint handling bodies to children and young people who are in the care of a government agency, by:
- providing education and awareness raising for children and young people about how to make a complaint of child abuse
  - receiving disclosures of alleged abuse occurring within a government agency and referring them to the relevant investigative body.

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<sup>262</sup> Hon Peter Blaxell, Submission to the Review, 1 March 2013.

- 5.57 There is also significant scope for the Commissioner to contribute to the accountability and transparency of government agencies that care for children and young people, by monitoring the way in which they deal with complaints that are received by or referred to them.
- 5.58 Children and young people living away from home are particularly vulnerable and should be a key focus of the Commissioner in providing a source of independent advice and information about how to make a complaint against a public sector body or officer in whose care they have been entrusted.
- 5.59 The conferral of the proposed child abuse complaints support function on the Commissioner would also build upon the functions and powers that the Commissioner already has in respect of complaints made by children and young people.

#### **Recommendation 12:**

The Commissioner should be given appropriate powers under the Act to provide a child abuse complaints support function that consists of:

- education and outreach programs for children and young people about how to disclose any child abuse that occurs while they are in the care of a government agency or service provider
- receiving complaints from children and young people, or adults acting in good faith on their behalf, about abuse alleged to have occurred in a government agency or service provider
- referring such complaints to the relevant investigative authority/s
- providing information and referrals to children and young people in relation to the support services available for victims of child abuse and their families
- monitoring the way in which government agencies deal with complaints of child abuse referred by the Commissioner or otherwise received by them.

The Commissioner should not have a role in investigating the substance of individual complaints that are received.

- 5.60 The elements of the model proposed in this recommendation are discussed further below. As noted in the submission to the review from the Hon Peter Blaxell, relatively minimal amendment of the Act is necessary for the Commissioner to be able to perform the proposed child abuse complaints support role.<sup>263</sup>

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<sup>263</sup> *ibid*, p. 1.

## Education/awareness raising about how to make a complaint

- 5.61 The Blaxell Inquiry Report found that lack of avenues to make a complaint of child abuse and lack of knowledge about how or who to make a complaint to were factors that contributed to difficulties for victims in raising their concerns.
- 5.62 The Commissioner has a strong focus on and connection with children and young people and is seen as a 'child friendly' organisation for children and young people who may otherwise, for a variety of reasons, be fearful or uncertain about making a complaint to WA Police, DCPFS or any other government agency. Building the confidence and ability of children and young people to make complaints through education and awareness raising activities is consistent with the Commissioner's broad functions under the Act of advocating for children and young people and promoting their wellbeing.
- 5.63 The focus in exercising this proposed function would be on educating children and young people about reporting abuse, advertising and making more accessible the appropriate avenues for complaint, and monitoring how complaint handling agencies deal with disclosures of child abuse. The Commissioner's expertise in developing child-friendly engagement models will be relevant in this regard. Information would be provided to children and young people concerning:
- their rights in respect of making complaints
  - the various avenues by which they could make a complaint
  - the processes involved in making a complaint
  - the possible outcomes of complaints once made
  - the counselling and criminal justice support services available to children and young people who are victims of abuse.
- 5.64 The Blaxell Inquiry Report found that regular visitor programs would enable the building of relationships and confidence in the system. Consistent with this, the Commissioner's education and awareness raising role should include visiting government facilities that care for children and young people, including through outreach programs, to assist in building relationships with and confidence in the Commissioner's office. Some of the young people participating in the consultation to assist the review conducted by the CREATE Foundation identified trust and support as factors that would assist them to make a complaint if they are feeling unsafe or being abused. For example Imogen, 19 (not her real name) said:

*It needs to be someone they trust. Need to have a relationship with them because it isn't so easy going to someone you don't have a relationship*

*with and tell them you are being sexually abused.*<sup>264</sup>

- 5.65 The Commissioner's submission recommended that consideration be given to providing the Commissioner with powers of entry, for the purpose of meeting with children and young people resident in government facilities, as part of conducting visitor programs. The review, however, considers that such powers of compulsion are not necessary or appropriate for the Commissioner. Whilst a Commissioner may choose to visit residential and other government facilities as part of their education and information awareness raising function, this is not seen as an enforcement type role that would require the provision of powers of entry. Powers of entry are, it is noted, already available under section 37 of the Act where the Commissioner elects to conduct a special inquiry into a matter affecting the wellbeing of children and young people.
- 5.66 The provision of assistance and information to children and young people in the care of government agencies about child abuse complaint mechanisms would be consistent with the Commissioner's functions in section 19(d) to promote the participation of children and young people in the making of decisions that affect their lives and section 19(h) to promote public awareness and understanding of matters relating to the wellbeing of children and young people.
- 5.67 The review considers that, in exercising this role, the Commissioner should focus on children and young people who are living away from home, consistent with the requirement in section 20(1)(a)(ii) to have special regard to the interests and needs of children and young people who are vulnerable or disadvantaged for any reason.

### **Complaints receipt and referral**

- 5.68 The review concluded that the Commissioner's role in assisting children and young people in making disclosures of abuse alleged to have occurred in a government agency or service provider should include receiving such disclosures and referring them to the relevant investigative agency.

### **Extent of agencies covered**

- 5.69 Consistent with the child abuse complaints support function recommended by the Blaxell Inquiry Report, the Commissioner should be able to receive complaints related to public sector programs and services run or contracted by public sector agencies.<sup>265</sup> This would include facilities contracted by any agency which provides

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<sup>264</sup> CREATE Foundation, Submission to the Review, 1 March 2013, p. 17.

<sup>265</sup> Blaxell, P 2012, *St Andrew's Hostel Katanning: How the system and society failed our children – A Special Inquiry into the response of government agencies and officials to allegations of sexual abuse*,

services on behalf of government to children and young people. In this regard it is noted that the Act provides a very broad definition of 'government agency', which includes:

- (a) *A department of the Public Service; or*
- (b) *A State agency; or*
- (c) *A local government or regional local government; or*
- (d) *A body, whether incorporated or not, or the holder of an office, post or position, that is established for a public purpose under a written law.*<sup>266</sup>

- 5.70 The term 'service provider' is used in section 22 of the Act, in setting out the bodies from which the Commissioner is able to request information. This term is defined to mean 'a person or body who or which provides services for, or on behalf of, a government agency under a contract or other arrangement.'<sup>267</sup> This is considered to provide an appropriate definition for the group of 'service providers' to be within the Commissioner's jurisdiction in providing the recommended complaints support function.
- 5.71 The review notes that although the Commissioner's focus in performing the child abuse complaints support function would be children in the care or custody of government agencies or service providers, as at present, the Commissioner should not be precluded from providing information and assistance to any child who comes forward with a disclosure of child abuse.

### **Recommendation 13:**

That the Commissioner's jurisdiction in undertaking the child abuse complaints support function extend to 'government agencies' and 'service providers' as those terms are currently defined in the Act.

### **Range of complaints**

- 5.72 In the matters considered by the Blaxell Inquiry there was evidence of a broad range of improper conduct towards children and young people living away from home, including physical and sexual abuse but also emotional abuse such as ostracising, bullying, teasing, humiliating and threatening behaviours. Rather than being limited to physical and sexual abuse, it is recommended that the Commissioner have jurisdiction to receive and refer allegations of emotional and

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Public Sector Commission, Western Australia, p. 340

<sup>266</sup> *Commissioner for Children and Young People Act 2006*, see section 5.

<sup>267</sup> *ibid*, section 22(1).

psychological abuse, as well as neglect. It is noted that this broader range of behaviours that harm children and young people is consistent with the approach taken in the *Children and Community Services Act 2004*.<sup>268</sup>

#### Recommendation 14:

That the Commissioner's jurisdiction in providing the complaints support function supplement and not duplicate the role of other relevant agencies in receiving and referring disclosures of alleged physical, sexual, emotional, or psychological abuse and neglect.

#### Power of referral

- 5.73 Disclosures of child abuse to the Commissioner will most often entail referral to the WA Police Service, DCPFS, the CCC and the agency where the government officer is employed. This enables appropriate preventative action to be taken to secure the safety of the discloser or any other children and young people who may be at risk, as well as any necessary criminal law enforcement action. Importantly, this referral to the appropriate investigative agencies will occur independently of the agency where the alleged conduct occurred. The Commissioner's submission contemplates that robust and detailed memoranda of understanding with relevant agencies will be required.<sup>269</sup>
- 5.74 It is noted that the Act does not contain a specific power for the Commissioner to refer information obtained in the course of his or her functions. In this regard the power in section 15 of the *Commission for Children and Young People Act 1998* (NSW) to refer any information obtained by the NSW Commission in the course of exercising its functions to the Commissioner of Police, the Department of Human Services or any other investigative or government agency is considered to have merit.

#### Recommendation 15:

That the Act be amended to provide a specific power for the Commissioner to refer complaints received in the course of performing his or her functions to the relevant investigative or other government agency.

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<sup>268</sup> *Children and Community Services Act 2004*, see section 28 ("When child is in need of protection").

<sup>269</sup> Commissioner for Children and Young People, Submission to the Review, 1 March 2013, p. 74.

### Protection for disclosers

- 5.75 Having found that fear of defamation is a significant barrier to people raising and acting on allegations of sexual abuse, the Blaxell Inquiry Report recommended that the complaints support function address issues relating to the protection of complainants from civil and criminal liability.
- 5.76 Currently the Act offers protection against civil or criminal liability when, in good faith:
- the Commissioner requests information from a service provider under section 22 of the Act
  - information is provided to the Commissioner in the course of a Special Inquiry held under Part 5 of the Act
  - a person acts in good faith in the performance of a function under the Act (section 59).
- 5.77 The Act does not currently provide any specific protections for persons providing the Commissioner with information regarding the wellbeing of a child or young person. To ensure that people who make a disclosure, in good faith, of child abuse to the Commissioner, are able to do so without threat or fear of legal proceedings, it is recommended that the Act be amended to provide the relevant protection.
- 5.78 As examined in Chapter 4, the review has recommended that the Commissioner be able to receive complaints from adults acting in good faith on behalf of a child or young person.

#### Recommendation 16:

That the Act be amended to protect persons from civil and criminal liability when raising concerns with the Commissioner, in good faith, about the wellbeing of a child or young person.

### Support for children and young people subject of disclosures

- 5.79 The Western Australian Aboriginal Advisory Council noted the need for the complaint support function to be culturally appropriate for Aboriginal children and young people. It referred to the need to factor Aboriginal people into the design of the service, consult with Aboriginal experts and to ensure that the geographical reach of the function includes regional and remote areas.<sup>270</sup>

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<sup>270</sup> Western Australian Aboriginal Advisory Council, Submission to the Review, 7 March 2013, p. 2.

- 5.80 The submission to the review from the Australian College of Children and Young People's Nurses also noted that there needs to be adequate counselling and support services for children and young people who are disclosing abuse.<sup>271</sup>
- 5.81 The Blaxell Inquiry report identified that children and young people require support in making a complaint of child abuse, throughout the complaint process and its immediate aftermath.
- 5.82 The review considers that the ways in which victims of child abuse can be supported include:
- individual counselling and support
  - help in writing victim impact statements
  - support during a court case and assistance in preparing for it
  - help in obtaining information on the status of police investigations
  - providing information about criminal injuries compensation
  - help in understanding victims' rights when dealing with the criminal justice system
  - providing information on the status of convicted offenders in WA.
- 5.83 Services that provide support to victims in the above areas include the metropolitan and regional child sexual abuse therapeutic services administered by DCPFS to which victims and their family members can be referred for counselling and support. Assistance with court preparation and matters proceeding through the relevant court is provided by the Child Witness Service operated by the Department of the Attorney General.
- 5.84 It is noted that in February 2013 the Western Australian government announced its intention to establish a Commissioner for Victims of Crime, which has now been established. The creation of this position was stated to be aimed at ensuring that victims of crime (including child victims) receive the specialist care, support, counselling and guidance they need to rebuild their lives and seek justice.<sup>272</sup>

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<sup>271</sup> Australian College of Children and Young People's Nurses, Submission to the Review, 1 March 2013, p. 1.

<sup>272</sup> Hon Colin Barnett, MLA, Premier, and Hon Michael Mischin, MLC, Attorney General 2013, *Victims' crime support services increased* (Joint Media Statement), viewed on 9 March 2013, <http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsBarnett&StatId=7200>.

5.85 The complaint support function proposed to be provided by the Commissioner should include the provision of information and assistance in relation to the range of counselling and criminal justice support services that are available to victims of child abuse. Rather than duplicating the work of other agencies, the Commissioner's role should be one of providing information about and referral to the relevant agencies.

### **Monitoring the way government agencies deal with complaints received or referred**

5.86 A key element of the recommended complaints support function for the Commissioner will be monitoring the way in which government agencies deal with complaints that are referred by the Commissioner or otherwise received by them. This provides an additional layer of accountability and transparency, and helps to ensure the robustness of the public sector's response to allegations of child abuse.

5.87 Developing and distributing standards for government agencies which will ensure that their complaints systems are child accessible will be consistent with the Commissioner's function in section 19(d) of the Act to monitor the way in which a government agency deals with a complaint made by a child or young person.

5.88 Section 22 of the Act empowers the Commissioner to obtain information from any government agency, as well as 'service providers' which means any person or body which provides services on behalf of a government agency under a contract or other arrangement. This will provide a source of power to obtain information from government agencies and service providers about the way a complaint is being dealt with, such as in relation to the status and outcome of the complaint. The Commissioner would then be in a position to advocate on behalf of the complainant if concerned about the way a complaint is being dealt with.

5.89 It is acknowledged that agencies may be subject to confidentiality obligations in the information that they are able to provide the Commissioner and that the integrity of any investigation underway must take precedence. The submission to the review from the CCC indicated a willingness to provide the information to the Commissioner, stating that 'the Commission would be prepared to inform the [Commissioner] of any child abuse allegation it receives and then, once it has dealt with the matter, inform the [Commissioner] of the outcome.'<sup>273</sup>

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<sup>273</sup> Corruption and Crime Commission, Submission to the Review, 22 March 2013, p. 2.

- 5.90 It is noted that the Commissioner's monitoring role would be limited to government agencies and service providers and would not include non-government providers of services or programs to children and young people, such as non-government schools, sporting and recreational associations. Providing the Commissioner with responsibility to oversight the manner in which such a broad category of bodies deal with allegations of child abuse would be to confer far broader oversight functions on the office and be a fundamental change to the advocacy functions for which the Act currently provides. In any case, contemplation of such oversight for the non-government sector is beyond the scope of the Blaxell Inquiry Report recommendation and the terms of reference for this review.
- 5.91 If the Commissioner remains concerned after considering an agency's response on these matters, or from the nature of individual complaints received, the options available include reporting those concerns to Parliament or, if the concerns indicate possible systemic issues, the Commissioner is able to examine the matter more thoroughly by way of a special inquiry under Part 5 of the Act, with all of the necessary powers that entails.

### **Budget Considerations**

- 5.92 The child abuse complaints support function recommended above represents an enhancement and change of emphasis to the Commissioner's role and powers. A number of submissions to the review urged that the conferral of this additional function should not detract from the Commissioner's existing functions and should be appropriately resourced. Subject to the required legislative change, the Commissioner has advised that additional resources will be required to undertake the complaints support function.

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# Appendix B – List of submissions to the review

1. McCusker Centre for Action on Alcohol and Youth
2. Office of Multicultural Interests
3. Ms Fiona Stanley AC
4. Hon Barbara Scott, former MLC
5. Department of Environment and Conservation
6. Professor Stephen Zubrick
7. Department of the Premier and Cabinet
8. Department of Culture and the Arts
9. Anglicare WA
10. Youth Affairs Council of Western Australia
11. Telethon Institute for Child Health Research
12. Australian Association of Social Workers WA
13. Department of Education
14. WA Police
15. Community Health Nurses WA
16. Aboriginal Legal Service of Western Australia
17. Alliance for Future Health
18. Equal Opportunity Commission
19. CREATE Foundation
20. KidsMatter / MindMatters Reference Group
21. Mr Bret Hart
22. Ombudsman WA
23. Hon Peter Blaxell
24. Commissioner for Children and Young People
25. Centrecare Inc
26. Australian College of Children and Young People's Nurses
27. Mental Health Commission
28. Drug and Alcohol Office
29. Department for Communities
30. Department of Sport and Recreation
31. Western Australian Council of Social Service

32. Department for Child Protection<sup>274</sup>
33. Save the Children Australia
34. Western Australian Aboriginal Advisory Council
35. Disability Services Commission
36. The Royal Australasian College of Physicians WA
37. Consultations with children and young people
  - a. Western Australian Institute for Deaf Education
  - b. Sacred Heart Primary School
  - c. Indigenous Communities Education and Awareness Foundation
  - d. CREATE Foundation - children in out of home care
  - e. YMCA HQ and Youth Parliamentarians
  - f. True Colours - Uniting Care West - young people with diverse sexuality/gender
  - g. Y2Y Children of Parents with Mental Illness - Wanslea
  - h. Katanning Senior High School
  - i. Youth Affairs Council of Western Australia - Aboriginal young people in the Kimberley
38. Department of Corrective Services

#### **Late Submissions**

39. Corruption and Crime Commission
40. Professor Trevor Parry AM

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<sup>274</sup> On 17 May 2013, this Department was renamed the Department for Child Protection and Family Support.

# Appendix C - Western Australian agencies with a complaints or investigative function or oversight role in relation to children and young people<sup>1</sup>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<b>Ombudsman WA</b>		
<p>The Ombudsman has three principle functions:</p> <ul style="list-style-type: none"> <li>• Resolving complaints about the decision making and practices of public authorities</li> <li>• Improving the standard of public administration through investigations initiated by the Ombudsman about significant public sector issues; making suggestions and</li> </ul>	<p>The Ombudsman takes complaints from all Western Australians, including children and young people and has a particular jurisdiction to take complaints from children and young people detained in custody.</p> <p>The Ombudsman reviews the deaths of certain children, identifies patterns and trends arising from</p>	<p><i>Parliamentary Commissioner Act 1971</i>  <a href="http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR">http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR</a></p>

<sup>1</sup> Source: Commissioner for Children and Young People, Submission to the Review, 1 March 2013, Table 8, pp. 85-89. This list is not exhaustive.

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<p>recommendations to improve public administration; and providing advice and guidance to public authorities.</p> <ul style="list-style-type: none"> <li>The Ombudsman's office is also involved in the review and investigation of sudden or unexpected deaths of children in Western Australia. This function involves reviewing, investigating and making recommendations to the Department for Child Protection and other public authorities in relation to preventable deaths of children.</li> </ul> <p>Below is an extract from the OWA website this links to the Public Sector Commission (PSC) functions in across government monitoring and development. (Note the link to <a href="http://complaints.wa.gov.au">complaints.wa.gov.au</a> does not work and it appears that the site is no longer available.)</p> <p><b>Whole of Government Complaints Management Policy</b> In February 2010, a whole-of-Government complaints management policy was issued by the Public Sector Commissioner through Circular 2009-27: <a href="#">2009-27: Complaints Management</a>. This policy applies to all public sector agencies and promotes effective complaints management in agencies across the sector. The Circular advises that an agency must have an appropriate complaints management system</p>	<p>these deaths and makes recommendations about ways to prevent or reduce child deaths.</p> <p>Access to the Ombudsman's services for children and young people is achieved through:</p> <p><b>Website and email</b> The Ombudsman's website accepts complaints by email and also includes an electronic complaint form. The Ombudsman is currently developing a separate web page specifically designed for children and young people and will consult and establish links with public sector and non-government websites and/or social media pages to refer children and young people directly to this web page.</p> <p><b>Written and telephone contact</b> Current development of enhanced mechanisms for taking complaints through technology accessible to children and young people. Children and young people in juvenile detention centres have access to a confidential mail system and confidential telephone calls.</p> <p><b>Regional Awareness and Accessibility Program</b> Targets awareness and accessibility for regional and Indigenous Western Australians, through complaint</p>	<p><a href="#">Document:24117P/\$FILE/ParlCommerAct1971-09-b0-00.pdf?OpenElement</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<p><i>and inform its clients that they can contact an external party, like the Ombudsman, if they are still dissatisfied after going through an internal complaints process.</i></p> <p><i>Under the Circular, the Ombudsman will be responsible for providing tools and guidance to assist agencies with their internal complaint handling role. Agencies can access these materials through the Ombudsman's website. The website has a range of <a href="#">guidelines</a> to assist agencies to ensure they are meeting their requirement to have an appropriate and effective complaint management system in place. There is also a whole-of-Government website <a href="http://www.complaints.wa.gov.au">www.complaints.wa.gov.au</a> which also links back to the Ombudsman's site.</i></p>	<p>clinics that children and young people in regional Western Australia can access.</p> <p><b>Publications</b> Publications are currently being adapted to target children and young people specifically, in formats suited to their needs.</p> <p><b>Limitations</b> Generally the Ombudsman cannot investigate matters more than 12 months old or those relating to court or tribunal matters (special exceptions may apply).</p>	
<b>Public Sector Commission</b>		
<p>The aim of the Public Sector Commission is to bring leadership and expertise to the public sector to enhance integrity, effectiveness and efficiency. To work towards achieving this objective, the Commission has identified the following four strategic priorities:</p> <ul style="list-style-type: none"> <li>• positioning the Commission as an independent authority, balancing its policy, assistance and oversight roles</li> </ul>	<p><b>Breach of Standard claims</b> Breach of Standard claims allows a person to seek relief if they believe a decision made by a Public Sector agency has breached a Public Sector Standard and they have been adversely affected by the breach. Breach of Standard claims are made once an agency has completed a process and made a reviewable decision covered by a Standard. Breach claims can be made about the following</p>	<p><a href="http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1957_homepage.html">http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1957_homepage.html</a></p> <p><a href="http://www.publicsector.wa.gov">http://www.publicsector.wa.gov</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<ul style="list-style-type: none"> <li>• driving public sector reform to increase efficiency, flexibility and integrity</li> <li>• leading and assisting the public sector to build a skilled, ethical, diverse and knowledgeable workforce</li> <li>• broadening and enhancing our evaluation and reporting of public sector management and administration.</li> </ul> <p>Complaints can be made to the PSC regarding breaches of public sector standards</p> <p>The PSC also has responsibility for arrangements under the <a href="#">Public Interest Disclosure Act 2003</a>.</p>	<p>Standards:</p> <ul style="list-style-type: none"> <li>• <a href="#">Employment</a></li> <li>• <a href="#">Performance Management</a></li> <li>• <a href="#">Grievance Resolution</a></li> <li>• <a href="#">Redeployment</a></li> <li>• <a href="#">Termination</a>.</li> </ul> <p><b>Public Sector Disclosures</b> The Public Sector Disclosure Act permits people to report wrongdoing by Public Sector Agencies or contractors when it is in the public interest to do so.</p> <p><b>Complaints Management</b> The PSC has issued a Commissioner’s Circular (#2009-27) regarding complaints management. The circular requires all agencies to have in place a complaints management system that conforms to the Australian Standard on Complaints Handling.</p>	<p><a href="http://www.publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf">au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf</a></p>
<b>The Integrity Coordinating Group</b>		
<p>The Integrity Coordinating Group (ICG) was formed in January 2005 and launched publicly in July 2005.</p> <p><b>Purpose</b> The Purpose of the Integrity Coordinating Group (ICG) is to promote policy coherence and operational coordination in the ongoing work of Western</p>		<p><a href="http://www.publicsector.wa.gov.au/ICG/About_Us/Home.htm">http://www.publicsector.wa.gov.au/ICG/About_Us/Home.htm</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<p>Australia's core public sector integrity institutions.</p> <p><b>Context</b> Operational cooperation and consistency is to be achieved through public awareness, workplace education, prevention, advice and investigation activities with respect to integrity themes identified by ICG members as suitable for collaboration.</p> <p><b>Terms of reference</b></p> <ol style="list-style-type: none"> <li>1) Fostering collaboration between public sector integrity bodies.</li> <li>2) Encouraging and supporting research, evaluation and policy discussion to monitor the implementation of integrity and accountability mechanisms in Western Australia, and other jurisdictions, nationally and internationally.</li> <li>3) Inspiring operational cooperation and consistency in communication, education and support in public sector organisations<sup>1</sup></li> </ol> <p><sup>1</sup> 'public sector organisations' means WA State Government bodies, local government and public universities as provided for in legislation which applies to ICG members.</p>		

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<b>Health and Disability Services Complaints Office (HaDSCO)</b>		
<p>HaDSCO is an independent statutory authority providing an impartial resolution service for complaints relating to health or disability services provided in the State of Western Australia. This service is free and available to all users and providers of health or disability services. HaDSCO was formerly known as the Office of Health Review until November 2010.</p> <p>The Office has three key areas of work:</p> <ul style="list-style-type: none"> <li>• Offering an accessible and impartial service for the resolution of complaints</li> <li>• Undertaking investigations and making service improvement recommendations</li> <li>• Providing education and training in the prevention and resolution of complaints.</li> </ul>	<p>HaDSCO accepts complaints from children and young people but does not offer any service particular for children and young people.</p> <p><b>Limitations</b> Complaint cannot be more than 2 years old. Cannot review complaints decided by a court or tribunal</p>	<p><i>Health and Disability Services (Complaints) Act 1995</i> <a href="http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR Document:2381 2P/\$FILE/Health andDisabilitySer vComplaintsAct 1995-04-b0-01.pdf?OpenElement">http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR Document:2381 2P/\$FILE/Health andDisabilitySer vComplaintsAct 1995-04-b0-01.pdf?OpenElement</a></p>
<b>Equal Opportunity Commission (EOC)</b>		
<p>The EOC has two major roles:</p> <ul style="list-style-type: none"> <li>• to encourage recognition and an understanding of the principles of equal opportunity</li> <li>• to provide a means of redress to individuals who allege unlawful discrimination.</li> </ul> <p>The Commissioner also conducts investigations,</p>	<p>The EOC accepts complaints from children and young people but does not offer any service particular for children and young people.</p> <p>The EOC also provides a program of community education around rights and making complaints.</p>	<p><i>Equal Opportunity Act 1984</i> <a href="http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR">http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<p>research and inquiries into all matters relating to discrimination.</p>	<p><b>Limitations</b> Generally does not accept complaints more than 12 months old but can consider exceptions</p>	<p><a href="#">Document:23812P/\$FILE/HealthandDisabilityServicesComplaintsAct1995-04-b0-01.pdf?OpenElement</a></p>
<p><b>Council of Official Visitors (COV)</b></p>		
<p>The major role of the COV is to provide an independent advocacy service for individuals who are currently being treated under the <i>Mental Health Act 1996</i> and/or who are living in licensed private psychiatric hostels.</p> <p>The COV is primarily there to ensure that:</p> <ul style="list-style-type: none"> <li>• individuals are aware of their rights</li> <li>• these rights are being observed, and to</li> <li>• investigate and seek to resolve complaints.</li> </ul> <p>The <i>Mental Health Act 1996</i> lists a number of functions to be carried out by the COV which include ensuring that:</p> <ul style="list-style-type: none"> <li>• each authorised hospital is visited at least once in each month by an official visitor or panel</li> <li>• at any time the Minister for Mental Health so</li> </ul>	<p>Official Visitors advocate for children and young people (aged up to 18) who are involuntarily detained at the Bentley Adolescent Unit (BAU).</p> <p>Inspections of authorised hospitals also include BAU.</p> <p><b>Limitations</b> The COV is limited in its jurisdiction to involuntary patients.</p> <p>PMH is not an authorised hospital for inspection purposes.</p>	<p><i>Mental Health Act 1996</i> (Part 9) <a href="http://www.slp.wa.gov.au/pco/product/FileStore.nsf/Documents/MRDocument:23818P/\$FILE/MentalHealthAct1996-03-b0-01.pdf?OpenElement">http://www.slp.wa.gov.au/pco/product/FileStore.nsf/Documents/MRDocument:23818P/\$FILE/MentalHealthAct1996-03-b0-01.pdf?OpenElement</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<p>directs, licensed private psychiatric hostels are visited, and</p> <ul style="list-style-type: none"> <li>• individuals are visited as soon as practicable after a visit is requested.</li> </ul> <p>Official Visitors are members of the general community who have an understanding of mental illness and the problems faced by those who are affected by it.</p>		
<b>Office of the Inspector of Custodial Services (OICS)</b>		
<p>OICS is an independent statutory body that provides external scrutiny to the standards and operational practices of custodial services in Western Australia.</p> <p>Core responsibilities include:</p> <ul style="list-style-type: none"> <li>• Comprehensive inspections of all non-police custodial facilities in Western Australia</li> <li>• Thematic reviews and issues papers on systemic issues</li> <li>• Advice to Parliament and the Minister for Corrective Services on criminal justice policy issues</li> <li>• Co-ordination with other relevant statutory bodies, such as the Ombudsman.</li> <li>• Administration of the Independent Visitor Scheme</li> </ul>	<p>OICS is required to inspect each juvenile detention centre (and prescribed lock up) in Western Australia at least once every three years.</p> <p>Full Inspection is a routine inspection conducted according to the legislative requirement for each custodial facility or service to be inspected at least once every three years. These inspections are scheduled according to the required three year cycle.</p> <p>Unannounced and short follow-up inspections occur outside of the routine three year cycle required by legislation. They are typically reserved for custodial places where there may have been a critical event that requires the Inspector to exercise his powers and functions in the public interest. These inspections may</p>	<p><i>Inspector of Custodial Services Act 2003</i></p> <p><a href="http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR Document:2318 7P/\$FILE/Inspr OfCustodialServ Act2003_01-e0-01.pdf?OpenElement">http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR Document:2318 7P/\$FILE/Inspr OfCustodialServ Act2003_01-e0-01.pdf?OpenElement</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<p>The Office has jurisdiction over all public and private sector prisons and juvenile detention centres, court custody centres, prescribed lock ups, and contracted prisoner transport and support services in Western Australia.</p> <p>OICS is independent of Government and reports directly to Parliament.</p> <p>OICS cannot deal with complaints or grievances relating to an individual.</p>	<p>also occur when the inspector receives information over a period of time that suggests that the performance of a prison has deteriorated to such an extent that the treatment and conditions for prisoners are being compromised. This information may come from a variety of sources, such as liaison visit notes and Independent Visitor reports. Specific criteria for the inspection of juvenile facilities in the <i>Juvenile Code of Inspection Standards</i> apply.</p> <p>OICS also operate an independent visitors scheme (IVS)</p> <p><b>Limitations</b> Cannot take individual complaints although the IVS does provide support to assist people to make a complaint.</p>	
<b>Child Witness Service</b>		
<p>Since 1995, the Child Witness Service has provided free emotional support and practical preparation for children under 18 years of age who are to give evidence to a court. The children involved can be victims or witnesses to any criminal charge, in any court. This includes the Magistrates Court, Children's Court, District Court or Supreme Court.</p> <p>The court process can add to the stress of a child victim. However, ensuring they are adequately prepared as a witness can reduce their emotional stress and enable them to better participate in court proceedings.</p>		<p>see <a href="http://www.court.s.dotag.wa.gov.au/c/child_witnss_service.aspx">http://www.court.s.dotag.wa.gov.au/c/child_witnss_service.aspx</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<p>The Child Witness Service aims to:</p> <ul style="list-style-type: none"> <li>• reduce the trauma experienced by a child witness through their involvement in the legal process</li> <li>• work with the WA Police and the Director of Public Prosecutions to ensure a child witness and their family are kept fully informed about the progress of a case through the courts</li> <li>• help a child witness prepare a victim impact statement, even if the child is not required to give evidence</li> <li>• liaise with the relevant counsellor or provide consultation/advocacy on behalf of a child witness with Government agencies</li> <li>• research the needs of child witnesses</li> <li>• heighten the awareness of professionals to the issues, needs and problems faced by child witnesses.</li> </ul>		
<p><b>Auditor General</b></p>		
<p>The Auditor General's role is to audit the finances and activities of the Western Australian public sector. In undertaking this task, the Auditor General will scrutinise the public sector for potential instances of wastage, inefficiency or ineffectiveness, and report his findings to Parliament.</p> <p>The Auditor General is responsible for:</p> <ul style="list-style-type: none"> <li>• auditing the Annual Report on State Finances</li> <li>• conducting financial statement, KPI and control audits and issuing audit opinions for over 200 public sector agencies</li> <li>• undertaking wide-ranging performance examinations to ensure there are adequate controls within agencies, compliance with the relevant legislation; and most importantly</li> </ul>	<p>The Auditor General may undertake performance examinations in relation to services that impact on children and young people (such as its report on Universal Child Health Checks) but does not offer any service particular for children and young people.</p> <p><b>Limitations</b></p> <p>The OAG does not investigate individual complaints.</p>	<p>Operating under the <i>Auditor General Act 2006</i></p> <p><a href="http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR Document:2054 5P/\$FILE/AuditorGnrAct2006_00-e0-00.pdf?OpenElement">http://www.slp.wa.gov.au/pco/pr od/FileStore.nsf/Documents/MR Document:2054 5P/\$FILE/AuditorGnrAct2006_00-e0-00.pdf?OpenElement</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<p>efficiency, effectiveness and economy of agency operations or programs</p> <ul style="list-style-type: none"> <li>reporting the results of audits to Parliament in an objective, competent, insightful and timely manner</li> </ul>		
<b>Corruption and Crime Commission</b>		
<p>The Corruption and Crime Commission is focused on helping public sector agencies minimise and manage misconduct, and improving the integrity of the public sector. It does this by working collaboratively with public sector agencies to increase their ability to effectively deal with misconduct.</p> <p>The Commission works to:</p> <ul style="list-style-type: none"> <li>Identify misconduct-related weaknesses in business processes</li> <li>Deal with misconduct, when it occurs</li> <li>Provide advice about minimising misconduct</li> </ul> <p>In doing so, the Commission also retains its power to investigate cases of misconduct.</p> <p>The Commission has jurisdiction over all Western Australian public officers, government departments, government instrumentalities, boards, universities and local governments.</p>	<p>The CCC receives notification of all incidents of alleged misconduct by public sector workers and oversees the management of such allegations by the relevant agency. Analysis of the trends, gaps and management of these allegations informs the CCC's proactive work with agencies.</p> <p>The CCC may undertake an investigation based on a report of misconduct made by anyone – including those made by, or on behalf of, a child or young person.</p> <p>The CCC does not have any separate processes or procedures for children or young people wishing to lodge a complaint.</p>	<p>Operating under the <i>Corruption and Crime Commission Act 2003</i></p> <p><a href="http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_207_homepage.html">http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_207_homepage.html</a></p>

OVERVIEW OF ROLE	FUNCTIONS RELATING TO CHILDREN AND YOUNG PEOPLE	LEGISLATION
<b>Youth Legal Service (YLS)</b>		
<p>The YLS is a Community Legal Centre that provides free and confidential legal services to young people in WA. The YLS is available to young people who are under 25 years of age and need legal information or advice and/or who need representation in the Children’s Court.</p> <p>In addition to providing legal services, the YLS also conducts community legal education and undertakes policy and law reform.</p>	<p>The YLS provides legal advice and representation to individual children and young people.</p>	<p><a href="http://www.youthlegalserviceinc.com.au">http://www.youthlegalserviceinc.com.au</a></p>
<b>Other services for children and young people</b>		
<p>It is acknowledged that a range of other services for children and young people provide assistance and support for children and young people, including access to complaints mechanisms on either a formal or informal basis (for example, the Freedom Centre). Consideration of the role of these services will also need to be incorporated into the development of the ICS function.</p>		

## Department for Child Protection <sup>2</sup>

The three primary service areas of DCP are:

- Supporting children and young people in the Chief Executive Officer's care.
- Protecting children and young people from abuse.
- Supporting individuals and families at risk or in crisis.

DCP has a statutory responsibility to investigate notifications of alleged child abuse from all citizens, including children and young people.

DCP offers protections for the notifier, including:

- Protection of identity
- Legal protection (providing the information is provided in good faith)
- Professional protection (for those reporting in a professional capacity).

Children and young people in care have access to the Advocate for Children in Care and may call or email her with any concerns they have that they do not feel they can address with their caseworker.

The CEO of DCP can appoint assessors to inspect residential facilities. The Assessors provide reports to the CEO. (s 125A of the CCS Act)

The *Children and Community Services Act 2004 (the CCS Act)*, which came into operation on 1 March 2006, is the main legislation that governs the Department's 3 service areas.

[http://www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_132\\_homepage.html](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_132_homepage.html)

DCP also administers the:

- *Adoption Act*

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<sup>2</sup> On 17 May 2013, this Department was renamed the Department for Child Protection and Family Support.

		<p>1994</p> <ul style="list-style-type: none"> <li>• <i>Parental Support and Responsibility Act 2008</i></li> <li>• <i>Working with Children (Criminal Record Checking) Act 2004</i></li> </ul>
<b>Western Australia Police</b>		
<p>The WA Police has three primary policing outcomes:</p> <ul style="list-style-type: none"> <li>• Lawful behaviour and community safety</li> <li>• Offenders apprehended and dealt with in accordance with the law</li> <li>• Lawful road-user behaviour.</li> </ul>	<p>The WA Police will investigate suspected criminal activity in relation to allegations of child abuse and will receive allegations made by anyone – including those made by, or on behalf of a child or young person.</p> <p>The WA Police does not have any separate processes or procedures for children or young people wishing to lodge a complaint.</p>	<p><a href="http://www.police.wa.gov.au">http://www.police.wa.gov.au</a></p>

## Appendix D – Role and function of child complaints handling bodies (examples of national & international models)<sup>1</sup>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
<b>ENGLAND: Children’s Commissioner for England (CCfE) Child Rights Director (CRD)</b>			
<p>The CCfE was established in 2004 but, following a review in October 2011, it will be re-established with a stronger mandate.</p> <p>The Children’s Rights Director and the Children’s Commissioner will be</p>	<p>Currently, the CCfE’s primary function is to promote the views and interests of children and young people under 18 years of age.</p> <p>The Children’s Rights Director (in Ofsted) (CRD)</p>	<p>The functions of the CRD will be assumed by the Children’s Commissioner to ensure these activities continue. In exercising her primary functions, the Commissioner must therefore have particular regard to the rights of children living away from home or receiving social care, and other groups of children who the Commissioner considers to be a particular risk of having their rights infringed. (Note: the definition of these children covers those aged 18-24).</p>	<p>Established by the <i>Children Act 2004</i></p> <p><a href="http://www.legislation.gov.uk/ukpga/2004/31/contents">http://www.legislation.gov.uk/ukpga/2004/31/contents</a></p> <p>Dunford review</p>

<sup>1</sup> This list was provided by the Commissioner: Commissioner for Children and Young People, Submission to the Review, 1 March 2013, pp. 78-84

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
<p>replaced by a new organisation: Office of the Children’s Commissioner for England (OCC).</p> <p>Draft legislation establishing the OCC and its functions are presently before Parliament.</p>	<p>currently has responsibility for children receiving social care services or living away from home in boarding schools, residential special schools or residential colleges. The current functions of this office will be ‘transplanted’ into the Children’s Commissioner for England.</p> <p>The CRD has a proactive visiting program and a staffed complaints line. They receive approximately 450 individual complaints per year the majority of which are in relation to issues for children in care.</p>	<p>In addition to her current role the Commissioner will have powers to access places where children are cared for or are accommodated away from home so that their concerns can be heard and so that standards of care can be observed. The Commissioner may provide advice and assistance to children living away from home or receiving social care, and may make representations on behalf of such a child to someone who is providing the child with accommodation or services or exercising a function in relation to the child.</p> <p>It is not envisaged that this will involve providing a full casework function that might, for example, involve carrying out a detailed investigation or supporting an individual child to take a case to court. Rather, it is envisaged that children who request advice and assistance will either be signposted to an existing complaints process, or helped to resolve an issue through the Commissioner or a member of her staff making representations on their behalf.</p> <p>The legislation gives the Commissioner the power to consider or research the availability and effectiveness of complaints procedures and advocacy services as they relate to children. The Commissioner will be able to look at any services, procedures or arrangements</p>	<p>of the Children’s Commissioner for England  <a href="https://www.education.gov.uk/publications/eOrderingDownload/Cm-7981.pdf">https://www.education.gov.uk/publications/eOrderingDownload/Cm-7981.pdf</a></p> <p>Draft legislation for the OCC is at:  <a href="http://www.official-documents.gov.uk/document/cm83/8390/8390.pdf">http://www.official-documents.gov.uk/document/cm83/8390/8390.pdf</a></p> <p>CRD legislation is in the Education and Inspections Act 2006  <a href="https://www.ed">https://www.ed</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
		<p>relevant to children, both public and private.</p> <p>The legislation states that the Commissioner may not conduct an investigation of the case of an individual child in the discharge of her primary function. The intention is that this will allow the Commissioner to concentrate on strategic issues that affect a larger number of children, rather than provide an ombudsman service for individual children on issues that are only relevant to that child. However the Commissioner may provide advice and assistance to individual children living away from home or in social care.</p>	<p><a href="http://education.gov.uk/publications/eOrderingDownload/EducandInspectionsAct.pdf">education.gov.uk/publications/eOrderingDownload/EducandInspectionsAct.pdf</a></p> <p>Website: <a href="http://www.childrenscommissioner.gov.uk/">http://www.childrenscommissioner.gov.uk/</a></p>
<b>IRELAND: Ombudsman for Children Office (OCO)</b>			
<p>The OCO is an independent statutory body, which reports directly to the Irish Parliament. Its mandate is to promote the rights and welfare of children and young people under 18 in Ireland.</p>	<p>The OCO's primary functions as set out in the Act are to:</p> <ol style="list-style-type: none"> <li>1. receive, examine and investigate complaints made by or on behalf of children and young people.</li> <li>2. undertake research regarding children's rights and welfare and to provide independent</li> </ol>	<p>The Act sets out the defining characteristics of the OCO's complaint handling mandate and role which includes the following:</p> <ul style="list-style-type: none"> <li>• The OCO manages and operates an independent and impartial complaint handling procedure.</li> <li>• The OCO provides a free complaint service.</li> <li>• Complaints can be made to the OCO by children and young people as well as on their behalf by parents or suitable third parties.</li> <li>• Complaints can be made in respect of actions on the part of public bodies, schools and all hospitals where children are cared for.</li> </ul>	<p>The OCO was established in 2004 under the <i>Ombudsman for Children Act 2002</i></p> <p><a href="http://www.irishstatutebook.ie/2002/en/act/pub/0022/index.html">http://www.irishstatutebook.ie/2002/en/act/pub/0022/index.html</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
	<p>advice on legislative and public policy developments affecting children and young people.</p> <p>3. promote children's rights and welfare by providing an independent voice on behalf of all children and young people in Ireland and affording children and young people opportunities to be heard in relation to issues that affect and concern them.</p>	<ul style="list-style-type: none"> <li>• In the context of examining a complaint, the OCO aims to support parties to the complaint to arrive at a mutual understanding of the complaint and to resolve the complaint informally.</li> <li>• In conclusion to an investigation, the OCO will issue an investigation statement and a set of recommendations as appropriate.</li> <li>• The OCO will only publish a statement if it believes that there is learning which may impact on bodies other than the one investigated. Both the complainant and the body under investigation would be fully informed of this decision in advance of the publication of the statement.</li> </ul>	<p>Website:  <a href="http://www.oco.ie/">http://www.oco.ie/</a></p>
<b>NORTHERN IRELAND: Commissioner for Children and Young People (NICCY)</b>			
<p>The principal aim of the Commissioner in exercising her functions is to safeguard and promote the rights and best interests of children and young persons.</p>	<p>The Commissioner's functions include:</p> <ul style="list-style-type: none"> <li>• advising Government on how to improve children and young people's lives</li> <li>• reviewing the level and quality of services for</li> </ul>	<p>The Commissioner can deal with individual complaints from children and young people, or their parents/guardians about any government service. The Commissioner has to take account of any existing complaints mechanism first.</p> <p>Where appropriate the Commissioner can start or take over legal proceedings on behalf of a child or</p>	<p>The Children and Young People's Commissioner for Northern Ireland was established by the</p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
	<p>children and young people</p> <ul style="list-style-type: none"> <li>• reviewing legislative protections of children's rights</li> <li>• conducting research about children's lives</li> <li>• developing good practice guidelines</li> <li>• conducting formal investigations into complaints in regard to relevant authorities</li> </ul> <p>The Commissioner has the power to undertake general inquiries into issues where she believes children are being adversely affected. This may be an informal inquiry or a more formal investigation with the same powers of the High Court that can include requesting documents or the attendance or</p>	<p>young person if a general principle is at stake.</p> <p>The Commissioner is also required to review the ways that those providing services for children listen to complaints and take account of children's views.</p> <p>NICCY's Legal and Casework Team deals with queries and complaints from children, young people, their carers and relevant professionals about the services they receive from public bodies.</p> <p>NICCY receives approximately 400 complaints per year.</p> <p>The NICCY can:</p> <ul style="list-style-type: none"> <li>• investigate complaints in regard to public bodies on behalf of children and young people.</li> <li>• help a child or young person bring their complaint to a public body.</li> <li>• bring legal proceedings about the rights and welfare of children and young people.</li> <li>• help children and young people in legal proceedings in regard to public bodies.</li> </ul> <p>The NICCY cannot:</p> <ul style="list-style-type: none"> <li>• get involved in private law proceedings such as, residence and contact between parents.</li> </ul>	<p><i>Commissioner for Children and Young People (Northern Ireland) Order 2003.</i></p> <p><a href="http://www.legislation.gov.uk/nisi/2003/439/contents/made">http://www.legislation.gov.uk/nisi/2003/439/contents/made</a></p> <p>NB Legislation is currently under review</p> <p>Website: <a href="http://www.niccy.org">http://www.niccy.org</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
	<p>examination of witnesses.</p> <p>She can also respond to requests from the Assembly and Parliament to look at issues.</p>	<ul style="list-style-type: none"> <li>• deal with complaints against the police, these need to be referred to the Police Ombudsman.</li> <li>• get involved in the conduct of court proceedings.</li> <li>• deal with complaints against private organisations or individuals</li> </ul>	
<b>BRITISH COLUMBIA: Representative for Children and Youth</b>			
<p>The Representative for Children and Youth advocates for people under 19 years old. The Representative's mandate is to improve services and outcomes for children in B.C. through advocacy, accountability and review.</p> <p>The Representative for Children and Youth is an Independent Officer of the Legislature and does not report through a provincial ministry.</p> <p><b>Reviewable services</b> are services or programs</p>	<p>The Representative can:</p> <ul style="list-style-type: none"> <li>• Advocate on behalf of children and youth to improve their understanding of and access to designated services</li> <li>• Monitor, review, audit and publicly report on designated services for children and youth</li> <li>• Conduct independent reviews and investigations into the critical injuries or deaths of children receiving reviewable services.</li> </ul>	<p>The Representative's advocacy functions include an ability to directly advocate on behalf of a child or young person to ensure their views and interests are heard and considered in decision-making. The Representative employs 'Child Youth Advocates' to conduct this, and other advocacy, functions.</p> <p>Currently considering expanding to cover advocacy up until age 24 years for those transferring to adult services.</p> <p>The Representative receives approximately 1920 enquiries (issues and complaints) per year.</p>	<p>Established by the <i>Representative for Children and Youth Act</i> in 2006, the office was established in April 2007.</p> <p><a href="http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/fr_eside/00_06029_01">http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/fr_eside/00_06029_01</a></p> <p>Website: <a href="http://www.rcyb.ca">http://www.rcyb.ca</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
<p>under the Child, Family and Community Service Act and Youth Justice Act and include mental health and addictions services for children. The Representative's authority to initiate a review or investigation is limited to reviewable services.</p> <p>The Representative can review a child's critical injury or death if the child or child's family was receiving a reviewable service at the time of, or in the year prior to, the critical injury or death. At the end of a review, the Representative can issue a report indicating improvements to a reviewable service, or informing the public about broader policy initiatives.</p>			

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
<b>NEW ZEALAND: Commissioner for Children and Young People</b>			
<p>The Commissioner's role is to protect the welfare, and well-being of children and young people between the ages of 0 and 18 years. The Children's Commissioner Act also directs the Commissioner to promote the United Nations Convention on the Rights of the Child (UNCROC). The Commissioner is independent of Government.</p>	<p>The Commissioner's work includes ongoing monitoring of the activities of New Zealand's statutory care and protection agency for children. The Commissioner also undertakes systemic advocacy functions and investigates particular issues compromising the health, safety, or wellbeing of children and young people.</p>	<p>The Commissioner has a responsibility to advocate for the interests of children, both in individual cases and for children as a group. Although individual complaints are not mentioned specifically, the Act states that the Commissioner is to: "receive and invite representations from members of the public on any matter that relates to the welfare of children".</p> <p>The Office staffs a telephone enquiry service, the Child Rights Line, which provides members of the public with information and advice on issues concerning children. Most of the enquiries come from parents or other adults acting on behalf of children.</p> <p>In the 2010–11 year, the total number of calls received on the Office's enquiry line for this reporting period was 1064 and 166 individual cases required further investigation or follow up.</p> <p>The Commissioner also has a responsibility to promote the establishment of accessible and effective complaints mechanisms, in key agencies, for children and monitor the nature and level of complaints.</p>	<p>Acting under the <i>Children's Commissioner Act 2003</i>.  <a href="http://www.legislation.govt.nz/act/public/2003/0121/latest/DLM230429.html?search=ts_act_Children%27s_resel&amp;sr=1">http://www.legislation.govt.nz/act/public/2003/0121/latest/DLM230429.html?search=ts_act_Children%27s_resel&amp;sr=1</a></p> <p>Website:  <a href="http://www.occ.org.nz">http://www.occ.org.nz</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
<b>WALES, UK: Children's Commissioner for Wales</b>			
<p>The Commissioner is an independent statutory body for all children to age 18 years. Its main role is to provide advocacy on children's rights.</p>	<p>The Commissioner provides both a broad advocacy role for children and young people and advice and support to individual children and young people.</p>	<p>The Commissioner provides a direct advice and support service to individual young people where no other service is available to assist.</p> <p>In 2010/11 the Commissioner's office handled 477 cases. 172 of these were 'signposted' to other agencies who could assist. 127 cases involved the provision of advice to assist the young person to resolve their concern. 178 cases became full cases where the Commissioner's office became involved in supporting the child or young person to work with the relevant agencies to reach an appropriate solution.</p>	<p><a href="http://www.legislation.gov.uk/ukpga/2001/18/contents">http://www.legislation.gov.uk/ukpga/2001/18/contents</a></p> <p>Website: <a href="http://www.childcomwales.org.uk/en/about-us/">http://www.childcomwales.org.uk/en/about-us/</a></p>
<b>QUEENSLAND: Commissioner for Children and Young People and Child Guardian</b>			
<p>The Commission is an independent statutory body and has an oversight role of the child safety and youth justice systems. The Commission works collaboratively with both government and non-government agencies to resolve matters impacting on the best interests of</p>	<p>The Commission promotes and protect the rights, interests and wellbeing of children and young people in Queensland, particularly those who:</p> <ul style="list-style-type: none"> <li>• are in care or detention</li> <li>• have no one to act on their behalf</li> </ul>	<p>The Commission can deal with complaints about any government or non-government service provided (or not being provided) to young people in the child safety and/or youth justice systems. The Commission may accept complaints made by children and young people or any person advocating on their behalf. (A person may make a complaint only within one year after the person becomes aware of the matter).</p> <p>The Commissioner may also initiate a complaint in her own name if she reasonably believes there is</p>	<p>Established under the <i>Commission for Children and Young People and Child Guardian Act 2000</i>.</p> <p><a href="http://www.legislation.qld.gov.au/LEGISLTN/">http://www.legislation.qld.gov.au/LEGISLTN/</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
children and young people.	<ul style="list-style-type: none"> <li>• are not able to protect themselves</li> <li>• are disadvantaged because of a disability, geographic isolation,</li> <li>• homelessness or poverty.</li> </ul>	<p>cause to do so. The Act sets out a number of functions the Commissioner must undertake in her investigation of a complaint, including reporting responsibilities. The Commissioner deals with 4561 issues (including all queries, complaints and functions listed) per annum.</p> <p>The Commissioner employs Community Visitors (CVs) who conduct 'regular and frequent' visits to visitable sites and homes to engage with children and young people. Children at visitable sites and homes are defined in the Act as:</p> <ul style="list-style-type: none"> <li>• a child residing at a residential facility</li> <li>• a child residing at a detention centre</li> <li>• a child residing at an authorised mental health service under</li> <li>• a child in who has been placed in the care of an approved carer or someone else other than a parent of the child;</li> <li>• a child who has been removed from the care of their parents under the <i>Child Protection Act 1999</i> and placed in the care of someone other than a parent of the child.</li> </ul> <p>The CVs, when visiting these sites or homes, must</p> <ul style="list-style-type: none"> <li>• develop trusting and supportive relationships with the children.</li> </ul>	<p><a href="#">CURRENT/C/CommisChildA00.pdf</a></p> <p>Website:  <a href="http://www.ccyqcg.qld.gov.au">http://www.ccyqcg.qld.gov.au</a></p>

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		<ul style="list-style-type: none"> <li>• advocate on behalf of the children by listening to, giving voice to, and facilitating the resolution of, their concerns and grievances.</li> <li>• seek information about, and facilitate access by the children to, support services appropriate to their needs provided by service providers.</li> <li>• assess the adequacy of information given to the children about their rights.</li> <li>• assess the physical and emotional wellbeing of the children.</li> <li>• Inspect the sites/homes and examine their appropriateness (including treatment of the children).</li> </ul> <p>The Commission's Individual Advocacy and Resolution Program is focussed on responding to and resolving issues or concerns that individual children and young people bring to the attention of the Commission through the CV team or by concerned individuals contacting the Commission's Complaints Resolution Team.</p> <p>Advocacy on behalf of these children is undertaken primarily at a local level with the relevant Child Safety Service Centre and, on occasions, some matters require escalation in order to be resolved.</p>	

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
<b>NEW SOUTH WALES: Ombudsman</b>			
<p>The NSW Ombudsman is an independent and impartial watchdog that makes sure that public and private sector agencies and employees fulfil their functions properly. The NSW Ombudsman is independent of government and accountable to the public through the NSW Parliament.</p>	<p>The NSW Ombudsman scrutinises the following agencies:</p> <ul style="list-style-type: none"> <li>• agencies delivering public services – including police, correctional centres and state-owned corporations</li> <li>• organisations delivering services to children – including schools and child-care centres</li> <li>• organisations delivering community services – including services for people with disabilities, people who are homeless and elderly people</li> <li>• agencies conducting covert operations – including the Crime Commission and the Independent</li> </ul>	<p>The NSW Ombudsman accepts complaints from children and young people and has dedicated ‘youth’ information on its website.</p> <p>The Ombudsman has a Youth Liaison Officer (YLO) responsible for developing strategies and providing advice to assist young people’s access to its services. The YLO also provides support, advice and assistance to young people about making a complaint. The YLO regularly liaises with youth agencies and peak bodies about issues affecting young people. It is also part of the YLO’s role to conduct presentations and information sessions to young people and agencies working with young people about the NSW Ombudsman and making a complaint.</p> <p><u>Employment related child protection:</u> The Act requires agencies to notify the Ombudsman of allegations against employees that constitute sexual offences, misconduct, assault, ill-treatment, neglect and behaviour that causes psychological harm to children. Designated government and non-government agencies are required to notify the Ombudsman of such allegations arising in the course of the</p>	<p>The NSW Ombudsman work is governed by the <i>Ombudsman Act 1974</i>.  <a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/oa1974114/">http://www.austlii.edu.au/au/legis/nsw/consol_act/oa1974114/</a></p> <p>Website:  <a href="http://www.omb.o.nsw.gov.au/">http://www.omb.o.nsw.gov.au/</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
	<p>Commission Against Corruption.</p> <p>The Ombudsman also has specific functions relating to the protection of children in NSW, the delivery of community services, the causes and patterns of deaths of certain children and people with a disability in care, the use of powers to conduct controlled operations, and the operation of a number of new pieces of legislation conferring additional powers on police.</p>	<p>employee's work or outside their work; whereas all other public authorities are covered by the Act if the allegations arise in the course of the person's employment with the authority.</p> <p>The Ombudsman can monitor the progress of an investigation conducted by an agency, or an investigation conducted on behalf of the agency, concerning a 'reportable allegation or conviction'* against an employee. The Ombudsman may observe interviews conducted by or on behalf of the agency, and may confer with the people conducting the investigation about its conduct and progress. If asked, agencies must provide the Ombudsman with any information relating to the investigation.</p> <p>The Ombudsman also conducts audits of agency child protection systems by reviewing the agency's documentation. The Act requires agencies to have in place codes of conduct, professional standards and workplace employment procedures to assist in determining whether a matter is reportable conduct or not.</p> <p>*Defined in the Act as:  (a) any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence or an offence</p>	

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
		involving child abuse material (within the meaning of Division 15A of Part 3 of the Crimes Act 1900 ), or (b) any assault, ill-treatment or neglect of a child, or (c) any behaviour that causes psychological harm to a child.	
<b>NEW SOUTH WALES: Children's Guardian</b>			
<p>The NSW Children's Guardian is an independent statutory office which promotes the best interests and rights of children and young people in out-of-home care in NSW.</p> <p>The Children's Guardian is part of the NSW Department of Education and Communities and reports directly to the Minister for Family and Community Services.</p> <p>The Children's Guardian can make special reports to the Minister or directly to</p>	<p>Under the <i>Children and Young Persons (Care and Protection) Act 1998</i>, the Children's Guardian functions are to:</p> <ul style="list-style-type: none"> <li>• promote the best interests of all children and young persons in out-of-home care,</li> <li>• ensure the rights of all children and young persons in out-of-home care are safeguarded and promoted,</li> <li>• accredit designated agencies and to monitor their responsibilities under the Act and the regulations.</li> </ul>	<p>Accreditation and quality improvement is the process of evaluating the performance of statutory out-of-home care providers and certifying that standards have been met to the level required.</p> <p>Agencies must be accredited by the Children's Guardian or participating in the quality improvement program in order to provide out-of-home care.</p> <p><u>Case File Audit Program</u>: Case file audits are reviews of files which belong to children and young people in statutory out-of-home care. These files document what has happened in their lives and what plans are in place for their current and future care. The Case File Audit Program compliments the Accreditation and Quality Improvement Program as a means of monitoring whether designated agencies are meeting their responsibility for providing good quality care to children and young people.</p> <p>The Case File Audit Program commenced in July</p>	<p>Established under the <i>Children and Young Persons (Care and Protection) Act 1998</i></p> <p><a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/caypapa1998442/">http://www.austlii.edu.au/au/legis/nsw/consol_act/caypapa1998442/</a></p> <p>Website: <a href="http://www.kidsguardian.nsw.gov.au/">http://www.kidsguardian.nsw.gov.au/</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
the Parliament of NSW.	<p>The Children's Guardian is also responsible for regulating the employment in NSW of children who are under 15 years of age for entertainment, exhibition, still photography and door-to-door sales, and children who are under 16 years of age for any type of modelling. This is done by:</p> <ul style="list-style-type: none"> <li>• promoting the welfare of children and consulting with employers if specific safety and welfare issues are identified.</li> <li>• investigating complaints and alleged breaches of the statutory provisions.</li> <li>• helping to educate parents and people in the industry about the Code of Practice.</li> </ul>	<p>2004. Staff from the Children's Guardian's office conduct annual on-site reviews in designated agencies and use a standard audit tool to randomly review case files, to ensure a consistent method of collecting information.</p> <p>Case file audits provide a 'big picture' of what is happening in out-of-home care in NSW. The findings from case file audits help:</p> <ul style="list-style-type: none"> <li>• monitor the extent to which practice is compliant with the legislation.</li> <li>• designated agencies to demonstrate that they meet the relevant NSW Standards for Statutory Out-of-Home Care.</li> <li>• designated agencies identify where practice improvements can be made for better outcomes for children and young people in out-of-home care.</li> <li>• provide information and advice to the Minister and Parliament and inform out-of-home care policy in NSW.</li> <li>• identify areas which warrant research, as well as providing information about the training and development needs of staff.</li> </ul> <p>The Children's Guardian does not handle individual complaints.</p>	

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
<b>AUSTRALIAN CAPITAL TERRITORY: Children and Young People Commissioner</b>			
Can investigate and decide on individual complaints	Section 14 of the Human Rights Commission Act (ACT) requires the CYPC to assist to resolve complaints about services provided in the ACT specifically for children and young people, or the carers of children and young people. In 2010/11 the service dealt with 71 complaints, 41 complaint-related inquiries and 79 requests for assistance or information.		Website: <a href="http://www.hrc.act.gov.au/childrencyongpeople/content.php/category.view/id/36">http://www.hrc.act.gov.au/childrencyongpeople/content.php/category.view/id/36</a>
<b>NORTHERN TERRITORY: Children's Commissioner</b>			
Can investigate individual complaints relating to "protected and otherwise vulnerable" children	<p>Under Part 5.1 of the Care and Protection of Children Act 2007 (the Act), the Children's Commissioner is charged with ensuring the wellbeing of vulnerable children. One way this is achieved is by receiving and resolving complaints made by or on behalf of vulnerable children or those who were previously vulnerable children. To be eligible for consideration, a complaint needs to pertain to a 'vulnerable' child (as defined in the Act); it must relate to the provision (or the lack of provision) of 'required services'; the service provider must meet specified criteria; and the complaint needs to adhere to the allowable grounds.</p> <p>A 'vulnerable' child is one who:</p> <ul style="list-style-type: none"> <li>• has been notified to or is otherwise involved with child protection or out-of-home care services provided by the Department of Children and Families ('subject of the exercise of a power or performance of a function under chapter 2' of the Act)</li> <li>• is under arrest or is on bail, or has an order under the Youth Justice Act</li> <li>• is on an order made under the Volatile Substance Abuse Prevention Act</li> <li>• has a mental illness, is mentally disturbed, or has a disability</li> </ul>		Website: <a href="http://www.childrenscommissioner.nt.gov.au/complaints.html">http://www.childrenscommissioner.nt.gov.au/complaints.html</a>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
	<ul style="list-style-type: none"> <li>has sought (or for whom a family member or designated professional has sought) child-related services for the prevention of harm, exploitation, protection, care or support of the child</li> </ul> <p>The Act also specifies that the complaint provisions apply to a young person who has left the care of the Department 'as if they were a vulnerable child'. The Commissioner receives approximately 119 complaints per annum.</p>		
<b>TASMANIA: Commissioner for Children</b>			
Can investigate individual complaints when requested by Minister	<p>The Commissioner's powers and functions are in section 78 of the Children Young Persons and their Families Act 1997. In summary the Commissioner provides advice to the Minister on all matters relating to children and young people, promotes the wellbeing of children and investigates matters as requested by the Minister.</p> <p>The Commissioner also has the function to act as an advocate for detainees under the Youth Justice Act 1997. The Commissioner regularly meets with residents at Ashley Youth Detention to discuss issues and concerns with them and act on these.</p> <p>This provides residents with an independent person, the Commissioner, to speak about anything that concerns them about conditions at Ashley. It also provides them with information and assistance to access formal complaint avenues available to them, the Ombudsman and the Secretary, Department of Health and Human Services.</p>		<p>Website:  <a href="http://www.childcmm.tas.gov.au/about-us/">http://www.childcmm.tas.gov.au/about-us/</a></p>

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
<b>SOUTH AUSTRALIA: Office of the Guardian for Children and Young People</b>			
<p>Provides complaints and advocacy services for children and young people in state care and youth justice facilities.</p>	<p><b>Monitoring</b></p> <p>One of the Guardian's functions is to monitor the circumstances of children under guardianship. We do this in different ways. For example, our staff visit children and young people in residential care and in the youth training centres at Magill and Cavan. We talk to the residents, observe their situation and talk to their carers. We address issues with the care providers directly and with Families SA as the situation requires and provide reports to the Minister. We follow up on issues at subsequent visits.</p> <p>Our staff also audit some of the annual reviews for children and young people conducted at Families SA district centres, monitoring the quality of their care and the effectiveness of case planning in meeting their needs. Our observations and interventions are organised around the Monitoring Framework derived from the Charter of Rights (see below) and based on 12 statements encompassing our aspirations for children and young people in care. Our observations during monitoring sometimes lead us to undertake individual advocacy or to advocate on systemic issues.</p> <p><b>Individual advocacy</b></p> <p>The Office responds to concerns raised by children and young people in care themselves or by their advocates. In some cases matters are referred to a more suitable agency, while others are resolved quickly with a brief inquiry or conversation. For more intractable matters, the Office may launch an investigation and actively advocate for the best interests of the child or young person. The Guardian deals with approximately 140 'issues' per annum.</p>	<p>Website:  <a href="http://www.gcyp.sa.gov.au/about-2/what-we-do/">http://www.gcyp.sa.gov.au/about-2/what-we-do/</a></p>	

DESCRIPTION	OVERVIEW OF ROLE	CHILD-RELATED COMPLAINTS FUNCTION	LEGISLATION & WEBSITE
The Office of the Child Safety Commissioner in Victoria <sup>2</sup> and the NSW Commission for Children and Young People, similar to CCYP WA, cannot act on behalf of individual children			

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<sup>2</sup> As of March 2013, the office of the Victorian Child Safety Commissioner was replaced by the Commission for Children and Young People, under the *Commission for Children and Young People Act 2012* (VIC).

## Appendix E – Role of Australian Commissioners for Children and Child Guardians<sup>1</sup>

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria <sup>2</sup>	WA Commissioner for Children and Young People

<sup>1</sup> Australian Children’s Commissioners and Guardians nd, *Role of Australian Commissioners for Children and Child Guardians*, viewed on 10 January 2013, <http://www.ccyw.wa.gov.au/files/article/Roles%20of%20Australian%20Commissioners%20and%20Guardians%20-%20November%202009.pdf>.

<sup>2</sup> Since the publication of this table, legislation was passed in Victoria to replace the Child Safety Commissioner with a Commissioner for Children and Young People, and consequently this information is now out of date. The new Commission’s website can be found at <http://www.ccyw.vic.gov.au/>.

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Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria <sup>2</sup>	WA Commissioner for Children and Young People
Legislative base	<i>Human Rights Commission Act 2005, and Human Rights Act 2004</i>	<i>Commission for Children and Young People Act 1998</i>	<i>Children and Young Persons (Care and Protection Act) 1998</i>	<i>Care and Protection of Children Act 2007</i>	<i>Commission for Children and Young People and Child Guardian Act 2000</i>	<i>Children’s Protection Act 1993</i>	<i>Children, Young Persons and Their Families Act 1997</i>	<i>Child Wellbeing and Safety Act 2005<sup>3</sup></i>	<i>Commissioner for Children and Young People Act 2006</i>
Independence	Reports to the Minister	Reports to a Parliamentary Joint Committee	Reports to the Minister	Reports to the Minister	Reports to a Parliamentary Joint Committee	Reports to the Minister	Reports to the Minister	Reports to the Minister	Reports to a Parliamentary Joint Committee
Reporting to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament	Required to table an annual report to Parliament	Required to table an annual report to Parliament Can table special reports to Parliament

<sup>3</sup> This Act was repealed by the *Commission for Children and Young People Act 2012*.

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Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria <sup>2</sup>	WA Commissioner for Children and Young People
Appointment	The Commissioner is an independent statutory officer appointed by the Executive	The Commissioner is an independent statutory officer appointed by the NSW Governor	The Children’s Guardian is an independent statutory officer appointed by the NSW Governor	The Commissioner is an independent statutory officer appointed by the Administrator	The Commissioner/ Guardian is an independent statutory officer appointed by the Queensland Governor	The Guardian is an independent statutory officer appointed by the Governor of South Australia	The Commissioner is an independent statutory officer appointed by the Governor of Tasmania	The Commissioner is appointed by the Premier	The Commissioner is an independent statutory officer appointed by the Governor of Western Australia
Grounds for dismissal and who can dismiss	The Commissioner may be removed from office by the Executive for contravening a law, misbehaviour, bankruptcy, or conviction of certain offences	The Commissioner may be removed from office by the Governor for misbehaviour, incapacity or incompetence	The Children’s Guardian may be removed from office by the Governor for misbehaviour, incapacity or incompetence	The Commissioner may be removed by resolution of Parliament on grounds of misbehaviour or incapacity or bankruptcy	The Commissioner /Guardian may be removed from office for incapacity or misbehaviour as defined in the Act	The Guardian may be removed from office by the Governor for neglect of duty, incapacity or any other sufficient reason. They must be removed if convicted of an indictable offence	The Commissioner may be removed from office by the Governor on the recommendation of the Minister for any sufficient reason	The Commissioner may be removed from office by the Premier	The Commissioner may be removed from office by the Governor for incapacity or inability to perform functions, misconduct or other reasons under the Act

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria <sup>2</sup>	WA Commissioner for Children and Young People
Advisory Committees	May establish advisory committees pursuant to the Human Rights Commission Act	- Required to establish an Expert Advisory Committee • Can establish other advisory committees – Young People’s Reference Group established	No	No	May establish youth, expert or other advisory committees under the Act	No	• Children and Young Persons Consultative Council • Children and Young Persons Advisory Council	May establish advisory committees	May establish advisory committees consisting of children and young people and may establish other advisory committees

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria	WA Commissioner for Children and Young People
Role	Mandate to promote and protect the rights and well-being of all Australian Capital Territory children and young people	Mandate to promote the well-being of all New South Wales children and young people	Mandate to promote the best interests of New South Wales children and young people in out-of-home care and accredit agencies providing out-of-home care	Mandate to promote the well-being of Northern Territory “protected and otherwise vulnerable” children and monitor key government decisions	Mandate to: <ul style="list-style-type: none"> <li>• promote and protect the rights, interests and well-being of all Queensland children and young people</li> <li>• fulfill particular responsibilities for vulnerable children as defined in its Act</li> <li>• systemically monitor and report on outcomes for children and young people in the child protection and juvenile justice systems</li> </ul>	Mandate to promote the well-being of South Australian children in out-of-home care	Mandate to promote the well-being of all Tasmanian children and young people	Broad mandate to promote the safety and wellbeing of all Victorian children and conduct inquiries as requested by the Minister	Mandate to promote the well-being of all West Australian children and young people

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria	WA Commissioner for Children and Young People
Functions: Advocacy	Broad advocacy functions through providing advice to Executive Government and non-government organisations	Broad advocacy functions through research, policy, community education and public awareness, special inquiries, releasing public reports and making recommendations to Parliament, Executive Government, non-government organisations and business corporations	Contributes to the development of out-of-home care policy and legislation through providing advice to Executive Government and non Government organisations	Provides advice to Executive Government and broad education functions	Broad advocacy function for all children through research, complaints, policy advice, education and public reports to Parliament, Executive Government and non-government organisations. Specific advocacy function for children in alternative care government, residential support facilities and juvenile detention through community visitor program	Advocates for children and young people through policy, inquiries and advice to Executive Government. Limited Individual advocacy role	Broad advocacy functions through policy, raising public awareness, recommendations and advice to Executive Government	Broad advocacy provided through policy comment, research activity, community education and advice to the Minister	Broad advocacy functions through policy, research, monitoring, special inquiries, public awareness and recommendations to Executive Government and non government organisations

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria	WA Commissioner for Children and Young People
Functions: Complaints	Can investigate and decide on individual complaints	<ul style="list-style-type: none"> <li>• Cannot act on individual complaints</li> <li>• Monitors trends in complaints</li> </ul>	<ul style="list-style-type: none"> <li>• Cannot act on individual complaints</li> <li>• Monitors the accreditation of out-of-home care</li> </ul>	Can investigate individual complaints relating to “protected and otherwise vulnerable” children	<ul style="list-style-type: none"> <li>• Can investigate individual complaints</li> <li>• Can investigate systemic concerns</li> <li>• Can seek judicial review of decisions made by statutory child protection decision maker</li> </ul>	<ul style="list-style-type: none"> <li>• Monitors Systemic complaints</li> </ul>	Can investigate individual complaints when requested by Minister	<ul style="list-style-type: none"> <li>• Can respond to individual complaints at the discretion of the Commissioner</li> <li>• Monitors systemic complaints</li> </ul>	<ul style="list-style-type: none"> <li>• Cannot act on individual complaints</li> <li>• Monitors government agencies systems for dealing with complaints made by children and young people and trends in complaints received</li> </ul>

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Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria	WA Commissioner for Children and Young People
Functions: Employment screening	No	<ul style="list-style-type: none"> <li>Encourages organisations to be child-safe and child-friendly</li> <li>Conducts and monitors employment screening for volunteers, students, paid staff and self employed in child-related employment</li> </ul>	No	No	<ul style="list-style-type: none"> <li>Requires providers in regulated service environments to comply with risk management regulations</li> <li>Conducts and monitors employment screening for volunteers and paid staff in child-related employment</li> <li>Daily monitoring of individuals and targeted audits of agencies’ and individual’s compliance with legislative provisions</li> </ul>	No	No	<ul style="list-style-type: none"> <li>Annually reviews the administration of the Victorian employment screening system</li> <li>Promotes the Victorian employment screening system</li> </ul>	Not yet proclaimed

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
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Functions: Accreditation	No	No	Administers the out-of-home care accreditation and quality improvement program and Adoption Service Providers (by delegation)	No	No	No	No	No	No

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria	WA Commissioner for Children and Young People
Functions: Child Death Review mechanisms	No	Chairs independent Child Death Review Team to identify trends and patterns in child deaths, maintains register of all child deaths of NSW children, conducts research and publishes statutory annual reports and special reports	No	Chairs the Review and Prevention Committee	Chairs independent committee to review deaths known to child protection system within 3 years prior to their death; maintains register of all deaths of Queensland children, conducts research and publishes statutory annual reports, promotes prevention activities	No	No	Conducts inquiries into the deaths of children known to the child protection system. Reports findings to the independent Victorian Child Death Review Committee and Executive Government	No

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
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Function: Other			Regulates prescribed children’s employment		<ul style="list-style-type: none"> <li>Conducts monthly visits to all children in care, detention and residential facilities funded by Queensland Government</li> <li>Surveys all children in state care, detention and residential facilities biennially and reports their views on safety, well-being and adequacy of support</li> </ul>	Monitors information sharing on individual children	Advocates for and visits the youth detention centre	<ul style="list-style-type: none"> <li>Promotes out of home care services that encourage the participation of children</li> <li>Advises Executive Government on the performance of out of home care services</li> <li>At the request of the Minister can investigate and report on an out of home care service</li> </ul>	
Children: Age	0-17 years	0-17 years	0-17 years	0-17 years	0-17 years	0-17 years	0-17 years	0-17 years	0-17 years
Children: Population	75,481	1,569,177		56,539	973,140	341,895	114,503	1,152,362	481,840

State / Territory	Australian Capital Territory	New South Wales (NSW)		Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia (WA)
Name	ACT Children & Young People Commissioner	NSW Commission for Children and Young People	NSW Office for Children – the Children’s Guardian	Children’s Commissioner	Queensland Commission for Children and Young People and Child Guardian	Guardian for Children and Young People	Commissioner for Children Tasmania	Child Safety Commissioner Victoria	WA Commissioner for Children and Young People
Children: Target Group	All children and young people	All children and young people	Children and young people in out of home care.  Children and young people under 15 employed in entertainment, exhibition, still photography, door-to-door sales and under 16 in modeling	Protected and otherwise vulnerable children	All children and young people with particular focus given to children in out-of-home care and the juvenile justice system	Children and young people in out-of-home care	All children and young people with a particular focus given to vulnerable children, particularly those in the child protection or juvenile justice system	All children and young people with a particular focus on those who are most vulnerable	All children and young people with special regard for the interests and needs of Aboriginal and Torres Strait Islander children and young people and vulnerable or disadvantaged children and young people
Year established	2006	1998	1998	2008	1996	2006	2000	2005	2007
Commissioner / Guardian	Alasdair Roy	Jan McClelland	Kerryn Boland	Howard Bath	Elizabeth Fraser	Pam Simmons	Paul Mason	Bernie Geary	Michelle Scott
Website	<a href="http://www.hrc.act.gov.au">www.hrc.act.gov.au</a>	<a href="http://www.kids.nsw.gov.au">www.kids.nsw.gov.au</a>	<a href="http://www.kidsguardian.nsw.gov.au">www.kidsguardian.nsw.gov.au</a>	Not available yet	<a href="http://www.ccypcg.qld.gov.au">www.ccypcg.qld.gov.au</a>	<a href="http://www.gcyp.sa.gov.au">www.gcyp.sa.gov.au</a>	<a href="http://www.childcomm.tas.gov.au">www.childcomm.tas.gov.au</a>	<a href="http://www.ocsc.vic.gov.au">www.ocsc.vic.gov.au</a>	<a href="http://www.ccy.wa.gov.au">www.ccy.wa.gov.au</a>