Joint Standing Committee on the
Commissioner for Children and Young People

Report 3

THE MERITS OF APPOINTING A COMMISSIONER FOR
ABORIGINAL CHILDREN AND YOUNG PEOPLE

Presented by
Mrs R.M.J. Clarke, MLA and Hon N. Thomson, MLC

November 2021
Joint Standing Committee on the Commissioner for Children and Young People

The merits of appointing a commissioner for Aboriginal children and young people

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Chair’s Foreword

Western Australia has around 40,000 Aboriginal children and young people, the third biggest population after New South Wales and Queensland. Those two states have appointed an Aboriginal person to act in the interests of Aboriginal children and young people. So have Victoria and South Australia, whose Aboriginal children number around 25,000 and 19,000 respectively.

Those states have established that having an Aboriginal advocate can help to address the higher levels of disadvantage experienced by these young people.

Aboriginal children and young people in WA face the same type of entrenched disadvantage – and in fact, many face additional challenges because of where they live. WA has the highest number of Aboriginal people living in remote or very remote regions – 38,100 compared to 36,600 in Queensland. This is 38% of WA’s Aboriginal population, while the Queensland figure represents only 16% of its Aboriginal population.

The four states with an Aboriginal commissioner or guardian have outlined their reasons for making the appointment and there have been calls for all states to have such a position – as well as for an Aboriginal commissioner at the national level. WA has not appointed an Aboriginal commissioner, even though there have been recommendations to make such an appointment for two decades.

There have been various arguments put forward as to why the current arrangement, which allocates responsibility for all children to the Commissioner for Children and Young People, is acceptable. But it is worth noting that the Commissioner himself firmly believes that there should be an Aboriginal commissioner.

Outgoing Commissioner Colin Pettit has worked hard to connect with Aboriginal children and young people and the adults from their communities. But he is the first to admit that an Aboriginal person in the role could do it better, and someone should be given that opportunity. Aboriginal children and young people need to be heard loud and clear to have a better chance of a brighter future.

Mrs R.M.J. Clarke, MLA
Chair
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Executive Summary

It has been almost 20 years since a landmark inquiry recommended appointing a commissioner for Aboriginal children. This pre-dated the establishment of the Commissioner for Children and Young People in 2008.

While the Commissioner for Children and Young People is required to give special consideration to Aboriginal children and young people, the degree of disadvantage this population faces makes this a challenging task for one commissioner. Aboriginal children and young people make up 40% of Western Australia’s Aboriginal population – a much higher proportion than children in the non-Indigenous population (22%). This, along with the over-representation of Aboriginal children and young people in the youth justice and child protection systems, justifies the appointment of an advocate.

The outgoing Commissioner for Children and Young People believes that Aboriginal children need to be represented by someone with a cultural connection, and we support that view.

A review of the Commissioner for Children and Young People Act 2006 in 2013 considered but did not support creating a deputy commissioner for Aboriginal children and young people. However, since then, four other states have established an equivalent position and there have been calls for WA to follow suit.

We have considered the models in other states and concur with WA’s Commissioner for Children and Young People that a model similar to Victoria’s, which has been operating for 8 years, would work best. This would entail the two commissioners (or an alternative title) working collaboratively within the same office. An amendment to the Act would be required to ensure that the functions and powers of a new role are made explicit, along with the appointment process. Only an Aboriginal person should be appointed.

We recommend that the Aboriginal community be consulted to decide the best title for the position and to determine who should be involved in any appointment.

The new position would require support staff and a budget for community visits, and these requirements should be determined in consultation with the Commissioner for Children and Young People.

We recommend that provision be made in future State Budgets to fund an Aboriginal advisor position as an interim measure, until such time as the legislation is amended to establish the role in its own right.
Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Commissioner for Children and Young People directs that the Attorney General and the Treasurer report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.
Recommendations

Recommendation 1  Page 16
A separate statutory position dedicated to the advocacy of Aboriginal children and young people be created to work alongside the Commissioner for Children and Young People.

Recommendation 2  Page 17
The establishment of an Aboriginal commissioner or similar statutory position should not affect the creation of a statutory position dedicated to Aboriginal children and young people.

Recommendation 3  Page 20
The *Commissioner for Children and Young People Act 2006* be amended to:
- bestow equivalent powers as the Commissioner for Children and Young People upon a newly created position dedicated to the needs of Aboriginal children and young people
- clearly define the functions and powers of the new position
- specify that only an Aboriginal person can be appointed to the position
- specify the appointment process, including that Aboriginal people be consulted.

Recommendation 4  Page 20
The title of the Aboriginal children and young people’s advocacy role be decided in consultation with Aboriginal people.

Recommendation 5  Page 21
The office of the Commissioner for Children and Young People be consulted to determine the resources required to support a new Aboriginal children and young people’s advocate position.

Recommendation 6  Page 21
The Treasurer makes funds available in future State Budgets to provide for an interim commissioner or advisor for Aboriginal children and young people (and support staff, to be determined in consultation with the office of the Commissioner for Children and Young People) until such time as amendments to the *Commissioner for Children and Young People Act 2006* have been passed.
The merits of appointing a commissioner for Aboriginal children and young people

1 Twenty years since the first recommendation

There have been calls for Western Australia to establish a commissioner for Aboriginal children and young people, or a similar position, for almost 20 years. In 2002, the Gordon Inquiry recommended establishing an Aboriginal children’s commissioner. It was part of a recommendation to establish a commissioner for children and young people (CCYP), which was established 6 years later.

We note with a sense of irony that it was an inquiry into children in Aboriginal communities that eventually led to the establishment of a CCYP, but not a commissioner for Aboriginal children and young people.

The establishment of such a role was clearly front of mind for outgoing Commissioner for Children and Young People Colin Pettit, who raised it at his first meeting with this Committee earlier this year. Mr Pettit has made numerous calls to appoint a commissioner for Aboriginal children and young people (CACYP), along with a range of other bodies (including this Committee in previous parliaments).

The purpose of this short report is to draw together the previous recommendations and current support for the role. As well as seeking input from our own commissioner, we contacted commissioners (or guardians) in the four states which already have a CACYP position to form a better understanding of how it has been of benefit and how the role might work here.

The establishment of a CACYP warrants consideration as a discrete issue. Past recommendations for the position can be easily lost or overlooked among a multitude of other recommendations. This report summarises the arguments in favour of appointing a commissioner, which we consider to be compelling, as well as considering opposing views.

Recommendations in previous reports and documents have been made on the basis (in most cases) of consultation with Aboriginal organisations and communities. We did not wish to repeat the consultation process when views have already been recorded. However, we do comment on the need for consultation in regard to any future appointment process.

1 The Joint Standing Committee on the Commissioner for Children and Young People acknowledges that Western Australia is home to people of diverse Aboriginal and Torres Strait Islander backgrounds, and intends that the word ‘Aboriginal’ be understood as an inclusive reference.

We also provide some thoughts on suitable models. It seems that while there may be broad agreement on the need for a commissioner for Aboriginal children and young people, there is less clarity in relation to what form the position should take.

At present, the Commissioner for Children and Young People Act 2006 requires the Commissioner to give special consideration to Aboriginal children and young people by way of section 20 – Matters relevant to performance of functions:

(1): In performing the Commissioner’s functions, the Commissioner 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;

We will consider whether this is adequate to ensure the complex issues affecting Aboriginal children and young people are addressed, or whether the Act should be amended.

2 Aboriginal children and young people are disadvantaged in many areas

Aboriginal children and young people make up a significant proportion of the overall Aboriginal population. More than half live in regional and remote areas. Unfortunately, they also suffer higher rates of disadvantage than the rest of the population.

Aboriginal children and young people account for nearly 40% of the Aboriginal population in WA (39,779 out of a total population of 100,512). This proportion is almost double that of children and young people in the non-Aboriginal population (22%). This is in part due to the lower life expectancy of Aboriginal people compared to non-Aboriginal people.

Aboriginal children and young people make up 6.8% of all children and young people in WA. Approximately 58% live in regional and remote areas, compared to only 20% of non-Aboriginal children and young people. Nearly one in four (24%) Aboriginal children and young people live in very remote parts of WA.

The continuing disadvantage of Aboriginal children and young people in WA is an ongoing challenge for this state. As the Commissioner noted in 2019:

Despite significant investment and policy commitments, including the Council of Australian Governments’ (COAG) commitment to close the gap in Indigenous disadvantage in 2007, there has been little progress in improving wellbeing among Aboriginal children and young people. They continue to be overrepresented in

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4 ibid.
5 ibid.
6 ibid.
vulnerability measures including poverty, out-of-home care, youth justice involvement, homelessness and mental health issues.\textsuperscript{7}

According to the Commissioner,\textsuperscript{8} Aboriginal children and young people in WA:

- Are 16.7 times more likely to be removed from their families by child protection services than non-Aboriginal children.\textsuperscript{9}
- Are 36 times more likely to be in detention than non-Aboriginal children and young people.\textsuperscript{10}
- Are 17.8 times more likely to be subject to a community-based supervision order than non-Aboriginal children and young people.\textsuperscript{11}
- Experience almost 3 times the incidence of developmental vulnerability upon entering primary school compared to non-Aboriginal children and young people (45% compared to 18%).\textsuperscript{12}
- Are at higher risk of mental health problems than their non-Aboriginal peers (almost one in every four Aboriginal children aged 4 to 17 years is at high risk of experiencing clinically significant emotional or behavioural difficulties).\textsuperscript{13}

The urgency of this issue is reflected in the fact that Aboriginal children and young people are almost 10 times more likely to die by suicide than non-Aboriginal children and young people.\textsuperscript{14} Perinatal mortality rates for Aboriginal people are also significantly higher than for non-Aboriginal people. In 2017 perinatal mortality rates were reported to be 10.7 per 1,000, compared to 6.6 per 1,000 for non-Aboriginal people.\textsuperscript{15}

The Commissioner advised the Committee that:

\begin{quote}
There is ... a recognised need to improve the overall health and wellbeing of Aboriginal children in the early years of life, address mental health concerns that are more prevalent amongst young Aboriginal people, and to increase the overall literacy and numeracy amongst Aboriginal students.\textsuperscript{16}
\end{quote}

\begin{flushleft}
\textsuperscript{7} Commissioner for Children and Young People WA, Improving the Odds for WA’s Vulnerable Children and Young People, Perth, April 2019, p. 20.
\textsuperscript{8} Colin Pettit, Commissioner for Children and Young People WA, Letter, 1 October 2021, pp. 1–2.
\textsuperscript{10} Australian Institute of Health and Welfare, Youth Justice in Australia 2019–20, Cat. No. JUV 134, Table 3.1: Young people aged 10–17 under supervision on an average day by Indigenous status and state and territory, 2019–20 (rate), Canberra, AIHW, 2021.
\textsuperscript{11} ibid.
\textsuperscript{12} Australian Early Development Census 2009–2018 data, custom report provided to the Commissioner for Children and Young People (unpublished), WA Department of Education, 2019.
\textsuperscript{13} Stephen Zubrick et al., The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People, Curtin University of Technology and Telethon Institute for Child Health Research, 2005, p. 25.
\textsuperscript{14} Commissioner for Children and Young People WA, Improving the Odds for WA’s Vulnerable Children and Young People, Perth, April 2019, p. 7.
\textsuperscript{15} Department of the Premier and Cabinet, An office for advocacy and accountability in Aboriginal affairs in Western Australia: Discussion paper, Western Australia, 2018, p. 5.
\end{flushleft}
School attendance rates also demonstrate the degree of disadvantage faced by Aboriginal children and young people, with only 33% of Aboriginal students achieving attendance rates of 90% over a year, compared with 72% of non-Aboriginal students.\(^\text{17}\)

Statistics from the Closing the Gap initiative provide further insight into the extent of disadvantage,\(^\text{18}\) revealing that it is visible from childhood right through to after Aboriginal young people have left school.

Closing the Gap target 4 is to increase the proportion of Aboriginal children assessed as developmentally on track in all five domains of the Australian Early Development Census (AEDC) to 55% by 2031. In WA in 2018, 31% of Aboriginal children were developmentally on track across all 5 domains of the AEDC, compared to 60% of non-Indigenous children.\(^\text{19}\)

Target 5 of Closing the Gap relates to attaining year 12 or an equivalent qualification. The target is to increase the proportion of Aboriginal young people (aged 20–24) attaining year 12 or equivalent qualification to 96% by 2031. In WA in 2016, 57% of Aboriginal and Torres Strait Islander young people had achieved this, compared with 88% of non-Indigenous young people.\(^\text{20}\)

Another indicator of the extent of Aboriginal disadvantage is evident in Closing the Gap target 7, which is to increase the proportion of Aboriginal youth (15–24 years) who are in employment, education or training to 67% by 2031. In 2016, 52% of Aboriginal and Torres Strait Islander youth had achieved this, compared with 78% of non-Indigenous youth.\(^\text{21}\)

As noted by the Commissioner, addressing the underlying causes of poor health and wellbeing in Aboriginal communities is complex and yet essential to bring about change for Aboriginal children and youth. One important factor that must be recognised is that of trauma.

Trauma is a pervasive and complex aspect of the lives of Aboriginal people, operating at an individual, collective and community level, with historical and contemporary manifestations. Aboriginal people have been exposed to generations of trauma through colonisation, dispossession, assimilation, child removal policies and marginalisation. The magnitude and compounding nature of intergenerational

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\(^\text{17}\) Department of the Premier and Cabinet, *An office for advocacy and accountability in Aboriginal affairs in Western Australia: Discussion paper*, Western Australia, 2018, p. 5.


trauma experienced by Aboriginal people is still not adequately recognised in
Australia.\textsuperscript{22}

The Committee remains deeply concerned by the continuing degree of disadvantage
experienced by Aboriginal children and young people. The lack of progress made in
addressing that disadvantage is equally concerning.

3 Renewed support as other states lead the way

A recommendation to appoint a CACYP was made even before the office of the WA
Commissioner for Children and Young People was established. This section begins by tracing
chronologically the relationship between recommendations for a CACYP and the
establishment (and subsequent review) of the Commissioner for Children and Young People
Act.

While government support for the CACYP position has wavered at times, there has been
renewed attention as a result of the State Government’s response to the \textit{Inquest into the
deaths of thirteen children and young persons in the Kimberley Region}. The appointment of
similar positions in four other states in recent years has also caused some to question why
WA does not have a CACYP.

3.1 The Gordon Inquiry

The Gordon Inquiry, announced in 2001, was prompted by the coronial inquest into the
death of a 15-year-old at the Swan Valley Nyoongar Community\textsuperscript{23} in 1999. The Coroner’s
report detailed allegations of physical and sexual abuse at the community, and raised
questions about how government agencies responded to allegations of family violence and
child abuse. The inquiry report was released in 2002.\textsuperscript{24} Among other findings and
recommendations, the inquiry recommended the establishment of an independent
children’s commissioner. It further recommended that the ‘proposed Children’s
Commissioner should have a Deputy Children’s Commissioner with responsibility for issues
in relation to Aboriginal children’.\textsuperscript{25} The report argued for the creation of these positions in
recognition of ‘the vulnerability of children, particularly Aboriginal children’.\textsuperscript{26}

3.2 The establishment of the Commissioner for Children and Young People

The coronial inquest and the Gordon Inquiry led to the establishment of a select committee
in 2003 to inquire into:

\begin{itemize}
  \item Commissioner for Children and Young People WA, \textit{Improving the Odds for WA’s Vulnerable Children
  and Young People}, Perth, April 2019, p. 20.
  \item The Gordon Inquiry report refers to the community as the ‘Swan Valley Nyoongar Community’. Other
  references have used the names ‘Swan Valley Nyungah Community’ or ‘Swan Valley Noongar
  Community’. The Government of Western Australia closed the community in 2003.
  \item Sue Gordon, Hon. Kay Hallahan and Darrell Henry, \textit{Putting the Picture Together, Inquiry into Response
  by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities,
  Department of Premier and Cabinet, Western Australia, July 2002.}
  \item \textit{ibid.}, p. 412.
  \item \textit{ibid.}, p. xxvi.
\end{itemize}
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 enable better government for children and to ensure government and Parliament are aware of the needs of children.\textsuperscript{27}

While the issue of a separate CACYP was discussed at several points during the inquiry, the final report did not support the creation of a deputy commissioner for Aboriginal children, finding instead that ‘a commissioner for all children was the best option’.\textsuperscript{28} This was despite support for a deputy commissioner from WA’s Chief Justice at the time, Hon. David Malcolm AC.\textsuperscript{29}

The select committee’s desire for the commissioner to focus on the broadest possible set of children and young people is reflected in recommendation 7 of its report, which was that ‘a Commission and Commissioner for Children and Young People have responsibility for the interests of all children and young people, not just those considered at risk’.\textsuperscript{30}

During the passage of the legislation to create the CCYP position, there was still support for the creation of a deputy commissioner as recommended by the Gordon Inquiry report, including from members such as Dr Elizabeth Constable MLA.\textsuperscript{31} However, the final legislation, the \textit{Commissioner for Children and Young People Act 2006}, did not include this provision. As a result, Dr Gordon and groups such as the Perth Aboriginal Women’s Network have criticised the Act, arguing that ‘there was insufficient pre-legislative consultation, especially with Aboriginal women’s groups’.\textsuperscript{32}

\section*{3.3 The statutory review of the \textit{Commissioner for Children and Young People Act 2006}}

In 2013, the Public Sector Commission completed its statutory review of the \textit{Commissioner for Children and Young People Act 2006}. The review canvassed the issue of a commissioner for Aboriginal children and young people at some length, as it had received a variety of submissions on the issue. As the CCYP (at the time Michelle Scott) made clear to the review, much of the argument regarding the issue centred on the best mechanism to ensure that meeting the needs of Aboriginal children and young people remains a priority:

\begin{quote}
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
\end{quote}

\begin{flushright}
\textsuperscript{27} Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), \textit{Final Report}, July 2004, inside cover.
\textsuperscript{28} \textit{ibid.}, p. 50.
\textsuperscript{30} Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), \textit{Final Report}, July 2004, p. iii.
\textsuperscript{31} Dr Elizabeth Constable MLA, Legislative Assembly, \textit{Hansard}, 16 August 2005, pp. 3975b–4012a.
\end{flushright}
Aboriginal children’s needs would be delegated to the Deputy Commissioner rather than being a priority of the Commissioner.\(^{33}\)

The submissions to the review appeared to follow the same divide. The review concluded 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 ... 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.\(^{34}\)

The review further commented that:

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.\(^{35}\)

The review therefore recommended 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.’\(^{36}\) The review did state that the Commissioner should retain the discretion to use the existing mechanisms under the Act to establish advisory committees, 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’.\(^{37}\)

The review was not necessarily opposed to the idea of a deputy commissioner focusing on Aboriginal children, but favoured a model whereby the Commissioner retained control over the appointment. Arguments related to this approach will be discussed further in section 5.

### 3.4 The Aboriginal and Torres Strait Islander Social Justice Commissioner

The former federal Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda, recommended in 2015 that ‘state and territory governments take steps to establish Aboriginal and Torres Strait Islander Children’s Commissioners in their jurisdictions’.\(^{38}\) The Commissioner argued that

the introduction of a Commissioner [for Aboriginal children] in every state and territory across the country could bring much needed accountability, focus and expertise to issues facing Aboriginal and Torres Strait Islander children. This will


\(^{34}\) *ibid.*, p. 58.

\(^{35}\) *ibid.*

\(^{36}\) *ibid.*

\(^{37}\) *ibid.*

also create a platform for the provision of advice about policies, practices and services aimed at promoting the safety, welfare and wellbeing of our communities. The creation of these positions … could bolster the participation and leadership of Aboriginal and Torres Strait Islander peoples.

3.5 The Joint Standing Committee on the Commissioner for Children and Young People, 39th Parliament of WA

In 2016, the Joint Standing Committee on the Commissioner for Children and Young People (JSCCCYP) of the 39th Parliament tabled *Everybody’s Business: an examination into how the Commissioner for Children and Young People can enhance WA’s response to child abuse*. Recommendation 3 of that report was that

the Children’s Commissioner’s office be appropriately resourced to appoint a person who is either a special advisor on matters concerning Aboriginal children and young people, or to consider appointing an additional Commissioner for Aboriginal children.

The government response to the report noted the recommendation and stated that the ‘Government supports the Commissioner’s continued focus on the needs and views of Aboriginal children and young people in Western Australia’. It also noted that in 2016 the Commissioner had appointed an Aboriginal Community Engagement Officer – a temporary position which no longer exists – and four Aboriginal ambassadors for children and young people.

3.6 The Coroner of Western Australia

In 2019 the WA Coroner released the report of an inquest into the deaths of 13 children and young people in the Kimberley region of WA. Of the 13 deaths, which occurred between 2012 and 2016, 12 were found to have been by way of suicide, and in one case the Coroner made an open finding. The Coroner noted that just over 6% of all children and teenagers in WA are Aboriginal, but 54% of children in the care of the Department of Communities were Aboriginal (as at 30 June 2017). Aboriginal young people also account for more than three-quarters of those in juvenile detention.

These statistics, together with the alarming rate of suicides amongst Aboriginal children and young persons, warrant the appointment of another Commissioner with responsibilities confined to this group or a Special Advisor. There would be merit in appointing an Aboriginal person for this role.

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42 State Coroner RVC Fogliani, *Inquest into the deaths of thirteen children and young persons in the Kimberley Region, Western Australia*, Coroner’s Court of Western Australia, 2019, p. 279.
Recommendation 7 of the Coroner’s report was:

That the State Government appoints a person who is a Special Advisor on matters concerning Aboriginal children and young persons, or considers appointing an additional Commissioner for Aboriginal children and young persons.\(^43\)

The Coroner concluded her report by advocating for services to be co-designed in a way that recognises the need for a more collective and inclusive approach towards cultural healing for Aboriginal communities.

If the cultural healing is able to occur at the community level, underpinned by the principles of self-determination and empowerment, there is a prospect of the benefits of this healing being passed on to children and young persons, through stronger, safer, more resilient communities, and families.\(^44\)

The Coroner’s recommendation for a CACYP should therefore be viewed within the context of co-designing services to improve self-determination and empowerment for the Aboriginal community, and especially for the benefit of Aboriginal children and young people.

3.7 The Joint Standing Committee on the Commissioner for Children and Young People, 40\(^{th}\) Parliament of WA

The JSCCCYP of the 40\(^{th}\) Parliament continued the advocacy of the previous committee and called for the creation of the position of CACYP in its Annual Report for 2019–20. The committee stated that ‘it is the Committee’s view that appropriate and independent advocacy of Aboriginal children and young people is crucial’.\(^45\)

The report further commented that ‘the work of the Children’s Commissioner and the interests and needs of Aboriginal children and young people would be enhanced by the establishment of a [Commissioner] position dedicated to Aboriginal Children and Young People’.\(^46\)

3.8 Commissioner for Children and Young People WA

Outgoing Commissioner Colin Pettit has repeatedly advocated for a CACYP on the basis of advice from senior Aboriginal leaders and the experiences of other Australian jurisdictions. Mr Pettit listed 14 instances in the past 5 years in which he had recommended appointing a CACYP, by way of submissions, letters, reports, policy papers and evidence to parliamentary committees. His most recent appeal was in December 2020 in a letter to the Premier. Mr Pettit said he had never received a formal response from the State Government.\(^47\)

\(^43\) State Coroner RVC Fogliani, Inquest into the deaths of thirteen children and young persons in the Kimberley Region, Western Australia, Coroner’s Court of Western Australia, 2019, p. 280.
\(^44\) ibid., p. 372.
\(^46\) ibid.
\(^47\) Colin Pettit, Commissioner for Children and Young People WA, Letter, 1 October 2021, p. 3.
Mr Pettit believes there is a clear need for an independent CACYP whose functions and powers are solely aimed at supporting governments, decision makers and the broader community to act in the best interests of the state’s 40,000 Aboriginal children and young people. 48

Given the complex and entrenched nature of the issues affecting Aboriginal children and young people, the CCYP maintains that the legislative requirement to simply ‘give priority’ to the interests and needs of Aboriginal children and young people is insufficient – especially considering the CCYP must also represent the diverse interests of all of WA’s 610,000 children and young people.

A designated Aboriginal commissioner focusing purely on issues such as over-representation of Aboriginal children in youth justice and out-of-home care would have a better chance of knowing how to address these issues.49 The cultural connection with Aboriginal communities would also pay dividends:

... even though I am welcomed into most Aboriginal communities and we have a great relationship, sometimes I cannot do some of the things that an Aboriginal commissioner could, and that is the reality.50

Mr Pettit says that ‘appropriate expertise and resources must be specifically allocated to addressing the inequalities facing Aboriginal children and young people if meaningful change is to occur’.51

3.9 Positions in other states

3.9.1 Victoria

Victoria was the first state to appoint a CACYP. The Commission for Children and Young People has both a Principal Commissioner and a Commissioner for Aboriginal Children and Young People. The first CACYP (Andrew Jackomos) was appointed in 2013, and the second (Justin Mohamed) in 2018. The Principal Commissioner and the CACYP said that Aboriginal children and young people required ‘dedicated and specialist focus’ and the CACYP role had been essential to ensuring their needs were identified and addressed.52

Having an Aboriginal person in the role was considered crucial to maintaining strong relationships with Aboriginal communities and organisations and building credibility and acceptance of the Commission’s work.

The connection provided and trust invested in the role by Aboriginal communities ensures access to crucial information and insights on the challenges, barriers and system failures impacting on the rights and wellbeing of Aboriginal children and

49 ibid., p. 9.
50 ibid., p. 10.
51 ibid.
52 Justin Mohamed, Commissioner for Aboriginal Children and Young People and Liana Buchanan, Principal Commissioner, Commission for Children and Young People, Victoria, Letter, 23 September 2021, p. 3.
their families whilst facilitating opportunities for effective advocacy and, in many cases, influencing change to policy, practices and service systems.  

A commissioner dedicated to advancing the rights of Aboriginal children and young people was considered an important means of supporting transformative and meaningful change, which could only be achieved if Aboriginal children and their families’ perspectives were at the centre of systems that impact them.

**3.9.2 Queensland**

The Queensland Family and Child Commission is required by the *Family and Child Commission Act 2014* (QLD) to have two commissioners, with at least one of them being an Aboriginal person or a Torres Strait Islander.  

The Chief Executive and Principal Commissioner, Cheryl Vardon, was appointed in 2015. The current second commissioner, appointed in 2016, is Natalie Lewis, a Gamilaraay woman. She works alongside Ms Vardon with ‘a strong and renewed focus on the systemic and structural issues disproportionately affecting Aboriginal and Torres Strait Islander children’.

Ms Lewis said that the over-representation of Aboriginal children in the child protection system in particular warranted a ‘dedicated and unapologetic focus’ on providing oversight of the system to ensure the rights of Aboriginal and Torres Strait Islander children are upheld.

**3.9.3 South Australia**

South Australia has a Commissioner for Children and Young People (Helen Connolly) and a separate and independent CACYP (April Lawrie). The CACYP was appointed in 2018 to work in partnership with the CCYP; however, legislation passed at the end of September means the CACYP will now operate as a separate entity with powers equivalent to those of the CCYP, including the ability to conduct systemic inquiries. In announcing the new legislative provisions, Education Minister John Gardner said it was a significant step forward which would give a voice to many Aboriginal children and young people in a formal way, ‘with the Commissioner acting as their megaphone’.

In correspondence to the Committee, Ms Lawrie said that an effective advocate for Aboriginal children must be an Aboriginal person who can bring culturally sound insight.

The commissioner as an Aboriginal person, also has privileged and culturally safe access to the Aboriginal community, its families and children and is an enabler and voice for these children. The Aboriginal children’s commissioner is a person who

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53 Justin Mohamed, Commissioner for Aboriginal Children and Young People and Liana Buchanan, Principal Commissioner, Commission for Children and Young People, Victoria, Letter, 23 September 2021, p. 1.
can hear and represent Aboriginal children’s voices with authenticity and cultural integrity.\textsuperscript{58}

Ms Lawrie has focused on child protection, youth justice, education and health – the systems in which there was a marked over-representation of Aboriginal children and young people with negative outcomes. She has sought the views of Aboriginal children and young people about their place in these systems and engaged them in designing system reforms that centre on cultural safety and self-determination.

Ms Lawrie said in contrast, the CCYP had focused on many mainstream matters that may be unrelated to system reform in these four target areas, and to Aboriginal children in particular. This was one of the reasons it was important to have a standalone commissioner for Aboriginal children.

While there had been some legislation to rectify systemic issues that perpetuate disadvantage, data had shown that the plight of Aboriginal children had not improved and was set to worsen.

Having a standalone Aboriginal children’s commissioner in these circumstances is necessary to apply concentrated and culturally sound oversight of those aspects of systems that beset the most disadvantaged children in our society.\textsuperscript{59}

3.9.4 New South Wales

As part of its response to the 2019 review into out-of-home care for Aboriginal children and young people,\textsuperscript{60} the NSW government established the position of Deputy Children’s Guardian for Aboriginal Children and Young People within the Office of the Children’s Guardian (OCG).\textsuperscript{61} This required changes to the Children’s Guardian Act. The legislative changes came into effect on 1 March 2020, and the first Deputy Children’s Guardian for Aboriginal Children and Young People, Richard Weston, took up the role in January 2021.

Employing a Deputy Children’s Guardian was expected to provide another opportunity to drive better outcomes for Aboriginal children and communities. The role was designed to develop and deliver policy, programs and services which affect Aboriginal people and liaise directly with Aboriginal people and communities. As such, the Deputy Children’s Guardian needed to be someone with credibility and a leadership presence in the Aboriginal community.\textsuperscript{62}

The Deputy Children’s Guardian has direct responsibility for implementing the Child Safe Standards and out-of-home care regulatory functions; these encompass all children and

\textsuperscript{58} April Lawrie, Commissioner for Aboriginal Children and Young People, South Australia, Letter, 16 September 2021, p. 1.
\textsuperscript{59} ibid.
\textsuperscript{61} The OCG sits alongside the NSW Office of the Advocate for Children and Young People, which advocates for and consults with children and young people in a similar way to children’s commissioners in other states.
young people but have a clear emphasis on Aboriginal children and young people, particularly in the out-of-home-care system.

The Deputy Children’s Guardian for Aboriginal Children and Young People has been operating for less than a year so there has been little opportunity to assess the impact of the role. Children’s Guardian Janet Schorer told the Committee that since the deputy role was still relatively new, the office would continue to review and refine its scope.63

4 The views of the Aboriginal community should inform the model

While it does not appear that the views of Aboriginal people have been sought specifically and exclusively in relation to appointing a commissioner for Aboriginal children and young people in WA, the views of Aboriginal community representatives are reflected in some of the reports in which a recommendation for a commissioner was made, and in other inquiries and forums.

For example, during the Inquest into the deaths of thirteen children and young persons in the Kimberley Region, Western Australia in 2017, the State Coroner heard firsthand from Aboriginal families and community members about the factors that contribute to an elevated risk of suicide. The key representatives for the inquest were Kimberley Community Legal Services (KCLS) and Aboriginal Legal Service of Western Australia (ALSWA).

KCLS appeared on behalf of the families of 12 of the 13 Aboriginal children and young people whose deaths were investigated, while ALSWA appeared on behalf of five of the families in collaboration with KCLS. Both organisations are intimately acquainted with the Aboriginal communities in which they operate. KCLS operates from offices in Broome and Kununurra and 84% of its clients are Aboriginal.64 ALSWA operates a state-wide service and is the largest community-based Aboriginal and Torres Strait Islander legal organisation in Australia.65

The KCLS and ALSWA both submitted to the Coroner that a position that acts in the interests of Aboriginal children and young people should be created. While KCLS suggested a deputy commissioner, ALSWA preferred either an additional commissioner or a special advisor to assist the CCYP. The Coroner’s recommendation included both options.66 (See section 5 for further discussion of the most appropriate model.)

In 2018 WA’s CCYP Colin Pettit, who has repeatedly called for an Aboriginal commissioner, conducted a one-day forum with Aboriginal leaders to discuss what needs to happen to improve the wellbeing of Aboriginal children and young people. The forum was part of the broader Vulnerability Speaker Series. There were 72 participants including elders, academics

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66 State Coroner RVC Fogliani, Inquest into the deaths of thirteen children and young persons in the Kimberley Region, Western Australia, Coroner’s Court of Western Australia, 2019, p. 278.
and high school students and representatives of community service organisations, government organisations, health services and Aboriginal organisations.

Participants listed solutions to the key issues, barriers and challenges identified in earlier sessions. In regard to Aboriginal leadership and self-determination, participants wanted to see Aboriginal leadership at the top of government and agreed that ‘every state should appoint an Aboriginal Children’s Commissioner to provide monitoring, oversight mechanisms and national and parliamentary reporting.’

Sometimes, it is a single influential voice – a key representative of Aboriginal people – who has made the call. As outlined above, former Aboriginal and Torres Strait Social Justice Commissioner Mick Gooda recommended that all state and territory governments establish Aboriginal children’s commissioners. He said this was something that leaders in the sector had been calling for, particularly having observed the benefits flowing from the appointment of the Victorian Commissioner for Aboriginal Children and Young People.

SNAICC, the national non-government peak body for Aboriginal and Torres Strait Islander children and their families, recommended the appointment of commissioners at state/territory level at the suggestion of workshop participants. More recently, it published a position paper on establishing a national commissioner which was supported by more than 70 organisations across Australia.

As Mr Pettit has pointed out, while there is broad agreement from Aboriginal leaders that a position should be established, there is not necessarily consensus in regard to the form it should take.

We agree with Mr Pettit’s view that in keeping with Article 12 of the United Nations Convention on the Rights of the Child, the model adopted in WA should be informed by the views of Aboriginal children and young people and their families, carers and communities.

A consultation process such as this will be critical to ensuring a WA CACYP has the role, functions and powers required to meet the needs of Aboriginal children and young people and the adults who care for and support them.

It should be noted that while consultation and collaboration with Aboriginal communities is essential for creating ownership of well-accepted, workable solutions, there have also been

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69 SNAICC stands for Secretariat of National Aboriginal and Islander Child Care, but is commonly known as SNAICC – National Voice for Our Children.
70 See SNAICC, Pathways to safety and wellbeing for Aboriginal and Torres Strait Islander children, February 2015, p. 29.
71 SNAICC, Position Paper – Establishment of a national commissioner for Aboriginal and Torres Strait Islander children and young people, October 2019, p. 2.
72 Colin Pettit, Commissioner for Children and Young People WA, Transcript of Evidence, 13 September 2017, pp. 15–18.
73 This requires that children and young people capable of forming their own views are given the opportunity to express their views in matters affecting them.
74 Colin Pettit, Commissioner for Children and Young People WA, Letter, 1 October 2021, p. 3.
concerns about excessive consultation. The Coroner found that consultation could be met with ‘some degree of scepticism and mistrust’, hence the need for a collaborative process.

The Department of the Premier and Cabinet (DPC) considered the question of how and who to consult in its discussion paper on establishing an office for accountability and advocacy in Aboriginal affairs. It determined that Aboriginal people and organisations should have a role in the appointment process for the new office. The paper pointed out that while there are numerous Aboriginal organisations representing a variety of specific interests, there is no single state-wide representative structure which might be called upon to assist in the appointment.

The DPC’s Aboriginal Policy Unit sought feedback on which organisations should have a role in the appointment process. Many proposed a panel of representatives that reflected the regional, social and cultural diversity of Aboriginal West Australians. There were various suggestions as to how the panel should be formed, including: each region nominating preferred candidates; the Minister for Aboriginal Affairs or the Premier making the appointments; and the WA Aboriginal Advisory Council choosing the panel.

The Committee proposes that if an Aboriginal commissioner or equivalent role is to be appointed on the basis of consultation with the community, the suggestions regarding who to consult outlined in the Strengthening accountability and advocacy in Aboriginal affairs – Community Feedback Report should be considered.

5 The basis for a good model already exists

There have been a number of different models proposed for a statutory officer to serve the interests of Aboriginal children and young people. The four states which currently have a position operate under slightly different models and legislation. Their experiences of how this has worked in practice are instructive and will be discussed in more detail. In addition, we consider the options that have been suggested in this state over the past two decades.

5.1 Is a separate additional commissioner warranted?

As outlined in section 3, the select committee which helped establish the Commissioner for Children and Young People Act did not support the creation of a deputy commissioner for Aboriginal children, suggesting a single commissioner for all children was the best option so that Aboriginal children’s issues were not marginalised.

The Committee does not agree. We support the position of Mr Pettit and commissioners in other states: that the entrenched disadvantage experienced by this population, as outlined in section 2, warrants a separate position focused on Aboriginal children and young people.

75 State Coroner RVC Fogliani, Inquest into the deaths of thirteen children and young persons in the Kimberley Region, Western Australia, Coroner’s Court of Western Australia, 2019, p. 45.
76 Department of the Premier and Cabinet, An office for advocacy and accountability in Aboriginal affairs in Western Australia: Discussion paper, Western Australia, 2018, p. 12.
77 Department of the Premier and Cabinet, Strengthening accountability and advocacy in Aboriginal affairs – Community Feedback Report, Western Australia, 2019, p. 17.
Recommendation 1
A separate statutory position dedicated to the advocacy of Aboriginal children and young people be created to work alongside the Commissioner for Children and Young People.

5.2 Would an overarching Aboriginal advocate negate the need for an Aboriginal children’s advocate?

In 2018 and 2019, the State Government explored the possibility of establishing an Aboriginal commissioner or equivalent statutory officer as part of a new office for accountability in Aboriginal Affairs. A discussion paper produced by the DPC considered how this might fit with existing oversight or advocacy bodies, including the CCYP. It noted that none of these existing entities has an exclusive focus on Aboriginal interests and priorities. 78

The proposal was that the new office would not be limited to particular subject matter but would be at liberty to determine which relevant issues to focus on – including ‘difficult areas’ such as housing and children in care. It was acknowledged that there would be some overlap with other accountability agencies, such as the Ombudsman, CCYP and Inspector of Custodial Services, but that this should be seen as a strength. 79

Community feedback on the proposal was gathered; a submission from the CCYP proposed that an additional new office holder – a deputy commissioner for Aboriginal young people – could work across both offices. 80

However, according to a letter from the Attorney General there was also ‘one view’ that instead of a distinct CACYP, the proposed office for accountability in Aboriginal affairs should work closely with the existing CCYP. 81 It is not clear who holds this ‘one view’. The reference in the Attorney General’s letter is from the Commitment to Aboriginal Youth Wellbeing Progress Report, released in late September 2021. This report is the State Government’s updated response to the recommendations of the State Coroner’s 2019 inquest into the deaths of 13 children and young persons in the Kimberley. 82

The section quoted in the Attorney General’s letter is part of the response to recommendation 7 of the Coroner’s report 83 (which was the recommendation to establish an Aboriginal children’s commissioner, as outlined at section 3.6). According to the Attorney

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78 Department of the Premier and Cabinet, An office for advocacy and accountability in Aboriginal affairs in Western Australia: Discussion paper, Western Australia, 2018, p. 8.

79 ibid., p. 11.

80 Department of the Premier and Cabinet, Strengthening accountability and advocacy in Aboriginal affairs – Community Feedback Report, Western Australia, 2019, p. 9.


82 The initial report, Commitment to Aboriginal Youth Wellbeing, was released in March 2020. The Commitment reports also address the recommendations of the Education and Health Standing Committee’s 2016 report Learnings from the Message Stick: the report of the Inquiry into Aboriginal youth suicide in remote areas.

83 Government of Western Australia, Commitment to Aboriginal Youth Wellbeing Progress Report, September 2021, p. 72.
General, the response to the Coroner’s recommendation 7 is the government’s most up-to-date position in regard to appointing a CACYP.\textsuperscript{84}

The response to recommendation 7 ends by saying ‘The Government will continue to engage with key stakeholders about how best to resolve this question’.\textsuperscript{85} However, the Commitment report does not make any other mention of an Aboriginal commissioner, a commissioner for Aboriginal children and young people or, indeed, an office of accountability.

There is also no mention of the proposed accountability office in the recently released Aboriginal Empowerment Strategy\textsuperscript{86} or the Closing the Gap Implementation Plan.\textsuperscript{87} CCYP Colin Pettit was of the belief that it had been ‘taken off the table’.\textsuperscript{88}

The prospect of a commissioner associated with an office of accountability in Aboriginal affairs appears remote. However, the Committee is of the view that even if an Aboriginal commissioner (or equivalent statutory position) was established as part of an office of accountability in Aboriginal affairs, a commissioner for Aboriginal children and young people would still be warranted. The non-Indigenous population has access to a range of advocacy bodies for adults as well as a children’s commissioner, and it seems reasonable to provide the equivalent for the Aboriginal population. Existing positions do not focus specifically on Aboriginal children.

Recommendation 2

The establishment of an Aboriginal commissioner or similar statutory position should not affect the creation of a statutory position dedicated to Aboriginal children and young people.

5.3 Does the Act need to be amended?

The statutory review of the Act in 2013 maintained that there should be no mandated additional commissioner; rather, the Commissioner should retain the discretion and flexibility to use existing mechanisms to ensure that the interests of Aboriginal children and young people are addressed. If there was funding and ‘a demonstrated need’, a deputy commissioner position could be created.

Having been briefed on the experiences of other jurisdictions, we can see the limitations of legislation which does not clearly specify the functions, powers and responsibilities of an additional position. For example, while NSW recently appointed a Deputy Children’s Guardian for Aboriginal Children and Young People, its Children’s Guardian Act 2019 does not specify that a deputy or assistant guardian must be Aboriginal and attend to the

\textsuperscript{84} Hon John Quigley MLA, Attorney General, Letter, 11 October 2021, p. 2.
\textsuperscript{85} Government of Western Australia, Commitment to Aboriginal Youth Wellbeing Progress Report, September 2021, p. 72.
\textsuperscript{86} Department of the Premier and Cabinet, The Aboriginal Empowerment Strategy Western Australia 2021–2029, Western Australia, 2021.
\textsuperscript{87} Department of the Premier and Cabinet, Closing the Gap Jurisdictional Implementation Plan Western Australia, Western Australia, September 2021.
\textsuperscript{88} Transcript of Evidence, 13 October 2021, p. 11.
interests of Aboriginal children. The Children’s Guardian appoints the deputy, in a similar way to the provision within the WA Act.\textsuperscript{89}

Queensland’s Act\textsuperscript{90} specifies that there must be two commissioners and that at least one must be an Aboriginal person or Torres Strait Islander. While this might imply that this commissioner will consider issues particular to Aboriginal and Torres Strait Islander children, there is in fact no mandate to do so. Any work that the Aboriginal commissioner might wish to initiate is subject to the approval of the Principal Commissioner.

Queensland’s Aboriginal Commissioner Natalie Lewis told the Committee that the two commissioners reach an agreement about what to prioritise, but that if she had no interest in focusing on Aboriginal and Torres Strait Islander children and the Principal Commissioner had other priorities it could result in a period where there was no focus on issues specific to Aboriginal children.\textsuperscript{91}

A similar lack of independence and resources proved problematic for South Australia’s CACYP before legislation passed earlier this year to make the CACYP a standalone role with equivalent powers to the CCYP. CACYP April Lawrie said that models where the Aboriginal commissioner was an adjunct to the main commissioner relied upon the ‘grace and favour’ of the main commissioner. She also said that the CACYP role had been ‘severely inhibited’ by a lack of resources, which meant that she was allocated only one staff member.\textsuperscript{92} The two commissioners were essentially competing for the same resources and it was within the CCYP’s power (and not the CACYP’s) to decide how these should be expended.

South Australia’s CCYP Helen Connolly said it was too soon to say how well having the two independent roles in separate locations would work, but there was potential for duplication and overlap. For example, there would need to be a system to determine which commissioner would manage cases or issues which were relevant to both non-Indigenous and Indigenous children; this may also take into account the preference of the stakeholder.\textsuperscript{93} We agree with Ms Connolly’s view that defining the roles of the CCYP and the CACYP both independently and in relation to one another is vital to ensuring their effective operation.

Given the need to work together and manage duplication, it is easy to understand why WA’s CCYP recommends Victoria’s model as the one WA should follow. Victoria has a Principal Commissioner as well as a CACYP who work collaboratively within the same office. However, the powers and functions of the Victorian CACYP are not defined in the Commission’s Act. Some legislative powers can only be exercised by the Principal Commissioner; others can be shared or delegated.\textsuperscript{94}

\begin{itemize}
  \item \textsuperscript{89} Commissioner for Children and Young People Act 2006, s. 24.
  \item \textsuperscript{90} Family and Child Commission Act 2014.
  \item \textsuperscript{91} Natalie Lewis, Commissioner, Queensland Family and Child Commission, Briefing, 27 October 2021.
  \item \textsuperscript{92} April Lawrie, Commissioner for Aboriginal Children and Young People, South Australia, Letter, 16 September 2021, pp. 2, 3.
  \item \textsuperscript{93} Helen Connolly, Commissioner for Children and Young People, South Australia, Briefing, 27 October 2021.
  \item \textsuperscript{94} Justin Mohamed, Commissioner for Aboriginal Children and Young People and Liana Buchanan, Principal Commissioner, Commission for Children and Young People, Victoria, Letter, 23 September 2021, p. 2.
\end{itemize}
In practice, matters that relate to Aboriginal children are led by the CACYP although the commissioners consult one another on key policy or strategic issues, as these usually impact all children in some way.\textsuperscript{95}

Victoria’s commissioners say that legislation should be more explicit about the role of the CACYP and include clearly defined functions and powers.\textsuperscript{96}

This aligns with Mr Pettit’s view that WA’s Commissioner for Children and Young People Act be amended to provide for a dedicated CACYP with equivalent functions and powers to the CCYP, specifically outlining the titles and functions of each role.\textsuperscript{97}

Mr Pettit said the Act should specify that the CACYP role can only be filled by an Aboriginal person, and the process of appointment should be similar to the existing process to appoint a CCYP, outlined in section 7 of the Act. It could also include a requirement to have regard to the United Nations Declaration on the Rights of Indigenous Peoples.\textsuperscript{98} The Act currently requires the Commissioner to have regard to the United Nations Convention on the Rights of the Child.\textsuperscript{99}

The Committee supports these suggestions, emphasising in addition that careful consideration be given to the design of the appointment process following consultation with Aboriginal communities.

We note that SNAICC recently worked with law firm King & Wood Mallesons to prepare a comprehensive options paper on an appropriate model for a national commissioner for Aboriginal and Torres Strait Islander children and young people. After reviewing 18 commissioner models here and abroad for their compliance with the Paris Principles,\textsuperscript{100} the paper concluded that South Australia’s CCYP was the most compliant Australian model. However, the paper acknowledges that the desktop review focused on legislative structure and did not consider practical operation and community feedback. Anecdotal evidence suggested South Australia’s office may be less effective in practice due to insufficient funding. Still, the model was considered to have the strongest legislative framework of all Australian models.\textsuperscript{101}

\textsuperscript{95} Justin Mohamed, Commissioner for Aboriginal Children and Young People and Liana Buchanan, Principal Commissioner, Commission for Children and Young People, Victoria, Letter, 23 September 2021, p. 2.
\textsuperscript{96} ibid.
\textsuperscript{97} Colin Pettit, Commissioner for Children and Young People WA, Letter, 1 October 2021, p. 3.
\textsuperscript{98} ibid.
\textsuperscript{99} Commission for Children and Young People Act 2006, s. 20.
\textsuperscript{100} The Paris Principles are the minimum international standards for the establishment of National Human Rights Institutions. Compliance with the Paris Principles is a prerequisite to receiving the Global Alliance of National Human Rights Institutions accreditation. The Australian Human Rights Commission is the only Australian institution which has received this. The principles are summarised as: entrenchment in law, human rights mandate, cooperation with other human rights bodies, ensuring pluralism, selection and appointment of decision-making body, independence from government, adequacy of funding and public reporting.
\textsuperscript{101} SNAICC and King & Wood Mallesons, Options Paper: Models for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People, 2020, p. 28. The review does not include South Australia’s CACYP, which was established under a different Act (see p. 30 of options paper).
To be clear, we are not suggesting that WA follow South Australia’s recently legislated model of an entirely separate CCYP and CACYP, but features of the legislation governing South Australia’s CCYP may be worth exploring in the event that changes are made to our CCYP Act, to ensure compliance with the Paris Principles.

The options paper includes an assessment of WA’s CCYP against the Paris Principles, which could also prove instructive in the drafting of an amendment bill to the CCYP Act. The authors also searched for public commentary on models; no public criticisms had been made about the role of WA’s commissioner but it was noted that the Act had been criticised for not following the Gordon Inquiry recommendation to establish a deputy children’s commissioner with responsibility for issues in relation to Aboriginal children.

### Recommendation 3

The *Commissioner for Children and Young People Act 2006* be amended to:

- bestow equivalent powers as the Commissioner for Children and Young People upon a newly created position dedicated to the needs of Aboriginal children and young people
- clearly define the functions and powers of the new position
- specify that only an Aboriginal person can be appointed to the position
- specify the appointment process, including that Aboriginal people be consulted.

### 5.4 What should the position be called?

Various reports in the past have suggested that the advocacy role for Aboriginal children and young people be called a deputy commissioner or a special advisor. Another option is to follow the example of Victoria and Queensland in designating the overarching commissioner a principal commissioner and the Aboriginal position a commissioner. This would avoid any implications of lesser importance that could be associated with the title of deputy. Alternatively, they could both be called commissioners.

The label of special advisor may be viewed as less authoritative than commissioner, but so long as the equivalent powers and functions were specified this may be acceptable. It may be regarded as more preferable by Aboriginal people for whom the term ‘commissioner’ is associated negatively with the former Commissioner for Native Affairs, as noted by the Equal Opportunities Commission.

We do not wish to specify a particular title; rather, the above considerations should be taken into account and Aboriginal people should be consulted in the naming process.

### Recommendation 4

The title of the Aboriginal children and young people’s advocacy role be decided in consultation with Aboriginal people.

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103 *ibid.*, p. 72.
5.5 What resources would be required?

WA’s CCYP has suggested that a minimum of 4 additional full-time-equivalent (FTE) positions would be required to support the work of a CACYP.\(^{105}\) We believe the CCYP is best placed to assess the staffing requirements. This figure seems reasonable considering Victoria’s CACYP employs a team of 5 FTE, with additional resources supplied to deliver bigger projects.\(^{106}\) South Australia’s CACYP has 7 FTEs and this is expected to grow in the next budget period.\(^{107}\) Greater resources are required in South Australia than in Victoria because the position is completely independent and no longer located within the CCYP’s office, which would have facilitated the sharing of some resources.

WA’s CCYP has pointed out that in order to undertake meaningful consultation across the state, a travel budget would need to take into consideration that 58 per cent of WA’s Aboriginal children and young people live in regional and remote areas. Staff may also require appropriate technology to facilitate working in remote conditions.\(^{108}\)

**Recommendation 5**

The office of the Commissioner for Children and Young People be consulted to determine the resources required to support a new Aboriginal children and young people’s advocate position.

The Committee is aware that the passage of an amendment bill may delay the appointment of a position which is sorely needed. We propose that funds be made available in future State Budgets to fund an interim position and staff to support the position.

**Recommendation 6**

The Treasurer makes funds available in future State Budgets to provide for an interim commissioner or advisor for Aboriginal children and young people (and support staff, to be determined in consultation with the office of the Commissioner for Children and Young People) until such time as amendments to the *Commissioner for Children and Young People Act 2006* have been passed.

MRS R.M.J. CLARKE, MLA
CHAIR

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105 Colin Pettit, Commissioner for Children and Young People WA, Letter, 1 October 2021, p. 4.
106 Justin Mohamed, Commissioner for Aboriginal Children and Young People & Liana Buchanan, Principal Commissioner, Commission for Children and Young People, Victoria, Letter, 23 September 2021, p. 2.
107 April Lawrie, Commissioner for Aboriginal Children and Young People, South Australia, Letter, 16 September 2021, p. 6.
Appendix One

Committee’s functions and powers

The following was agreed by concurrence between the Legislative Assembly and the Legislative Council on 26 May 2021, establishing the Joint Standing Committee on the Commissioner for Children and Young People:

1. Pursuant to section 51 of the Commissioner for Children and Young People Act 2006, a Joint Standing Committee on the Commissioner for Children and Young People be appointed by the Legislative Assembly and the Legislative Council.

2. The Joint Standing Committee shall comprise 2 members appointed by the Legislative Assembly and 2 members appointed by the Legislative Council.

3. It is the function of the Joint Standing Committee to —
   
   i. monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People;
   
   ii. examine Annual and other Reports of the Commissioner; and
   
   iii. consult regularly with the Commissioner.

4. A report of the Joint Standing Committee will be presented to the Legislative Assembly and the Legislative Council by members of the Joint Standing Committee nominated by it for that purpose.

5. The Standing Orders of the Legislative Assembly relating to Standing and Select Committees will be followed as far as they can be applied.
## Appendix Two

### Abbreviations

<table>
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AEDC</td>
<td>Australian Early Development Census</td>
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<tr>
<td>ALSWA</td>
<td>Aboriginal Legal Service of Western Australia</td>
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<td>CACYP</td>
<td>Commissioner for Aboriginal Children and Young People when referring to a specific commissioner; commissioner for Aboriginal children and young people when referring to the position generally. <em>Note, we have used this title when referring to the proposed position for Western Australia, but advise that the position, if established, may have a different title.</em></td>
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<tr>
<td>CCYP</td>
<td>Commissioner for Children and Young People when referring to a specific commissioner; commissioner for children and young people when referring to the position generally.</td>
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<td>DPC</td>
<td>Department of the Premier and Cabinet</td>
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<td>KCLS</td>
<td>Kimberley Community Legal Services</td>
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<td>MLA</td>
<td>Member of the Legislative Assembly</td>
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<td>MLC</td>
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<tr>
<td>OCG</td>
<td>Office of the Children’s Guardian (New South Wales)</td>
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<td>OOHC</td>
<td>out-of-home care</td>
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<td>SNAICC</td>
<td>Secretariat of National Aboriginal and Islander Child Care</td>
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## Briefings

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<tr>
<td>27 October 2021</td>
<td>Helen Connolly</td>
<td>Commissioner for Children and Young People</td>
<td>Commissioner for Children and Young People, South Australia</td>
</tr>
<tr>
<td>27 October 2021</td>
<td>Natalie Lewis</td>
<td>Commissioner</td>
<td>Queensland Family and Child Commission</td>
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## Appendix Four

### Correspondence

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<td>16 September 2021</td>
<td>April Lawrie</td>
<td>Commissioner for Aboriginal Children and Young People</td>
<td>Commissioner for Aboriginal Children and Young People, South Australia</td>
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<td>2</td>
<td>20 September 2021</td>
<td>Janet Schorer</td>
<td>Children’s Guardian</td>
<td>NSW Office of the Children’s Guardian</td>
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<td>3</td>
<td>23 September 2021</td>
<td>Justin Mohamed</td>
<td>Commissioner for Aboriginal Children and Young People</td>
<td>Commission for Children and Young People, Victoria</td>
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<tr>
<td></td>
<td></td>
<td>Liana Buchanan</td>
<td>Principal Commissioner</td>
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<td>29 September 2021</td>
<td>Cheryl Vardon</td>
<td>Principal Commissioner</td>
<td>Queensland Family and Child Commission</td>
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<td>Natalie Lewis</td>
<td>Commissioner</td>
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<td>5</td>
<td>1 October 2021</td>
<td>Colin Pettit</td>
<td>Commissioner for Children and Young People</td>
<td>Commissioner for Children and Young People, Western Australia</td>
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<td>6</td>
<td>11 October 2021</td>
<td>Hon John Quigley MLA</td>
<td>Attorney General</td>
<td>Government of Western Australia</td>
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</table>

The listed correspondence can be accessed on the Committee webpage at [www.parliament.wa.gov.au](http://www.parliament.wa.gov.au). Go to Committees > Committee on the Commissioner for Children and Young People > Other proceedings.