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# Joint Committee on Children and Young People

Report 4/56 – August 2018

Review of the 2016-2017 Annual Report of the Advocate for Children and Young People and the functions of the Children's Guardian



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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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# Membership

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# Chair's Foreword

As an oversight committee, the primary role of the Committee on Children and Young People is to monitor the exercise of the functions of the NSW Advocate for Children and Young People and the NSW Children's Guardian. The Advocate and the Guardian perform two very different but important roles.

Children and young people are an important part of our community, but sometimes their voice is not heard. The Advocate is responsible for giving a voice to these children and young people. It does this by visiting schools, juvenile justice centres and PCYCs all over New South Wales to listen to children and young people. The Advocate can then bring this feedback to the attention of government and the wider community.

A core function of the Guardian is to administer the Working with Children Check (WWCC). While the Guardian has many functions, the Committee's oversight role is limited to monitoring the Guardian's administration of the WWCC. By exercising some control over the kinds of people that come into regular contact with our children, the Guardian helps ensure that the spaces children occupy – like schools and sporting clubs – are safe.

As part of its oversight role, the Committee regularly undertakes reviews of the work of the Advocate and Guardian. The Committee reviews the annual reports of these agencies and then holds hearings to hear from key people. These hearings are an opportunity to better understand the work and strategic direction of the Advocate and Guardian, while also allowing the Committee to question these agencies on any areas of interest or potential concern.

While this year's report makes no recommendations, it captures the key themes of our 2018 Review. I would like to thank the Advocate and the Guardian for participating in this review. As always, I thank my fellow Committee members for their enthusiasm and also acknowledge the support of the committee secretariat.



Ms Melanie Gibbons MP  
Chair

# Chapter One – The Advocate for Children and Young People

- 1.1 The purpose of this Chapter is to report on the Committee's review of the 2016-17 Annual Report of the Advocate for Children and Young People, and any matters arising out of that report.
- 1.2 In doing so, the Chapter will focus on how the office of the Advocate for Children and Young People (the ACYP) has performed its functions under the *Advocate for Children and Young People Act 2014* (the ACYP Act), with special attention to how it engages with children and young people, and the organisations that provide services to them.
- 1.3 This Chapter will also address how the ACYP is responding to various recommendations made by this Committee in the context of its Inquiry into the sexualisation of children and young people as well as last year's annual review.

## Launch of the Strategic Plan for Children and Young People

- 1.4 A core function of the ACYP is to prepare a strategic plan for children and young people.<sup>1</sup> The first Strategic Plan for Children and Young People (the Plan) was launched on 26 July 2016. The Plan was informed by consultations with over 4,000 children and young people, and representatives across government.
- 1.5 The Plan establishes a set of standards against which NSW Government policies and services for children and young people can be measured, grouped around six themes: 'safe', 'respect', 'opportunity', 'connect', 'wellbeing' and 'voice'. The Plan also includes 42 initiatives, five of which will be delivered by the ACYP as follows:
- Develop indicators of the level of participation of children and young people with disability in social, community and civic life in New South Wales – with the Department of Family and Community Services (FACS)
  - Develop a Quality Assessors Program so that children and young people can review services and provide feedback to service providers and government
  - Provide targeted training to service providers to improve their ability to engage with children and young people
  - Develop 'Our Local' – a web portal to provide information about local youth facilities and activities
  - Establish strong links between existing and new youth advisory groups and networks – with FACS.<sup>2</sup>

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<sup>1</sup> *Advocate for Children and Young People Act 2014*, section 15(1)(g)

<sup>2</sup> Advocate for Children and Young People, NSW Strategic Plan, 2016 – 2019, pp 34 – 36 and 43; Advocate for Children and Young People, Answer to Questions on Notice, 23 April 2018, p1

- 1.6 The Committee heard that Our Local, formerly known as 'MyLocal', is designed to help ensure that children and young people have a sense of belonging and connectedness with people and place, both online and offline.<sup>3</sup> In delivering Our Local, the Committee recognises that the ACYP is also discharging one of its statutory functions, which is to promote the provision of information and advice to assist children and young people.<sup>4</sup>
- 1.7 The ACYP will also train Quality Assessors, also known as 'Children and Young People Inspectors'. These inspectors will visit services to assess and provide feedback about whether they are appropriately-g geared to children and young people.<sup>5</sup> As at 22 May 2018, the ACYP had already trained 20 young people as inspectors, and training for additional inspectors is scheduled for later in the year.<sup>6</sup>
- 1.8 The Committee is encouraged by the Advocate's extensive efforts so far to prepare and promote the Plan. At the hearing the Committee heard from Mr Andrew Johnson, the Advocate for Children and Young People (the Advocate), about the efforts of his office to promote the Plan across government and in regional and rural areas:
- What we saw in the beginning of this reporting period was the launch of the actual plan. A large part of that was ensuring there was sensitisation across the State across different departments ... Each of the regions has a regional leadership executive group and so we went to each region to hear from a regional perspective about what issues were facing them and facing children and young people. One of the key elements for the strategic plan was to have a joint language when we talk about children and young people. It was very important to take that out to the regions and governments—a very big organ—to ensure that people on the ground knew about the plan and where it could be useful. We spent a lot of time in this reporting year doing that.<sup>7</sup>
- 1.9 The Committee agrees that promoting the Plan across government and in the community will assist in ensuring that the Plan is successfully implemented.
- 1.10 Through the Plan, the ACYP is acting in accordance with many of its obligations under the ACYP Act. For example, the ACYP consulted widely in preparing the Plan, and the Plan itself focuses on systemic issues affecting children and young people.<sup>8</sup>
- 1.11 The ACYP will prepare progress reports for Parliament during and at the conclusion of the Plan. These reports will outline the progress of new initiatives or investments that have achieved the Plan's objectives.<sup>9</sup>

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<sup>3</sup> Advocate for Children and Young People, NSW Strategic Plan, 2016 – 2019, p 17. See also Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 8

<sup>4</sup> *Advocate for Children and Young People Act 2014*, s 15(1)(f)

<sup>5</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 11

<sup>6</sup> Advocate for Children and Young People, Answer to Questions on Notice, 22 May 2018.

<sup>7</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of evidence, 30 April 2018, p 8

<sup>8</sup> *Advocate for Children and Young People Act 2014*, section 15(2)(a),(d)

<sup>9</sup> Advocate for Children and Young People, 2016-17 Annual Report, p 8

- 1.12 The Committee will monitor the impact of the Plan through these reports with particular interest on the outcomes for children and young people in New South Wales.

### **Engaging with children and young people**

- 1.13 A key focus of the ACYP is quality engagement with children and young people. In exercising its statutory functions, the ACYP must consult with a wide range of children and young people across the State and give priority to the interests of vulnerable and disadvantaged groups.<sup>10</sup>

- 1.14 At the hearing, the Advocate gave evidence about his office's approach to engaging with children and young people generally:

... I think there is a notion that there are children who are hard to reach. I think that stopped, over many decades, people going out and talking to young people in difficult circumstances. We would say that children who are "hard to reach" are the easiest to reach. If we wanted to talk to children in difficult circumstances we went out to the regions and spoke to children in specialist homelessness services [SHS]—services for homeless young people. If we want to hear about system failure, we sit down and listen to young people in detention. ... I think there is a kind of cultural barrier when people say that young people are hard to reach ... We would say that, if you think about it, children and young people are easier to reach because they are in organised groups—whether that is in a youth group or a school.<sup>11</sup>

- 1.15 In the context of the importance of face-to-face consultations generally, Mr Johnson also emphasised that the Advocate should be physically present for as many consultations as possible.<sup>12</sup>

- 1.16 The Committee also heard how the ACYP sometimes verifies the results of face-to-face consultations by conducting blind-polling.<sup>13</sup>

- 1.17 While the Advocate acknowledged that there may be some children and young people who are more difficult to reach, he stated that the ACYP made extra efforts to engage such vulnerable and disadvantaged children:

Obviously there are some children who slip through the cracks. They may have disengaged with school but are not yet in Juvenile Justice. So if they are not connecting with a service then we can say we are probably not listening to as many of those children, but because the legislation clearly sets out that we have to focus on disadvantaged young people, we go to where those young people are—whether that is in residential care, Juvenile Justice, with services or in homelessness.<sup>14</sup>

- 1.18 The Committee is encouraged that the ACYP is aware that it must prioritise engagement with vulnerable and disadvantaged children and young people.<sup>15</sup>

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<sup>10</sup> *Advocate for Children and Young People Act 2014*, sections 15(2)(b) and (c)

<sup>11</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 12

<sup>12</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, pp 9 and 11

<sup>13</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 9

<sup>14</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 11

<sup>15</sup> *Advocate for Children and Young People Act 2014*, section 15(2)(b)



### **Children and juvenile justice**

- 1.19 At the hearing, the Advocate spoke in detail about the experience of children in the juvenile justice system. This provided the Committee with more insight into the issues faced by these children, as well as ACYP's approach to engaging with vulnerable groups.
- 1.20 At the outset, Mr Johnson observed that the intersection between juvenile justice, out-of-home care and homelessness meant that the juvenile justice system could not be examined in isolation.<sup>16</sup>
- 1.21 The Advocate emphasised that children and young people with experience of the juvenile justice system were calling for individualised service delivery in the form of targeted activities that would 'keep them out of trouble'.<sup>17</sup>
- 1.22 In this context, the Advocate gave evidence about the positive view that Aboriginal children generally have of diversionary or cultural programs that are Aboriginal owned and controlled. He emphasised the importance of supporting Aboriginal ownership and control of such programs such as the Youth Koori Court.<sup>18</sup>
- 1.23 Another key issue emerging from the ACYP's consultations was the importance of managing suspensions from school in a way which did not increase the likelihood that a child would engage in juvenile offending.
- 1.24 While the ACYP speaks to many children and young people with experience of the juvenile justice system, the Advocate gave evidence that the ACYP had visited two or three juvenile justice centres. Given that this is a particularly vulnerable group, the Committee is pleased to hear the ACYP's plans to visit every juvenile justice centre in New South Wales twice over the next year, and to also trial exit interviews with juvenile offenders.<sup>19</sup>
- 1.25 The Committee will closely monitor the progress of this systematic engagement with children in juvenile justice centres, noting that its preliminary view is that this type of engagement should be an ongoing feature of the work of the ACYP.
- 1.26 In future years, the Committee would like to hear more about the ACYP's approach to systematically engaging with those children in out-of-home care or with a child protection history, particularly given that this is also a vulnerable and disadvantaged group.

### **Children and young people with disabilities**

- 1.27 At the hearing, Mr Johnson indicated that his office was trialling different ways to consult with children and young people with disability. The ACYP is currently

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<sup>16</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 14

<sup>17</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 14

<sup>18</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 14

<sup>19</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 13

establishing an advisory committee comprised of children and young people with disability, which would operate in a similar way to the Youth Advisory Council.<sup>20</sup>

1.28 The Committee is encouraged by the efforts of the ACYP to connect with children and young people with disability, particularly in light of the implementation of the National Disability Insurance Scheme. This increased level of engagement is likely to assist the ACYP in implementing one of its initiatives under the Plan, which is to work with FACS to develop indicators of the level of participation of children and young people with disability in the social, community and civic life of New South Wales.

1.29 The Committee will keep a watching brief on this aspect of the ACYP's work.

### **Children and young people in rural and regional areas**

1.30 The Committee commends the ACYP for its efforts to reach children and young people in rural and regional areas. The ACYP aims to ensure that 40% of children and young people consulted on a given issue or who attend an ACYP event are from regional and rural areas, a percentage which reflects their representation in the New South Wales population.

1.31 The primary method of engaging these children is through regional schools and other groups such as Police-Citizens Youth Clubs.<sup>21</sup> For events that are held in Sydney, the ACYP also facilitates involvement through video conferencing, or flying children from especially remote areas to an event.

1.32 Video conferencing was recently used to facilitate the participation of rural and regional young people at 'Citizens' Juries' held in Sydney. Such juries enabled these children and young people to discuss and vote on various policy proposals.<sup>22</sup>

### **Children and young people using drugs and alcohol**

1.33 At the hearing, the Advocate highlighted that children and young people had particular concerns about the use of drugs and alcohol, and often emphasised that alcohol was just as much of a problem as drugs.

1.34 The lack of youth-focused drug and alcohol detox services in rural and regional areas was a key concern. In particular, accessing rehabilitation could be difficult because many programs first required that young people be admitted to a detox facility, and some detox facilities would not accept young people.

1.35 Young people also sought greater awareness of the drug and alcohol services that do exist and are youth-friendly. The Committee understands that 'Our Local' will assist in improving access to information about such services.<sup>23</sup>

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<sup>20</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 10

<sup>21</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 9

<sup>22</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 9

<sup>23</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, pp 11

## Engaging with organisations

- 1.36 In exercising its functions under the ACYP Act, the ACYP must work cooperatively with organisations that provide services to children and young people.<sup>24</sup> Meaningful engagement with these organisations is therefore a key part of the work of the ACYP.
- 1.37 The initial focus of the ACYP was on building relationships with schools and non-government organisations. The Advocate observed that such organisations are now aware of the ACYP, including its ability to influence policy-making, and are therefore open to collaboration. For example, Mr Johnson observed that every single region in New South Wales had volunteered to trial the new 'Our Local' digital platform.<sup>25</sup>
- 1.38 Again, the Plan proposes the creation of Children and Young People Inspectors, who will visit services to assess their accessibility to children and young people. The Committee notes that this initiative is likely to complement the ACYP's current program of engagement with organisations.

## Juvenile justice

- 1.39 At the hearing, the Advocate spoke in detail about how the ACYP engaged with various juvenile justice organisations.
- 1.40 The ACYP has regular meetings with different parts of the NSW Police Force, including the Commissioner himself, as well as the President of the Children's Court. These meetings provide an opportunity for the ACYP to provide feedback from its consultations with children and young people about their interactions with police. Other issues discussed relate to diversionary programs such as the Youth Koori Court.<sup>26</sup>
- 1.41 In this context, the Advocate was asked about Suspect Targeting Management Plans (STMP). These are understood to be an individualised and targeted form of crime prevention, and which may apply to juvenile offenders or suspected juvenile offenders. While the Advocate had no 'hard evidence' that children and young people were disproportionately subject to STMPs, he shared the view of other organisations that STMPs should not apply to those under 18.<sup>27</sup>
- 1.42 The Committee also heard evidence that ACYP has been asked to become an ongoing member of the Juvenile Justice Advisory Committee administered by the Department of Justice.<sup>28</sup> The Committee anticipates that this will be another avenue for the ACYP to voice the concerns of children involved in juvenile justice, particularly as a result of their visits to juvenile justice centres.

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<sup>24</sup> *Advocate for Children and Young People Act 2014*, section 15(2)(d)

<sup>25</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 10

<sup>26</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 13-14

<sup>27</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, pp 14-15

<sup>28</sup> Mr Andrew Johnson, Advocate for Children and Young People, Transcript of Evidence, 30 April 2018, p 14

## **Inquiry into the sexualisation of children and young people**

- 1.43 In November 2016, this Committee published its report on the Sexualisation of Children and Young People.<sup>29</sup> Six of the Committee's 10 recommendations referred to the ACYP, including that the ACYP:
- monitor research into young people's use of and attitudes towards pornography
  - continue to work with the Children's e-Safety Commissioner and industry stakeholders to explore opportunities to reduce children and young people's exposure to pornography
  - research and promote credible, age-appropriate, evidence-based websites and other materials in relation to children and young people
  - work with the Department of Family and Community Services and the Department of Education to promote the Children's e-Safety Commissioner on their websites
  - given the concerns regarding revenge porn and the exchange of Child Exploitation Material Online, monitor research concerning the creation and distribution of sexts and pornography by minors
  - work with the Children's e-Safety Commissioner to investigate the processes currently available on social media for adults to review content flagged as harmful to children. They should also work together to establish a mechanism for adults to report inappropriate content exchanged on social media platforms.
- 1.44 The Government responded to these recommendations in May 2017.<sup>30</sup>
- 1.45 In its response to questions on notice, the Advocate stated that the ACYP staff regularly monitored research on the use of and attitudes towards pornography among young people, as well as other issues raised in the recommendations. The Advocate also updated the Committee about recent research into children and young people's exposure to pornography, including a literature review undertaken by the Australian Institute of Family Studies.<sup>31</sup>
- 1.46 The ACYP also regularly meets with the e-Safety Commissioner to discuss and share information regarding the matters raised in the recommendations. ACYP has also undertaken research in relation to the resources that should be available to parents in the context of their children's use of sexting and online pornography.<sup>32</sup>

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<sup>29</sup> Committee on Children and Young People, *Sexualisation of Children and Young People*, November 2016

<sup>30</sup> NSW Government, *Report 2/56: Sexualisation of Children and Young People*, November 2016 - New South Wales Government Response, May 2017

<sup>31</sup> Advocate for Children and Young People, *Answers to Questions on Notice*, 23 April 2018, p 4

<sup>32</sup> Mr Andrew Johnson, Advocate for Children and Young People, *Transcript of Evidence*, 30 April 2018, p 15

- 1.47 The Committee will continue to monitor the work of the ACYP which will be undertaken in accordance with the Government's response.

### **Violence against children**

- 1.48 In its last annual review, the Committee recommended that the Minister for the Prevention of Domestic Violence and Sexual Assault conduct a review of the incidence of violence against children.<sup>33</sup> The Committee had heard evidence from the ACYP and the Youth Advisory Council that this was an issue of great concern to children and which they felt was not being taken seriously.
- 1.49 As such, the Committee welcomed the Government's response on 14 February 2018 which confirmed that FACS would undertake such a review with the ACYP.<sup>34</sup>
- 1.50 The ACYP has also since advised that from June 2017 it has chaired an advisory group on violence against children. That advisory group comprises representatives from various government and non-government agencies including Domestic Violence NSW, the Department of Premier and Cabinet, the office of the Hon. Pru Goward MP, Mission Australia, and Youth Action.<sup>35</sup>
- 1.51 During the 2016-17 reporting year, the ACYP also ran the 'Now and Forever' anti-violence campaign.
- 1.52 The Committee will keep a watching brief on the review being undertaken by the ACYP and FACS, as well as the related work of the ACYP to address violence against children.

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<sup>33</sup> Committee on Children and Young People, Report 3/56: 2017 Review of the Annual Reports of the Advocate for Children and Young People and the Children's Guardian, August 2017

<sup>34</sup> Letter from The Hon Pru Goward MP to Ms Melanie Gibbons MP, Chair, Committee on Children and Young People, on 14 February 2018 providing government response

<sup>35</sup> Advocate for Children and Young People, Answers to Questions on Notice, 23 April 2018, p 3

## Chapter Two – Office of the Children's Guardian

- 2.1 The Committee monitors and reviews the exercise by the Office of the Children's Guardian (the OCG) of its functions under the *Child Protection (Working with Children) Act 2012* (the WWC Act).<sup>36</sup>
- 2.2 The functions of the OCG under the WWC Act are to collect and maintain data, and assess and monitor applications and applicants obtaining a Working with Children Check (WWCC). In addition, the OCG monitors compliance with the WWC Act and may promote public awareness on the WWCC and child-related work.<sup>37</sup>
- 2.3 During this review the Committee focused on compliance with the WWCC and the recent reforms to the WWC Act following the 2017 statutory review of the WWC Act and recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse.

### Appointment of a new Children's Guardian

- 2.4 During the review period, Ms Janet Schorer was appointed as the new Children's Guardian. In evidence before the Committee, Ms Schorer acknowledged the commitment and dedication of the staff of the OCG during her first year as Children's Guardian.<sup>38</sup>
- 2.5 The Committee welcomes Ms Schorer as the new Children's Guardian.

### Compliance with the Working with Children Check

- 2.6 The new WWCC system is being phased in over five years. During the reporting period, the WWCC entered the fourth phase of this process. During year four the sectors phased in included some children's health services and education providers.<sup>39</sup> Commenting on the effectiveness of the new system, Ms Louise Coe, Director of the WWCC, noted:

Part of the review was to look at whether we should do things differently, so there has been an evaluation by the stat review. We have, I think, more than 1.6 million people in the system, so there has been a huge uptake.<sup>40</sup>

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<sup>36</sup> *Advocate for Children and Young People Act 2014*, s 37(1)(b)

<sup>37</sup> *Child Protection (Working with Children) Act 2012*, Part 6

<sup>38</sup> Ms Janet Schorer, NSW Children's Guardian, Office of the Children's Guardian, Transcript of Evidence, Monday 30 April 2018, p 2

<sup>39</sup> Office of the Children's Guardian, Annual Report 2016-17, October 2017, p 20. The education providers phased in during year four were secondary, vocational, and private tuition coaching. The final categories of child-related work to be phased in in year five include the remaining children's health services, justice health, forensic mental health, NSW Ambulance service, early educations and child care and remaining education services.

<sup>40</sup> Ms Louise Coe, Director, Working with Children Check, Office of the Children's Guardian, Transcript of Evidence, Monday 30 April 2018, p 3

- 2.7 In the 2016-17 reporting year, the OCG processed 392,991 applications, with an average of 1556 online applications per day. Of these applications 63% were for paid work and 37% were for volunteers. 80% of applicants with non-records or non-relevant records were cleared within 24 hours.<sup>41</sup>
- 2.8 During 2016-17, the OCG received 90 referred matters of alleged non-compliance with the WWCC. The OCG state that allegations of non-compliance are received via referral from a number of sources including other Government agencies such as NSW Police and the NSW Ombudsman, internally or from members of the public.<sup>42</sup>
- 2.9 Of the 90 referred matters, two matters were referred to the NSW Police and the remaining 88 were reviewed by the OCG but not referred for any breach. Ms Coe expanded on the 90 referrals of alleged non-compliance:
- They were all reviewed but they were not all investigated. When we find a breach we refer it to the NSW Police Force. I think in the last year, two matters were referred to the police. One person received a warning and the other one was statute barred. The other matters have been resolved. Either the non-compliance issue was resolved or it was not the situation that was reported to us. But we have looked at all those matters.<sup>43</sup>
- 2.10 With regard to any trends concerning compliance with the WWCC, the Guardian indicated they have noticed some trends around organisations with a large volunteer base, including volunteer sporting bodies. Ms Schorer, Children's Guardian, commented:
- We appreciate that there is often a volunteer who is supporting another group of volunteers. In the main, our compliance effort there goes to explaining the process, helping them to understand their obligations and then maybe us speaking to a parent sporting body, for example, about ways that they support local groups.<sup>44</sup>
- 2.11 Ms Coe highlighted that the problem with the volunteer sector is the employer verification rate. In the WWCC system, an employer is meant to access the system and verify relevant details of an employee online. In the volunteer sector, 56% of employers are completing the verification process compared with 82% of employers in the paid work sector. Ms Coe commented:
- So a lot of checks are being done, but the organisation or the employer in the volunteer sector is not really following through with that necessary step and verifying online, which is critical.<sup>45</sup>

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<sup>41</sup> Office of the Children's Guardian, Annual Report 2016-17, October 2017, pp 20 – 21

<sup>42</sup> Office of the Children's Guardian, Annual Report 2016-17, October 2017, p 24

<sup>43</sup> Ms Louise Coe, Transcript of Evidence, Monday 30 April 2018, p 4

<sup>44</sup> Ms Janet Schorer, Transcript of Evidence, Monday 30 April 2018, p 4

<sup>45</sup> Ms Louise Coe, Transcript of Evidence, Monday 30 April 2018, p 4

- 2.12 Ms Sharminie Niles, Director, Legal Services, informed the Committee that recent amendments to the WWC Act now make it an offence for an employer (including the volunteer sector)<sup>46</sup> to fail to verify an employee's details.<sup>47</sup>
- 2.13 The Committee will inquire in its next Annual Review whether the amendments to the WWC Act have improved the verification rate in the volunteer sector.

### **Statutory review of the *Child Protection (Working with Children) Act 2012***

- 2.14 In August 2017 the OCG released a statutory review of the WWC Act. Conducted in accordance with section 53 of the WWC Act, the Review was tasked with determining whether the policy objectives for the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- 2.15 The policy objectives of the WWC Act are to protect children:
- by not permitting certain persons to engage in child-related work; and
  - by requiring persons engaged in child-related work to have working with children check clearances.<sup>48</sup>
- 2.16 The overall findings of the Review were that the policy objectives of the WWC Act remain valid and the terms of the Act generally remain appropriate for securing the objectives. The Review made 29 recommendations aimed at providing a balanced set of strategies to further improve the WWCC scheme.<sup>49</sup> In evidence before the Committee, Ms Schorer commented:
- We have just completed a comprehensive statutory review of the Working with Children Act, which has led to a number of improvements to the scheme. Some of these changes have been to fine-tune our legislation, others are more substantive and will promote better compliance or allow us to provide a more nuanced approach when we are representing in response to result in fairer outcomes.<sup>50</sup>
- 2.17 In April 2018, the *Child Protection (Working with Children) Amendment (Statutory Review) Act 2018* was passed which implements some of the recommendations of the statutory review, including:
- creating an offence if an employer fails to obtain, verify and keep relevant details of workers;

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<sup>46</sup> *Child Protection (Working with Children) Act 2012*, section 5. The definition of 'employer' in the WWC Act includes a person who engages a worker to perform work as a volunteer for the person under an agreement whether written or unwritten.

<sup>47</sup> Ms Sharminie Niles, Director, Legal Services, Office of the Children's Guardian, Transcript of Evidence, Monday 30 April 2018, p 4. Section 9A of the *Child Protection (Working with Children) Act 2012* now makes it an offence with a maximum penalty of 100 penalty units for a corporation and 50 penalty units in any other case for failing to verify relevant details of an employee. The provision came into force on 1 June 2018.

<sup>48</sup> *Child Protection (Working with Children) Act 2012*, section 3

<sup>49</sup> Office of the Children's Guardian, Statutory Review of the Child Protection (Working with Children) Act 2012, August 2017, p 7

<sup>50</sup> Ms Janet Schorer, Transcript of Evidence, Monday 30 April 2018, p 2



- requiring a placement agency and licensing authority to obtain, verify and keep details workers who are employed or licensed to work with children;
- allowing the OCG to permit a child who turns 18 to continue to reside with an authorised carer despite not holding a WWCC clearance;
- requiring the NSW Civil and Administrative Tribunal (NCAT) and OCG to consider any order of a court or tribunal when exercising review powers;
- preventing NCAT from staying a decision to refuse or cancel a WWCC or to impose an interim bar unless appropriate supervision is in place;
- compelling persons to provide information relevant to the preparation of submissions to NCAT for risk assessment;
- requiring applicants for or holders of a WWCC clearance to notify changes in personal details;
- permitting penalty notices to be issued for offences;
- requiring parent volunteers on overnight camps to have a WWCC clearance;
- defining what 'risk to the safety of children' means;
- defining what 'child-related work' means to include that it involves direct contact by the worker with children and that that contact is the usual part of work.

2.18 In the second reading speech, the Minister foreshadowed that a second Bill will be introduced implementing further recommendations from the review.<sup>51</sup> A table of the recommendations undergoing consultation to be introduced at a later stage was provided by the OCG in response to questions on notice.<sup>52</sup>

2.19 With regard to the impact the amendments will have on the workload of the OCG, Ms Niles indicated that the amendments are largely clarifying amendments or providing for additional powers. Ms Niles commented that the only area which may have an impact on workload would be the enforcements provisions:

Essentially, in regard to workload, it would just mean that we have additional powers to ensure that people comply. Apart from that there are a number of definitional changes and other things that do not really impact on the workload itself. The only thing that would perhaps impact on the workload would be the enforcement provisions, where we would be imposing penalty notices. But again it is just giving ourselves the power to be able to do something that we could not do before.<sup>53</sup>

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<sup>51</sup> New South Wales, Parliamentary Debates, Legislative Assembly, Wednesday 11 April 2018, p 1, Pru Goward MP, Minister for Family and Community Services

<sup>52</sup> Office of the Children's Guardian, Answers to Questions on Notice, 24 April 2018, p 8

<sup>53</sup> Ms Niles, Transcript of Evidence, Monday 30 April, p 6

### **Royal Commission into Institutional Responses to Child Sexual Abuse**

- 2.20 In August 2015, the Royal Commission into Institutionalised Responses to Child Abuse (Royal Commission) released its Working with Children Checks Report. The Royal Commission made 36 recommendations aimed at strengthening the protection children receive through working with children checks.
- 2.21 The Statutory Review of the WWC Act was informed by the recommendations of the Royal Commission. In answers to questions on notice, the OCG provided a table outlining the recommendations of the Review where they arose from a recommendation of the Royal Commission.<sup>54</sup>
- 2.22 One recommendation of the Royal Commission concerned the Commonwealth Government facilitating a national model for the WWCC. In answers to question on notice the OCG indicated that the New South Wales scheme currently meets and exceeds most of the Royal Commission's recommendations and indicated there are consultations occurring at a national level through an interjurisdictional working group:
- The OCG is in consultation with other jurisdictions through an interjurisdictional working group co-ordinated by the Commonwealth Department for Home Affairs to progress the Royal Commission's recommendations for nationally consistent WWCC standards.
- NSW and other jurisdictions have also provided in principle support for a centralised database for recording WWCC decisions from each jurisdiction, consistent with the Royal Commission's recommendation 3(a)(i).<sup>55</sup>
- 2.23 In June 2018, the NSW Government released its response to the Royal Commission's final report.<sup>56</sup>

### **Public awareness and advice functions**

- 2.24 Section 38 of the WWC Act provides the OCG with the ability to promote public awareness of and provide advice on requirements for working with children checks and other matters concerning child-related work.
- 2.25 Ms Schorer indicated that a focus for the OCG in the coming year will be the programs developed for children living with disability which provide resources on how to create safe environments for children and young people living with disability:
- In the context of the National Disability Insurance Scheme, we have also made and redeveloped many of those resources to enable parents to make choices about people and the organisations where they have their children and what they are purchasing on behalf of their children.<sup>57</sup>

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<sup>54</sup> Office of the Children's Guardian, Answers to Questions on Notice, 24 April 2018, p 4

<sup>55</sup> Office of the Children's Guardian, Answers to Questions on Notice, 24 April 2018, p 3

<sup>56</sup> NSW Government, Response to the Royal Commission into Institutional Responses to Child Sexual Abuse, June 2018

<sup>57</sup> Ms Janet Schorer, Transcript of Evidence, Monday 30 April 2018, p 5

- 2.26 Ms Schorer also indicated that there has been a large uptake of the OCG's suite of Child Safe eLearning packages. The OCG will focus on making the Child Safe products free and as accessible as possible for more people.<sup>58</sup>

### **Promoting Child Safe Principles**

- 2.27 During evidence, Ms Schorer elaborated on the Child Safe Principles and aspects of what the OCG can provide organisations in terms of training on the principles:

In New South Wales, a number of years ago we did some work with the sector to establish four Child Safe principles. They speak from the perspective of a child to help organisations understand in simple terms what they should be doing to understand the rights of a child, to understand how to organise their recruitment, the messaging about their organisation, and to enable them to have governance and management in place.<sup>59</sup>

- 2.28 The OCG educate organisations on these Child Safe principles by offering face to face training and online learning options. In response to questions, Ms Schorer indicated that currently the OCG does not have the ability to monitor compliance of organisations to the Child Safe Principles, nor is there a requirement for organisations to participate in the training. Ms Schorer commented:

At this point in time we do not have a scheme that allows us to do that. This is purely a capacity-building undertaking. We do as for feedback and because we have an ongoing relationship with organisations through our working with children check compliance, when we see non-compliance we ask organisations to participate in our Child Safe training. We can see some impact through that, but at this stage it is absolutely a capacity-building undertaking so we do not have that dataflow yet. There is no obligation on organisations to participate in that.<sup>60</sup>

- 2.29 When asked if organisations should be required to participate in Child Safe training, Ms Schorer indicated that from a compliance perspective it would assist.<sup>61</sup>

- 2.30 The Committee considers there may be merit in requiring organisations, that have been identified by the OCG as non-compliant with the WWCC, to complete Child Safe training. The Committee considers that by improving an organisations understanding of what it means to be child safe is an important part in ensuring safe environments for children and young people.

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<sup>58</sup> Ms Janet Schorer, Transcript of Evidence, Monday 30 April 2018, p 6

<sup>59</sup> Ms Janet Schorer, Transcript of Evidence, Monday 30 April 2018, p 6

<sup>60</sup> Ms Janet Schorer, Transcript of Evidence, Monday 30 April 2018, p 6

<sup>61</sup> Ms Janet Schorer, Transcript of Evidence, Monday 30 April 2018, p 7

## Appendix One – Committee's functions

The Committee's functions include:

- monitoring and reviewing the Advocate's exercise of their functions
- monitoring and reviewing the Children's Guardian exercise of functions under the *Child Protection (Working with Children) Act 2012*
- reporting to Parliament on any matter relating to the Advocate or connected with the exercise of the Advocate's functions, or on any matter relating to the exercise of the Children's Guardian's functions under the *Child Protection (Working with Children) Act 2012*
- examining each annual or other report of the Advocate and reporting to Parliament on any matter appearing in, or arising out of, any such report
- examining trends and changes in services and issues affecting children and young people, and reporting to Parliament any changes that the Committee thinks desirable to the Advocate's functions and procedures
- inquiring into and reporting on any question in connection with the Advocate's functions referred by Parliament.

The Committee's functions can be found in Part 7 of the *Advocate for Children and Young People Act 2014*.

## Appendix Two – Relevant documents

<a href="#">Review of Annual Report 2017</a>	Committee on Children and Young People
<a href="#">Government Response to Review of Annual Report 2017 to Review of Annual Report 2017</a>	NSW Government
<a href="#">ACYP Annual Report 2016-17</a>	Advocate for Children and Young People
<a href="#">Annual Report 2016-17</a>	Office of the Children's Guardian
<a href="#">Transcript of Hearing – 3 April 2018</a>	Committee on Children and Young People
<a href="#">Answers to Questions on notice</a>	Advocate for Children and Young People
<a href="#">Answers to Questions on notice</a>	Office of the Children's Guardian
<a href="#">Answers to Questions taken on notice</a>	Advocate for Children and Young People
<a href="#">Answers to Questions taken on notice</a>	Office of the Children's Guardian
<a href="#">Strategic Plan 2016-19</a>	Advocate for Children and Young People
<a href="#">Sexualisation of Children and Young People Report</a>	Committee on Children and Young People
<a href="#">Government Response to Sexualisation of Children and Young People Report</a>	NSW Government
<a href="#">Statutory review of the Working with Children Act</a>	Office of the Children's Guardian
<a href="#">Working with Children Checks Report</a>	Royal Commission into Institutional Responses to Child Sexual Abuse
<a href="#">Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report</a>	Royal Commission into Institutional Responses to Child Sexual Abuse
<a href="#">Government Response to Royal Commission Report</a>	NSW Government

## Appendix Three – Witnesses

**Monday, 30 April 2018**

**Jubilee Room, Parliament House**

<b>WITNESS</b>	<b>ORGANISATION</b>
Ms Janet Schorer Children's Guardian	Office of the Children's Guardian
Ms Sharminie Niles Director, Legal Services	Office of the Children's Guardian
Ms Louise Coe Director, Working with Children Check	Office of the Children's Guardian
Mr Andrew Johnson Advocate for Children and Young People	Advocate for Children and Young People
Mr Declan Drake Former Chair	Youth Advisory Council

## Appendix Four – Extracts from Minutes

### **MINUTES OF MEETING No 21**

12.01pm, Wednesday 17 January 2018

Room 813 or via teleconference

#### **Members present**

Ms Gibbons (Chair), Ms Harrison, Mr Johnsen, Ms Cusack and Mr Donnelly

#### **Apologies**

Mr Tudehope and Mr Green

#### **Staff present**

Elaine Schofield, Emma Wood, Stephanie Mulvey and Abegail Turingan

#### **1. Confirmation of minutes**

Resolved, on the motion of Mr Donnelly, seconded Ms Harrison: That the minutes of the meeting of 27 November 2017 be confirmed.

2. \*\*\*

3. \*\*\*

#### **4. Review of the 2016-2017 Annual Reports of the Advocate for Children and Young People and Children's Guardian**

Resolved, on the motion of Mr Johnsen, seconded Ms Cusack: That the Committee hold a public hearing on Monday, 30 April 2018 with the Advocate for Children and Young People and the Children's Guardian.

5. \*\*\*

#### **6. Next meeting**

The meeting adjourned at 12.28pm until 9.15am on Monday, 12 February 2018.

### **MINUTES OF MEETING No 22**

9.20am, Monday 5 March 2018

Jubilee Room

Parliament of New South Wales

#### **Members present**

Mr Tudehope (Deputy Chair), Ms Harrison, Mr Fang, Mr Green and Mr Donnelly

**Apologies**

Ms Gibbons (Chair), Mr Johnsen

**Staff present**

Elaine Schofield, Emma Wood, Stephanie Mulvey, Abigail Turingan

**1. Deliberative meeting**

**1.1 Confirmation of minutes (attached)**

Resolved, on the motion of Mr Donnelly, seconded Ms Harrison: That the minutes of the meeting of 12 February 2018 be confirmed.

**1.2 Committee membership**

The Committee noted that on Tuesday 13 February 2018, the Hon Wes Fang MLC was appointed to the Committee on Children and Young People in place of the Hon Catherine Cusack MLC: Legislative Council, Minutes No 138, item 38; Legislative Assembly, Votes and Proceedings No 157, item 25.

**1.3 Review of the 2016-2017 Annual Report of the Advocate for Children and Young People and the functions of the Children's Guardian**

Resolved, on the motion of Mr Fang, seconded Ms Harrison, that the Committee commence an examination of the 2016-2017 Annual Report of the Advocate for Children and Young People and the functions of the Children's Guardian.

**1.4 Correspondence**

The Committee noted the following correspondence:

- 14 February 2018 – The Hon Pru Goward MP, Minister for the Prevention of Domestic Violence and Sexual Assault, Government Response to the Committee's 2017 Annual Review of the Annual Reports of the Advocate for Children and Young People and Children's Guardian.

**2. \*\*\***

**3. \*\*\***

**4. \*\*\***

The meeting adjourned at 5.05pm until Monday, 30 April 2018.

**MINUTES OF MEETING No 24**

12.47pm, Monday 30 April 2018

Jubilee Room

Parliament of New South Wales



**Members present**

Ms Gibbons (Chair) Mr Tudehope (Deputy Chair), Ms Harrison, Mr Fang, Mr Johnsen, Mr Green (from 1.05pm), Mr Donnelly (from 2.20pm)

**Apologies**

None

**Staff present**

Elaine Schofield, Emma Wood, Stephanie Mulvey, Abegail Turingan

**1. Confirmation of minutes**

Resolved, on the motion of Mr Tudehope, seconded Ms Harrison: That the minutes of the meeting of 5 March 2018 be confirmed.

**2. \*\*\***

**3. Review of the 2016-2017 Annual Report of the Advocate for Children and Young People and the functions of the Children's Guardian**

**3.1 Correspondence**

Committee noted the following correspondence received:

- 5 March 2018 – letter received regarding the public awareness and advice functions of the Children's Guardian.

**3.2 Answers to questions on notice**

Resolved, on the motion of Mr Johnsen, seconded Mr Fang: That the answers received from the Advocate for Children and Young People and the Children's Guardian to the questions on notice be published on the Committee's website.

**4. Pre hearing resolutions for the following public hearings:**

- \*\*\*
- Review of the 2016-2017 Annual Report of the Advocate for Children and Young People and the functions of the Children's Guardian.

**4.1 Media orders**

Resolved, on the motion of Mr Fang, seconded Mr Johnsen: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearings on 30 April 2018, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the Legislative Assembly

**4.2 Answers to questions taken on notice**

Resolved, on the motion of Mr Johnsen, seconded Mr Fang: That witnesses be requested to return answers to questions taken on notice within 14 days of the date on which the questions are forwarded to witnesses

**4.3 Publication orders for today's public hearings**

Resolved, on the motion of Mr Johnsen, seconded Mr Fang: That the corrected transcripts of public evidence given today be authorised for publication and uploaded on the Committee's website

#### **4.4 Additional questions**

Resolved, on the motion of Mr Johnsen, seconded Mr Fang: That the Committee adopts the following process for sending additional questions to witnesses:

1. Members submit additional questions to the Secretariat by close of business two full working days after the transcripts are distributed to members.
2. The proposed additional questions will be circulated to all members.
3. Members may express concerns or objections to additional questions within 2 working days of distribution of the questions from the secretariat, any objections that cannot be resolved will be deferred until a deliberative meeting of the Committee.

5. \*\*\*

#### **6. Public hearing – Review of the 2016-2017 Annual Report of the Advocate for Children and Young People and the functions of the Children's Guardian**

The witnesses and the public were admitted. The Chair opened the public hearing at 2.01pm and after welcoming the witnesses made a short opening statement.

Ms Janet Schorer, Children's Guardian, was sworn.

Ms Louise Coe, Director, Working with Children Check, Office of Children's Guardian was sworn.

Ms Sharminie Niles, Director, Legal Services, Office of Children's Guardian, was sworn.

Ms Schorer made a short opening statement.

The Committee commenced questioning the witnesses.

Evidence concluded and the witnesses withdrew.

Mr Andrew Johnson, the Advocate for Children and Young People, was affirmed.

Mr Declan Drake, Former Chair of the Youth Advisory Council, was affirmed.

Mr Johnson made a short opening statement before a short video provided by the Advocate which detailed its work in the 2016 – 17 reporting year was played to the Committee.

Mr Tudehope entered the room at 2.44pm.

The Committee commenced questioning the witnesses.

The public hearing concluded at 3.38pm. The witnesses and public withdrew.

7. \*\*\*

## **8. Next meeting**

The meeting adjourned at 3.45pm until a date to be determined.

## **DRAFT MINUTES OF MEETING No 24**

Wednesday 15 August 2018

4.03pm, Room 1254

Parliament of New South Wales

### **Members present**

Ms Gibbons (Chair), Mr Tudehope, Ms Harrison, Mr Fang, Mr Johnsen, Mr Green, Mr Donnelly.

### **Apologies**

None

### **Staff present**

Elaine Schofield, Emma Wood, Stephanie Mulvey and Abegail Turingan

## **12. Confirmation of minutes**

Resolved, on the motion of Mr Donnelly, seconded Mr Johnsen: That the minutes of the meeting of 30 April 2018 be confirmed.

## **13. Review of the 2016 – 2017 Annual Report of the Advocate for Children and Young People and the functions of the Children's Guardian**

### **2.1 Responses to questions taken on notice and additional questions**

Committee considered the answers received to questions taken on notice and additional questions from the hearing held on 30 April 2018:

- 11 May 2018, response received from Children's Guardian
- 22 May 2018, response received from the Advocate for Children and Young People

Resolved, on the motion of Mr Donnelly, seconded Mr Fang: That the responses to questions taken on notice and additional questions received from the Advocate for Children and Young People and the Children's Guardian be authorised for publication on the Committee's website.

### **2.2 Consideration of Chair's Draft Report**

Resolved, on the motion of Mr Johnsen, seconded Mr Donnelly: That Chapter One stand part of the report.

Resolved, on the motion of Mr Johnsen, seconded Ms Harrison: That Chapter Two stand part of the report.

Resolved, on the motion of Mr Johnsen, seconded Ms Harrison:

1. That the draft report be the report of the Committee, and that it be signed by the Chair and presented to the House
2. That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
3. That, once tabled, the report be posted on the Committee's website.

**14. \*\*\***

**15. Next meeting**

The meeting adjourned at 4.08 pm until a date to be determined.