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Committee on Children and Young People

Report 2/57– September 2020

2020 Review of the Annual Reports and other matters of the Office 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

The Committee on Children and Young People monitors the exercise by the Children's Guardian of functions relating to her administration of the Working with Children Check and the Reportable Conduct Scheme. This is the second report produced by the Committee as part of its 2020 review, following an earlier report which focused on the oversight of the Advocate for Children and Young People.

The Committee has reviewed the 2017-18 and 2018-19 annual reports of the Office of the Children's Guardian.

Chapter One outlines the Committee's role in overseeing the Children's Guardian. The Committee found that the Office of the Children's Guardian is fulfilling its functions and following the principles governing its work as specified by the *Child Protection (Working with Children) Act 2012* and the *Children's Guardian Act 2019* in relation to the Reportable Conduct Scheme.

In Chapter Two, the Committee discusses in detail some of the matters raised during the review, including the work being done in the Office of the Children's Guardian following the commencement of the *Children's Guardian Act 2019*. This Act consolidates the powers and functions of the Children's Guardian into one Act and aims to help to keep children safe in organisations.

Of particular note for the Committee was the transfer of responsibility for the Reportable Conduct Scheme from the NSW Ombudsman to the Children's Guardian. The Committee heard that significant work had been done to prepare the Office of the Children's Guardian for this new responsibility. The Committee acknowledges the efforts made by the Guardian to communicate with the religious and faith-based groups that are now covered by the Scheme.

The Committee also found that the Guardian had responded appropriately to complaints and allegations made that Working with Children Check clearances were incorrectly issued and incidents of inappropriate workplace behaviours. These were serious allegations. The Children's Guardian responded by commissioning external reviews of some of their processes, especially with regard to risk management and decision making.

The Working with Children Check continues to play an important part in ensuring that children are safe in NSW and the Committee notes the Guardian's ongoing work in this area. The Working with Children Check reached its fifth year of operation in June 2018 and almost half of the applications received by the Office of the Children's Guardian in 2018-19 were seeking a renewal of an existing clearance.

I would like to thank the Children's Guardian and her staff for participating in this review. I also thank the Committee members for their involvement.

The Hon Matthew Mason-Cox MLC
Chair

Findings and recommendations

Finding 1 _____ 1

The Committee finds that the Office of the Children's Guardian has been fulfilling its functions and following the principles governing its work as specified by the *Child Protection (Working with Children) Act 2012* and the *Children's Guardian Act 2019* in relation to the reportable conduct scheme.

Finding 2 _____ 7

The Committee finds that the Children's Guardian has appropriately responded to anonymous complaints and allegations that Working with Children Check clearances were incorrectly issued and incidents of inappropriate workplace behaviours.

Chapter One – Oversight of the Office of the Children's Guardian

The Committee's oversight of the Children's Guardian

Finding 1

The Committee finds that the Office of the Children's Guardian has been fulfilling its functions and following the principles governing its work as specified by the *Child Protection (Working with Children) Act 2012* and the *Children's Guardian Act 2019* in relation to the reportable conduct scheme.

- 1.1 One of the responsibilities of the Committee on Children and Young People under section 37 of the *Advocate for Children and Young People Act 2014* (the ACYP Act) is to monitor and review the Children's Guardian as it exercises its functions under the *Child Protection (Working with Children) Act 2012* and the *Children's Guardian Act 2019*, in relation to the Reportable Conduct Scheme. This includes examining each annual report of the Children's Guardian and reporting to both Houses on any matter appearing in, or arising out of any such report.
- 1.2 The purpose of this report is to summarise the Committee's review of the 2017-18 and 2018-19 Annual Reports of the Children's Guardian, and any matters arising out of those reports. The Committee has examined the 2017-18 and 2018-19 Annual Reports together because the Committee of the 56th Parliament did not have the opportunity to examine the 2017-18 report before the expiration of the Parliament prior to the 2019 election.
- 1.3 The Committee held a public hearing with the Children's Guardian on 6 March 2020 in relation to its review of the 2017-18 and 2018-19 Annual Reports, and other matters relating to the Office of the Children's Guardian.
- 1.4 This report follows the earlier, interim report that reviewed the work of the Office of the Advocate for Children and Young People. The Committee chose to report on each agency separately as this gave it the opportunity to consider certain issues relating to the Children's Guardian in more detail.
- 1.5 In particular, the Committee considered it appropriate to allow additional time to examine the transfer of the Reportable Conduct Scheme to the Children's Guardian which was still in its initial stages when the Committee met with the Guardian. The Guardian also informed the Committee that they were in the process of implementing changes in the organisation following some external reviews.
- 1.6 In addition to these issues, the Committee chose to focus on how the Office of the Children's Guardian (OCG) has performed its functions under the relevant Acts, with particular attention given to the commencement of the *Children's Guardian Act 2019* and the operation of the Working with Children Check.

- 1.7 The Committee found that the OCG has been fulfilling its functions and following the principles governing its work as specified by the relevant Acts. The new Children's Guardian Act also required the OCG to give the Committee a report, and copies of policies and procedures to be adopted, before the commencement of their administration of the Reportable Conduct Scheme.¹ The Committee was satisfied with the report provided to it by the OCG, which is discussed in more detail in Chapter 2. The Committee is also pleased to report that no issues were raised with the Committee about the powers of the OCG.
- 1.8 The Committee considers that the commencement of the *Children's Guardian Act 2019* will be beneficial to the work of the Children's Guardian. The consolidation of the Guardian's various functions into one Act should assist the OCG to fulfil its functions and help to keep children in NSW safe. The Committee will continue to monitor the implementation of this new Act with interest in the coming months.
- 1.9 The following Chapter contains a more detailed examination of some of the work that the OCG has done to fulfil its functions under the relevant Acts.

¹ Section 136, *Children's Guardian Act 2019* (NSW).

Chapter Two – The work of the Office of the Children's Guardian

Commencement of the *Children's Guardian Act 2019*

- 2.1 The *Children's Guardian Bill 2019* passed Parliament on 21 November 2019, receiving assent on 4 December 2019. The *Children's Guardian Act 2019* (the Act) commenced on 1 March 2020, with some minor exceptions. The Act reinforces the independent role of the Children's Guardian in keeping children safe in organisations and consolidates the powers and functions of the Children's Guardian into one Act.
- 2.2 The main object of the Act is to protect children by providing for the role and functions of the Office of the Children's Guardian. This includes promoting the quality of organisations and persons providing services to children and regulating those organisations and persons in their provision of those services.²
- 2.3 The Act consolidates legislation that previously governed the existing functions and responsibilities of the Children's Guardian. As such, it provides for the regulation of out-of-home care matters by the Children's Guardian, including oversight of designated agencies, and for the accreditation and monitoring of adoption service providers. It also regulates the employment of children.
- 2.4 The Act also amends section 37 of the *Advocate for Children and Young People Act 2014* (the ACYP Act), which sets out the functions of the Committee on Children and Young People (the Committee). Section 37(1)(b) of the ACYP Act has expanded the remit of the Committee to include monitoring and reviewing the exercise by the Children's Guardian of its functions 'in relation to the reportable conduct scheme and working with relevant entities to prevent, identify and respond to reportable conduct and promote compliance with the scheme'.
- 2.5 Section 37(1)(c) empowers the Committee to report to both Houses of Parliament with such comments as it thinks fit, on any matter relating to the exercise of the Children's Guardian's functions as outlined above, to which it believes the attention of Parliament should be directed. This is in addition to its ongoing consideration of the exercise of the Guardian's functions under the *Child Protection (Working with Children) Act 2012*.
- 2.6 The Committee notes these changes in its oversight responsibilities relating to the Children's Guardian. This review is the first time that the Committee has exercised these functions and, as has been outlined, it was one of the reasons for the Committee delaying its report on the Children's Guardian. The Reportable Conduct Scheme is a key element in ensuring the safety of children in New South Wales, and the Committee will endeavour to exercise its new expanded oversight functions thoroughly.

² Section 6, *Children's Guardian Act 2019* (NSW).

Responsibility for the Reportable Conduct Scheme

- 2.7 One of the key changes introduced by the Act was the transfer of the Reportable Conduct Scheme from Part 3A of the *Ombudsman Act 1974* to the Office of the Children's Guardian.
- 2.8 The Reportable Conduct Scheme (the Scheme) is designed to prevent, identify and respond to child abuse. It has been enlarged to include the religious and faith-based sector which was not captured under the previous scheme.
- 2.9 Part 4 of the *Children's Guardian Act 2019* sets out the details of the Scheme. It involves the Children's Guardian and relevant entities investigating reportable allegations and making determinations about reportable convictions.
- 2.10 This transfer is of particular interest to the Committee which now has oversight of the Guardian's functions in relation to the Scheme.
- 2.11 The Committee was pleased to hear that the Guardian had been doing significant work to prepare her Office for this new responsibility. In addition to holding information sessions for all organisations covered by the Scheme, they have also made a number of documents available on their website which outline the responsibilities of the organisations and highlight some of the new definitions brought in by the Act.³
- 2.12 The Children's Guardian acknowledged that because the Scheme is well established and has been operating in NSW for a significant amount of time a number of organisations were already very familiar with it. Ms Janet Schorer, Children's Guardian, stated that:
- The good thing is though that because the Reportable Conduct Scheme, in particular, has been operating in New South Wales for 20 years, in the sectors that work with children there is a familiarity. So many of these organisations might be providing those sorts of services but they might be coming in now because they are a faith entity or they have a school or those sorts of combinations, there is a level of understanding about what reportable conduct is and is not in terms of practice. So we are going from a strong base.⁴
- 2.13 The Office of the Children's Guardian (the OCG) has also been working with the organisations that are now covered by the Scheme that were not previously, in particular, those that are religious and faith-based. The OCG has held a number of conversations with various organisations to explain the new processes. They have also created a tool that will 'give specific guidance for organisations in the faith sector about how to think about and how to handle reportable allegations in their context'.⁵
- 2.14 The Committee was pleased to hear that this work has been very collaborative with these groups being 'keen to come into' the Scheme.⁶ Following the initial

³ Ms Janet Schorer, Children's Guardian, Transcript of evidence, 6 March 2020, p 23.

⁴ Ms Schorer, Transcript of evidence, 6 March 2020, p 24.

⁵ Ms Schorer, Transcript of evidence, 6 March 2020, p 24.

⁶ Ms Sharminie Niles, Director, Legal Services, Office of the Children's Guardian, Transcript of evidence, 6 March 2020, p 24.

discussions during the public hearing in March, the Guardian updated the Committee with a Progress Report in July 2020. In this report, she noted that:

... the enforceable provisions of the Act came into effect in June. We continue to work with the religious sector to support their understanding of and capacity to comply with the Act.⁷

- 2.15 With respect to the Scheme being expanded to cover other sectors, the Guardian explained that this decision would be delayed due to the difficulties presented in conducting proper consultation during the COVID-19 pandemic:

Given restrictions on consultation with the COVID-19 pandemic, we will move to formally test the scope of the Reportable Conduct Scheme when we review the legislation at the end of 2021. At that time, we can consult more widely on whether other sectors should be added to the Scheme.⁸

- 2.16 The Committee acknowledges the work done by the OCG to implement the new Act, in particular as it relates to the Reportable Conduct Scheme. This Scheme plays a significant role in keeping the children and young people of New South Wales safe. Transferring responsibility of the Scheme to the Children's Guardian allows that agency to use its expertise in the area of child safety.

- 2.17 The inclusion of religious groups is an important step to further the effectiveness of the Scheme. The Committee supports the move to include religious groups in the Scheme. It acknowledges the work done by the Guardian to help them to understand their new responsibilities. The Committee acknowledges the additional challenges presented by implementing the Scheme during the COVID-19 pandemic. The Committee recognises the need for a delay to the review of the operation of the Act and whether it should apply to other organisations until the end of 2021.

Additional requirements to provide information to the Committee

- 2.18 Section 136 of the new Act made it a requirement that the Guardian provide a report to the Committee before the commencement of Part 4 of the Act, which relates to the Reportable Conduct Scheme. This report was required to include the policies and procedures that the Guardian intended to adopt in relation to the exercise of their functions under the Act. It was also required to include information about how perceived or actual conflicts of interest associated with the exercise of the Children's Guardian's functions under the Act were to be minimised or removed.
- 2.19 The Guardian provided the Committee with its report on 28 February 2020. The Committee discussed this report with the Guardian during the public hearing. In particular, the Committee was interested to hear about the policies put in place to avoid potential conflicts of interest.
- 2.20 The Children's Guardian noted that the issue of conflicts of interest had been raised due to the fact that the Scheme would be administered by her office, in

⁷ Office of the Children's Guardian, *Progress Report*, July 2020, p 7.

⁸ Office of the Children's Guardian, *Progress Report*, July 2020, p 7.

addition to administering the Working with Children Check and the accreditation of organisations in out-of-home care. The Scheme had previously been administered by the NSW Ombudsman and the Children's Guardian recognised that there could be concerns about conflicts of interest now that it was all administered by one agency.

But we understood that there is a perception that when all of that information is held in one organisation, we might be perceived as being able to make a determination, particularly about an employee and their ability to work, without having the right checks and balances internally about how information was used to form a decision or a judgement.⁹

- 2.21 Ms Schorer explained that while there were already a number of containments to protect against conflicts of interest arising, there was also significant work underway to offer further protections. As such, she offered to provide further information to the Committee after a period of three months with an update containing further detail on the new arrangements.¹⁰
- 2.22 The Committee was interested to receive an update after the first three months of operation and review by the Children's Guardian.
- 2.23 In the update, the Children's Guardian outlined how they maintained separate management structures and decision-making delegations between the different statutory functions. These functions include:
- the Reportable Conduct Scheme;
 - the Working with Children Check; and
 - the accreditation and monitoring of out-of-home care.
- 2.24 The Children's Guardian explained that:
- Our organisational structure, policies, and processes continue to support robust decision making and to avoid conflicts of interest or the appearance of conflict of interest arising from the administration of the Reportable Conduct Scheme and our regulatory functions.¹¹
- 2.25 The Children's Guardian also noted that Information Sharing Guidelines published in March 2020 were being reviewed and updated. This review will allow the OCG to incorporate what they have learnt from their experiences of operating the new functions. In particular, they now have a better understanding of how to manage the real, and perceived, risks in how to manage and share information from different sources.¹²
- 2.26 The Committee acknowledges the work done by the Guardian to address the issue of conflicts of interest. This issue was raised during the second reading debate of the Children's Guardian Bill and is an important one. While bringing the

⁹ Ms Schorer, Transcript of evidence, 6 March 2020, p 15.

¹⁰ Ms Schorer, Transcript of evidence, 6 March 2020, p 15.

¹¹ Office of the Children's Guardian, *Progress Report*, July 2020, p 7.

¹² Office of the Children's Guardian, *Progress Report*, July 2020, p. 7

various child protection functions into one organisation has benefits for child safety, it is important that information gathered in the different functions is handled properly. The Committee is satisfied with the information that the Guardian has provided in fulfilling the requirements under the Act. It is pleased to see that the Guardian is taking this issue seriously and has put mechanisms in place.

- 2.27 The Committee will continue to monitor this area, and the effectiveness of the mechanisms put in place. As was noted by the Children's Guardian, addressing the perception of conflicts of interest will also be an important measure to ensure that the OCG operates as a well-trusted organisation. The Committee welcomes the ongoing review of policies such as the Information Sharing Guidelines, with regular updates to ensure their effectiveness. The Committee expects that this will be an ongoing process as the OCG continues to gain experience from fulfilling their new functions.

Responses to recent reviews of the Office of the Children's Guardian

Reviews of the Office of the Children's Guardian

Finding 2

The Committee finds that the Children's Guardian has appropriately responded to anonymous complaints and allegations that Working with Children Check clearances were incorrectly issued and incidents of inappropriate workplace behaviours.

- 2.28 In late 2018, allegations surfaced in the media regarding the inappropriate granting of Working with Children Check (WWCC) clearances and a culture of bullying in the OCG. The matters were also raised with the Minister for Families, Communities and Disability Services at Budget Estimate hearings in 2019.¹³ In response to these concerns, the Children's Guardian commissioned two independent reviews of the OCG, and more specifically its WWCC processes.
- 2.29 The first review, known as the Robinson Review, examined the OCG's risk tolerance levels and decision-making thresholds associated with the WWCC.¹⁴ The second review, known as the Grisard Consulting Report, examined the OCG's response to the allegations of bullying and the arising themes regarding WWCC management, process and policies.¹⁵
- 2.30 The Committee notes that the Grisard Consulting Report noted that the available evidence did not convincingly demonstrate that specific staff had been bullied.¹⁶ At the public hearing, however, Ms Schorer acknowledged that, while the Report found there was not a serious problem with bullying at the OCG it did identify certain issues. She explained:

¹³ The Hon Gareth Ward MP, Minister for Families, Communities and Disability Services, Budget Estimate hearings, Transcript of evidence, 4 September 2019, pp 37-39.

¹⁴ Office of the Children's Guardian, *Progress Report*, July 2020, p 3.

¹⁵ Ms Schorer, Transcript of evidence, 6 March 2020, p 19.

¹⁶ The Hon Greg Donnelly MLC, Transcript of evidence, 6 March 2020, p 19.

[The report] said that there were some issues with management style and interaction style ... but there was nothing that indicated there was a culture of, or further claims of, bullying that need to be investigated or tolerated.¹⁷

Changes in the Office of the Children's Guardian

- 2.31 One of the reasons that the Committee's report on its oversight of the Office of the Children's Guardian has been tabled later than that of the Advocate for Children and Young People is that the Committee wanted to properly consider these issues and the response of the Children's Guardian.
- 2.32 On 23 July 2020, the Children's Guardian updated the Committee about the progress in relation to the recommendations of the independent reviews.¹⁸
- 2.33 The Children's Guardian reported her new strategic plan which commenced in July 2020.¹⁹ Under the Strategic Plan, the OCG has set out multiple initiatives, which were identified across four key areas:
- WWCC process;
 - management capability;
 - corporate support; and
 - change management.²⁰

Working with Children Check process

- 2.34 The OCG identified that WWCC staff require greater certainty around decision-making, particularly in regard to risk threshold and methodology when assessing WWCC applications.
- 2.35 The OCG has implemented a number of initiatives to provide clarity and rigour to its processes, for example the introduction of:
- a Recordkeeping Practice Note;
 - an Interim Bar Business Rule, which includes information review timelines to determine promptly if an Interim Bar should be maintained or revoked; and
 - a quality assurance program.²¹
- 2.36 The OCG also introduced changes to the way cases are reviewed by Directors in the Directors Case Review Meetings (DCRM). The Children's Guardian advised that DCRM are now required to maintain a register of matters it has reviewed to

¹⁷ Ms Schorer, Transcript of evidence, 6 March 2020, p 19.

¹⁸ Office of the Children's Guardian, *Progress Report*, July 2020.

¹⁹ Office of the Children's Guardian, *Progress Report*, July 2020, p 4.

²⁰ Office of the Children's Guardian, *Progress Report*, July 2020, p 7.

²¹ Office of the Children's Guardian, *Progress Report*, July 2020, p 9.

enhance transparency. Further to this, Risk Assessment Team Officers are now able to attend DCRM as observers or participants as cases are reviewed.²²

- 2.37 The Guardian has also developed and implemented new tools to help WWCC staff feel supported, such as:
- staff wellbeing workshops;
 - Peer Consultation Guidelines to formalise peer consultation and review; and
 - a Structured Risk Assessment Guide to guide WWCC staff in assessing applications.²³
- 2.38 The Progress Report noted a recommendation in the Grisard Consulting Report concerning an internal confidential and anonymous mechanism for staff to submit suggestions and complaints. In response, the OCG created an anonymous employee portal to raise any concerns or issues.²⁴
- 2.39 Another key priority set out in the Progress Report, is to 'make the OCG a great place to work'.²⁵ The Guardian outlined several actions that will help progress this priority, including:
- embedding values in day to day work;
 - introducing a cultural training program;
 - delivering outcomes under the Disability Inclusion Action Plan and the Reconciliation Action Plan;
 - developing a Multicultural Action Plan; and,
 - launching a People and Culture Strategic Plan to support staff.²⁶

Management capability and corporate support

- 2.40 As part of its Strategic Plan, the OCG revised its corporate governance structure which resulted in training and education functions locating to one central location. The OCG also invested in leadership and management programs for staff in senior positions.²⁷

Change management

- 2.41 The Guardian has developed a Change Management Framework for the agency, which 'articulates expectation about engagement of staff and stakeholders in any

²² Office of the Children's Guardian, *Progress Report*, July 2020, p 9.

²³ Office of the Children's Guardian, *Progress Report*, July 2020, Tab B: Sandra Herlot Consulting, *Working with Children Check – Expert Program Support*, pp 3-4.

²⁴ Office of the Children's Guardian, *Progress Report*, July 2020, p 10.

²⁵ Office of the Children's Guardian, *Progress Report*, July 2020, p 16.

²⁶ Office of the Children's Guardian, *Progress Report*, July 2020, p 16.

²⁷ Office of the Children's Guardian, *Progress Report*, July 2020, p 10.

change process'.²⁸ The Framework includes a set of tools and processes that will be used when any change occurs within the agency.²⁹

- 2.42 The Committee is pleased to see that the Children's Guardian is taking seriously the issues raised, and emphasises the importance of the WWCC and public confidence in the work of the OCG in this regard. The Committee sees this as a matter that should and has been treated with the utmost priority.
- 2.43 The Committee also commends the Children's Guardian for initiating independent reviews following the allegations being raised. The use of external independent reviews provides an opportunity for an impartial look at any problems and improvements that can be made within the agency, particularly in regard to management capability, corporate support and change management.
- 2.44 The Committee is satisfied with the work done by the Guardian to implement the recommendations made in these reviews. Implementing the recommendations should help to resolve reported staff concerns and improve decision making, risk management, accountability and transparency.
- 2.45 The Committee acknowledges that the commencement of the new Act was a timely opportunity for the OCG to develop a new Strategic Plan. The Plan that has been developed identifies important strategic priorities and outlines measurable outcomes. The Committee will continue to monitor the implementation of the Strategic Plan, its initiatives and its impact on the effectiveness of the OCG, particularly as it relates to the administration of the WWCC and the Reportable Conduct Scheme.

Working with Children Check

- 2.46 The WWCC is required for anyone aged 18 or older who works with, or volunteers to work with, or provides services to children in NSW.

Compliance with the Working With Children Check

- 2.47 Administering the WWCC continues to be an important function of the OCG. Under the ACYP Act, the Committee is required to monitor and review the exercise by the Children's Guardian of functions under the *Child Protection (Working with Children) Act 2012*.
- 2.48 The OCG also supports employers and workers to be aware of and follow their obligations under the *Child Protection (Working with Children) Act 2012* and the *Child Protection (Working with Children) Regulation 2013*. An essential element of this is the monitoring of an employer's compliance with these laws.
- 2.49 Organisations are audited to ensure they meet their legal obligations by requiring their employees to have a WWCC clearance. They must also register with the OCG's online system and confirm their employees' WWCC status and not employ

²⁸ Office of the Children's Guardian, *Progress Report*, July 2020, p 10.

²⁹ Office of the Children's Guardian, *Progress Report*, July 2020, p 10.

anyone who fails to have a WWCC clearance or is banned from child-related work.³⁰

- 2.50 In April 2018, the process to phase the last sectors into the WWCC was completed. These most recent sectors to be phased in were the focus of compliance audits. The OCG conducted over 4,100 audits during 2018 with a focus on employers in child-related sectors including:
- education;
 - early education; and
 - children's health services.³¹
- 2.51 In 2018-19, the OCG processed 480,485 applications, a 28 per cent increase from the previous year.³²
- 2.52 During this period, there were 70 requests made to the NSW Civil and Administrative Tribunal (NCAT) or the Supreme Court to appeal a decision made in the WWCC.³³ The OCG noted that successful requests to overturn WWCC decisions are often based on NCAT having received additional information between the original decision being made and the hearing date.³⁴ Ms Sharminie Niles, Director, Legal Services, Office of the Children's Guardian, explained that:
- ... often there is additional information that comes onto the scene between the time that we made the decision and it goes to NCAT. For instance, there might be psychological reports that might have been provided, or time since, or other work that had been done in terms of rehab work. They would all contribute to the tribunal then looking at it slightly differently, perhaps, from the way the Children's Guardian might look at it.³⁵
- 2.53 However, the OCG also highlighted that since it has introduced the 'real and appreciable risk test' into its WWCC decision-making process, 'there has been a much greater level of consistency in relation to the decisions that come out the other end from the tribunal.'³⁶ The phrase 'real and appreciable risk' was added to the *Child Protection (Working with Children) Act 2012* by legislative change in June 2018. Some of the reasons for this change were to clearly establish an appropriate threshold of risk that must be achieved and clarify that the standards that applicants are assessed against would be consistent with those used by NCAT.³⁷

³⁰ Office of the Children's Guardian, *Annual Report 2018-19*, pp 26-27.

³¹ Office of the Children's Guardian, *Annual Report 2018-19*, p 27.

³² Office of the Children's Guardian, *Annual Report 2018-19*, p 22.

³³ Office of the Children's Guardian, *Annual Report 2018-19*, p 14.

³⁴ Ms Niles, Transcript of evidence, 6 March 2020, p 25.

³⁵ Ms Niles, Transcript of evidence, 6 March 2020, p 25.

³⁶ Ms Niles, Transcript of evidence, 6 March 2020, p 25.

³⁷ The Hon Pru Goward MP, Minister for Family and Community Services, *Child Protection (Working with Children) Amendment (Statutory Review) Bill 2018* Second Reading, NSW Legislative Assembly Hansard, 11 April 2018.

- 2.54 The OCG has now developed a Structured Risk Assessment Guide which aims to support consistency in decision making, transparency and accountability and implements the definition of 'real and appreciable risk'. This Guide is being implemented in the second half of 2020, including training and facilitated case discussions.³⁸
- 2.55 The Committee commends the Guardian for its work over the past years to implement the new WWCC system. The WWCC remains an important tool in keeping children in NSW safe. It is pleased to hear that the new organisations were monitored with a compliance audit. This should be an effective program to ensure that those organisations are properly aware of their responsibilities under the WWCC scheme.
- 2.56 The Committee notes that there has been some legitimate concerns raised about people being granted a WWCC clearance despite there appearing to be good reasons for clearance not to be granted. The concerns and the responses by the Guardian are detailed at paragraph 2.28.

Working with Children Check renewals

- 2.57 Commencing in 2013, the WWCC reached its fifth year of operation in June 2018. As the WWCC clearance remains valid for five years, the earliest clearances were due to be renewed from this time. Of the 480,485 applications received in 2018-19, almost half (233,579 making up 49%) were seeking a renewal of their existing WWCC clearance.³⁹
- 2.58 The Committee notes the rising number of renewals in WWCC applications and will monitor what effect this new phase has on workloads and resourcing at the OCG. In particular, with regards to their new responsibilities administering the Reportable Conduct Scheme.
- 2.59 Due to the COVID-19 pandemic, all WWCC clearances due to expire between the end of March and 26 September 2020 were granted a six month extension by the OCG. This avoided WWCC clearance holders having to attend Service NSW customer service centres in person to provide proof of identity and pay the renewal fee.⁴⁰

Outreach and education

- 2.60 The Committee notes the work in outreach and public awareness about the WWCC performed by the OCG. In particular, the efforts made to reach and engage with more diverse groups of people, including people with disability, communities with diverse language and culture, and Aboriginal and Torres Strait Island people.
- 2.61 The Guardian stated that engaging with Aboriginal people and communities has been a focus in the past year. The Guardian told the Committee of their work over the previous year to gain better awareness and understanding of the

³⁸ Office of the Children's Guardian, *Progress Report*, July 2020, p 11 and Tab B: Sandra Herlot Consulting, *Working with Children Check – Expert Program Support*, pp 3-4.

³⁹ Office of the Children's Guardian, *Annual Report 2018-19*, p 22.

⁴⁰ Office of the Children's Guardian, *Progress Report*, July 2020, p 13.

experience Aboriginal applicants have in undergoing the WWCC process. They are working towards improving this experience. For example, the Guardian noted that Aboriginal applicants may require a different approach as they may have had difficult experiences in the past with other government departments.⁴¹

- 2.62 Following a program of work to explore the impact of the WWCC for Aboriginal applicants, the OCG has introduced a number of initiatives to keep the WWCC process and communication open and culturally appropriate. Training is also provided to staff on being culturally appropriate in their work with Aboriginal people and communities.⁴²
- 2.63 The OCG is working to have community buy-in of the WWCC process. They are communicating with Elders groups and people within the Aboriginal community to help better explain the importance of undertaking the WWCC.⁴³
- 2.64 The Committee commends the OCG for their ongoing work in outreach. This is clearly important work, and the Committee is pleased to hear of the additional efforts being made to reach diverse and vulnerable groups, including Aboriginal people. The Committee will continue to monitor the important work being done in this area.
- 2.65 In its previous review, this Committee noted the lower WWCC compliance rates among volunteer organisations.⁴⁴ As such, it would like to acknowledge the efforts being made by the OCG to identify, engage with and provide information to the volunteer sector.⁴⁵
- 2.66 The Committee notes that the volunteer sector continues to have lower compliance and verification rates, but it also recognises that many of these organisations are not as well-resourced as other agencies. The Committee also notes that the OCG continues to support these organisations to meet their obligations. The Committee will continue to monitor this issue.
- 2.67 The Children's Guardian noted one area of particular concern. She highlighted instances in which the WWCC is being used by employers to screen staff or potential staff when a WWCC is not required for their work. There are organisations using the WWCC process to check on a criminal history and discriminate against that person accordingly. This can cause distress to the person, particularly if it is used as a reason for terminating employment. It also causes unnecessary work for the OCG.⁴⁶
- 2.68 The Committee is concerned to hear that some employers are using the WWCC as a way to discriminate against potential employees. This is not the intention of the WWCC and is not an effective use of resources. The Guardian noted that they

⁴¹ Ms Schorer, Transcript of evidence, 6 March 2020, p 17.

⁴² Office of the Children's Guardian, *Progress Report*, July 2020, p 9.

⁴³ Ms Schorer, Transcript of evidence, 6 March 2020, p 17.

⁴⁴ Committee on Children and Young People, *Review of the 2016 – 2017 Annual Report of the Advocate for Children and Young People and the functions of the Children's Guardian*, Report 4 / 56, August 2018, p 10.

⁴⁵ Ms Schorer, Transcript of evidence, 6 March 2020, p 23.

⁴⁶ Ms Schorer, Transcript of evidence, 6 March 2020, pp 17-18.

will consider statutory changes to address this issue when the Regulations or the Act are reviewed.⁴⁷ The Committee will continue to monitor this matter.

⁴⁷ Ms Schorer, Transcript of evidence, 6 March 2020, p 18.

Appendix One – Committee's functions

Part 7 of the *Advocate for Children and Young People Act 2014* sets out the Committee's functions as:

- (a) to monitor and review the exercise by the Advocate of the Advocate's functions,
- (b) to monitor and review the exercise by the Children's Guardian of functions under—
 - (i) the *Child Protection (Working with Children) Act 2012*, or
 - (ii) the *Children's Guardian Act 2019* in relation to the reportable conduct scheme and working with relevant entities to prevent, identify and respond to reportable conduct and promote compliance with the scheme,
- (c) to report to both Houses of Parliament, with such comments as it thinks fit, 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 specified in paragraph (b), to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
- (d) to examine each annual or other report of the Advocate and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
- (e) to examine trends and changes in services and issues affecting children and young people, and report to both Houses of Parliament any changes that the Joint Committee thinks desirable to the functions and procedures of the Advocate,
- (f) to inquire into any question in connection with the Advocate's functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

Appendix Two – Witnesses

6 March 2020

Public Hearing in Preston-Stanley Room, Parliament House

Witness	Position and Organisation
Ms Zoë Robinson	A/Advocate for Children and Young People, Office of the Advocate for Children and Young People
Mr Michael Shaw	Director, Office of the Advocate for Children and Young People
Ms Emily Backhouse	Chair, Youth Advisory Council 2019, Office of the Advocate for Children and Young People
Ms Janet Schorer	Children's Guardian, Office of the Children's Guardian
Ms Sharminie Niles	Director, Legal Services, Office of the Children's Guardian
Mr Steve Gholab	Director, Working with Children Check, Office of the Children's Guardian

Appendix Three – Extracts from minutes

MINUTES OF MEETING No 3

1:31pm, 14 November 2019

Room 1136, Parliament House

Members present

Mr Mason-Cox (Chair), Ms Wilson (Deputy Chair), Ms Boyd, Mr Donnelly, Ms Harrison, Ms Preston and Mr Saunders.

Officers in attendance

Elaine Schofield, Elspeth Dyer and Jennifer Gallagher.

1. Confirmation of minutes

Resolved, on the motion of Mr Donnelly:

That the draft minutes of meeting no 2, held on 9 August 2019, be confirmed.

2. ***

3. Office of the Advocate for Children and Young People Annual Report 2018/2019 and Children's Guardian

The Chair noted that the Office of the Advocate for Children and Young People presented its Annual Report for 2018/2019 on 1 October 2019; and that the Children's Guardian presented her Annual Report for 2018/2019 on 31 October 2019.

Discussion ensued.

Resolved on the motion of Ms Wilson:

- That the Committee conduct a review of the annual reports and other matters in relation to the functions and performance of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian;
- That the Chair and secretariat develop an inquiry plan and timeline and circulate to all members.

4. ***

5. General Business

The Chair noted that the Advocate for Children and Young People has advised the Committee that the Youth Advisory Council will meet on 1 December 2019; that the Advocate has invited interested members to attend and observe proceedings; and that the Chair will be attending.

6. Next meeting

The Committee adjourned at 2:06pm until a date and time to be determined.

MINUTES OF MEETING No 4

10:16am, 6 March 2020

Preston-Stanley Room, Parliament House

Members present

Mr Mason-Cox (Chair), Ms Boyd, Mr Donnelly, Ms Harrison, Ms Preston and Mr Saunders.

Officers in attendance

Elaine Schofield, Leon Last, Jackie Linnane, Jennifer Gallagher, and Mohini Mehta.

1. Apologies

An apology was received from Ms Wilson.

2. Confirmation of minutes

Resolved, on the motion of Mr Donnelly, seconded by Mr Saunders:

That the draft minutes of meeting no 3, held on 14 November 2019, be confirmed.

3. ***

4. ***

5. ***

6. Review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

Resolved, on the motion of Ms Preston: That the Committee invite the witnesses listed in the notice of hearing for Friday, 6 March 2020 to give evidence in relation to the review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian.

6.1. Media

Resolved, on the motion of Mr Saunders: That the Committee authorise the audio-visual recording, photography and broadcasting of the public hearing on 6 March 2020 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

6.2. Answers to questions on notice

Resolved, on the motion of Ms Harrison: That witnesses be requested to return answers to questions taken on notice and any supplementary questions within 10 working days of the date on which the questions are forwarded to the witness.

7. ***

8. Public hearing with the Advocate for Children and Young People and the Children's Guardian

Witnesses and the public were admitted. The Chair opened the public hearing at 10.30 am and after welcoming the witnesses, made a brief opening statement.

Ms Zoë Robinson, Acting Advocate for Children and Young People, and Ms Emily Backhouse, Chair, Youth Advisory Council 2019, Office of the Advocate for Children and Young People were affirmed and examined.

Mr Michael Shaw, Director, Office of the Advocate for Children and Young People was sworn and examined.

The Acting Advocate for Children and Young People showed a video presentation as an opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The Committee adjourned at 11.34 am and the public hearing resumed at 1.01 pm.

Ms Janet Schorer, Children's Guardian, Ms Sharminie Niles, Director Legal Services, Office of the Children's Guardian, and Mr Steve Gholab, Director, Working With Children Check, Office of the Children's Guardian, were sworn and examined.

Ms Schorer made a brief opening statement.

The Committee commenced questioning the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.03 pm.

9. Post-hearing deliberative

Resolved, on the motion of Mr Donnelly: That the corrected transcript of public evidence given on 6 March 2020 be authorised for publication and uploaded to the Committee's website.

10. Next meeting

The Committee adjourned at 2:06pm until a date and time to be determined.

MINUTES OF MEETING No 5

1.30pm, 18 June 2020

Macquarie Room, Parliament House

Members present

Mr Mason-Cox (Chair), Mr Donnelly, Ms Harrison, Ms Preston, Mr Saunders, and Mr Sidgreaves.

Officers in attendance

Elaine Schofield, Leon Last, and Jackie Linnane.

1. Apologies

An apology was received from Ms Boyd.

2. Committee membership

The Chair reported a change in the membership of the Committee as reported in the Votes and Proceedings, of 16 June 2020, entry 13.

Mr Peter Sidgreaves MP has been appointed to the Committee in place of Ms Felicity Wilson MP.

3. Election of Deputy Chair

As a consequence of the membership change, the Chair noted the vacancy in the office of Deputy Chair for the Committee and called for nominations.

Ms Preston, seconded by Mr Saunders, nominated Mr Sidgreaves.

Mr Donnelly, seconded by Ms Harrison, nominated Ms Harrison.

Question put- that Mr Sidgreaves be elected Deputy Chair of the Committee.

Question resolved in the affirmative.

Mr Sidgreaves elected as the Deputy Chair.

4. Confirmation of minutes

Resolved, on the motion of Mr Donnelly, seconded by Ms Preston:

That the draft minutes of meeting no 4, held on 6 March 2020, be confirmed.

5. 2020 Review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

5.1. Publication Orders

Resolved, on the motion of Ms Preston, that the Committee publish the answers to questions on notice received from the Office of the Advocate and Children and Young People and the Office of the Children's Guardian on its website.

The Committee kept confidential the document referred to as the *Grisard Consulting Report* provided to the Committee by the Children's Guardian.

5.2. Consideration of Chair's draft report on the 2020 Review of the Office of the Advocate for Children and Young People

The Committee agreed to consider the report *in globo*.

Resolved, on the motion of Mr Saunders:

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.

5.3. 2020 Review of the Children's Guardian

Resolved, on the motion of Mr Donnelly, that the Chair write to the Children's Guardian to request an update on the issues raised at the public hearing in March, including:

- the implementation of the Reportable Conduct Scheme, in particular the issue of potential conflicts of interest,
- implementing changes following the reviews conducted by Mark Robinson SC and Grisard Consulting, and
- the development of a new Strategic Plan for the Office of the Children's Guardian.

6. ***

7. ***

8. Next meeting

The Committee adjourned at 2.04 pm until a date and time to be determined.

MINUTES OF MEETING No 6

9.00am, 31 July 2020

Macquarie Room, Parliament House

Members present

Mr Mason-Cox (Chair), Mr Donnelly, Ms Harrison, Ms Preston (via teleconference), Mr Saunders, and Mr Sidgreaves.

Officers in attendance

Elaine Schofield, Leon Last, Jackie Linnane, and Jennifer Gallagher.

1. Apologies

An apology was received from Ms Boyd.

2. Confirmation of minutes

Resolved, on the motion of Mr Saunders:

That the draft minutes of meeting no 5, held on 18 June 2020, be confirmed.

3. 2020 Review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

3.1. Correspondence

- The Committee considered the response received from the Office of the Advocate for Children and Young People relating to the presentation given by A Gender Agenda.

Resolved, on the motion of Mr Donnelly, that the Committee write to the Advocate for Children and Young People, thanking them for their response to the request for the presentation given by A Gender Agenda at a meeting of the ANZCCG in May 2019.

That the Committee further request a copy of that part of the finalised minutes of the November 2019 meeting of the ANZCCG, relating to the support of young LGBTQIA+ persons with gender dysphoria.

- The Committee considered the report received from the Office of the Children's Guardian, providing an update on the work of their office.

Resolved, on the motion of Ms Harrison, that the Committee publish the report from the Office of the Children's Guardian on its website.

4. ***

5. ***

6. ***

7. Next meeting

The Committee adjourned at 2.46pm until 9.00am, Thursday, 6 August.

MINUTES OF MEETING No 8

1.33pm, Wednesday, 23 September 2020

Macquarie Room, Parliament House

Members present

Mr Mason-Cox (Chair), Mr Donnelly, Ms Harrison, Ms Preston, Mr Saunders, Mr Shoebridge and Mr Sidgreaves.

Officers in attendance

Elaine Schofield, Leon Last, and Jennifer Gallagher.

1. Committee membership

The Chair reported a change in the membership of the Committee.

Mr David Shoebridge MLC has been appointed to the Committee in place of Ms Abigail Boyd MLC.

(Legislative Council Minutes of 23 September 2020)

2. Confirmation of minutes

Resolved, on the motion of Mr Donnelly, seconded by Mr Sidgreaves:

That the draft minutes of meeting no 7, held on 6 August 2020, be confirmed.

3. 2020 Review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

3.1. Correspondence

The Committee noted the following correspondence:

Sent

- Letter to Advocate for Children and Young People requesting minutes of ANZCCG meeting, dated 20 August 2020.
- Letter to Children's Guardian about the effectiveness of the Working with Children Check, dated 14 September 2020.

Received

- Letter from the Hon Gareth Ward MP, Minister for Families, Communities and Disability Services, noting the Report on the 2020 Review of the Office of the Advocate for Children and Young People, received 19 August
- Email from Office of the Advocate for Children and Young People, answer to a request for information, including minutes of ANZCCG meeting and additional context, dated 1 September.
- Reply from Children's Guardian about the effectiveness of the Working with Children Check, including a Memorandum of Advice concerning a recent matter, dated 16 September.

3.2. Consideration of Chair's draft report on the 2020 Review of the Office of the Children's Guardian

Resolved, on the motion of Ms Preston, seconded by Mr Sidgreaves, that the Committee consider the report *in globo*.

Resolved, on the motion of 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.

4. ***

5. ***

6. Next meeting

The Committee adjourned at 1.52pm until a date and time to be determined.

Appendix Four – Glossary

The Act	The <i>Children's Guardian Act 2019</i>
The ACYP Act	The <i>Advocate for Children and Young People Act 2014</i>
The OCG	The Office of the Children's Guardian
The Scheme	The Reportable Conduct Scheme
WWCC	Working with Children Check
