Advocacy for Children in Tasmania Committee (ACTC)

REPORT AND RECOMMENDATIONS

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12.3 Discussion Paper ........................................................................................................... 92
12.4 Submissions .................................................................................................................. 99
12.5 Interview Participants ................................................................................................. 99
1. EXECUTIVE SUMMARY

This report was commissioned to review the adequacy of advocacy services for children and young people in Tasmania and within that context to comment on and make recommendations about the role, functions and powers of the position of the Commissioner for Children.

An invitation to comment along with the Terms of Reference and a discussion paper with questions were distributed to all relevant agencies and departments in Tasmania and to a wide scope of nominated individuals. These documents were also placed on the website of DHHS. Individual interviews were held with a range of nominated and self-nominated stakeholders and interested parties including current and previous children’s commissioners and officials in other instrumentalities. A committee of eight people with expertise in the broad policy arenas of advocacy, legislation and governance met on four occasions. They were assisted by a small advisory group of experts. A preliminary desktop analysis was undertaken of international and national literature on advocacy and this was distributed to those making submissions and / or those being interviewed. Over one hundred people individually or as part of a submission or presentation, contributed to the thinking of the committee.

Some very consistent themes have emerged and this report draws attention to a number of facts. Advocacy arrangements for children and young people in Tasmania are present in a range of forms but are seen to be scattered, tangled, and minimally understood even by many advocates themselves. There was unanimous support for maintaining and indeed developing the role of the Commissioner to meet both original intentions around advocacy and more contemporary expectations associated with accountability. However, many stakeholders did not understand the role of a commissioner for children, and ongoing publicity appears to have confounded this issue and distorted further understanding.

In large part, the difficulties in fully and effectively implementing the role of Children’s Commissioner were seen to be due to lack of clarity in the original functions as described in the legislation. Urgent requests came from all quarters for the position of the Commissioner to be re-authorised strongly and to take a major role in systemic advocacy for Tasmania’s children and young people and for the position to provide a monitoring role for government in terms of the status of children and young people. Less consistent were the requests that the office include a complaints or a guardianship function. It is clear that the position itself needs to be more strongly linked with similar instrumentalities and that the functions of the Commissioner for Children in Tasmania are spelled out more succinctly in the legislation. Additionally, if at all possible, the legislation should be established independently of its place within the current Children, Young Person and Their Families Act 1997.

A core overriding observation and message from the review is the important role the Tasmanian Commissioner for Children has in working collaboratively across sectors, building relationships and in developing partnerships with government, non-government and private sector organisations. The focus of the role is systemic advocacy and its fundamental aim is to increase the appreciation of contemporary challenges that confront children, young people, their families, and those who provide services to them and to encourage the changes that improve their wellbeing.

Recommendations:

1. The Commissioner for Children utilise the work to date undertaken by the Secretariat of the ACTC and engage in a participative ‘mapping’ of systemic and individual advocacy services for children and young people in Tasmania in order to develop an understanding of their availability, accessibility and any gaps that are evident and can be addressed either within current services or additional ones.
2. The Commissioner for Children to establish further mechanisms to consult with young people to enable their participation in broader policy discussions and to report annually to Parliament about these structures, processes and the outcomes thereof.

3. Establish a portal or a static site on the Commissioner’s website to alert children and young people to the availability of the range of mechanisms for accessing advocacy and complaints mechanisms and services¹, and;

   a. The Commissioner for Children to develop a communications strategy to promote the site and its availability.

4. The Commissioner for Children work with the Ombudsman to consider the feasibility of developing, within the next five years, a visitor programme within the Office of the Ombudsman for children and young people in all forms of residential care, and;

   a. In determining the feasibility of such an arrangement consideration needs to be given to the inclusion of all relevant residential care services, including for example disability care services.

5. Explore the option to develop within the Office of the Ombudsman a visitors’ scheme for young people in detention to replace this specific aspect of the role of the Commissioner for Children. In determining the feasibility of any such changes, it is essential the Ombudsman and the Commissioner for Children consider how to collaborate on mechanisms that ensure systemic issues facing young people in detention are made known to and can be monitored by the Commissioner.

6. Investigate the possibility of establishing a position for an independent child advocate within DHHS - a contracted part time position that can report directly to the Secretary. This position could explore possibilities of utilising new computer-assisted software to increase participation of children and young people in care in decision making and in communicating their concerns. Such a position would provide a means for ensuring concerns and complaints by children and young people in care are appropriately directed and dealt with. Importantly, such a position would need to be situated in a ‘safe’ child-friendly environment and seen to be separate from major departmental activities. Linkage arrangements with the office of the Commissioner for Children in relation to systemic issues would need to be in place.

7. In consultation with the Office of the Ombudsman, the Commissioner for Children and any other relevant authority, DHHS to ensure the internal complaints mechanisms are accessible to children and young people in contact with statutory services and their families. A component of this assessment is to ensure complainants are being provided with detailed feedback about outcomes and the reasons for these, and;

   a. develop a communication strategy to ensure information about internal complaints mechanisms are provided to children, young people and their families in user friendly language and style.

¹ Such a portal is available in other jurisdictions and could well be adapted at minimal cost in Tasmania. It is also noted there are a number of groups in Tasmania, including (Youth Network of Tasmania) YNOT, who have already done preparatory work for such a portal.
b. the appropriate independent body undertake an audit of the new DHHS complaints protocols to ascertain how these protocols are used as well as their outcomes for children and young people in care and detention.

c. ensure the Commissioner for Children continues to sit on the regular review of concerns and complaints within DHHS and receives all relevant data in order to assist the office to understand and monitor any systemic issues that arise.

8. Enhance the capacity for systemic advocacy by the Children’s Commissioner by ensuring powers exist to enable the Commissioner to access all data required to enable the functions of evidence-based advocacy to be fulfilled. That is, establish secure mechanisms that fulfil privacy obligations and enable the timely provision of information and data:

a. between the Ombudsman, the Auditor General, the Children’s Commissioner and other relevant instrumentalities including the Anti-Discrimination Commissioner, and

b. from all government agencies and the non-government sector involved in providing services to children and young people.

9. Retain the sections of the legislation [s79 (1) (a) and (c)] that provide for the Minister (and the relevant Parliamentary Subcommittee) to request the Commissioner instigate an investigation. This is a generally accepted function in equivalent legislation.

10. Include in the Act an ‘own motion’ investigation/inquiry capacity appropriate to undertaking systemic advocacy such as that included in the equivalent Western Australian legislation. This could include advising the Minister or Standing Committee on relevant matters or conducting a special inquiry into a matter or matters affecting the wellbeing of children or young people. It must not be limited to government services. There are scoping requirements for such an ‘own initiative’ investigation/inquiry capacity that need to be developed in line with Tasmanian government protocols. It is important that any such requirements do not limit the Commissioner in receiving information about third parties where this is relevant to such an inquiry.

11. As an alternative to amending Children, Young Persons and Their Families Act 1997, seek to legislate for a stand-alone Act that clearly frames the role of Commissioner for Children as broader than that of only addressing the interests of the most vulnerable of children and young people covered by the Children, Young Persons and Their Families Act 1997. This matter is of particular significance given the urgent need for the Commissioner to develop strong partnerships across departments and agencies and given the increasing presence of non-government agencies in the provision of services to children and families.


13. Incorporate in the legislation the details of the following necessary functions and ensure the powers to implement these functions are clearly legislated:

- Systemic advocacy
- Monitoring
- Policy development and influence
- Research/Inquiry
- Receipt and referral of concerns
- Public awareness and education

14. Ensure the proper independence of the Tasmanian Commissioner for Children by legislating that:

- Appointment to the role be for a five year term of office
- The Commissioner report to a Parliamentary subcommittee and is required in the Commissioner’s Annual Report to develop and report against KPIs of the functions as specified in the legislation, and provide the equivalent of a primary aggregated data source by which programmes, policies, services for children and young people can be understood and suggestions made for improvements. Such data could include:
  - child and youth wellbeing indicators – including health, education, mental health etc.
  - the status of advocacy services for children and young people
  - outcomes of participation mechanisms established for children and young people
  - strategies that have been developed to enhance the capacity of organisations delivering services to children and young people in a manner that is culturally safe and recognises the particular needs of Aboriginal children and other identified populations
  - focused outcomes in relation to services for and complaints by vulnerable children and young people such as those in care and/or detention.

15. Establish an advisory group including relevant members of the Advocacy for Children in Tasmania Committee (ACTC) to oversee the implementation of recommendations accepted by government to ensure the principles enunciated therein are understood and incorporated and the views of those who contributed are honoured. Included in these principles are:

a. a primary role for the Commissioner is that of systemic advocacy
b. the role of the Commissioner includes an important monitoring function in relation to programmes, policies and legislation that have potential to impact on the wellbeing of children and young people.
c. key outcome indicators for particularly vulnerable children and young people must provide one of the focal points for the work of the Commissioner.
2. BACKGROUND
The Minister for Children, Michelle O’Byrne, commissioned the Advocacy for Children in Tasmania Review (ACTC) in June 2013. Although the review was commissioned following the resignation of the then Commissioner for Children, it had been foreshadowed during discussions following the Minister’s receipt of the Legislative Amendments Review Reference Committee (LARRC) in November 2012. It is important to notice at the outset that the current advocacy arrangements and needs for the children and young people of Tasmania, are at the forefront of this review and that the role of Commissioner for Children is being scoped within that context.

The review is situated within the broad international and national environment in which is located the generally vexed question of how to determine and specify the ambit of functions and powers of a commissioner for children within any particular jurisdiction. There are noteworthy variations in the role delineations for children’s commissioners, or their equivalent of a children’s ombudsman, but they all have at their heart the importance of advocacy, that is, the championing of the voice, rights and position of children and young people – especially the most vulnerable.

It is within this context that this review incorporates an appraisal of the current and potential functions, authority and power relating to the role and office of the Commissioner for Children in Tasmania. One of the central questions for the Committee as it commenced its deliberations was:

*How does the role of a commissioner for children in Tasmania best aid government in facilitating and enhancing the voice and upholding the rights of its children and young people in its policies, practices and legislation?*

3. TERMS OF REFERENCE
To provide policy advice to Government on the provision of:

*Functions*
1. Advocacy for all Tasmanian children and youth:
   *Whether existing advocacy services for all Tasmanian children are adequate, and if not where the additional capacity would be best provided from?*

2. Advocacy for children and youth in care due to child protection concerns:
   *Whether existing advocacy for children and youth in care due to child protection concerns is adequate, and if not where the enhanced capacity would be best provided from?*

3. Advocacy for youth in detention:
   *Whether existing advocacy for youth in Ashley Youth Detention Centre (AYDC) is adequate, and if not where the enhanced capacity would be best provided from?*

4. Responding to complaints relating to children in care or detention:
   *Whether existing responses for individual complaints arising from children in care or detention are adequate, if there is a need to increase capacity in this area, and if so where this would be best provided from?*

5. Investigation and inquiry functions:
   *Is there a need for increased capacity to have an external authority undertake an own initiative investigation, if so what are the options to establish this? Whether this should be limited to services provided under the Children, Young Person and Their Families Act 1997 and the Youth Justice Act 1997 or all services provided to children in Tasmania.*
**Powers**

6. **In order to fulfil the role of advocate for children, what powers are needed to be associated with the function of the Commissioner and, which if any, need to or can be located elsewhere? Are these powers suitably placed in the Children’s Young Persons and Their Families Act 1997 or some other legislation?**

**Governance arrangements** for any statutory roles suggested including:

- Term of appointment
- Whether there should be an Office for Children or a Commissioner for Children
- Accountability
- Independence / reporting arrangements
- Ministerial direction
- Financial management and reporting
- Skills and attributes required for the Commissioner

*The Process required* under the Terms of Reference:

The Chair’s report is to be informed by (but not limited to):

- Consideration of recommendations within reports, Parliamentary records and publications relating to the function and powers of the Tasmanian Commissioner for Children;
- Comparison of other national and international jurisdictions’ responses to issues identified within the Terms of Reference;
- Comparison of governance arrangements for similar statutory officers within Tasmania;
- Targeted consultations with key stakeholders, including current and past commissioners for children;
- Call for comment and submissions; and
- Expert advice.

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**4. COMMITTEE AND TEAM MEMBERSHIP**

Dr. Maria Harries  
Adjunct Professor, School of Occupational Therapy and Social Work, Curtin University. Senior Honorary Research Fellow, The University of Western Australia.

Mr. Greg Barns  
Barrister, Michael Kirby Chambers & Immediate Past President Australian Lawyers Alliance.

Mr. Nick Evans  
Director, Community Development, Department of Premier and Cabinet.

Ms. Liz Little  
Chief Executive Officer, Sexual Assault Support Services Inc.

Mr. Tom Lynch  
Secretary, Community and Public Sector Union.

Ms. Angela McCrossen  
A/Manager Quality Improvement and Workforce Development, Children and Youth Services, Department of Health and Human Services.

Mr. Andrew Mead  
Barrister, Wallace, Wilkinson and Webster

Ms. Heather Sculthorpe  
Chief Executive Officer, Tasmanian Aboriginal Centre Inc.

**ADVISORY GROUP:**

Ms. Robin Banks  
Anti-Discrimination Commissioner.

Ms. Elizabeth Daly  
Acting Commissioner for Children.
Ms. Tenielle Moore  Acting State Coordinator, CREATE, Tasmania.
Ms. Joanna Siejka  Chief Executive Officer, Youth Network of Tasmania.

SECRETARIAT SUPPORT:
Mr. Bruce Kemp  Acting Director, Strategy, Program Development and Evaluation, Children and Youth Services, DHHS.
Ms. Colleen Moran-Ford  Project Consultant, Children and Youth Services, DHHS (to September 2013).
Ms. Miranda Ashby  Project Consultant, Children and Youth Services, DHHS (from September 2013).
Ms. Anna Oakley  A/Principal Analyst, Planning, Program Development and Legislation, Children and Youth Services, DHHS

CONSULTANCY ASSISTANCE:
Professor Mike Clare  Honorary Fellow, The University of Western Australia.

5. CONTEXT AND BACKGROUND INFORMATION
The following is a very brief summary of six issues that offer a contextual background for the deliberations of the ACTC:

1. A brief socio-economic profile of children and young people in Tasmania.
2. The concept of advocacy especially as it relates to children and young people.
4. The various roles and functions of commissioners for children in Australia.
5. Key factors relating to the role and function of commissioners for children internationally and nationally particularly with respect to advocacy.
6. The Tasmanian legislation

A background paper, ‘A Review of Key Literature on Advocacy for Children and Youth and the Roles and Functions of Commissioners for Children’, prepared for the ACTC by Professor Mike Clare provides a fuller summary of much of the contextual material and some of the references utilised in this section (Appendix 1).

5.1. PROFILE OF CHILDREN AND YOUNG PEOPLE IN TASMANIA
Children and young people make up 25.8% of the population of 500,000 inhabitants of Tasmania.² It was explained early to the Chair and Committee that Tasmania’s children and young people are particularly disadvantaged as a cohort compared to those of nearly all other Australian jurisdictions. It is clear that the Tasmanian government and people face quite unique challenges as they try to meet the needs of the community in general, as well as the needs of vulnerable populations, such as children and young people.

Jonathan West’s provocative comments in the essay, ‘Obstacles to Progress’, for the Griffiths Review (2013) were widely quoted during the time of the Committee meetings and provided a compelling backdrop for the review:

Tasmania ranks at the bottom among Australian states on virtually every dimension of economic, social, and cultural performance: highest unemployment, lowest incomes, languishing investment, lowest home prices, least educated, lowest literacy, most chronic disease, poorest longevity, most likely to smoke, greatest obesity, highest teenage pregnancy, highest petty crime, worst domestic violence. It seems not to matter which measure is chosen, Tasmania will likely finish last.¹

Data prepared for the Committee at its request (Appendix 2) displays well the overall socio-economic demography of Tasmania’s population and highlights the likely vulnerability of its children and youth. The following chart, included and explained in more detail in Appendix 2, utilizes data from the Census of Population and Housing in the form of Socio-Economic Indexes for Areas (SEIFA). The Socio-Economic Index for Areas (SEIFA) outlines the socioeconomic conditions for all geographical areas in Australia. It uses several demographic indicators to record advantage and disadvantage, including employment, income, literacy and educational attainment.

Using the Index of Relative Socio-Economic Disadvantage (IRSD) this chart graphically portrays the level of socio-economic disadvantage in Tasmania.

Chart 1: Population Distribution and Socio-Economic Disadvantage (2011 SEIFA)

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Quintile 1 (Most Disadvantaged)</th>
<th>Quintile 2</th>
<th>Quintile 3</th>
<th>Quintile 4</th>
<th>Quintile 5 (Least Disadvantaged)</th>
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<tbody>
<tr>
<td>ACT</td>
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<td>6%</td>
<td>13%</td>
<td>27%</td>
<td>52%</td>
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<tr>
<td>NSW</td>
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<td>18%</td>
<td>17%</td>
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<tr>
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<td>28%</td>
<td>14%</td>
<td>19%</td>
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<tr>
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<td>VIC</td>
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<td>WA</td>
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<td>Total</td>
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5.2. Advocacy

Author and scholar, Nigel Thomas provides a comprehensive definition of advocacy as it pertains to children and young people:

Advocacy is about enabling a child or young person to speak for her/himself or speaking for a child or young person. The term advocacy is commonly used to refer to the practice of representing a child or young person, or providing them with advice and support, and conveying their wishes to the appropriate local authority. The majority of children and young people we spoke to understood advocacy to mean, or involve, speaking up for someone, understanding, talking and making other people listen and consider their views.²

At this simple level, advocacy is either about representing the views of the individual for changes to be made to benefit that individual (individual advocacy) or representing the views of that individual or a broader group of individuals at a systems level wherein the need is expressed for structural changes.

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² Thomas N. (2008), Consultation and Advocacy, Chapter 6 (pp 97-114), In B. Luckock and M. Lefevre, Direct Work: Social Work with Children and Young People in Care, British Agencies for Adoption and Fostering, London.
(systems advocacy) to benefit members of that group. There are multiple other ways of describing advocacy of course – legal advocacy, pure advocacy, peer advocacy etc.

The Australian Law Reform Commission\(^5\) is inclusive in its definition of advocacy as it pertains to children and young people. It summarises the importance of advocacy in ‘humanising the bureaucracies’ and assisting children and families to navigate the complex maze of bureaucratic processes. The functions of advocacy are identified herein as:

1. Promoting the interests of children generally to ensure government and agency accountability.
2. Monitoring compliance with international obligations.
4. Conducting and / or coordinating research to promote best practice in relation to children.
5. Resolving complaints and conducting enquiries into individual concerns.
6. Supporting and assisting particular children to access services or obtain redress for complaints and problems.
7. Encouraging the development of structures to enable children and young people to be active participants in the decision-making processes affecting their lives.

Brady\(^6\) catalogues a useful list of providers of advocacy services for children in the care system – with implications for Independent Human Rights Institutions for Children (IHRICs):

1. Peer – provided by a peer with a shared experience (e.g. CREATE).
2. Citizen - befriending by a volunteer visitor.
3. Organised Volunteer – e.g. Independent Visitor System for children in detention.
4. Group e.g. an adult advocate supporting a group of young people to advocate for themselves and others.
5. Self – advocating for own needs with information and human assistance (Grover\(^7\) reflects on self-advocacy and enhancing a child’s level of resilience).
6. Electronic – making use of the internet/ social media/ SKYPE e.g. the Community Connector Programme.\(^8\)
7. System – advocacy by front-line professionals for structural changes in the care system. This model is articulated by Grover\(^9\) who argues for an expanded understanding of professionalism in Canadian child and family care by incorporating child advocacy at the front-end of service delivery. Grover suggests that workers tend to operate in passive compliance with policy mandates of their employing institution. She also describes more formal advocacy as the formal role of a single provincial government official designated as the ‘child’s advocate’.

Whilst being cognizant of the important nuance and complexities in the above list, for the purposes of this review, advocacy is defined simply as:

**The active support of an individual, or group of individuals or an idea or issue and especially involves the acts of representing these individuals or groups or pleading or arguing for something on their behalf.**

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\(^8\) Blundell B and Clare M (2012), *Elder Abuse in Linguistically Diverse Communities: Developing Best Practice, Advocare: WA and the Centre for Vulnerable Children and Families*, UWA. P. 43.

This simple definition accepted, it is important to note a continuing potential for ambiguity in relation to the use of the term advocacy by different professional disciplines which is highlighted in the desktop review of Professor Clare.\textsuperscript{10} It is essential to underline the difference between the two polar ideal types/styles of advocacy in common use:

\textbf{Ideal-Type/ Style One ‘Doing-to’ Advocacy} – a relatively closed representative role incorporating a more task-focused legal, more prescribed and correct questioning, procedural, adversarial and authoritative set of activities by the adult advocate.

\textbf{Ideal-Type/ Style Two ‘Working-with’ Advocacy} – a relatively open facilitative role incorporating a more process-focused, developmental, creative, inclusive and synergistic set of activities involving the ‘Exchange Model’.

The following matrix provides a relatively simple model for understanding and undertaking advocacy in its different forms:

What this matrix attempts to show is that one can undertake systemic advocacy or individual advocacy in a ‘doing to’ or ‘working with’ way. Permutations of these approaches are possible within each service that undertakes advocacy but what is important is that these services appreciate the implications of the different approaches.

\section*{5.3. United Nations Convention on the Rights of the Child (UNCROC) and Independent Human Rights Institutions for Children (IHRIC).}

The ground-breaking United Nations Convention on the Rights of the Child (UNCROC)\textsuperscript{11} is the 1989 human rights treaty enshrining children’s rights in international law. In detailing what is required for every child to have a fulfilling and successful childhood, this treaty names and describes universal principles for how we respect the rights of children and young people worldwide. The treaty was ratified by Australia in 1990 and nearly all United Nations member states (except United States and Somalia) have since ratified the Convention. It remains one of the most highly regarded human rights documents in the world.

Although there are a large number of articles (54 in total), four of these identify the core principles underpinning the charter:

- Children have the right to protection from discrimination on any grounds.
- The best interests of the child should be the primary consideration in all matters affecting the child.
- Children have the rights to life, survival and development.
- All children have the right to an opinion and for that opinion to be heard in all contexts.

\textsuperscript{10} Appendix 1: P. 18.

It is noteworthy that the newly appointed Australian National Children’s Commissioner has already observed, “twenty years after we ratified the Convention on the Rights of the Child, vulnerable groups of children and young people in this country continue to lack adequate human rights protections”.12

UNCROC makes clear that contrary to what is often claimed or feared, the rights of children and young people are situated firmly within and not in opposition to the rights and responsibilities of families. The United Nations asserts in UNCROC that the family is the fundamental location for the growth and well-being of children and must be afforded assistance in carrying out its essential responsibilities within its own wider community. It recognises that all children have the right to be nurtured and grow up in a family environment that is supported to do this demanding work.

Recent years have seen an exponential increase in the measurement, analysis and monitoring of the rights and needs as well as the status of children and young people across the globe.13 Researchers, Ben-Arieh & George comment on the significance of developments in ‘monitoring the state of our children’.14

_The development of the notion of children’s rights has led to the establishment of an Ombudsman, a Special Commissioner, and special departments and ministries for children’s rights and children’s wellbeing._

They note that these institutions have become part of an international reporting framework on the status of children around the world.

In particular, since the development of UNCROC, there has been a remarkable growth of what are termed ‘Independent Human Rights Institutions for Children’ (IHRICs) worldwide. The Australian Law Commission15 lists the diversity of titles of IHRICs in use internationally:

- Children’s Commissioner
- Children’s Ombudsman / Ombudsperson
- National Office for Children
- Ministry for Children.

Whatever their nomenclature, there are wide variations in independence, functions and powers of these institutions - all depending on the history and particular requirements of the relevant jurisdiction or country at any particular time. In recent years reviews have been conducted on the roles and outcomes of each of the equivalent UK commissioners for children. The introductory commentary in one of these reviews provides this Tasmanian review with some potentially salutary counsel. Reporting in 2010, the review report into the Office of the Children’s Commissioner (England),16 notes:

_The overall impact has been disappointing. This is in large part due to the limited remit set out in the 2004 legislation and a failure to establish credibility with Government and other policy makers…The recommendation in this report strengthens the remit, powers and independence of the Commissioner._

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Sedletzki, the author of the UNICEF Office of Research Report which reports on a study of more than 200 IHRCs specifies the key features of an effective IHRC to include:

**Independence** as the main strength and source of legitimacy and authority to keep the focus on the rights of the child regardless of political trends – recognising that such independence is a most fragile quality with the quality of actual independence a function of the office’s mandate, resources and management.

The perception of an institution’s independence particularly on the part of children, excluded communities and other actors engaged in rights-related work, is crucial to its ability to carry out its mandate.

**Financial Autonomy** as the key to independence given that institutions need sufficient and sustainable financial resources to carry out their mandates, in full recognition that funding sources must respect the legitimacy and independence of the institution. While government funding might compromise an institution when there are restrictions on funding, such funding provides legitimacy as a public regulatory agency. Also, external / private funding can be double-edged by keeping an institution operational but with the risk of compromising independence and sustainability over the long term.

**Accountability Mechanisms** which provide ongoing feedback on the institution’s strengths and weaknesses as crucial in fostering independence and strength; clear accountability mechanisms can build public trust and reinforce legitimacy in the eyes of the public and of state bodies enhancing the likelihood of implementation of recommendations. Key accountability mechanisms include:

- Written reports to Parliament and the public of activities on an annual or regular basis
- Informing the general public through websites, social media and regular bulletins
- Monitoring by civil society e.g. national human rights institutions and membership of national and international networks.

**Child Participation** – is a core principle of UNCROC. IHRCs have a unique role in promoting and modelling the child’s right to be heard through engaging effectively with children; this requires specific skills, resources and commitment. The participation of children and young people is pivotal to any work of an IHRC.

Independence, financial autonomy, accountability and participation underpin the legislation for most commissioners for children in Australia although the mandates, independence and funding arrangements of these commissioners vary significantly. Importantly, there is no suggestion that total responsibility for protecting the rights of children and young people sits solely with such commissions. Sedletzki notes:

Independent human rights institutions for children do not remove responsibility from [other] actors but work alongside them to strengthen their performance. Their key role is to facilitate government processes involving others.

This is an important matter and points to the fact that a key role for commissioners for children is to work across government and non-government, that is, as advocates for children and young

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18 Ibid P 16.
19 Ibid P 6.
people such commissions need to ‘work with’ rather that to ‘do to’. Their role is not to do all the advocacy work but to ensure as far as is possible that it is happening.

5.4. COMMISSIONERS FOR CHILDREN IN AUSTRALIA

Australian states and territories as well as the Federal Government have adopted the term Commissioners for Children to describe the human rights institutions for children that support UNCRoC principles in this country. A separate role of child guardian has also been established in some jurisdictions. The primary function of this latter role is to work solely to improve the advocacy and services to children and young people in the care of the State.

There are significant variations in the developments and jurisdicational arrangements, legislative mandates, roles, powers and functions of commissioners for children in Australia. Despite some changes (current and pending), the variations are well captured in the regularly updated material from the Child Protection Clearing House. In their earlier comprehensive review of these roles, Lamont and Holzer noted:

The role and activities of children’s commissions/guardians differ between jurisdictions. Some take a broad focus and represent all children and young people, while others focus on children and young people at risk or those who come into contact with child protection systems.

At the time of writing this report, there is a newly legislated National Australian Children’s Commissioner in place; all states and territories have a commissioner for children or equivalent; one state has a guardian for children rather than a commissioner; one has a child guardian as well as a commissioner. In the states where there is no specified child guardian, the commissioner may undertake some or all of the functions and/or responsibilities associated with that role. There is much nuance and some ongoing confusion in relation to these various arrangements as jurisdictions determine their preferred arrangements and legislation to ensure the human rights of children and young people are managed within the context of the UNCRoC principles.

5.5. ROLE AND FUNCTION OF COMMISSIONERS FOR CHILDREN IN ADVOCACY

As already observed, UNCRoC principles are premised on the understanding that children and young people have inalienable rights, have not had a legitimized voice in the past, and that their voice about all matters pertaining to their rights and wellbeing is vitally important to hear and attend to. It is well acknowledged that as a group, children and young people are more dependent and vulnerable than adults as a group. They cannot, without assistance, be expected to understand their rights and the resources available to them and must have access to support and legal services and other forms of safety, protection and security.

Article 12 of the United Nations Convention on the Rights of the Child claims for all children:

The right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

As Clare comments:

There is emerging evidence of the ‘invisible, isolated and voiceless child’ in the Australian context – whether from the ‘Stolen Generations’ of Aboriginal children, from the ‘Lost

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22 In South Australia there is a Council for the Care of Children
23 Appendix 1 P 5.
Children of the Empire’, the so-called ‘orphans’ who continued to be sent from the United Kingdom until 1968, from the child placed through ‘Forced Adoption’, from the child recently arriving by boat and claiming refugee status while living in detention – or the child who experienced institutional abuse in silence until very recently. These were and are visible public policies with institutional buildings in the community and staff from the community – whether missions, orphanages, children’s homes or detention centres. The voiceless child is also the child without human rights regardless of the signing of international agreements and the plausible language in child and family legislation about ‘The child’s best interests’. The gap between policy and practice vision and fact for some children is startling – and the longevity of these policies, practices and the numbers of invisible, isolated and voiceless children has only recently been recognised.

The current Royal Commission into Institutional Responses to Child Sexual Abuse is dramatically highlighting our historic and ongoing failure to protect vulnerable children. It speaks to the historic vulnerability and lack of voice of children and young people and the ongoing vulnerability they face. This vulnerability continues despite the significant achievements of UNCROC in establishing principles, benchmarks and standards. It is clear we need to continue to be vigilant in ensuring children and young people have the right to participate in decisions affecting them, providing them with the means to voice their interests and concerns and for stronger systems to be developed to ensure their safety and protection.

In relation to these matters, the essential question facing this Committee is where these individual and systemic advocacy services for children and young people are best placed within Tasmania to be most effective for this jurisdiction and which enables the needs of the most vulnerable children to be met alongside those of the entire population of children.

It is worth noting in conclusion here that amongst matters the 2011 Tasmanian Select Committee on Child Protection recommended the role of the role of the Commissioner for Children ‘be expanded’ and:

\[\text{Child advocacy services be strengthened as part of the planned amendments to the Children, Young Persons and Their Families Act.}\]

5.6. THE TASMANIAN LEGISLATION

Tasmania was one of the first states to legislate for and establish a role of commissioner for children. It did so in legislation proclaimed in 2000. Hansard documents leading up to this, record the significant discussion and strong indications of support for such a function to be included within the Children, Young Persons and their Families Act 1997 (the Act). As is the case in all jurisdictions, Hansard and other accompanying reports demonstrate the liveliness of the debate about the various optional functions for such a commissioner. These reports provide interesting insights into the thinking of the time about advocacy for children in general. Many of the discussions remain relevant today and include:

- The importance of promoting the development of policies and services to increase the wellbeing of all children;
- The need to ensure robust advocacy mechanisms are in place for the most vulnerable children;
- The importance of government being able to access independent advice on policy and practice standards in relation to children and young people;
- The need for a dedicated location for the review and overview of potential legislation and decisions made under legislation from the perspective of the rights of children and young people;

\[\text{Select Committee on Child Protection (2011) Final Report, No. 44. Parliament of Tasmania, P.125.}\]
• The need for appropriate mechanisms for providing accountability of services in relation to children and young people; and,
• Ensuring an avenue for complaints by children and young people.

It is clear from Hansard and from various communications about this initiative that the focus of the model for the Tasmanian Commissioner for Children was that of advocacy and scrutiny of policy and practices rather than a formal child guardian model or one involving the receiving and managing of complaints:

An advocacy model was favoured by most respondents [to a Discussion Paper] in order to encourage proactive responses, community education, prevention strategies and provide a non-partisan, independent advocate.\(^{25}\)

An advocacy model would enable policy to be influenced and to sensitise the larger system to issues facing children and youth.\(^{26}\)

Similarly of importance is that in the deliberation of the time about the significance of the development of this new office, the centrality of family and community in relation to the role of a commissioner was highlighted:

These principles [within The Act] dictate a child-centred family focused approach to any intervention and ensure the views of the child and all persons seeking the best interests of that child are taken into consideration.\(^{27}\)

Records of that time show that in the initial deliberations about the functions, powers and location of the Commissioner for Children in Tasmania, the government considered this new Statutory Officer either be located within the Office of the Ombudsman/Health Complaints Commissioner or the Public Guardian – the latter being preferred in the first instance “because of their mutual advocacy focus”\(^{28}\). The final recommendation to government was ‘to negotiate the placement of the Office for the Commissioner for Children with the Ombudsman’s Office’\(^{29}\). However, the final decision was in fact to locate this office separately from either of these other offices.

This decision to establish an ‘independent office’ was in keeping with the recommendations of the Joint Select Committee on Children, Young Persons and Their Families:

The Commissioner for Children will be an independent office that will provide advice on policy and practice standards, conduct research and encourage the development of policies and services that enhance the wellbeing of children... The Commissioner will provide advocacy for children at a systems level.... The Commissioner for Children will be pro-active with ongoing review and research functions to ensure the delivery of appropriate services to children without having to re-invent the wheel.\(^{30}\)

Additionally, the importance of establishing the office as one independent of a department appears to have remained a priority in deliberations leading up the final establishment of the role of commissioner. The rationale was ‘to distance Secretarial decisions from the advocacy function and


\(^{26}\) Unnamed author (1999), Where should the Commissioner for Children be Located? P4.

\(^{27}\) ibid P 6

\(^{28}\) ibid P 19


hence reduce the possibility of conflicts of interest arising’ and because the Commissioner ‘is specifically mandated to question any policies or practices in relation to children in all spheres’.31

The Tasmanian Commissioner for Children was established as, and remains, an independent statutory officer appointed by the Governor, reporting to the Minister and required to table an annual report to Parliament.

The functions of the Commissioner for Children defined in Section 69 of the Act are as follows:

| (a) | on the request of the Minister, to investigate a decision or recommendation made, or an act done or omitted, under this Act in respect of a child, other than a decision or recommendation made by the Court; |
| (b) | to encourage the development, within the Department, of policies and services designed to promote the health, welfare, care, protection and development of children; |
| (c) | on the request of the Minister, to inquire generally into and report on any matter, including any enactment, practice and procedure, relating to the health, welfare, care, protection and development of children; |
| (d) | to increase public awareness of matters relating to the health, welfare, care, protection and development of children; |
| (e) | on the Commissioner's own initiative or on the request of the Minister, to advise the Minister on any matter relating to the administration of this Act and the policies and practices of the Department, another Government department or any other person which affect the health, welfare, care, protection and development of children; |
| (f) | on the Commissioner's own initiative or on the request of the Minister, to advise the Minister on any matter relating to the health, welfare, education, care, protection and development of children placed in the custody, or under the guardianship, of the Secretary under this or any other Act; |
| (fa) | on the Commissioner's own initiative or on the request of the Minister, to act as an advocate for a detainee under the Youth Justice Act 1997; |
| (fb) | to advise the Minister on any matter relating to the health, welfare, education, care, protection and development of detainees under the Youth Justice Act 1997; |
| (g) | any other functions imposed by this or any other Act. |

(2) If the Commissioner advises the Minister on any matter relating to the policies and practices of another Government department, the Commissioner must provide that advice also to the Minister to whom that Government department is responsible in relation to the administration of those policies and practices.

(3) In performing his or her functions, the Commissioner must act independently, impartially and in the public interest.

Section 80 of the Act confers the following powers to the Commissioner for Children:

| (1) | The Commissioner has power to do all things necessary or convenient to be done in connection with the performance and exercise of his or her functions and powers under this or |

any other Act.

(2) Without limiting the powers of the Commissioner under subsection (1), the Commissioner may require any person to answer questions or to produce documents so far as may be relevant to the administration of this Act.

Various criticisms have been made of this legislation over the last decade and there have been calls to improve the role and increase its status. In arguing for more status and authority for the role and to augment its capacity to take a whole-of-government approach, there have been suggestions the role be established under separate legislation as is the case in most other jurisdictions. The Select Committee on Child Protection (2011) received a number of submissions in relation to amending the Act with regard to functions and powers of the Commissioner for Children and made recommendations in relation to these. The submissions to the Select Committee evidence a range of ongoing (some long-standing) concerns and confusion and testify to areas in which both functions and powers of this role are insufficiently scoped and the role insufficiently well defined.

The recommendations contained in the Select Committee Report were considered to lie outside the scope of the earlier LARRC that reported in late 2012 but have been incorporated into the deliberations of ACTC and are reflected in some of its recommendations.

6. CONDUCTING THE REVIEW

6.1. ANALYSIS OF INTERNATIONAL LITERATURE

There is an extensive literature concerning advocacy in general and advocacy for children and young people in particular; the arrangements for addressing this advocacy via various independent human rights institutions; and, the ways these matters are dealt with in different jurisdictions internationally and nationally. As previously noted a desktop review report (Appendix 1) was commissioned at the commencement of this review to provide a summary of this literature for the members of the Committee as well as for the stakeholders we consulted. It was written by Professor Mike Clare and provides the essential theoretical context for the Report.

6.2. CONSULTATION PROCESS

It was agreed early in the consultations that there be a core ACTC and an associated Advisory Committee made up of people who have significant expertise in the broad policy agenda of advocacy for children and youth in Tasmania. Members of the Advisory Committee were invited to all meetings and were also consulted separately.

In June 2013 a Discussion Paper was developed to accompany the distribution of the Terms of Reference to a large range of stakeholders (Appendix 3). Simultaneously, the Discussion Paper and Terms of Reference were placed on the DHHS website. This provided the broad public invitation to comment. The deadline for submissions was set to accommodate the second meeting of ACTC in July. Additionally, the names of key stakeholders – both individual and organizational – were identified for more targeted interviews and invitations.

The first meeting of the ACTC was held in June 2013 and there it was agreed to commission the desktop review to assist the deliberations of ACTC. At this meeting the list of stakeholders for interview was augmented. The desktop literature review was provided to ACTC members prior to the second meeting in July. On the basis of the evidence in the desktop review, a draft list of questions was developed to guide interviews. It was agreed that all people being interviewed, as well as those

who had made a submission, receive a copy of this document and that the interviews to be undertaken with key stakeholders focus on the place of advocacy.

The Committee met four times altogether (June, July, September, October) and separate discussions were held with individual members as issues arose relevant to their constituency, interest or portfolio. All written submissions (Appendix 4) were made available to all committee members and a summary of issues arising from these and from participants was tabled at the second meeting of the committee. An early draft report was prepared in which key matters from the consultations were identified and in which draft recommendations were made in relation to each of the Terms of Reference. These were discussed by the ACTC and refinements and suggestions made with the agreement the next draft would be forwarded to members prior to the final meeting in October and prior to finalization and submission of the Report to the Minister in later October.

7. FINDINGS

The following matters were identified during the review process. These were tabled at the September ACTC meeting and represent the outcomes from submissions, consultations and interviews. They provide much of the data that was used by the ACTC in its considerations about core matters and to develop recommendations. They are presented simply as a chronological ordering of ‘findings’. Before listing these matters what follows are some important reflections on contemporary issues relating to advocacy and the role of independent human rights institutions for children in general that were current as the review progressed and which had some inevitable impact on our considerations.

7.1. Overview

The new position of National Children’s Commissioner was implemented and an appointment made about the time this review of children’s advocacy in Tasmania commenced. This national initiative is viewed as an auspicious and welcome development by its numerous and long-active campaigners across Australia. It also invited considerable thought and speculation about how the roles of children’s commissioners in the various Australian jurisdictions might relate to this central role and so was incorporated to some degree in the deliberations of ACTC. It is understood by the ACTC that the national role of commissioner for children promises to be one that usefully augments state roles by providing perspectives on national level policies relevant to children and young people.

Ironically, during this Tasmanian review, the expansive Queensland Child Protection Commission of Inquiry made the following recommendation:

*There is no need for the Commission for Children and Young People and Child Guardian [the first such office established in Australia 1996] to be retained in its current form.*

This Queensland Inquiry proposes far reaching changes to accommodate the removal or changes in the role and function of the Office of Children’s Commissioner including the establishing of a ‘Family and Child Council’, as well as a number of enhanced arrangements concerning the monitoring of services for children and families, the augmentation of ‘oversight bodies’ and complaints bodies such as that of the Ombudsman and Public Guardian, and inter-agency cooperation ‘providing cross agency leadership’. Whether or not these far reaching recommendations are accepted, they demonstrate the attention being paid in other Australian jurisdictions to developing models of child advocacy that are seen to meet contemporary local needs. They provide a message for Tasmania that it is not alone in its search for creative solutions in its attempts to meet the needs of children and young people.

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Changes and challenges to the role and functions of children’s commissioners in other Australian jurisdictions are ongoing. These include the new legislation enacted in Victoria which incorporates the appointment of an Office of Children’s Commissioner with considerable powers to replace that of the Child Safety Commissioner (Commissioner for Children and Young People Act 2012) and the appointment of the first Aboriginal Children’s Commissioner within that Office.

Similarly, in Western Australia, recommendations from the review of the Office of Children’s Commissioner (which occurred alongside the Blaxell Inquiry of 201235 into past sexual abuse in a country hostel for children and young people) have incorporated suggestions of expanding the powers of the Commissioner to that of ‘operating as a one-stop shop for any complaints concerning child abuse against a public sector agency’. This raised the question for the ACTC of the importance of ‘raising the bar’ in relation to hearing and managing complaints from children and young people on their behalf.

Other matters of contextual relevance during the deliberations of the ACTC related to ongoing reviews and activities within government in general and DHHS in particular. These include reviews of out-of-home care for children, family engagement strategies, complaints handling mechanisms, juvenile justice and Ashley Youth Detention Centre. The outcomes of these reviews will undoubtedly impact on decision making associated with the recommendations in this report.

### 7.2. General Observations and Themes Emerging from Consultations

1. There is very strong support for the maintenance of the role of a commissioner for children in Tasmania as a champion for the needs and interests of children and young people.
2. The importance of child and youth participation in identifying core matters of relevance for Tasmania’s children and young people and in shaping the role of commissioner for children was emphasized by many.
3. There was also considerable recognition of the achievements of previous children’s commissioners, most of whom are seen to have ‘been failed’ in many of their endeavours by the lack of clarity in the legislation.
4. There is much concern about the very public way the role of the Tasmanian Commissioner for Children has become confused and controversial over the twelve years of its operation. Emphasis was placed on the need to get role clarity this time – and to re-invent the role so that it “holds with authority and respect” the vitally important and legitimized voice for children and young people.
5. All Australian jurisdictions are paying attention to the difficulties in giving voice to the interests and concerns of children and young people and attempting to resolve these in various ways. Children’s commissioners are regarded as central locations for this systemic advocacy role in which the principles of UNCROC in relation to child participation are pivotal. Every person interviewed considered the central role of the Tasmanian Commissioner for Children is systemic advocacy – as a champion and a voice for all children and young people.
6. There is much variability in the functions and powers of children’s commissioners across Australia in relation to independence, advocacy, investigatory capacity, complaints management, oversight and monitoring of services for children and young people, and their focus on the most vulnerable children including those involved with statutory systems.
7. Each jurisdiction has responded in unique ways in how it establishes and reviews the legislation for children’s commissioners. Each has been influenced as much by then current inquiries into child protection (and associated demands for better oversight of services for children in care and

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those in detention) as by the availability of other oversight and complaints structures or the requirements of UNCROC for a voice for children’s rights.

8. There are important distinctions between individual and systemic advocacy and there is a tension between them and much debate about how well they can be conducted together. Different jurisdictions locate their own preferred positioning of the role of children’s commissioner in relation to these two advocacy types.

9. Much of the literature as well as many of the people consulted note the risk of individual advocacy depleting the capacity of children’s commissioners to successfully fulfil their role in systemic advocacy.

10. Tasmanian children and young people face particular disadvantages across the board (note ABS data). The significance of systemic advocacy for them and of ensuring their voice in public policy is very apparent. Strong statements were made throughout the consultations that the bulk of children and young people in Tasmania are vulnerable, that their profile and vulnerability need to be better understood and that their interests need to be highlighted and managed across government and non-government policy and practice.

11. Whilst ample evidence was provided of excellent individual and systemic work being done in small pockets in Tasmania – and within the range of professional services such as education and mental health - there is agreement that advocacy services for children, young people and their families in this state are insufficient, insufficiently charted and insufficiently coordinated.

12. There is ongoing concern about the needs for better support, oversight and monitoring of statutory child protection services in Tasmania, alongside a general lack of awareness of what systems are in place to protect the rights and interests of children and young people having contact with these services.

13. It is extensively noted in the literature and was commented on by numerous stakeholders that children and young people rarely use complaints mechanisms and, while being assisted in doing so more, also need opportunities to participate and simply voice their concerns, that is, they need stronger and more diverse avenues for advocacy.

14. The Tasmanian Commissioner for Children holds no responsibility for managing complaints from families, children and young people (apart from residents in Ashley Youth Detention Centre) and, it was explained, the Commissioner has minimal options for referral when complaints are received.

15. Few if any children or young people make contact with the Commissioner for Children or make formal complaints to the Ombudsman. Most child and youth-related concerns to the Commissioner for Children and Ombudsman come from family members. There was minimal expressed support (albeit some) for the Commissioner to be able to receive and manage complaints from children and young people or from those wishing to make a complaint on their behalf.

16. Many people emphasized there is a need for improved advocacy for families whose children are involved with statutory child protection and justice systems – although there was not any suggestion this be provided within the role ambit of a children’s commissioner.

17. Perhaps understandably, very few people appear to have any understanding of the structure of the office of the Commissioner for Children, its legislative functions or its legislative base.

18. The Commissioner for Children is identified by most people who made submissions or were consulted as primarily having a voice for individual young people in the Ashley Youth Detention Centre. Questions were raised about the possibility of re-locating the responsibility for young people in detention to the Office of Ombudsman to enable the Commissioner for Children to focus more on systemic advocacy for all children and young people particularly those in the care of or in contact with statutory systems.

19. A consistent observation was that the position of Commissioner needs ‘parity of esteem’ with equivalent offices in order to have the influence required to advocate for all children and young people who have minimal access to influence, and so are in particular need of a strong advocate.

20. Another strong view proffered locally as well as by those consulted in other jurisdictions is that the strength of the role of a Commissioner for Children lies in the capacity to “invite oneself to
the table”. This was explained to mean that a large component of the capacity to have a voice for children and young people resided in the ability of the holder of the position to engage with and ‘hold their own’ and be a ‘fierce advocate’ for children with those in positions of influence.

7.3. **FUNCTIONS AND POWERS OF A COMMISSIONER FOR CHILDREN**

Before summarising the themes that emerged from the ACTC consultation in relation to particular functions and powers, what follows is a brief recapitulation of functions and powers in order to focus the context. There are two broad, but not mutually exclusive, functions for the role of a commissioner for children. These broad functions are named as advocacy and accountability.37

a. **Advocacy** involves representing and promoting the rights and wellbeing of children and young people. It has been described extensively earlier in this report. As already discussed, it remains an elusive term variously interpreted to nuance particular activities within different disciplines and services. In relation to children’s commissioners, the advocacy role is rarely interpreted in a legal sense and mostly focuses on systemic advocacy including:

- working across government and non-government agencies to enhance their capacity to respond to the needs of children and young people;
- ensuring policies and practices are in place that meet the particular needs of children and young people;
- undertaking research to understand and meet the needs of children and young people;
- consulting with and ensuring the participation of children and young people;
- identifying and assisting to resolve matters that are negatively impacting on the health, education and wellbeing of children and young people; and
- increasing public awareness and promoting the interests and rights of children and young people.

The advocacy role of a commissioner may involve to a greater or lesser extent individual advocacy on behalf of all or some particularly vulnerable populations of children and young people.

b. **Accountability** involves holding Government and other bodies to account for what is happening for children and young people and monitoring certain activities and requires that a commissioner has considerable independence. Again, the means and mechanisms established for how such accountability is effected are multifaceted. These mechanisms vary in relation to what is perceived necessary, what other jurisdictional authorities are in existence, and the political will of the time. Generally it is understood that any children’s commissioner must have a monitoring function. Without this function they cannot undertake any informed analysis of policies and practices or comment sensibly on the status or developments in relation to children and young people. UNCROC principles demand such an accountability function. This accountability function might include the monitoring of advocacy mechanisms available for children and young people and the monitoring of complaints mechanisms available for them and the outcomes of these. It should also include some form of investigatory and research capacity including the ability to access data in order to undertake research and to advise government on the implications for children and young people of current and pending policies and legislation. It generally includes the capacity to undertake systemic investigations and inquiries and sometimes includes the handling of

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individual complaints and inquiries. In all jurisdictions in Australia an investigation and inquiry function is included in a commissioner’s role description – and in all but Tasmania, there is the capacity for an ‘own motion’ inquiry at least in relation to matters that have systemic implications for the wellbeing of children and young people.

One of the key criticisms of the relevant Tasmanian legislation is that the functions are insufficiently clearly stated and have been subject to multiple interpretations. The powers of the Commissioner as stated in the legislation in section 80 of the Act are:

(1) The Commissioner has power to do all things necessary or convenient to be done in connection with the performance and exercise of his or her functions and powers under this or any other Act.

Whilst apparently wide ranging, it was observed in some submissions and comments that these powers need to be more precise. On the other hand it was suggested that the legislated statement of powers may be sufficient to enable the Commissioner to perform functions if these are more clearly articulated. The matter of confusion about both powers and functions was mentioned in a number of submissions and historical document including the aforementioned Select Committee Report of 2011 and in correspondence between the Commissioner for Children and the Office of the Solicitor-General.38 Recalling the earlier discussion on necessary powers for a commissioner for children, the core issues that must be attended to in the legislation are stated to be independence, autonomy, accountability and ensuring the participation of children.39 Some of these matters are picked up in the following themes from submissions and discussions:

1. General understanding that a systems advocacy role and accountability (monitoring and investigation) roles may sit uneasily together at times – but can be and are managed in most instances in other jurisdictions. A strong preference for privileging the systems advocacy role.
2. Agreement that all services which have children and young people as service users or clients must be kept accountable for their work and that monitoring by the Commissioner is an essential function that must have powers attached.
3. Almost all submissions commented on the need to augment the capacity for and knowledge about complaints systems for children and young people and most stakeholders were keen to see these sit “wherever it needs to as long as in a child and youth friendly space”.
4. The Office of the Ombudsman is the most favoured location for a complaints role – noting that other Departmental complaints mechanisms have to be utilised by complainants first. However, there is a strongly voiced concern that the Office of the Ombudsman is not a ‘child friendly’ place and would need to have a different approach if hearing complaints from children and young people. This Office would need extra resources to enable it to be seen as accessible to young people.
5. Some have a view that the Commissioner should be legislated to receive individual complaints and manage individual advocacy for the most vulnerable i.e. youth in detention and children and youth connected with or in the child protection system.
6. It was made clear that all children’s commissioners should have a role in ensuring children and young people’s concerns were received and addressed somewhere and that mechanisms are in place for this. There is no doubt amongst those consulted, that any office associated with the role of children’s commissioner will receive enquiries and has an important function in ensuring such enquiries are responded to in the most appropriate place.
7. General agreement there must be a location external to the Department to which children, young people and their families can make complaints and that if this was primarily to be in the Office of the Ombudsman, it needed to be child and youth friendly.

38 Correspondence Solicitor-General of Tasmania to Commissioner for Children, 8th August 2012.
8. Strong support from other jurisdictions and from some submissions for the Commissioner for Children to have the legislated ability to initiate ‘own motion’ inquiries – even though this would rarely, if ever, be utilised.

9. Some support for the Commissioner’s office incorporating a role for the equivalent of a guardian for children and young people in statutory care. Alongside this, a strongly held view that there needs to be a more robust quality assurance mechanism and system of audit to ensure children and young people in statutory care are receiving quality services and have adequate access to make their views known.

10. Some view that there needs to be an independently funded non-government advocacy body to assist young people to express their concerns and make complaints (whilst it is also acknowledged that many government services and non-government bodies undertake this role already).

11. Strong support for some form of community visitor programme for all residential facilities for children and young people. A view this could be well accommodated within the Office of the Ombudsman – particularly as this office already has the infrastructure as it hosts the Prison Official Visitors Scheme and Mental Health Official Visitors Scheme.

12. An ongoing view was aired that the previously piloted children’s visitor scheme be continued in order to address the advocacy needs of children in care. Alongside this was a corresponding suggestion such a service is limited, was accessible to, and accessed by, only a very small number of young people and could be replaced by strengthening the internal advocacy mechanisms and linking them with an oversight role by the Commissioner for Children.

13. No strong views were expressed about the need for stand-alone legislation although some of the suggestions about whole-of-government and non-government sector advocacy strongly suggest there might be a need for this.

14. Repeated emphasis made about the need for the Commissioner for Children to have more authority on behalf of children and young people and to have a higher profile in relation to activities and achievements.

15. A number of those consulted (including all of those who hold or who have held, a commissioner role) argued strongly that in order for the role of the Commissioner to have influence, the position had to have more independence and sufficient powers to gain access to data and conduct inquiries and investigations where these are indicated.

Little comment was made about the importance of child and youth participation although this is a key feature for all IHRCs. Similarly, very few comments were made about the natural tension for governments in managing independent bodies that hold them accountable within the Westminster system. The issue of the independence of the role of commissioner for children is often a thorny one across jurisdictions although little specific comment was made about this by those consulted or in submissions except for a strong suggestion from a range of people that the position report to Parliament rather than the Minister. It was also firmly suggested the term of office be extended from three years to five years as is the case in similar roles and other jurisdictions. These two matters were viewed as important by most commissioners in other jurisdictions. The significance of the former is that the position of commissioner is seen to be bipartisan if it reports to a Parliamentary Committee and more independent of partisan political influence if it has a five-year term. The capacity for ‘own motion’ investigation was also seen to add independence and whilst rarely used in most jurisdictions provides the position with considerable leverage in its deliberations across government.

7.4. Summary

The large question that engaged the Committee as it deliberated on the implications of the findings was:

How can a champion for children and young people in the form of a commissioner for children be best operationalized in a small jurisdiction like Tasmania when to be a voice for this population one needs the enthusiasm and capacity to understand and advocate, the
ability to relate across complex relationships and, unarguably, the authority and power to leverage necessary changes.

Undoubtedly the answer to this question will lie in part in how the various bodies responsible for promoting and ensuring the wellbeing of Tasmania’s children and young people can work together at a high level and how any person in this role can best work to augment capacity rather than simply ‘wield a big stick’.

Whilst acknowledging the need for this office to engage in collaborative work at the highest level of government in order to advocate for children and young people, ACTC remains cognizant that any functions allocated to the Commissioner for children must include sufficient clarity about aims and objectives and be accompanied by the powers to enable the position to fulfil these functions. This would appear to be a self-evident objective. However, the ACTC was reminded that no jurisdiction nationally or internationally has developed the prototype. No government has developed the perfect template that adequately captures all of the aspirational objectives of UNCROC, articulates its aims unambiguously, clarifies its functions ideally and has impeccable mechanisms for ensuring outcomes as well as successfully legislating for all the appropriate powers to meet UNCROC’s important and very varying and sometimes highly ambitious goals for children and young people.40

8. TERMS OF REFERENCE: DISCUSSION

8.1. OVERVIEW
Each of the Terms of Reference is discussed and addressed separately in this section and where necessary, overlaps between the matters in relation to other Terms of Reference are noted. However, because of the overlapping of relevant matters between the various Terms of Reference, the recommendations are collated at the close of the discussion.

In presenting the recommendations at the forefront of the thinking of the ACTC is the vital question:

What is it we can and must do that recognizes and augments the rights of children and young people and improves their wellbeing in Tasmania?

What has been axiomatic to the ACTC is that the key role of the Tasmanian Commissioner for Children is systemic advocacy that involves facilitating government and non-government processes involving the rights and needs of children and young people.41

Some of the recommendations involve increasing the function of existing services or adding particular tasks to existing services. These need no legislative endorsement or change. Others are more far reaching and will involve government and/or legislative change. No costing of these recommendations has been undertaken and resource issues will need to be addressed. It was noted throughout our consultations that if any additional functions are allocated, or requirements added to already established instrumentalities, there would be resource implications.

8.2. **Advocacy for all Tasmanian Children and Youth:**

*Whether existing advocacy services for all Tasmanian children are adequate, and if not where the additional capacity would be best provided from?*

There are a wide range of organisations in Australia that provide systemic advocacy (in a generic as well as a legal sense) for children and youth most of which link with jurisdiction specific advocacy organisations. Of particular note are those in schools and early education which have been developed very strongly in recent years. The general agreement of everyone consulted was that there is evidence of high quality individual advocacy being provided for children and young people in Tasmania, and evidence of some strong systems advocacy. The Youth Network of Tasmania (YNOT) via the Tasmanian Youth Forum is acknowledged as a leader in this arena. However, there are minimal links between advocacy services and the Commissioner for Children. Advocacy services are seen to be patchy, subject to significant geographical variability and unintegrated and, at worst, confusing to young people and their families as well as to many professionals. One reference was made to child and youth advocacy services being like a ‘quagmire’. Quoting a member of the ACTC “it’s very apparent to the there’s a lot of stuff out there, let’s get it linked up.”

A number of people commented on the important individual advocacy being undertaken by personnel within government and non-government services that were providing assistance to children and young people (education, mental health etc.). This observation adds to the complexity of understanding the current ‘map’ of advocacy and indeed of determining how best to augment it. People also commented at length on the limitations imposed on government personnel to engaging in any systemic advocacy (‘gagging’). There was considerable discussion within the ACTC on the legitimacy of these concerns and a strong view put that individual advocacy on behalf of individuals was surely an expected activity for all staff. Some very powerful examples of individual and systems advocacy by frontline professional staff in government as well as non-government organisations were provided to the ACTC.

**Key points:**

- The Commissioner for Children has a vital if not central role in system advocacy for children and young people.
- The role of the Commissioner for Children in being a champion for children and young people in relation to their rights and the mechanisms for ensuring these rights are respected is crucial and must continue to be promoted.
- While not necessarily undertaking individual advocacy, the Commissioner should be aware of the availability of individual advocacy for children and young people and lobby for necessary changes in services if these are deemed insufficient.
- There is an urgent need to ‘map’ systemic advocacy services and promote awareness of them in a contemporary youth friendly form. Such maps could usefully be interactive and/or computer based. It is understood that one such ‘map’ or ‘information portal’ is known to the Commissioner for Children. It is being developed by a Communities for Children service and may be able to be developed further if assistance is provided. Early design of such a portal has also been undertaken by YNOT.
- There is also a need to assist young people and those who seek to support them to understand the availability of individual and systemic advocacy. This could include the development of a youth-friendly web link on the Commissioner’s website linked with other websites such as that of the Ombudsman to assist young people understand what advice and complaints mechanisms are available and how to use them. The ACTC was informed there had been serious discussion in recent years in the Ombudsman’s office about a single web portal for

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42 A draft map of advocacy services was drawn up by the Secretariat with the assistance of members of ACTC but it became evident that this needed much more collaborative work and engagement (including with the participation of young people) for it to be comprehensive and useful.
complaints processes so that people could go to that page to find their way to the most appropriate option.

- Training in advocacy is essential. There are national programmes available for training personnel in best practice advocacy and these may be accessible at minimal cost via, for example, commissioners for children in other Australian jurisdictions.
- Depending on the outcomes of a mapping of advocacy services, there may be a need to fund a NGO to be a portal to assist young people to understand avenues of advocacy (including available complaints). On the other hand, this might be a role considered appropriate for the Tasmanian Commissioner for Children.

8.3. Advocacy for Children and Youth in Care Due to Child Protection Concerns

Whether existing advocacy for children and youth in care due to child protection concerns is adequate, and if not where the enhanced capacity would be best provided from?

The Act makes provision in a number of places for advocates for children and young people in care to be in place. These provisions relate in particular to ensuring the participation of children and young people in any decision making that affects them. Whilst their intention is clear, the efficacy of these requirements is impossible to determine from evidence provided to ACTC. There is a general view that advocacy and opportunities for participation in decision making by children and young people in care are seen to be insufficiently robust in contemporary terms.

Also evident in the consultations were two related matters relevant to the matter of advocacy services for children and young people in the care of the State. Firstly, and as recognised in the UNCROC, this population is considered to be one of the most vulnerable and one that requires additional security in relation to enabling them to have a strong voice, to be involved in decision making about their own future and to be able to make complaints. Secondly, and largely explained as due to recent and long standing media publicity about failings in the statutory care of children, a number of submissions and those consulted expressed their concerns about what they perceived to be inadequate monitoring of the care of these children and young people and insufficiently robust mechanisms and opportunities for them to express any concerns in a safe environment (via a facility external to DHHS).

The relatively recent inquiry and media attention concerning the fate of a young girl who was in the care of the State continues to inform people that internal DHHS procedures are faulty despite changes that have been made. Understandably, this very public critique has resulted in significant distress to departmental staff who continue to have to work under the inevitable and well-documented pressures associated with child protection work. They report on the firm efforts and energy that have led to strengthening the internal participation and quality assurance mechanisms. This matter of quality assurance concerning complaints mechanisms is addressed in more detail within the discussion under the 4th Term of Reference for this review.

One of the many matters receiving the ongoing attention of UNCROC and IHRICS is the need for scrutiny and monitoring of statutory authorities that have the responsibility for guardianship / custody and / or care of children who have been removed from their families. This is in part because of the vulnerability of these children and young people that has already been demonstrated by the need to remove them from family. These authorities note that these already highly sensitised children and young people are unlikely to feel easy about expressing their views and they have limited access to the resources external to the statutory department responsible for their care. The international and national evidence is undisputed that the voices of these already vulnerable young people are often not heard, their needs ignored, and their safety likely to be further compromised as a result of this. 43

43 The very current presence and work of the Royal Commission into Institutional Responses to the Sexual Abuse of Children is in itself testimony to the need for augmented monitoring and complaints mechanisms.
The UNCROC principles require that wherever possible, age and capacity permitting, children and young people participate in all decisions concerning their care and future. Augmenting this capacity for children in the care of the State provides many challenges particularly as it is to be expected that strong internal participatory systems are in place from the beginning and external monitoring of such is sometimes viewed by authorities as unnecessarily intrusive. The non-government peak body and foundation, CREATE\textsuperscript{44}, was established in 1999 as an advocate for children and young people in care to ‘ensure that their voices are heard by key decision makers in government and out-of-home care sector stakeholders’. The annual CREATE report card\textsuperscript{45} documents the experiences and insights of children and young people with an out-of-home care experience and provides an overview of how states and territories are responding to their needs. As reported elsewhere, CREATE has a strong relationship with DHHS in Tasmania and is seen as a strong advocate for children and young people in care.

A particular emphasis has been placed in recent times on the advocacy needs of children and young people leaving care.\textsuperscript{46} In this regard, particular mention was made to the ACTC of the value of the non-government organisation, White Lion, which runs what is seen to be a very successful mentoring programme for children and young people leaving care, which is funded by DHHS.\textsuperscript{47} Also noted was the value of CREATE as a non-government organisation focusing on the needs of young people leaving care. These are critical advocacy services for children and young people. Comment was made these services need as much support as possible.

The particular role of child guardian is instituted in some jurisdictions to provide an advocacy service as well as a complaints function. In some jurisdictions these functions are assumed by the commissioner for children. In other jurisdictions, successful attempts have been made to increase the place of internal advocacy for children and young people in care by ensuring their opportunities to participate in decision making concerning their care and future planning. Such a model has been developed in Western Australia where the role of child advocate\textsuperscript{48} has been in place for some years. Whilst this model is sometimes controversial because it relies on an internal, rather than external advocacy arrangement, the role as adopted and adapted in Western Australia has developed robust and creative mechanisms for providing a voice for children in the care of the State as well as mechanisms for improving their opportunities for participation in decision making about their lives.\textsuperscript{49} Of significance, this child advocate has recently piloted and is now implementing an audio assisted self-interviewing mechanism called A-CASI\textsuperscript{50} developed by Viewpoint. This is an internet based computer methodology developed to support the participation of children and young people in care in decision making and “help them to share their views, opinions wishes and feelings.”\textsuperscript{51} It is the view of ACTC that such a model could usefully be trialled in Tasmania.

Some jurisdictions internationally have developed children’s visitor schemes in an attempt to address the particular advocacy needs of children in care. Independent visitors are adult volunteers who

\begin{thebibliography}{9}
\bibitem{CREATE} http://www.create.org.au/about-us
\bibitem{CREATEreportcard} http://www.create.org.au/create-report-card-2013
\bibitem{ACTC} http://www.acwa.asn.au/Leaving_Care_Working_Party11.html
\bibitem{Whtl} http://www.whitelion.asn.au/index.php?sectionID=52&pageID=117
\bibitem{WhiteLion} http://www.whitelion.asn.au/index.php?sectionID=52&pageID=117
\bibitem{DCPWA} http://www.dcp.wa.gov.au/CHILDRENINCARE/Pages/AdvocateforChildreninCare.aspx
\bibitem{Garsed} Garsed, J. & Davies, M. (2013) Improving Participation by Children and Young People in Care in Western Australia: The use of A-CASI technology and reflective casework practice, Department of Child Protection, Government of Western Australia
\bibitem{VPT} http://www.vptorg.com/philosophy.asp
\end{thebibliography}
provide support to young people who are in care. They do so only when requested by the young person and the arrangements are established on the grounds that these young people have minimal available independent support for encouragement, advice and advocacy. Following consultation with the Office of the Children’s Commissioner in Queensland, the Commissioner for Children in Tasmania established a small pilot visitor scheme in 2009. It was commenced in 2010 and then continued until its evaluation in 2011. Its evaluation is unequivocal on the positive value of such a service:

What is less clear however is how in Tasmania, we can provide a relevant, targeted and sustainable model of support and advocacy that will result in better outcomes for children and young people both as individuals in care and in terms of systemic change. Despite current State Government budgetary challenges, this is an area that should be prioritised not only as a demonstration of the commitment to children in care but because vulnerable children should be able to access an independent advocate and voice when the need arises.

It was the view of a number of people consulted that should such a visitor service be re-established, it should focus on children and young people in all forms of residential care and could most usefully be accommodated within the Office of the Ombudsman where the Prison Official Visitor Scheme and the Mental Health Official Visitor Scheme are already operating. It is the view of the ACTC that a children’s visitor scheme for all children in foster care is not a priority at this point but that other mechanisms be established as a matter of some urgency to ensure children and young people in more institutional forms of out of home care have access to advocacy and participation and that these be developed in consultation with and their success or otherwise monitored by the Commissioner for Children.

There is no one model for ensuring advocacy for children and youth in care due to child protection concerns is adequate. However, there remains an unqualified requirement that children and young people in the care of the State can express their wishes or concerns and/or make complaints in safety, to someone independent and to be assured of being heard. After careful deliberation, ACTC formed the view that the introduction of a new role or position of child guardian is impractical and would be confusing in Tasmania. At the same time the ACTC agreed that the need for increased advocacy for children and youth in care could be met by enhancing the capacity within the current suite of services alongside a monitoring role in relation to this by the Children’s Commissioner.

8.4. Advocacy for Youth in Detention

Whether existing advocacy for youth in Ashley Youth Detention Centre (AYDC) is adequate, and if not, where it should be best provided from?

As recognised in the UNCROC, young people in any form of detention are considered one of the most vulnerable populations. Consistent with UNCROC, a key principle of the Australian youth justice system is that young people are detained only as a last resort and for the shortest appropriate period of time. All state and territory legislation ensure that young people are diverted away from further involvement in the youth justice system whenever possible and appropriate. Importantly, research has showed clear pathways between being in the care of the State, homelessness and entering the youth

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54 This relates to the current nomenclature in The Act that stipulates the Secretary is ‘the legal guardian of a child in care’. http://www.thelaw.tas.gov.au
justice system. Whilst a range of factors such as the experience of abuse and care will contribute to this link, it is clearly of vital importance that advocates for young people at risk of detention and in detention are available to protect their rights and acknowledges the particular vulnerabilities associated with their earlier experiences. In their very recent publication based on research involving the children’s court in Tasmania, Travers et al provide these compelling observations that signify the significance of the link and the important role of the Commissioner for Children in this arena:

In practice, the participants [in youth justice and child protection] are essentially the same people, who share the same types of social backgrounds and family contexts. The history of connection and separation between welfare and justice considerations must be acknowledged, as does the simultaneous status of children as both victims and offenders.

In 2011–12, there were 290 young people under youth justice supervision in Tasmania on any one day. Of these 8% were in detention and the remaining 92% were supervised in the community. Among the states and territories for which data was available during this period Tasmania was seen to have the highest overall rate of young people aged 10–17 years under supervision and the highest rate of young people under community-based supervision. Tasmania like all states and territories is active in trying to prevent youth offending and to reduce the number of young people in detention. It was noted by ACTC that currently there are far fewer young people in detention in AYDC than in 2011-12. In accordance with internationally recognised protocols Tasmania is also attempting to ensure, among other things that young people in detention are not ‘incarcerated’ in any way that violates their rights or that distances and isolates them from family.

The particular needs of children and young people in detention are recognised in the Act wherein the role of children’s commissioner “as an advocate for a detainee under the Youth Justice Act 1997” is spelled out. A strong view was presented by stakeholders that despite many challenges, the Commissioner for Children has successfully managed the role of advocate for youth in Ashley Youth Detention Centre. Indeed, the view was consistently aired that this was the most publicly identifiable role of the Commissioner. The ACTC was advised there were thirteen enquiries from AYDC to the Children’s Commissioner in the past five months. The data relevant to these was not analysed in terms of content or outcomes and so ACTC can provide no evidence about the outcomes of these enquiries.

As youth justice policies are currently under review in Tasmania, there may well be a good argument to be made to formalise a stronger mechanism for access and complaints via a formal visitor’s scheme situated in a location in which such schemes are already in place. The presence of such a formal scheme may become particularly relevant given the possibility there may be recommendations for more regionalized sites for the provision of new and smaller residential facilities for youth in detention. As well as this there is clearly a need to address advocacy requirements of the larger number of young people who may well be on the cusp of detention. The latter cohort is one that was brought to the attention of the ACTC as one that is particularly vulnerable and requiring advocacy on the part of the Commissioner for Children who, in being released from visiting young people in detention could provide some focus on the advocacy needs of this population.

55 Mendes, P and Baidawi, S. (2012) Pathways into youth justice : strengthening policy and program supports for young people in the youth justice system who are transitioning from out-of-home care, Children Australia, 37 (1).
Again, it is interesting to note the National Children’s Youth Law Centre (NCYLC)\(^{60}\), an advocacy body providing advice and information for children and young people about their rights and responsibilities across all states and territories, advised the Chair of ACTC of the comparative lack of access by young people in Tasmania to the web based NCYLC advocacy services. Tasmania is one of only two Australian jurisdictions that do not have a dedicated youth legal advocacy service.

A number of comments were made during consultations that the enhanced capacity for advocacy for children and youth in detention could be managed effectively within the Office of the Ombudsman in the form of a formal visitor’s scheme there. Such a scheme generally does have an advocacy function. Again, it was noted that the Commissioner for Children could have a dual monitoring role in the event this arrangement was deemed practical. The ACTC was advised that over the past years there have been both strong and very weak relationships between these two independent statutory offices. The importance of strengthening their combined capacity for managing advocacy and complaints in a collaborative manner in order to minimize confusion and capitalize on their individual strengths was emphasized by a number of stakeholders including representatives from the two offices.

Naming a visitor’s scheme for young people in detention and locating it within the Office of the Ombudsman, could provide a much stronger conduit for commentary and complaints by young people in detention as well as liberating the office of the Commissioner for Children to undertake the vital systemic advocacy for young people in detention that would remain a function of that office. As already noted, the Ombudsman’s Office manages the Prison Official Visitors Scheme and the Mental Health Official Visitors Scheme. In his Annual Report\(^{61}\) the Ombudsman notes the successful activity and outcomes of these two schemes. These, like children’s visitor schemes, provide important access to otherwise disenfranchised and vulnerable populations and enable residents of these facilities to have a voice as well as make complaints.

The proviso associated with this recommendation would be that a strong relationship (potentially a legislative one) is established between the two statutory offices in order to ensure ‘an uncomplicated flow of information’ and require the Ombudsman to ‘access the skill and expertise of the Commissioner in relation to advocacy’ and ‘allow the Commissioner to access trends and issues arising from investigations undertaken by the Ombudsman’.\(^{62}\) This would enable the Commissioner for Children to focus on the systemic needs of young people in detention whilst enabling the Office of the Ombudsman to deal with individual complaints and concerns. Importantly this structure would assist to clarify the different requirements associated with individual and systemic advocacy.

Many contributors to the ACTC commented on the importance of increasing collaboration between all statutory offices in an effort to increase efficiencies and reduce unnecessary duplication.

8.5. **RESPONDING TO COMPLAINTS RELATING TO CHILDREN IN CARE OR DETENTION.**

Whether existing responses for individual complaints arising from children in care or detention are adequate, if there is a need to increase capacity in this area, and if so where this would be best provided from?

Some of the discussion herein overlaps with that relating to the second term of reference in discussions about advocacy and access to information and complaints systems. Of particular note is the UNCROC requirement that children and young people in care are assisted in voicing concerns as well as participating in decision making. Again the international literature confirms that children and young people very rarely utilise formal complaints mechanisms.

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\(^{60}\) http://www.ncylc.org.au/


\(^{62}\) Email correspondence 3/9/2013
There are two formal mechanisms for receiving and responding to individual complaints by children and young people in care and those in detention: an internal complaints mechanism and the one via the Office of the Ombudsman. The latter is expected to be the ‘last port of call’ once internal mechanisms have been explored. Strong comments were made and data provided to demonstrate the strength of the internal DHHS complaints mechanisms and quality assurance systems. ACTC was advised these revamped protocols were based on ‘practice advice’ and templates from the Commonwealth Ombudsman’s Office and the Office of the Ombudsman in Tasmania. Additionally, there are new processes being implemented which put distance between quality assurance processes and service delivery in order to make them more robust and ‘safe’ for complainants. Complaints within Children and Youth Services are now termed Care Concerns or Complaints in Care. In 2012-13, 147 such concerns were recorded of which 17 were substantiated. The nature of these is not known to ACTC however we were advised the Commissioner for Children sits on the complaints committee for DHHS and has a role in considering trends and their implications. There appears to be little knowledge on the part of external agencies and personnel or the public about the presence or the workings of the internal DHHS complaints system.

In the CREATE submission made to the Legislative Review of 2012 and re-examined for this review, it notes the important role of the Ombudsman in receiving complaints. It also comments on the need for oversight of this and of DHHS by “an external party” or “an external advocate”. It makes the recommendation that the Children’s Commissioner should be able to “receive and investigate individual complaints” in part because this would facilitate improved systems advocacy.

In the most recent Annual Report of the Ombudsman it is stated there were 71 complaints in relation to all Human Services (which include those from Children and Youth Services):

As in previous years, only a very small proportion of complaints against the Department were found to be substantiated either partly or in full. 52 per cent were either declined or discontinued, and in 42 per cent of cases, a finding was made that there had been no defective administration. Nearly all divisions of the DHHS were referred to in complaints, and matters complained of included issues related to the management of children in State care, including access to children, reunification and kinship assessments.

In relation to complaints from youth in detention the Ombudsman’s Report notes there were 21 complaints from Ashley Youth Detention Centre:

Complaints from residents of the Ashley Youth Detention Centre were dealt with by way of direct referral to the Centre’s management. This resulted in complaints being addressed promptly and resolved informally where possible. Reports from Centre management on the outcome of complaints satisfied me that they had been dealt with fairly and appropriately.

This raises the question of what independent oversight is provided in relation to such complaints and indeed whether the Commissioner for Children can work more strongly with the Ombudsman in reviewing any systemic issues that might be arising. The Commissioner for Children may also receive

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64 Currently under review in order to update them in relation to newly emerging standards.

65 CREATE Submission to LARRC, 13 February 2013.


67 Ibid
complaints from young people in Ashley Youth Detention Centre and, if unable to manage these within an advocacy framework, refers them to the Office of the Ombudsman. A number of complaints were so referred. The ACTC was advised that the Children’s Commissioner is often seen by the public as being a location for making enquiries about matters of concern in relation to children or for the lodging of complaints. Not being mandated to receive or manage individual concerns or complaints, this office re-directs them to what they assess to be the appropriate location. In the 2012-2013 period, 106 public enquiries were received by the office. It is not known how many of these constituted formal complaints or may have related to children in care or detention. Of these enquiries though, nine were referred to the Ombudsman and another nine were referred to Child Protection and nine to the Legal Aid Hotline. Understandably, there is no data on the outcomes of such referrals as this responsibility does not sit with the Commissioner for Children.

It could be imputed from the above that complaints mechanisms and responses to children in detention are adequate. Whether these systems for complaints are sufficient or adequate is not certain although they appear robust. Many stakeholders provided the view that the Office of the Ombudsman is not and cannot be proactive in this regard in inviting complaints from youth in detention or indeed from any young people or children. Comment was made that this Office responds only to individual complaints, does not address systemic issues and operates within an administrative framework rather than adopting the human rights approach required under UNCROC. The majority of ACTC members remained of the view that increased capacity for receiving and managing complaints from children and young people in care and detention and their families was essential and needed to be developed in child and youth friendly locations.

The question about the vulnerability of children in care and detention is the focus of ongoing and increasing international and national concern. This concern was very evident locally from a number of submissions and comments made by those interviewed. As mentioned in earlier discussion, a number of jurisdictions have instituted external mechanism for providing advocacy services for children in care and receiving complaints from them in the form of a role of child guardian or such. A couple of states (including Tasmania) have piloted or developed children’s visitor schemes. Others again have developed more robust channels for internal ‘youth friendly’ independent advocacy.

ACTC has formed the view that a child guardian equivalent is not appropriate or practicable in Tasmania. Nor, as has already been indicated, is it proposed to recommend a full implementation of the children’s visitor scheme at this stage. However, given there is strong emerging evidence about the historic failure of institutions to provide safety as well as accessible mechanisms for complaints by children and young people in care, further action is clearly required. It is abundantly clear there is need for children and young people in care to know about and be able to access ‘youth friendly’ advocacy and complaints mechanisms either internally or externally to the department. Whilst there is some readily available criticism about reliance on internal mechanisms, there are some increasingly robust models for achieving successful outcomes using internal mechanisms. The ACTC is of the view that complaints mechanisms for children and young people need to be robust, publicly available and that evidence is provided of their utility. Whatever else is implemented to enhance complaints mechanisms, the ACTC considers it imperative that the Children’s Commissioner along with other relevant statutory offices has a mandated role to assist in the monitoring of such systems in terms of their effectiveness for children and young people in order to help facilitate any required changes.

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68 Commissioner for Children, Public Inquiries: Summary of Quarterly Reports July 2012-June 2013
69 Communication from office of Tasmanian Children’s Commissioner, 21/10/13.
70 Royal Commission into Institutional Responses to the Sexual Abuse of Children 2013.
8.6. INVESTIGATION AND INQUIRY FUNCTIONS

Whether existing responses for individual complaints arising from children in care or detention are adequate, if there is a need to increase capacity in this area, and if so where this would be best provided from?

This Term of Reference was probably the most difficult to address in part because it involves matters that have been the subject of much public as well as legal commentary over past years. It was noted these matters, amongst others, had been the subject of considerable communication and legal opinion over previous months.71

There is strong support for the Children’s Commissioner retaining the investigation and inquiry functions as outlined in the Children, Young Persons and Their Families Act 1997 albeit that these might be mistakenly seen by some to be at odds with the Commissioner’s primary role of advocacy. It is very clear that in order to fulfil any monitoring or oversight role in relation to activities and outcomes in relation to children and young people, the Commissioner must have the ability to undertake investigations and inquire into relevant matters as requested by the Minister. The large question herein is whether any such investigations or inquiries could be initiated by the Commissioner as well as by the Minister.

The proposal was put by some stakeholders, including the submission from the Commissioner for Children, that the Commissioner should have the right to conduct an ‘own initiative investigation’ without, of course, this being subject to Ministerial request [s79 (1) (a)]. There is a small but strongly held view that the Commissioner, like most in other jurisdictions, needs this capacity to undertake an ‘own initiative investigation’. Such functions within the specialist roles of a children’s commissioner enable focused investigations. This capacity, whilst minimally if ever used in other jurisdictions, is seen to increase the independence of the role, to give it an important value and authority, and to facilitate rather than hamper inter-agency dialogue in the interests of children. This matter prompted interesting debate amongst committee members who were cognizant of the opportunities and risks associated with such powers. It was noted that most children’s commissioners in Australia do have such an ‘own motion’ capacity and also that they rarely use it as they generally work collaboratively and with agreement to undertake investigations. Such an ‘own motion’ capacity is always allocated to Auditors General and Offices of the Ombudsman and there was some suggestion that this was sufficient for Tasmania. It is noted the Ombudsman only has the authority to conduct investigations into the conduct of government and services for children and young people are increasingly being delivered by non-government agencies. Additionally, one of the strong arguments for there being additional ‘own-motion’ powers within an office of the Children’s Commissioner is that of course this is where the expertise in relation to children and young people is situated and is where such authority must sit.

There is a view that if there is an ‘own initiative investigatory capacity it should enable an investigation into all services and not just those provided under the mentioned Act. The ACTC endorses the view that if the intention is for the Commissioner for Children to be the watchdog of children’s interests generally, this cannot be limited to government services. This matter is particularly important in the contemporary environment in which ever increasingly, services to children and young people are being provided by non-government (including ‘for profit’) organisations.

As observed within the ACTC the inclusion of an own motion inquiry ‘is a matter of a short amendment to the Act’. The larger question raised by a member of the ACTC is ‘what sorts of matters may be the subject of such powers and what functions should it be associated with’? Whilst previously noting the requirement to prevent duplication and encourage collaboration, (Part 5, Section

71 Communication of Solicitor-General of Tasmania to Commissioner for Children, 8th August 2012.
32) the Victorian legislation\(^{\text{72}}\) provides the clearest parameters in regard to parameters for an own motion inquiry.\(^{\text{73}}\)

(1) The Commission may conduct an inquiry in relation to the provision of services if the Commission—

(a) identifies a persistent or recurring systemic issue in the provision of those services;

(b) considers that a review of those services will assist in the improvement of the provision of those services; and

(c) considers that the inquiry can be conducted within the resources of the Commission.

The language in the Western Australian legislation may also prove helpful in this regard as the role there is clearly one that is more focused on advocacy than guardianship.\(^{\text{74}}\)

The Commissioner, on the Commissioner’s own initiative or at the request of the Minister, may conduct a special inquiry into a matter affecting the wellbeing of children and young people.

Before conducting a special inquiry the Commissioner must inform the Minister in writing of his or her intention to do so.

Part 5 of this Western Australian Act identifies a range of parameters, functions and powers associated with such an inquiry. The ACTC is of the firm view such inquiry functions should be limited to systemic ones unless requested by the Minister.

8.7. Powers

In order to fulfill the role of advocate for children, what powers are needed to be associated with the function of the Commissioner and, which if any, need to or can be located elsewhere? Are these powers suitably placed in the Children’s Young Persons and Their Families Act 1997 or some other legislation?

In addressing this Term of Reference ACTC was reminded of its earlier guiding question:

How does the role of a Commissioner for children in Tasmania best aid government in facilitating and enhancing the voice and upholding the rights of its children and young people in its policies, practices and legislation.

The ACTC was also cognizant of the angst and disruption over recent times about questions and challenges associated with the role, function and powers of this office and aware of the need to ensure clarity in the legislation so that the important matter of the rights and needs of children and young people in Tasmania become the dominant matter to replace questions of legislative authority.

As has been indicated, the legislative mandate for the role and function of the Tasmanian Commissioner for Children was intended at the outset to be largely advisory with a focus on advocacy and monitoring. The legislation does not give the Commissioner “a role in the investigation or


\(^{\text{73}}\) ibid Part 5, Division 4, Section 39.

resolution of complaints”. The ACTC consider there is no need to alter this focus. However, from comments made in recent reports and media, from observations made by members of the ACTC and other people consulted, and in a retrospective analysis of some of the decision making that led to the finalization of the legislative base of this statutory office, it is apparent confusion remains in regard to both powers and functions of the Commissioner. As previously reported, there was a clear expectation for this role of Commissioner to have a major place in monitoring and overseeing and holding government and other instrumentalities accountable for their work with children and young people. The ACTC is firmly of the view the monitoring role is vital to the capacity of the Commissioner to meet basis UNCROC principles and assist government to do this.

Ostensibly the legislation does give significant responsibility to the Commissioner for Children for holding government and other instrumentalities responsible for overseeing that the rights of children and young people are upheld and services monitored to attempt to ensure this. It is self-evident that the inquiry and monitoring roles of this Office are essential for it to be able to be a ‘watchdog’ as well as a ‘champion’ for children and to be able to report on the status of children and young people and identify systemic problems impacting on their rights. What is apparent to the ACTC is that these functions are not spelled out adequately with the result being that powers of the Commissioner to act on functions are constantly under question. The ACTC proposes the legislation should enunciate clearly the following functions many of which, in their implementation, will require the power to obtain information:

- Systemic advocacy: promoting the interests of vulnerable children and young people in the Tasmanian community;
- Monitoring: holding government and non-government organisations accountable for outcomes for children and young people (high level KPIs) and monitoring and reporting to the Minister and Parliament on the implementation and effectiveness of strategies relating to the safety or wellbeing of vulnerable children and young persons;
- Policy development and influence: providing advice to Ministers, government departments, health services and human services about policies, practices and the provision of services relating to the safety or wellbeing of vulnerable children and young people;
- Research/Inquiry: inquiry functions relating to systemic advocacy issues, or individual advocacy issues as part of own motion or requests from Minister;
- Information provision re concern/complaints: no complaints function but triage of enquiries and concerns and the ability to provide information and referral functions relating to general public enquiries or complaints regarding children and young people; and

Many of the contemporary relevant Australian Acts list the functions of a commissioner for children and can be easily adapted for the Tasmanian legislation. The most recent Victorian legislation might be most useful in this regard (Part 2, Division 1, Section 8).

One of the core matters relevant to the powers of the Commissioner is the ability to access data and information in order to manage the important functions outlined in Section 79 of the Act. It was made apparent to the committee that in recent times there has been some significant dispute about the Commissioner’s rights of access to data considered important for the fulfilment of any named functions. The ACTC is strongly of the view that the Commissioner has to have the authority to routinely receive data necessary in order for the office to undertake research and secondary analysis, to monitor mechanisms in place with regard to the ensuring wellbeing of children and young people and to inform policies in relation to children and young people – and for this authority to be enforceable. Included in these powers should be the reasonable right of access to any reports that could usefully assist the Commissioner regardless of defences such as those of ‘commercial in confidence’ or generally ‘confidential’. These powers of access need to be articulated clearly within
the legislation and to accompanied of course with the necessary limits associated with privacy and confidentiality of information obtained. Again, the recent Victorian legislation provides some useful parameters in relation to data access.

Part 9, Division 1, Section 79 of the Children, Young Persons and their Families Act 1997 is relatively brief in its current form, and this lends itself more easily to amendment. It is the view of the ACTC that these provisions are not well drafted

Section 80 of the Act is the source of the Commissioner’s powers:

(1) The Commissioner has power to do all things necessary or convenient to be done in connection with the performance and exercise of his or her functions and powers under this or any other Act.

(2) Without limiting the powers of the Commissioner under subsection (1) the Commissioner may require any person to answer questions or to produce documents so far as may be relevant to the administration of this Act.

These sections appear to give the Commissioner sweeping powers because of the language and phrasing used, however, they have tended to be interpreted narrowly particularly with reference to the qualifying statement which ensures relevance to the “administration of the Act” [section 80, (2)]. As observed by a member of the ACTC, ‘given that Courts tend to read legislation these days in a purposive way – that is determining the purpose of the legislation and then reading clauses in light of this purpose it is desirable to set out in detail, the powers available to the Commissioner for Children’.

Clauses need to be added to the Act that give the Commissioner explicit power to demand data and information from government departments and agencies which deal with children, but which also protect departments and agencies from breaches of privacy laws etc. This would obviously include all relevant agencies and instrumentalities such as the Department of Education, the Department of Health and Human Services, the Office of Aboriginal Affairs, the Department of Justice and Tasmania Police.

Two models are set out in equivalent Queensland, Western Australia and the Northern Territory. The Children and Young People and Children’s Guardian Act 2000 (Qld) (‘the CYPG Act’) allows for the Commissioner to access data from government and private sector providers of services for children, as part of its monitoring role. Sections 40 and 41 of the CYPG Act provide for the Commissioner to serve a notice on a provider to allow the Commissioner to enter the provider’s premises and access information or documents. If the provider refuses entry then it must provide the documents within a certain time.

In the Northern Territory the Commissioner for Children has power to access documents under the Care and Protection of Children Act. Section 272 provides that for the purpose of “performing the Commissioner’s functions, the Commissioner may, by written notice, request a person” to give specified information within a specified time.

In Western Australia the Commissioner for Children and Young People Act 2006 provides that the Commissioner may ask a government agency or service provider, acting on behalf of government, to disclose to the Commissioner relevant information. ‘Relevant information’ means information that enables the Commissioner to perform the duties and tasks set out in the Act.

The view of the ACTC is unequivocal that the authority and power within the role and functions of the Commissioner for Children in Tasmania must not relate only to DHHS but must relate to all services for children and young people. Whilst not unanimous, there remains a strong view on the ACTC there the role of the Commissioner should be re-framed in ‘stand-alone legislation’ that, amongst other things, will facilitate such a wider interpretation of function and powers.
In summary there are a number of templates to draw upon in terms of amending the Act to give the Commissioner specific powers to access information from government departments, agencies and services providers. Of course, privacy protections must be maintained and there does need to be a sanction attached to such legislative amendment. That is, if agencies refuse to hand over data or information when requested, and have no reasonable excuse such as another enactment preventing disclosure or privacy obligations, then the Commissioner ought be able to seek an order from the Magistrates Court of Tasmania compelling the handover of data or information.

It was said many times in discussions with various stakeholders that whatever the legislated functions and powers of the role of the Commissioner, their success relies on the capacity of an incumbent who has strong relationship skills and the capacity to ‘invite themselves to the tables’ at which the rights and needs of children and young people are being deliberated. The ACTC is firmly of the view that, whilst capacity to engage in deliberations at the highest levels of government in relation to policies and legislative changes is crucial to this role, it also needs the clout that comes from strength in its own legislated functions and powers.

8.8. GOVERNANCE ARRANGEMENTS

The ACTC was asked to address governance arrangements for any statutory roles suggested including:

- Term of appointment
- Whether there should be an Office for Children or a Commissioner for Children
- Accountability
- Independence / reporting arrangements
- Ministerial direction
- Financial management and reporting
- Skills and attributes required for the Commissioner

Many of these items have been addressed within the discussions in relation to the main Terms of Reference and are incorporated in the recommendations to follow. Most of them relate to the vital need for independence on the part of the role of any commissioner for children. The two matters that have not been addressed previously are the latter two – Financial management and reporting and Skills and attributes required for the Commissioner.

1. Financial independence and reporting

The argument often developed is that financial independence is essential and can only be guaranteed by means of having a separate Office of Commissioner. The costs for such an office are considerable and unrealistic for many jurisdictions particularly for small ones and as all governments attempt to reduce their expenditure. However, financial independence is crucial to the role of a children’s commissioner. Increasingly, such independence has been arranged via Memoranda of Understanding with government instrumentalities and such equivalents or by co-locating statutory offices in order to share costs. It has already been foreshadowed that the Commissioner for Children should provide reports to Parliament as well as reporting to the Minister. This too, is seen as an important mechanism for increasing independence. It is understood by ACTC that if this recommendation is accepted it will of necessity necessitate a new financial accountability structure, ensure participation in Budget Estimates Committee meetings and provide more financial independence from the department.
2. **Skills and attributes required for the Commissioner**

The requisite skills and attributes required for the Commissioner were mentioned by many stakeholders and their ideas have been incorporated in the descriptors below.

a. Commentary on role
   - A statutory role to protect the rights of all children (Article 2 UNCROC)
   - Must have broad strategic role and this not be jeopardized by investigative or complaints function
   - Credibility, authority and independence are vital to the role
   - Essential to monitor the welfare of children and young people in the population; and identify their needs and those of the most likely excluded and protect the most vulnerable.

b. Important considerations for the position
   - Credibility
     - The capacity to speak publicly on the basis of evidence
   - Authority and Influence
     - Technical expertise
     - Respectful
     - Resolute for children whilst strategic in relationships
     - Impartial
     - Transparency, business planning and prioritization in collaboration with partners
   - Independence
     - “Fundamentally important” as credibility and public confidence rely on the perception this role has some independence
     - Must maintain the balance by working with rather than against
     - Report to Parliament
     - Five year term
     - The capacity for ‘own motion’.

9. **SUMMARY AND CONCLUSIONS**

The ACTC is grateful to all of the people who contributed their valuable time to the considerations of the Terms of Reference and who responded in various ways to the Discussion Paper. Whilst many organisations were not in a position to respond to the invitation to comment, there was a wide and diverse group of stakeholders who did so and who provided excellent commentary.

Widely held was the view the position of commissioner for children in Tasmania was not sufficiently defined from the outset; that the adversarial processes focusing on functions and powers for the position over previous periods has been unhelpful if not destructive; and there is a need to ‘reinvent the role’ and give it an authoritative position in order for it to adequately represent the views, rights and needs of children and young people and monitor these with legitimacy. The hope is for the position of Commissioner for Children to have a wide systemic focus that engages with matters to do with all children including children in care and detention, Aboriginal children and young people and their families, children and young people with disabilities and with the needs of an increasingly culturally diverse community of children and young people.

These latter populations have not been addressed in any detail during this review as they are to a large part outside of its scope. However, it is proposed that in developing its new strategic plan, the Commissioner for Children engage in a cross sectional consultation in order to establish its priorities and develop a subsequent work plan that incorporates planning about these vulnerable populations. Importantly, it is clear this statutory authority is one among many. While it has a special focus on children and young people, it shares responsibility for a number of mechanisms for achieving outcomes with other independent statutory offices and government and non-government
instrumentalities and organisations. In a small jurisdiction such as Tasmania, shared leverage to advance community needs is vital.

10. **RECOMMENDATIONS**

The following recommendations are made as far as is possible to address in chronological form the Terms of Reference:

1. The Commissioner for Children utilise the work to date undertaken by the Secretariat of the ACTC and engage in a participative ‘mapping’ of systemic and individual advocacy services for children and young people in Tasmania in order to develop an understanding of their availability, accessibility and any gaps that are evident and can be addressed either within current services or additional ones.

2. The Commissioner for Children to establish further mechanisms to consult with young people to enable their participation in broader policy discussions and to report annually to Parliament about these structures, processes and the outcomes thereof.

3. Establish a portal or a static site on the Commissioner’s website to alert children and young people to the availability of the range of mechanisms for accessing advocacy and complaints mechanisms and services, and;
   a. The Commissioner for Children to develop a communications strategy to promote the site and its availability.

4. The Commissioner for Children work with the Ombudsman to consider the feasibility of developing, within the next five years, a visitor programme within the Office of the Ombudsman for children and young people in all forms of residential care, and;
   a. In determining the feasibility of such an arrangement consideration needs to be given to the inclusion of all relevant residential care services, including for example disability care services.

5. Explore the option to develop within the Office of the Ombudsman a visitors’ scheme for young people in detention to replace this specific aspect of the role of the Commissioner for Children. In determining the feasibility of any such changes, it is essential the Ombudsman and the Commissioner for Children consider how to collaborate on mechanisms that ensure systemic issues facing young people in detention are made known to and can be monitored by the Commissioner.

6. Investigate the possibility of establishing a position for an independent child advocate within DHHS - a contracted part time position that can report directly to the Secretary. This position could explore possibilities of utilising new computer-assisted software to increase participation of children and young people in care in decision making and in communicating their concerns. Such a position would provide a means for ensuring concerns and complaints by children and young people in care are appropriately directed and dealt with. Importantly, such a position would need

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75 Such a portal is available in other jurisdictions and could well be adapted at minimal cost in Tasmania. It is also noted there are a number of groups in Tasmania, including YNOT, who have already done preparatory work for such a portal.
to be situated in a ‘safe’ child-friendly environment and seen to be separate from major
departmental activities. Linkage arrangements with the office of the Commissioner for Children
in relation to systemic issues would need to be in place.

7. In consultation with the Office of the Ombudsman, the Commissioner for Children and any other
relevant authority, DHHS to ensure the internal complaints mechanisms are accessible to children
and young people in contact with statutory services and their families. A component of this
assessment is to ensure complainants are being provided with detailed feedback about outcomes
and the reasons for these, and;

   a. develop a communication strategy to ensure information about internal complaints
      mechanisms are provided to children, young people and their families in user friendly
      language and style.

   b. the appropriate independent body undertake an audit of the new DHHS complaints
      protocols to ascertain how these protocols are used as well as their outcomes for children
      and young people in care and detention.

   c. ensure the Commissioner for Children continues to sit on the regular review of concerns
      and complaints within DHHS and receives all relevant data in order to assist the office to
      understand and monitor any systemic issues that arise.

8. Enhance the capacity for systemic advocacy by the Children’s Commissioner by ensuring powers
exist to enable the Commissioner to access all data required to enable the functions of evidence-
based advocacy to be fulfilled. That is, establish secure mechanisms that fulfil privacy obligations
and enable the timely provision of information and data:

   a. between the Ombudsman, the Auditor General, the Children’s Commissioner and other
      relevant instrumentalities including the Anti-Discrimination Commissioner, and

   b. from all government agencies and the non-government sector involved in providing
      services to children and young people.

9. Retain the sections of the legislation [s79 (1) (a) and (c)] that provide for the Minister (and the
relevant Parliamentary Subcommittee) to request the Commissioner instigate an investigation.
This is a generally accepted function in equivalent legislation.

10. Include in the Act an ‘own motion’ investigation/inquiry capacity appropriate to undertaking
systemic advocacy such as that included in the equivalent Western Australian legislation. This
could include advising the Minister or Standing Committee on relevant matters or conducting a
special inquiry into a matter or matters affecting the wellbeing of children or young people. It
must not be limited to government services. There are scoping requirements for such an ‘own
initiative’ investigation/inquiry capacity that need to be developed in line with Tasmanian
government protocols. It is important that any such requirements do not limit the Commissioner
in receiving information about third parties where this is relevant to such an inquiry.

11. As an alternative to amending Children, Young Persons and Their Families Act 1997, seek to
legislate for a stand-alone Act that clearly frames the role of Commissioner for Children as
broader than that of only addressing the interests of the most vulnerable of children and young
people covered by the Children, Young Persons and Their Families Act 1997. This matter is of
particular significance given the urgent need for the Commissioner to develop strong partnerships across departments and agencies and given the increasing presence of non-government agencies in the provision of services to children and families.

12. In amending the *Children, Young Persons and Their Families Act 1997* or enacting a stand-alone Act, reference should be made to the importance and relevance of the principles of the United Nations’ *Convention on the Rights of the Child* in relation to the role and responsibilities of the Commissioner for Children.

13. Incorporate in the legislation the details of the following necessary functions and ensure the powers to implement these functions are clearly legislated:

- Systemic advocacy
- Monitoring
- Policy development and influence
- Research/Inquiry
- Receipt and referral of concerns
- Public awareness and education

14. Ensure the proper independence of the Tasmanian Commissioner for Children by legislating that:

- Appointment to the role be for a five year term of office
- The Commissioner report to a Parliamentary subcommittee and is required in the Commissioner’s Annual Report to develop and report against KPIs of the functions as specified in the legislation, and provide the equivalent of a primary aggregated data source by which programmes, policies, services for children and young people can be understood and suggestions made for improvements. Such data could include:
  - child and youth wellbeing indicators – including health, education, mental health etc.
  - the status of advocacy services for children and young people
  - outcomes of participation mechanisms established for children and young people
  - strategies that have been developed to enhance the capacity of organisations delivering services to children and young people in a manner that is culturally safe and recognises the particular needs of Aboriginal children and other identified populations
  - focused outcomes in relation to services for and complaints by vulnerable children and young people such as those in care and/or detention.

15. Establish an advisory group including relevant members of the ACTC to oversee the implementation of recommendations accepted by government to ensure the principles enunciated therein are understood and incorporated and the views of those who contributed are honoured. Included in these principles are:

- a primary role for the Commissioner is that of systemic advocacy
- the role of the Commissioner includes an important monitoring function in relation to programmes, policies and legislation that have potential to impact on the wellbeing of children and young people.
- key outcome indicators for particularly vulnerable children and young people must provide one of the focal points for the work of the Commissioner.
11. REFERENCES


Blaxell, Peter & Western Australian Public Service Commission (2013). *St Andrew’s Hostel Katanning: How the system and society failed our children: a special inquiry into the response of government agencies and officials to allegations of sexual abuse.* Public Service Commission, West Perth, W.A.

Blundell B and Clare M (2012). *Elder Abuse in Linguistically Diverse Communities: Developing Best Practice,* Advocate: WA and the Centre for Vulnerable Children and Families, UWA.


Commissioner for Children, Public Inquiries: Summary of Quarterly Reports July 2012-June 2013


National Children's and Youth Law Centre Website: http://www.ncylc.org.au/


12. APPENDICES

12.1 REVIEW OF KEY LITERATURE

REVIEW OF KEY LITERATURE ON ADVOCACY FOR CHILDREN AND YOUTH AND THE ROLES AND FUNCTIONS OF COMMISSIONERS FOR CHILDREN

Prepared for the Advocacy for Children in Tasmania Committee (ACT)

July 2013

Thanks to Professor Mike Clare who prepared the bulk of this desktop analysis – the focus of which is advocacy rather than just the role of Children’s Commissioners. As an appendix to the paper is an excerpt from the most recent AIFS Fact Sheet on Children’s Commissioners and Guardians (June 2013).
# Table of Contents

1. **Background – Reflections on Some Key Concepts**  
   1.1 The Social Construction of Childhood ................................................................. 49  
   1.2 The Rights of Children ......................................................................................... 50  
   1.3 ‘Floors or Ceilings’ - Setting and Monitoring Standards in Child Welfare Policy – Comparison Between Developments in Out-of-Home Care Policies in Australian States and Territories and the UK ............... 52

2. **Advocacy and Why It is Important**  
   2.1 Advocacy for Children and Youth – Why is it Important? ........................................ 54  
   2.2. Some International Developments ........................................................................ 56

3. **Various Approaches to Advocacy – Formal Titles, Models, Ideal Types and Styles**  
   3.1 Diversity of Titles of Independent Human Rights Institutions for Children ................ 60  
   3.2. Models of Advocacy Provision ............................................................................. 62  
   3.3. Ideal Types and Styles of Advocacy for Children .................................................. 63

4. **Advocacy by Children’s Commissioners in Australia and Internationally**  
   4.1. Within Australian States and Territories ................................................................ 65  
   4.2. International Developments .................................................................................. 66

5. **The Broader Role of the Children’s Commissioner – Beyond Advocacy**  

6. **Bibliography**  

71
1. BACKGROUND – REFLECTIONS ON SOME KEY CONCEPTS

1.1 The Social Construction of Childhood

In the 18th century, most European children were protected and cherished until the age of 6 or 7 years; they were then considered mini-adults and mostly placed in employment or sent to boarding school. From mid-19th century, European and North American philanthropists worked to abolish slavery and the participation of young children in dangerous and harsh employment (coal mining; chimney sweeping). In the early 20th century, legislation was introduced which recognised and protected the status of childhood; in England, the 1906 legislation introduced compulsory education until the age of 12 years and young offenders under the age of 18 years were separated from adults in the criminal justice system.

Children became an even more obvious separate social group following World War II – with the school-leaving age raised to 15 years and the establishment of child welfare departments; this was followed by the emergence of the need for ‘child protection’ legislation and services in the 1960’s. At the same time, because of effective family planning, parents had fewer children – with the emergence of the ‘cherished child’. The Children’s Rights Movement strengthened the position of childhood in contemporary society. However, there is an emerging recognition of ambivalence and contradictory messages about childhood – with:

- Parents, teachers and the community inclined to cherish and protect children from ‘the risk society’ (Giddens 1991)
- Children being increasingly stimulated to present themselves as autonomous young people with a right to be heard.

The paradox is that children are expected to be increasingly independent and responsible while their social situation imposes a growing and continuing dependency and inequality. First world children are now leaving home, on average, in their mid/late 20’s to establish their own homes – with open opportunity to borrow the family car, accept financial support from parents and return home to live if necessary. There is a double and contradictory pressure on children – to move quickly from dependent child to potential young adult (media, fashion, social media) while accepting the continuation of late-adolescent dependency as students and trainees in preparation for eventual adult employment.

All of this is in the context of growing complexity in the discontinuities of the contemporary family; the ‘baby-boomer’ generation is more likely to have been divorced and to be more actively managing their identities, activities and relationships in later life. Ozanne (2009) reflects on the greater rates of divorce, separation and marital disruption – and a higher likelihood of impact on intergenerational obligation and a sense of neighbourhood belonging; Ozanne (2009) asserts that baby-boomers are presenting challenges to their children and grand-children because they are:

- Less likely to be currently married,
- Have a greater level of cohabitation, multiple marriages, same-sex partnerships and childlessness
- More likely to be living in a complex inter-generational household
- More likely to be living alone
The impact of the diversity and discontinuity of the modern family has contributed to the growing number of children entering the care system. Structurally, there are crises within many families, triggered by poverty, drug and alcohol abuse, mental health problems, homelessness, violence and separation. In addition, a larger number of children are being brought up by their grand-parents than by agency foster-carers. There are profound developmental consequences for many children arising from their experiences in their families and in the care system – particularly for those children who experience conflictual parental divorce and / or multiple moves and placement instability.

1.2 The Rights of Children

The long-standing debate about the rights of vulnerable children in care (Freeman, 1983; Lavery, 1986; Lansdown, 2001) has considered the proposition that enhancing the rights of children may not always be ‘in their best interests’ and may undermine the authority of parents and other adults with responsibilities for their well-being; this appears to be a ‘zero-sum’ argument in which moving to enhance the rights of children must inevitably reduce those of parents and adults. By conceptualising the child as ‘becoming’ and not yet a citizen, he /she can be excluded from participating as a ‘knower’ in decisions about their lives; they are viewed as immature and not cognitively competent (Mason, 2000).

This position has been under challenge both from the Children’s Rights Movement and from the Consumer Movement; Article 12 of the United Nations Convention on the Rights of the Child claims for all children:

“The right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.

While this does not require adult compliance with whatever the child wishes, there are good reasons why adults should listen carefully to what children are saying and try to understand the thinking behind it – particularly when the child is in the care of the ‘government as parent’ (Cashmore and O’Brien 2001; Clare, 2003; The Vardon Report, 2005) - including:

**QUESTION ONE:** What is the assumed definition of ‘the child’ in Tasmanian legislation? Does childhood end at age 18 years or earlier if a child removes her or himself from care – or is it extended in recognition of the continuation of required dependency of many post-18 year old adults as in England?

**QUESTION TWO:** Should the focus of the Children’s Commissioner be on the citizenship rights of all children in Tasmania? Or more focused on vulnerable ‘children in need’ because of their social, financial and educational disadvantage, disability or living in detention? Or aimed at children ‘at risk’ who are living in out-of-home care because of family separation and potential or actual abuse?
• Children in care are relatively isolated and vulnerable; they are entitled to be listened to and taken seriously to ensure attention to their well-being
• Participation needs to be viewed as a developmental process central to the vulnerable child’s emerging citizenship rights and responsibilities; the growing child in care can experience a sense of involvement in key decisions in their lives as preparation for independent living at age 18 years (Clare, 2006)
• Participation in decision-making processes is part of the review and accountability processes for monitoring the progress of children in care (Penglase 2004)
• The ‘Best Interests’ principle assumes that these are knowable by adults who can be relied upon to act accordingly; the first assumption is intellectually problematic while the second flies in the face of national and international evidence about institutionalised abuse in care

There is emerging evidence of the ‘invisible, isolated and voiceless child’ in the Australian context – whether from the ‘Stolen Generations’ of Aboriginal children, from the ‘Lost Children of the Empire’, the so-called ‘orphans’ who continued to be sent from the United Kingdom until 1968, from the child placed through ‘Forced Adoption’, from the child recently arriving by boat and claiming refugee status while living in detention – or the child who experienced institutional abuse in silence until very recently. These were and are visible public policies with institutional buildings in the community and staff from the community – whether missions, orphanages, children’s homes or detention centres. The voiceless child is also the child without human rights regardless of the signing of international agreements and the plausible language in child and family legislation about ‘The child’s best interests’. The gap between policy and practice vision and fact for some children is startling – and the longevity of these policies, practices and the numbers of invisible, isolated and voiceless children has only recently been recognised.

Lansdown (2001:88) summarises the evidence for enhancing the participation of children in care in reviews and decisions – and for developing a number of opportunities for the triangulation and transparency of such participation,

“We can, then, no longer disregard the fact that children can be and are both physically and sexually abused by the very adults who are responsible for their care, both within families and in state institutions”.

In an important study of the views of children in care and their experiences of participating in decisions about their own care and progress, Thomas and O’Kane (2000:827) draw important parallels between appropriate research and effective communication processes in child-centred practice; they reflect, “Further progress in including children in decisions depends both on formal decision-making meetings being made more ‘child-friendly’ and on attention being paid to the quality of direct work with children outside meetings”.

Thomas and O’Kane also reflect on the rediscovery of childhood in ‘New Sociology’ (McKechnie, 2002) and the growing interest in listening to children’s voices. Thomas and O’Kane cite James (1998) in exploring four ways of ‘seeing’ children – namely:

• The developing child seen as incomplete and lacking in competence and status
• The tribal child seen as competent but part of an independent culture which can be viewed in its own right but not part of the same communicative group as the adult researchers/ practitioners
The adult child viewed as socially competent in comparable ways to the adult; in this way of ‘seeing’, perceptions of ‘maturity’ and information about age will be influential.

The social child is seen as having different though not necessarily inferior social competencies with one important implication being that there may be some areas in which children are more competent e.g. writing stories, drawing pictures and using materials such as ‘Feelings Cards’.

McKechnie (2002:44) reflects on the ‘social child’ and the ‘rediscovery of childhood’ which views children as ‘agents’ who are creating themselves in a range of different social contexts; there are significant implications for training, good practice, professional supervision and staffing policies for enhancing the participation of children in care. McKechnie asserts, “At the heart of this perspective is the view that children must be accepted as accurate reporters of their own worlds”.

Jans (2004; 38) reflects usefully on ‘Citizenship Child-Sized’ and identifies 4 elements defining citizenship – namely:

- **As a whole of rights** – the right to vote like an adult (does not exist in the West - if anywhere?)
- **As a whole of responsibilities** – with childhood recognised as the time when a child can decide to withdraw from responsibilities (‘childish’)
- **As identity** – children can identify themselves with informal networks and larger social groups - a local form of peer-group citizenship
- **As participation** – with involvement and participation in community activities (e.g. Youth Council; the environmental movement)

1.3 ‘Floors or Ceilings’ - Setting and Monitoring Standards in Child Welfare Policy – Comparison between Developments in Out-of-Home Care Policies in Australian States and Territories and the UK

The past twenty years have seen a number of significant controversies and policy changes in out-of-home care nationally and internationally – but what matters in a review of any policy is the nature of aspirational or cynical or achievable objectives embedded in that policy. Also, whether a policy is asserted and assumed to be in operation or whether steps are in place to monitor the quality of practice culture, staff development and policy implementation. All of this impacts on the challenges for those advocating for vulnerable children’s felt and expressed needs – in the context of macro-level decisions about the balance of personal and collective responsibilities for people in need, increased levels of unemployment, the spread of substance abuse by parents and young people and the growing impermanence of ‘the family’ which have impacted significantly on the level of trauma and risk to children and the need for family support and alternative care programmes.

In the UK, different sources of influence for policy change have come from moves to develop ‘good enough’ standards in child welfare; the implementation of the Looking After Children (LAC) case management system for planning and review (Clare 1997); the realisation that admission into care is a process not an event with implications for placement stability, for the education of children in care and for the importance of Leaving Care services for young people seeking independent living. A key responsibility of the LAC tools is to operationalise ‘Good enough parenting standards’ for the care of vulnerable children – and to manage the collection and dissemination of evidence of agency
performance against those standards. Government Ministers are ‘in loco parentis’ in this scrutiny of child welfare outcomes; explicit emphasis on the State as Parent is reflected in the term ‘Looked After’ for children placed in the care of the State under a legal order - more human than ‘State Ward’?

In the UK, the specified National Priorities and Strategic Objectives (Department of Health 1999) are monitored through independent central government audit processes, and include:

A1 **Stability of placements of children looked after** - The percentage of children looked after at 31 March with three or more placements during the year.

A2 **Educational qualifications of children looked after** - The proportion of those young people leaving care aged 16 or over with at least 1 GCSE at grade A to G or a GNVQ.

A4 **Employment, education and training for care leavers** - The proportion of young people being looked after on 1 April aged 16 engaged in education, training or employment at 19.

C18 **Cautions and convictions of children looked after** - For children aged 10+, the percentage of children looked after* cautioned or convicted divided by the percentage of all children cautioned or convicted. (*Children looked after continuously for at least 12 months)

C19 **Health of children looked after** - For children looked after for at least 12 months with the average of:

* Percentage with routine immunisations up to date;
* Percentage whose teeth have been checked by a dentist in the previous year, and
* Percentage who had an annual health assessment in the previous year.

C24 **Children looked after absent from school** - Of children looked after at 30 September who had been looked after continuously for at least 12 months and are of school age, the proportion who have missed at least 25 days of schooling for any reason during the school year.

There is an annual reporting requirement for all government child welfare agencies in England – leading to transparency about data and service outcomes; also, a national inspection policy and practice which in marked contrast to the national research policy development and evaluation across Australian States and Territories. International comparisons should be undertaken with caution (Scott 1993). One significant issue is the complexity of inter-agency and inter-professional decision-making in child and family welfare; this complexity is completely misunderstood by Sammut (2013:8) who identifies social workers as the lead professionals in decision-making in child protection practice in Australia. There is an inter-departmental and an inter-professional hierarchy in decision-making process and practice – with overt and covert challenges of power, status and authority in working relationships within and between these agency and professional boundaries.

Even when countries share many common historical strands, as with Australia, New Zealand and the United Kingdom, caution must be adopted. The British policy tradition has its potent mix of humanitarian concern, public fear – for example ensuring clean water and immunisations following cholera and polio – and fear of litigation. Despite its colonial heritage, Australian social policy development reveals a more reactive ‘reluctant collectivism’ (George and Wilding 1976) than in Britain. Finally, illustrating cross-cultural differences in social policy, the Australian State-led child welfare system contrasts markedly with the highly centralised UK system as shown in Table 1 below:
Table 1: A Comparison of Child Welfare Systems in Australia and the United Kingdom (Clare 1997)

<table>
<thead>
<tr>
<th>Australian States</th>
<th>United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fragmented policies</td>
<td>Integrated policies</td>
</tr>
<tr>
<td>Single issue services</td>
<td>Multiple issue services</td>
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<td>Parallel competitive services</td>
<td>Collaborative partnership services</td>
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<tr>
<td>Reactive to enquiry and crisis</td>
<td>Proactive research/development</td>
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<tr>
<td>Diversity and difference in policy</td>
<td>Directed and uniform in policy</td>
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<tr>
<td>Advisory/consultative central direction</td>
<td>Inspectorial central direction</td>
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<tr>
<td>Focus on inputs and numbers</td>
<td>Focus on outcomes and impact</td>
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We are beyond the use of research findings to identify concerns and to formulate policies ‘in the child’s best interests’; accessible research evidence may identify what is needed but the political decision is that implementation of sustainable policy processes are not affordable. Current case studies, reported and analysed in numerous newspaper articles in Australia reveal the problems associated with many teenage young offenders – including many still only on remand.

2. ADVOCACY AND WHY IT IS IMPORTANT

2.1 Advocacy for Children and Youth – Why is it Important?

“Today, the childhood years present themselves as changing as well. On the one hand, children are surrounded with care; on the other hand, they are stimulated to present themselves as individuals with their own rights” (Jans 2004:27)

Children do not have political power at both societal and family levels – with limited say in decision-making and access to redress. They are seen as the property of their parents and are in receipt of paternalistic policies; as a consequence, they are more likely passive recipients of decisions made by powerful adults (parents, teachers, magistrates, police). The Australian Law Reform Commission (2012: Section 7) summarises the importance of advocacy in ‘humanising the bureaucracies’ and assisting children and families to navigate the complex maze of bureaucratic processes. The functions of advocacy are identified as:

- Promoting the interests of children generally to ensure government and agency accountability
- Monitoring compliance with international obligations
- Scrutinising legislation, programmes and initiatives
- Conducting and / or coordinating research to promote best practice in relation to children
- Resolving complaints and conducting enquiries into individual concerns
• Supporting and assisting particular children to access services or obtain redress for complaints and problems
• Encouraging the development of structures to enable children and young people to be active participants in the decision-making processes affecting their lives

Recent publications about children’s rights (Doek 2008; Rees 2010; Australian Law Reform Commission 2012; Sedletzki 2012), identify the centrality of the United Nations Convention on the Rights of the Child in national and local initiatives; the European Union refers to the generic term Independent Children’s Rights Institutions (IHRIC’s); Thomas, Gran and Hanson (2011:431) define an IHRIC as, “an independent institution (usually called a Children’s Ombudsman, Ombudsperson or Commissioner) with duties and powers to monitor, promote and protect the rights of children”.

Given the earlier point about aspirational, cynical or achievable policy objectives, Rees (2010:34) makes a very clear statement about the importance of IHRIC’s addressing individual concerns and complaints, including advocacy, “Dealing with individual cases is a direct means of challenging violations of children’s rights and of working to prevent such violations from taking place in the future”.

Rees goes on to spell out what is involved in providing effective advocacy for individual children; this includes:
• Adequate resourcing necessary for effective practice; those opposed to this function would argue that resources could be more effectively spent elsewhere
• Having the power to deal with individual cases places obligations on the IHRIC to raise awareness of the institution amongst children; Rees (2010) reports that in Norway(1991) almost all 10 and 11 year olds were aware of the Children’s Ombudsman – whereas, in 2007/8, only 8% of children were aware of the Children’s Commissioner for Wales. Detailed consideration of the role and impact of the Children’s Commissioner for Wales is provided by the Children’s Commissioner for Wales (2003), Williams (2005): Thomas et al (2009)
• Avoid taking on cases that could be dealt with by other bodies (public services; advocacy providers); this highlights the importance of appropriate negotiation and cooperation with relevant agencies to minimise duplication.

Grover (2005) reflects on the promotion of a child’s capacity for resilience through engaging in self-advocacy; this provides a buffer for the child psychologically against the impact of their adversity and connects them with their larger community. Children have a legal right to access independent professionals who can foster their self-advocacy efforts by helping them to recognise and name their own concerns; this is examined more fully in the consideration of Polar-Ideal Type/ Styles of Advocacy (Page 22). The processes of moving from passive victim to a more active sense of agency are developmentally significant in managing the transition to eventual adult citizenship rights and responsibilities. Thomas (2008:98), a UK researcher, summarises the importance of establishing a dialogue with a vulnerable child,
“In the end, the child’s experience of consultation and advocacy depends crucially on the quality of communication that takes place in their relationship with social workers, carers and other adults involved with them.”

2.2 Some International Developments

The first IHRIC was introduced in Norway in 1981 – with a growth in IHRIC’s in Europe since 2000. There are noticeable differences in organisational characteristics which have led to a debate about their relative efficacy; the basic model has important common characteristics founded on the Convention on the Rights of the Child. Since 1997, the European Network of Ombudspersons for Children (ENOC) was established, linking 27 countries in Europe.

Most member institutions have been established in accordance with ENOC’s criteria for independence; those whose legislation falls short of these standards are offered non-voting associate membership. The stated aims of ENOC are:

1. To encourage the fullest possible implementation of the Convention on the Rights of the Child
2. To support collective lobbying for children’s rights
3. To share information, approaches and strategies
4. To promote the development of effective independent offices for children

Thomas et al (2011:433) assert, “As ENOC itself notes, the aims of independent institutions for children vary from state to state according to differences in the national context” – with member institutions tending to encompass the following objectives:

- To promote full implementation of the Convention on the Rights of the Child
- To promote a higher priority for children in government and civil society and to improve public attitudes to children
- To influence law, policy and practice by responding to governmental and other proposals and by actively proposing changes
- To promote effective coordination of government for children at all levels
- To promote effective use of resources for children
- To provide a channel for children’s views, and to encourage government and the public to give proper respect to children’s views
- To collect and publish data on the situation of children and to encourage the government to collect and publish adequate data
- To promote awareness of the human rights of children among children and adults
- To conduct investigations and undertake or encourage research
- To review children’s access to and effectiveness of all forms of advocacy and complaints systems
- To respond to individual complaints from children or those representing children and, where appropriate, initiate or support legal action on behalf of children

In relation to the final two dot-points, IHRIC’s in ENOC vary as to whether they have the power to intervene in individual cases and deal with complaints from children. Following interviews with the
IHRIC office-holders, Thomas et al assert that 16 of 23 had such power and saw it as a crucially important part of their function – and saw casework as an important aspect of their work both with individual children and as supporting their more general advocacy. Thomas et al assert, “It is clear that there is a widely held view that individual casework is a very important part of the powers and duties of an IHRIC” (p434)

There are emerging threats to IHRIC’s in some European countries because of:
- Budget and staffing cuts
- Loss of functional independence from government with freedom to initiate action and accountability decided by the legislative rather than by the executive
- Incorporation of an IHRIC into other national human rights institutions

Sedletzki, in the UNICEF Report, *Championing Children’s Rights*, reports on a study of more than 200 IHRIC’s which have emerged to independently monitor, promote and protect children’s rights in more than 70 countries – with the Convention on the Rights of the Child as core to their operation and with implementation as a national responsibility requiring:

1. Legal action through the courts as a principal remedy for addressing violations of children’s rights
2. Parliaments as responsible for enacting legislation to enshrine child rights
3. Specialised parliamentary committees often play an essential role in overseeing the implementation of policy and legislation
4. Line ministries or ministries for children have key practical responsibilities for developing and implementing government policy that realises children’s rights
5. Coordination mechanisms exist in principle to ensure that all areas of government recognise obligations in CRC
6. Children’s observations monitor children’s rights to provide evidence to influence policy – including advocacy by non-government agencies and the media

Sedletzki asserts, “Independent human rights institutions for children do not remove responsibility from these actors but work alongside them to strengthen their performance. Their key role is to facilitate government processes involving others” (Page 6).

**QUESTION THREE: What governmental and inter-agency facilitative processes of influence are in place to enhance the effectiveness of the work of the Children’s Commissioner of Tasmania?**

With specific regard to the advocacy functions of the IHRIC, both Thomas (2011) and Sedletzki (2012), refer to the ‘Paris Principles’ adopted by the United Nations and used by ENOC to underpin its criteria for membership. Sedletzki, in the UNICEF Research Report (Page 9) lists the Activities under the Paris Principles as *Advocate for and monitor human rights* which identifies necessary activities as follows:

1. Promote visibility and the best interests of the child in policy-making, implementation and monitoring
2. Ensure the views of children are expressed and heard
3. Promote understanding and awareness of children’s rights
4. Have access to children in care and detention

Sedletzki (2012:9) confirms that, “Children are citizens who do not, because of their age, have easy avenues for making their views known about issues that affect them….Actively establishing ways of seeking and expressing the views of children is therefore a fundamental responsibility”.

**QUESTION FOUR – How useful are the ENOC Objectives (above) as a framework for the current and/or future roles and functions of the Children’s Commissioner for Tasmania?**

Even when separate IHRIC’s are geographically close – as in the United Kingdom – there are key differences. Both Williams (2005) and Thomas et al (2009) explore the similarities and differences between the functions of the Commissioners for Children in England, Northern Ireland, Scotland and Wales; Williams (Page 40) summarises key differences, “Children in Wales and Northern Ireland can expect that their Commissioners to be more of an effective ‘champion’ on the issues that the children themselves feel they need to raise individually than their counterparts in Scotland and England”.

Thomas (2011) conducted telephone interviews with the four UK Commissioners and the Irish Ombudsman (or with 2 of their senior staff) to compare legislative, administrative and operational arrangements; he found many similarities (independence from government; promotion of the rights of children with reference to the CRC; seeking to influence policy and services). However, Williams found important variations including the range of the Commissioner’s functions and the extent of their legal powers – particularly the Commissioners for Wales and Northern Ireland and the Irish Ombudsman have a remit to advise individual children and to investigate individual cases while those from England and Scotland do not, in broad terms. Interestingly, Evans (2011:170) reflects on the emergence of the ‘Big Society’ in the UK under Prime Minister Cameron’s political leadership – and the implications for the reformed role of the reviewed Children’s Commissioner for England,

“The Big Society places even greater significance on their role as an independent voice and watchdog for all children”.

Specifically in relation to Children at Risk in England – the more than 64,000 children in care – Brady (2011) conducted a scoping study to establish a true picture of the advocacy provision for children in government care. Brady found evidence that:

- Legislation and policy effort has improved children’s access to advocacy services but also that advocacy is complex and difficult for children and young people in care to understand
- A postcode lottery system exists for children attempting to access advocacy (availability; independence; accessibility); some local authorities are prepared to go further but there is no national strategy to ensure entitlements are consistently met
- Inconsistency of access is particularly true for the most vulnerable children – very young children; children with disabilities; asylum-seeking children; CALD children
There is limited knowledge about the effectiveness of professional and other forms of advocacy to assist in establishing cost-effective approaches to secure good outcomes for children.

The UK Department of Health (2002) has formulated a set of national standards for advocacy for vulnerable children but a more recent UK study, The Care Enquiry (2013:7) conducted by a consortium of non-government service providers into the outcomes of key processes in the care system for Children at Risk reports, “A recurrent theme throughout all of the sessions and in conversation with young people was the concern that the policy and practice guidance drafted in the light of messages from research and from consultation exercises ends up being ignored”.

QUESTION FIVE: What findings would emerge from a scoping exercise about advocacy services for vulnerable Children at Risk by the Commissioner for Children in Tasmania?

Finally, in this section reflecting on Some International Developments, Sedletzki, in the UNICEF Office of Research Report, identifies key factors which must be taken into account and constantly restated for an IHRIC to enjoy public support and trust – including:

- The extent of effectiveness and independence
- The capacity to identify and analyse child rights violations, including the mechanisms for child-accessibility complaints
- The capacity to formulate and advocate recommendations
- The capacity to communicate concerns
- The capacity to mediate, convene and build bridges between other public institutions, government and wider society on children’s rights issues
- The awareness that independence is not just a product of an institution’s mandate, but also of its financing and leadership
- The quality of child participation

Some of these international IHRIC’s operate independently while others operate in context of other Human Rights and Equal Opportunities Commissions for adults; a current debate centres on the arguments for integrating child and adult institutions. When there are more than one IHRIC in the same jurisdiction, there are challenges around role, mandate and collaboration. Sedletzki (Page 29) recognises the inevitability of diversity between IHRIC’s, “In the end, the form and scope of the institution must be a product of national and local political and social processes that confer legitimacy and broad ownership”.

QUESTION SIX: What other Independent Human Rights Institutions contextualise the role and functions of the Commissioner for Children in Tasmania? How well developed are their role differences and working arrangements?
3 VARIOUS APPROACHES TO ADVOCACY – FORMAL TITLES, MODELS, IDEAL TYPES AND STYLES

3.1 Diversity Of Titles Of Independent Human Rights Institutions For Children

The UN Convention on the Rights of the Child was ratified by Australia in 1990; Queensland established the Queensland Commissioner for Children and Young People and Child Guardian in 1996, the first State independent statutory body (Lamont and Holzer 2011). All others followed. The Australian Law Commission (2012:4) lists the diversity of titles of IHRIC’s in use internationally – namely:

- Children’s Commissioner
- Children’s Ombudsman / Ombudsperson
- National Office for Children
- Ministry for Children

Within Australian States and Territories, Lamont and Holzer ((2011), differentiate between:

1. Children’s Commissioners who work to improve and ensure better services for all children - and
2. Children’s Guardians who work solely to help improve the services for children in the care of the government

Lamont and Holzer report that:

- Not all States and Territories have a Commissioner and a Guardian
- Most States and Territories have a Commissioner who also acts as a Guardian
- New South Wales has a separate Commissioner and Guardian
- South Australia has a Guardian but no Commissioner

All States and Territories in Australia have now legislated for a position of Children’s Commissioner, and/or that of an Office of Children’s Commissioner. Their ‘makeup’ varies considerably from state to state. In most states, the Commissioner also acts as the guardian of children who are in the care of the state. NSW has a separate position for the children’s guardian. In very few jurisdictions are complaints mechanisms relating to services to children placed within the office of the children’s commissioner. Arrangements for the management of complaints vary between jurisdictions. A number of commissioner roles are currently being reviewed and this number may well increase in the light of the significance of the appointment of the National Children’s’ Commissioner this year. And as this paper is being finalised we hear of the groundbreaking appointment by the Victorian State Government of Australia’s first Aboriginal Children’s Commissioner the focus of which will be the reduction of the appallingly high number of Aboriginal children and youth in the care of the state, in the justice system or who are deemed to be at risk of abuse.

It is significant to not the NGO Sector Position Paper (2011:10) asserted that the time was right then for the establishment of a National Commissioner for Australia’s Children and, along with a number of other agencies, presented a review of non-government organisations and individuals working in
the children’s and youth sector in Australia. Their Position Paper argued successfully for the following functions of the National Children’s Commissioner:

1. Monitor and review laws, policies and programmes and practices, conduct research and report to Parliament and to children
2. Encourage the broad development of accessible, effective and child-friendly complaints mechanisms and remedies in existing forms
3. Establish an independent guardian for unaccompanied children seeking asylum in Australia, but the National Children’s Commissioner should not act as that guardian
4. Engage in public education to increase public awareness and understanding of children’s rights and the UN Convention on the Rights of the Child

The NGO Sector Position Paper (Page 12) also articulated the necessary powers of the Office of the National Children’s Commissioner; the powers make reference to the Convention on the Rights of the Child, to ‘children’s and young people’s best interests’ and to ‘the health, well-being and rights of children’. The four named powers are:

1. To intervene on behalf of children and young people in legal proceedings affecting them
2. To direct its own agenda and initiate inquiry
3. To require action on recommendations made to government about law, policy or institutions
4. To report on progress and effectiveness of actions by governments and other bodies to Parliament.

The Federal Government announced on 29 April, 2012, the introduction of a National Children’s Commissioner within the Australian Human Rights Commission. The National Framework for Protecting Australia’s Children 2009-2020 (COAG 2009) had identified this as a core requirement to underpin a national child protection agenda. Legislation establishing the National Children’s Commissioner was introduced in late 2012 and the new Commissioner, now appointed, will focus on promoting the rights, well-being and development of children and young people in Australia. Moore and Carson report (Page109) that, “This new role was identified as complementing the work of state and territory commissioners and guardians”. It will be interesting to understand how this will occur and what changes this appointment foreshadows for the roles of such commissioners in each Australian jurisdiction.

Moore and Carson also refer to:

- A broad advocacy role to promote public awareness of issues affecting children
- Conducting research and education programmes
- Consulting directly with children and representative organisations
- Monitoring Commonwealth legislation, policies and programmes relating to children’s rights, well-being and development.

**QUESTION SEVEN: What opportunities for a national model of IHRIC’s and integrated provision for protecting Australian children’s rights is emerging? What is the position of the Government of Tasmania to the introduction of an Australian Commissioner for Children?**
Models of Advocacy Provision

Thomas (2008:105) provides a comprehensive definition of advocacy which he asserts:

“is about enabling a child or young person to speak for her/himself or speaking for a child or young person. The term advocacy is commonly used to refer to the practice of representing a child or young person, or providing them with advice and support, and of conveying their wishes to the appropriate local authority. The majority of children and young people we spoke to understood advocacy to mean, or involve, speaking up for someone, understanding, talking and making other people listen and consider their views”

But, in the words of the song, “It ain’t what you do but the way that you do it”; advocacy is a process based on establishing a relationship of trust in which a child or young person might risk reporting personal and private concerns; effective practice depends on the quality of engagement in a dialogue. Smale et al. (1993) reflect on the nature of effective inter-personal communication in undertaking what can be a complex needs and risk assessment; they differentiate between three major practitioner – and supervisor - styles when undertaking a needs and risk assessment. The three styles differ in how professional power is used and its impact on the voice of the client. The three styles are:

The Questioning Model – in which the professional is assumed to be the expert in identifying need and in interpreting the other person’s responses.

The Procedural Model – a variation of the Questioning Model used by front-line staff, based on the assumption that managers and policy-makers drawing up practice guidelines have expertise in setting the criteria for needs assessment, resource and service allocation.

The Exchange Model – in which it is assumed that the child and or ‘family’ and other people are the experts in their situation and, together with the professional worker, all have equally important perceptions of the problem and can contribute to their solution or continuation.

While all three models are necessary in needs and risk assessment professional practice and supervision, the Exchange Model with its commitment to the use of ‘open questions’, to respect for difference and commitment to Appreciative Enquiry (Davys and Beddoe 2010) is more likely to encourage exploration of sensitive and complex issues, such as possible children’s rights violations; the Exchange Model is also demanding of professional time and skills in developing necessary levels of trust with children and young people.

Brady (2011:37) identifies a useful list of providers of advocacy services for children in the care system – with implications for IHRIC’s:

8. **Peer** – provided by a peer with a shared experience (e.g CREATE:WA)
9. **Citizen** - befriending by a volunteer visitor
10. **Organised Volunteer** – e.g Independent Visitor System for children in detention
11. **Group** e.g an adult advocate supporting a group of young people to advocate for themselves and others
12. **Self** – advocating for own needs with information and human assistance Grover (2005) reflects on self-advocacy and enhancing a child’s level of resilience

13. **Electronic** – making use of the internet/ social media/ SKYPE e.g the Community Connector Programme (Blundell and Clare 2012:43)

14. **System** – advocacy by front-line professionals for structural changes in the care system; this model is articulated by Grover (2004) who argues for an expanded understanding of professionalism in Canadian child and family care by incorporating child advocacy at the front-end of service delivery. Grover suggests that workers tend to operate in passive compliance with policy mandates of their employing institution; Grover also describes more formal advocacy as the formal role of a single provincial government official designated as the ‘child’s advocate’. Grover asserts (Page410),

“The various Canadian provincial children’s advocate offices are thus not viewed as activist and pro-active. Instead, they are, with rare exception, currently regarded exclusively as spokespersons or mediators representing the young person’s best interests”.

Specifically in relation to the Children’s Commissioner for Tasmania, Challen (2011) reviews the position in relation to Section 79 of the Children, Young Persons and Their Families Act, 1997 and summarises the Commissioner’s functions as advisory, promotional, educational and advocacy in nature. Challen goes on to assert that:

1. The Act does not give the Commissioner any independent decision-making responsibilities
2. The Commissioner does not have a role in the investigation or resolution of complaints in relation to the administration of the Act; such complaints are dealt with mainly by the Ombudsman.

**QUESTION EIGHT:** There appears to be a continuum of models of advocacy identified in the reviewed literature; at one end is the UNICEF Research Report, ENOC and the “Paris Principles” with its integrated structure within the European Community, while at the other end is Grover’s description of the local and passive compliance of marginalised provincial advocates in Canada. Where does the current Tasmanian model of advocacy sit on the notional continuum of advocacy models? Where would it best sit in the coming years?

**QUESTION NINE:** Given the list of seven models of advocacy provision (above) – potentially alongside provision by the Office of the Commissioner for Children in Tasmania - how many of these models are/ need to be in place in Tasmania? What is the quality of cooperation and collaboration between existing services providing advocacy for children?

3.3 **Ideal Types and Styles of Advocacy for Children**

There could be considerable scope for ambiguity, misunderstanding and conflict in an uncritical view of the purposes of advocacy – with important professional discipline, practice method and
relationship process differences: a notional continuum of characteristics of two polar ideal types / styles of Advocacy is presented below:

**Ideal-Type/ Style One ‘Doing-to’ Advocacy** – a relatively closed representative role incorporating a more task-focused legal, more prescribed and correct questioning, procedural, adversarial and authoritative set of activities by the adult advocate.

**Ideal-Type/ Style Two ‘Working-with’ Advocacy** – a relatively open facilitative role incorporating a more process-focused, developmental, creative, inclusive and synergistic set of activities involving the ‘Exchange Model’ (see Smale et al on Page 20).

Given this notional continuum, there is considerable scope for ambiguity, misunderstanding and conflict on many levels – both within and between individual children and adults, within an IHRIC, and between agencies involved in advocacy for children; there is huge scope for agency cultural difference in the style of advocacy in operation, depending on such variables as:

- The worker’s personal knowledge, values and skills
- The model adopted by the worker’s professional discipline
- The model taught to new staff as the correct model for their office and role
- Perceptions by the worker and the child of the child’s capacity for active participation
- The IHRIC’s explicit policy mandate and framework
- The clarity and quality of inter-agency power, authority and influence in decision-making

Looking at advocacy through the lens of process and relationship, Thomas (2008:99) lists five potential adaptations by children when engaging in participation with key adults in decision-making about their concerns – namely:

- **Assertive** – expecting to have a say in the discussion and decision-making
- **Dissatisfied** – believing that children should have more say in the discussion and decision-making
- **Submissive** – believing and acting that ‘adults know best’ so participation is unnecessary
- **Reasonable** – expecting to be heard but believe that adults should make any decisions
- **Avoidant** – find discussion and decision-making with adults difficult

Thomas (2008:99) then goes on to identify different worker attitudes that they bring to the dialogue/potential partnership with a child; these attitudes can impact significantly on the nature of the child’s engagement in the subsequent discussion. Thomas lists four adult styles:

**Clinical** – possibility that the focus will highlight the child’s needs and exclude the child as ‘too emotionally needy’ to contribute to the decision; this style can also work sensitively to engage the vulnerable child. As with styles of professional supervision, the key issue is the participant’s perception of the professional integrity informing the worker’s clinical practice.

**Bureaucratic** – fulfilling organisational and procedural requirements in decision-making but may leave little genuine opportunities for effective children’s participation or sensitive communication informing any decision.
Value-Based – regarding children’s involvement in decision as a positive good in itself to enhance the move from passive recipient to greater agency in their lives; this genuine commitment is also likely to lead to better decisions.

Cynical – based on the dominant assumption that children have too much attention and power already – and are irresponsible and manipulative.

Clearly, the potential for different styles of worker practice, along with different assumptions by children about active engagement in conversations about their concerns, is a key argument for good quality professional supervision of practice in services providing advocacy for vulnerable children (Clare 2001)?

**QUESTION TEN: To what extent is the scale of the role ambiguity embedded in the role, practice and professional supervision of the Commissioner for Children in Tasmania recognised, understood and addressed?**

4. ADVOCACY BY CHILDREN’S COMMISSIONERS IN AUSTRALIA AND INTERNATIONALLY

4.1 Within Australian States and Territories

The Australian Law Reform Commission (2012) reviewed the functions of Advocacy and Complaints Bodies in Australian States and Territories and found that existing State and Territory agencies vary greatly:

- Some have wide investigatory powers while others have an advocacy coordination role
- All tend to focus on care and protection rather than broad-ranging issues
- All have a general complaints-handling body e.g. an Ombudsman’s Office which accepts complaints by or on behalf of children about services and authorities; the number of complaints by or about a child is very small.

The Australian Law Reform Commission identifies the key issues as:

1. The adequacy of responses by institutions within Australian States and Territories in meeting national standards; one such example could be the WA teenagers currently detained in an adult jail.

2. The extent to which the State or Territory institution displays the characteristics of a good advocacy mechanism – identified as:
   - Statutory independence
   - Adequate resources
   - Investigative powers
   - Active participation by children
   - Accessibility to all children
   - Good relationship with decision-making bodies concerned with issues affecting children
   - Regional and local representation
- Access to research and statistics relevant to children.

The report recommends that each State and Territory should ensure that there are appropriate mechanisms vested in either newly established or existing bodies to handle complaints by or on behalf of children concerning the conduct of that State or Territory’s authorities – and to advocate children’s or particular groups of children’s interests at a policy level within the government.

Resource issues are identified as very important to address at both the individual and systemic level of concerns, especially for children in care. One recommended strategy is for State and Territory advocacy bodies to maintain effective links with other State and national HREOC’s and OFC’s to ensure access to information about systemic problems revealed by individual complaints. The Australian Law Reform Commission goes on to recommend that a focus of the State and Territory advocacy bodies should be on assisting children with particular needs – including children:
- In care
- In, or at risk of entering, detention (Juvenile Justice)
- Excluded, or at risk of exclusion, from school

Interestingly, there was no mention of children with disabilities or children in separating and divorced families. The Australian Law Reform Commission asserts (Page 3) that,

“We are still a long way from a model of Children’s Commissioner in Australia which is independent, broad in focus and fully involves children and young people as a statutory function”

4.2 International Developments

Sedletzki (2012), in the UNICEF Office of Research Report specifies the key features of an effective IHRIC for Children as including:

1. **Independence** as the main strength and source of legitimacy and authority to keep the focus on the rights of the child regardless of political trends – recognising that such independence is a most fragile quality with the quality of actual independence a function of the office’s mandate, resources and management. Sedletzki (Page 16), asserts, “The perception of an institution’s independence particularly on the part of children, excluded communities and other actors engaged in rights-related work, is crucial to its ability to carry out its mandate”.

2. **Financial Autonomy** as the key to independence given that institutions need sufficient and sustainable financial resources to carry out their mandates, in full recognition that funding sources must respect the legitimacy and independence of the institution. While government funding might compromise an institution when there are restrictions on funding, such funding provides legitimacy as a public regulatory agency. Also, external / private funding can be double-edged by keeping an institution operational but with the risk of compromising independence and sustainability over the long term.
3. **Accountability Mechanisms** which provide ongoing feedback on the institution’s strengths and weaknesses as crucial in fostering independence and strength; clear accountability mechanisms can build public trust and reinforce legitimacy in the eyes of the public and of state bodies enhancing the likelihood of implementation of recommendations. Key accountability mechanisms include:

- Written reports to Parliament and the public of activities on an annual or regular basis
- Informing the general public through websites, social media and regular bulletins
- Monitoring by civil society e.g. national human rights institutions and membership of national and international networks.

4. **Child Participation** - a core principle of the United Convention on the Rights of the Child so that IHRIC’s have a unique role in promoting and modelling the child’s right to be heard through engaging effectively with children; this requires specific skills, resources and commitment. Sedletzki (Page 19) warns, “This has proved extremely challenging for many of the institutions reviewed in this study”.

In New Zealand, Hollingworth (2004) in her critical review of their legislation, made the important observation that essential ingredients for success of any children’s commissioner role are adequate opportunities to hear the voice of children, accountability as well as advocacy and independence from Government.

Finally, Stalford and Schuurman (2011) reflect on the Treaty of Lisbon, 2009, as a significant constitutional development in the history of the European Union – particularly in regard to the development of children’s rights. While many of the changes are seen as technical and specialised in nature, it is the bolder declaration of the EU’s commitment to enhancing democratic accountability, protecting children and upholding fundamental rights more generally that presents the most significant opportunities for strengthening and clarifying the EU’s role in relation to children’s rights. Stalford and Schuurman go on to assert,

> “Experience proves that legislation is rarely the most effective EU response on children’s rights issues and that broader campaigns to encompass policy, budgetary, research, educative and knowledge exchange initiatives are equally, if not more crucial, to achieving adequate responses to the diverse and distinct range of needs that children have” (Page 402).

From the UK, Thomas (2008) asserts that children in care are entitled to make complaints and representations under the Children Act, 1989 – and recognises the difficulties facing a child in care who wishes to make a complaint. An advocate would make it more possible for a child to make a complaint and to make their way through the complex bureaucratic processes. Thomas asserts (Page 109),

> “The most important implication is the need to remain open to what the child is saying, either verbally or in other ways, not to dismiss or overlook it, even when it is inconvenient or difficult to address, and to share concerns with colleagues and with managers”.

From the international perspective, Sedletzki (2012:13) reflects on the focus on individual situations, arguing that a complaints mechanism is the route by which to remedy individual and collective child
rights violations - particularly for two vulnerable groups of children, namely those in contact with the justice system and those in alternative care. The report asserts,

“Access to an effective remedy for rights violations is integral to the realisation of all human rights and is implicit in the Convention on the Rights of the Child”.

Later in the Report (Page 25), there is recognition of the potential for the complaints process to stretch the IHRIC’s capacity; the suggested way forward is to ensure that the complaints mechanism is used strategically to advance the declared policy agenda and to develop an agreed triage process, but - “It is essential for independent institutions to have a strong mandate to hear and respond to individual complaints”.

5. THE BROADER ROLE OF THE CHILDREN’S COMMISSIONER – BEYOND ADVOCACY

The Parliament of Tasmania (1997) publication welcomes the proposed Commissioner for Children as a ‘great step forward’ – with:

(1) The proposed independent office to provide:
   - Advice on policy and practice standards
   - Conducting research
   - Encouraging the development of policies and services that enhance the wellbeing of children

(2) The Commissioner to report to the Minister and provide an annual report to Parliament

(3) The Commissioner to provide advocacy for children at a systems level given that:

   “The current legislation is inadequate in this area. The lack of specific structures for quality control; means that problems can develop into a crisis before gaining recognition...problem-solving is reactionary and tends to provide piece-meal short-term solutions”. (Page 5)

(4) The Commissioner for Children will be pro-active with ongoing review and research functions to ensure the delivery of appropriate services to children, without having to ‘re-invent the wheel’ on each occasion

(5) Currently, Tasmania has the greatest number of ‘State Wards’ and the Children, Young Persons and Families Bill proposes to give greater flexibility to the courts through a wider range of orders in the context of (Page 6), “In all of these areas (of orders) where a child’s future is being determined, the Draft Bill ensures the child will have an advocate”

Of direct relevance to the earlier (Section 3.3) review of different types of advocacy, two models are recognised – namely:

   - In the court system, the child must be represented by a legal practitioner unless the child has made an informed decision otherwise – and
• In the family group conference where the child must also have an advocate who need not be a legal practitioner.

During the Second Reading of the Bill in the Tasmanian Parliament, Hansard (1997) refers to the ‘critical importance’ of ensuring responsible and effective services – with the Commissioner providing an innovative solution to problems that have been unresolved for more than twenty years. The Commissioner will:

• Conduct reviews of decisions
• Provide advice on policy and practice standards
• Coordinate and provide community education
• Advocate on behalf of children at a system level

Hansard (1997:45) reflects on support for the powers of the Commissioner for Children to include:

• The provision of a complaints and investigative mechanism;
• The provision of independent advice on policy and practice standards;
• Advocacy for children at assisted level;
• Promotion of the development of policies and services to increase the wellbeing of children; to review decisions made under legislation.”

The Children’s Court in Tasmania is the focus of the recent study by Travers, White and McKinnon (2013) based on their interviews with magistrates and other practitioners working in the Youth Justice Division of the Magistrates Court of Tasmania. A number of their observations are directly relevant to a consideration of the needs and rights of vulnerable children in Tasmania – including:

• A significant rise in notifications to the child protection agency – from 422 in 1999 to 12,863 in 2007 – up more than 30 times; in relation to the issues of increasing family instability and the needs and rights of vulnerable children, 83% of cases did not attract further action as compared with 56% in New South Wales, 68% in Victoria, 13% in Queensland and 1% in Western Australia. There is no explanation of this wide range of responses.
• Shortage of resources in the youth justice system with delays in sentencing young people for offences committed weeks or months earlier. In some cases, such delays result in young people spending of up to a few months remanded in custody before appearing in court – often because of a lack of alternative accommodation rather than the seriousness of the offence
• There is a chronic shortage of resources and trained personnel in the child protection service and there needs to be greater cross-fertilisation of policy and practice ideas between child protection and juvenile justice – particularly in the light of the commitment to the UN Convention on the Rights of the Child.

Travers et al concluded at that time (Page 119):

“The case of Tasmania illustrates that more could be done in reducing delays and investing in more child protection and youth justice workers, refurbishing courtrooms and establishing bail hostels. The argument that no resources are
available is really not compelling. It may reflect the limited influence or political power of children.”

QUESTION ELEVEN: How can we understand the Tasmanian environment sufficiently to determine the current advocacy arrangements for children and youth, determine the necessary functions of a Commissioner for Children and ensure that the associated powers of the are sufficient to perform the functions associated with this role?
BIBLIOGRAPHY


Blundell B and Clare M (2012), *Elder Abuse in Linguistically Diverse Communities: Developing Best Practice*, Advocare: WA and the Centre for Vulnerable Children and Families, UWA.


Clare M (2006), Personal Reflections on Needs and Services for Young People Leaving Care: From Local to International to National (1996 – 2005), *Children Australia 31* (1), 11-17

Commonwealth Commissioner for Children and Young People Bill (2010), Explanatory Memorandum


Grover S (2004), Advocating for Children’s Rights as an Aspect of Professionalism: The Role of Frontline Workers and Children’s Rights Commissions (Canada), *Child and Youth Care Forum*, 33(6), 405-423


Thomas N. and O’Kane C (2000), Discovering What Children Think; Connections between Research and Practice, *British Journal of Social Work*, 30 (6), 819-836

Thomas N (2008), Consultation and Advocacy, Chapter 6 (pp 97-114) in B. Luckock and M. Lefevre, *Direct Work: Social Work with Children and Young People in Care*, British Agencies for Adoption and Fostering, London


Travers M, White R and McKinnon M (2013), The Children’s Court in Tasmania, Chapter 7 (103-121) in R. Sheehan and A. Borowski (eds), *Australia’s Children’s Courts Today and Tomorrow*, Springer, Dordecht,
Vardon Report Implementation Team, (2005), *Listening to Kids – Emerging Themes from Children’s Responses to a Commissioner for Children and Young People*, Department of Disability, Housing and Community Services, ACT


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**Websites for Commissioners for Children and Young People and Guardians**

**Commonwealth**


**ACT**


**NSW**


**NT**


**Qld**


**SA**


**Tas**

Vic

WA

Websites for legislation by jurisdiction

NSW

Qld

South Australia

Victoria

WA

Tasmania
http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=28%B1997%2BGS1%40EN%BSESSIONAL;histon=;prompt=;rec=;term=

ACT

NT
Appendix

Specific activities of state commissioners/guardians (AIFS Fact Sheet: Children’s Commissioners and Guardians, updated June 2013)

Jurisdiction: Commissioner/Guardian role

ACT

The commissioner’s role is to consult and encourage the participation of children in decision-making; consider complaints; ensure service standards in children’s services are met; and encourage and assist service users and providers to make improvements to services.

NSW

The commissioner's role is to promote the participation of children and young people in decision making; provide input into laws and policies that affect children and young people; undertake research awareness and understanding of issues affecting children and young people; promote child-safe and child-friendly organisational policy and practice; implement and monitor the Working With Children Check; and produce publications and resources about children and young people's issues. The guardian's role is to promote the best interests of children in out-of-home care; ensure the rights of all children and young persons in out-of-home care are safeguarded and promoted; and accredit agencies and monitor their responsibilities.

NT

The commissioner's role is to act as an advocate for and to ensure the wellbeing of vulnerable children, particularly Indigenous children, and to represent their interests at all levels of government and in the
community. Specifically the role of the commission is to investigate, resolve, and report on complaints about services provided to “protected” children; review and monitor the child protection and out-of-home care system in the NT; host and convene the Child Deaths Prevention and Review Committee covering all child deaths in the NT; and provide advice to government and respond to Ministerial requests pertaining to child protection matters.

Qld

The commissioner’s role is to monitor and review laws, policies and practices impacting on services provided to children and young people and on the safety and wellbeing of vulnerable children and young people; administer a state-wide Community Visitor Program for children and young people in alternative care—including foster care; receive and investigate complaints; maintain the Child Death Register; administer the Child Death Case Review Committee; administer the working with children check screening program; educate the community to comply with the commission’s Act; conduct research; and promote laws, policies and practices that uphold the rights, interests and wellbeing of children and young people, particularly those at risk.

SA

The guardian’s role is to advocate for the best interests of children and young people under the guardianship, or custody, of the Minister; provide independent monitoring of the circumstances of children and young people in out-of-home care; monitor the quality of out-of-home care; investigate and report to the Minister on matters referred to the guardian; and advise the Minister on whether the needs of children in care and guardianship are being met. The Council for the Care of Children’s role is to promote and advocate the rights and interest of all children in South Australia; report to the South Australian Government on how children are faring; and inform the South Australian community about the best care and support for children.

Tas.

The commissioner’s role is to ensure that legislation, policy and practices that affect the health, welfare, care, protection and development of all children operate in the best interests of the child; identify and act on issues affecting children and young people; conduct research on issues related to children; consult with Ministers, government agencies and non-government organisations and the community; and seek the views of children about issues affecting them.

Vic.

The commissioner’s role is to provide advice to Ministers, government departments, health services and human services relating to the safety and wellbeing of vulnerable children and young people and child safety as requested, to promote the interests of vulnerable children and young people, to conduct inquiries into service provision or omission relating to children who have died and were known to child protection within 12 months of their death, the safety and wellbeing of an individual or group of vulnerable children and young people or a health service, human service or school where there are persistent or recurring systematic concerns.
Additionally the Commissioner is to monitor Victoria’s out-of-home care system, monitor and report on the effectiveness of strategies relevant to the safety and wellbeing of vulnerable children and young people, promote child-friendly and child safe policies and practices in Victoria, review and report on the administration of the Working with Children Act 2005 and educating and informing the community about the Act and performing any other functions given to the Commission by the Act or any other Act.

WA

The commissioner’s role is to advocate on behalf of children and young people; promote strategies and outcomes that enhance their wellbeing; monitor, and inquire into, children’s wellbeing in the community; monitor government agency investigations of complaints made by children and young people; promote children’s participation in decision making; promote community awareness about the wellbeing of children and young people; and consider and make recommendations on laws, policies, programs and services affecting children and young people.
The SEIFA is a suite of four indexes derived from the Census of Population and Housing that summarise a number of variables. This overview of the Tasmanian context uses one of these indexes, the Index of Relative Socio-Economic Disadvantage (IRSD). The IRSD is a general socio-economic measure of the social and economic resources available to households within a particular area. These SEIFA values have been calculated at the lowest geographic level available (SA1 – below suburb level) and define the most disadvantaged communities as those with SEIFA scores in the bottom 20% of all Tasmanian SA1s (Quintile 1). The least disadvantaged communities are defined as SA1s with SEIFA scores in the highest 20% of all Tasmanian SA1s (Quintile 5).

**Interpretation of Index Scores (IRSD)**

A **low** score indicates relatively greater disadvantage in general. For example, an area could have a low score if there are (among other things):
- many households with low income, many people with no qualifications, or many people in low skill occupations.

A **high** score indicates a relative lack of disadvantage in general. For example, an area may have a high score if there are (among other things):
- few households with low incomes, few people with no qualifications, and few people in low skilled occupations.

*This index is preferred in situations where the user:*
- wants to look at disadvantage and lack of disadvantage
- wants a broad measure of disadvantage, rather than a specific measure (such as low income).

*An example would be where a user:*
- wants to ensure an allocation of funds goes to disadvantaged areas.

The variables that are included in the index can be found below. Each variable has a loading that indicates the correlation of that variable with the index. A negative loading indicates a disadvantaging variable. All variables in this index are indicators of disadvantage. INC_LOW is the strongest indicator of disadvantage.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Description</th>
<th>Loading</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENGLISHPOOR</td>
<td>% of people who do not speak English well</td>
<td>-0.34</td>
</tr>
<tr>
<td>NOEDU</td>
<td>% of people aged 15 years and over who have no educational attainment</td>
<td>-0.44</td>
</tr>
<tr>
<td>OCC_SERVICE_L</td>
<td>% of employed people classified as low skill Community and Personal Service workers</td>
<td>-0.50</td>
</tr>
<tr>
<td>OCC_DRIVERS</td>
<td>% of employed people classified as Machinery Operators and Drivers</td>
<td>-0.52</td>
</tr>
<tr>
<td>OVERCROWD</td>
<td>% of occupied private dwellings requiring one or more extra bedrooms</td>
<td>-0.52</td>
</tr>
<tr>
<td>SEP_DIVORCED</td>
<td>% of people aged 15 years and over who are separated or divorced</td>
<td>-0.54</td>
</tr>
<tr>
<td>NOCAR</td>
<td>% of occupied private dwellings with no cars</td>
<td>-0.56</td>
</tr>
<tr>
<td>DISABILITYU70</td>
<td>% of people under the age of 70 who have a long-term health condition or disability and need assistance with core activities</td>
<td>-0.66</td>
</tr>
<tr>
<td>ONEPARENT</td>
<td>% of one parent families with dependent offspring only</td>
<td>-0.71</td>
</tr>
<tr>
<td>LOWRENT</td>
<td>% of occupied private dwellings paying rent less than $166 per week (excluding $0 per week)</td>
<td>-0.73</td>
</tr>
<tr>
<td>UNEMPLOYED</td>
<td>% of people (in the labour force) who are unemployed</td>
<td>-0.74</td>
</tr>
<tr>
<td>NOYEAR12ORHIGHER</td>
<td>% of people aged 15 years and over whose highest level of education is Year 11 or lower</td>
<td>-0.75</td>
</tr>
<tr>
<td>OCC/labour</td>
<td>% of employed people classified as Labourers</td>
<td>-0.75</td>
</tr>
<tr>
<td>NONET</td>
<td>% of occupied private dwellings with no internet connection</td>
<td>-0.81</td>
</tr>
<tr>
<td>CHILDJOBLESS</td>
<td>% of families with children under 15 years of age who live with jobless parents</td>
<td>-0.85</td>
</tr>
<tr>
<td>INC_LOW</td>
<td>% of people with stated household equivalised income between $1 and $20,799 per year</td>
<td>-0.90</td>
</tr>
</tbody>
</table>
Table 1: Population Distribution of Socio-economic Disadvantage

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Quintile 1 (Most Disadvantaged)</th>
<th>Quintile 2</th>
<th>Quintile 3</th>
<th>Quintile 4</th>
<th>Quintile 5 (Least Disadvantaged)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>2%</td>
<td>6%</td>
<td>13%</td>
<td>27%</td>
<td>52%</td>
</tr>
<tr>
<td>NSW</td>
<td>23%</td>
<td>20%</td>
<td>18%</td>
<td>17%</td>
<td>22%</td>
</tr>
<tr>
<td>NT</td>
<td>28%</td>
<td>14%</td>
<td>19%</td>
<td>21%</td>
<td>17%</td>
</tr>
<tr>
<td>QLD</td>
<td>19%</td>
<td>21%</td>
<td>22%</td>
<td>21%</td>
<td>17%</td>
</tr>
<tr>
<td>SA</td>
<td>23%</td>
<td>24%</td>
<td>20%</td>
<td>19%</td>
<td>13%</td>
</tr>
<tr>
<td>TAS</td>
<td>32%</td>
<td>25%</td>
<td>21%</td>
<td>14%</td>
<td>8%</td>
</tr>
<tr>
<td>VIC</td>
<td>17%</td>
<td>18%</td>
<td>21%</td>
<td>23%</td>
<td>21%</td>
</tr>
<tr>
<td>WA</td>
<td>13%</td>
<td>18%</td>
<td>20%</td>
<td>23%</td>
<td>26%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>19%</td>
<td>20%</td>
<td>20%</td>
<td>20%</td>
<td>21%</td>
</tr>
</tbody>
</table>
SOCIO-ECONOMIC DISADVANTAGE - HOBART
SOCIO-ECONOMIC DISADVANTAGE - LAUNCESTON
### Table 2: Population Distribution (all ages) x Jurisdiction x Remoteness Structure (#)

<table>
<thead>
<tr>
<th>Row Labels</th>
<th>Major Cities of Australia</th>
<th>Inner Regional Australia</th>
<th>Outer Regional Australia</th>
<th>Remote Australia</th>
<th>Very Remote Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>100%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>NSW</td>
<td>74%</td>
<td>20%</td>
<td>6%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>NT</td>
<td>0%</td>
<td>0%</td>
<td>58%</td>
<td>20%</td>
<td>22%</td>
</tr>
<tr>
<td>QLD</td>
<td>62%</td>
<td>21%</td>
<td>15%</td>
<td>2%</td>
<td>1%</td>
</tr>
<tr>
<td>SA</td>
<td>73%</td>
<td>11%</td>
<td>12%</td>
<td>3%</td>
<td>1%</td>
</tr>
<tr>
<td>TAS</td>
<td>0%</td>
<td>66%</td>
<td>32%</td>
<td>2%</td>
<td>0%</td>
</tr>
<tr>
<td>VIC</td>
<td>76%</td>
<td>20%</td>
<td>5%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>WA</td>
<td>77%</td>
<td>9%</td>
<td>8%</td>
<td>4%</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>70%</strong></td>
<td><strong>19%</strong></td>
<td><strong>9%</strong></td>
<td><strong>1%</strong></td>
<td><strong>1%</strong></td>
</tr>
</tbody>
</table>

### Table 3: Population of 0-17 year olds x Region x Remoteness Structure (#)

<table>
<thead>
<tr>
<th>Remoteness Structure</th>
<th>North</th>
<th>North West</th>
<th>South</th>
<th>Tasmania</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inner Regional Australia</td>
<td>21,575</td>
<td>5,434</td>
<td>47,545</td>
<td>74,554</td>
</tr>
<tr>
<td>Outer Regional Australia</td>
<td>10,046</td>
<td>19,101</td>
<td>8,216</td>
<td>37,363</td>
</tr>
<tr>
<td>Remote Australia</td>
<td>22</td>
<td>1,296</td>
<td>307</td>
<td>1,625</td>
</tr>
<tr>
<td>Very Remote Australia</td>
<td>124</td>
<td>273</td>
<td>0</td>
<td>397</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>31,767</strong></td>
<td><strong>26,104</strong></td>
<td><strong>56,068</strong></td>
<td><strong>113,939</strong></td>
</tr>
</tbody>
</table>
### Table 4: Population of 0-17 year olds x Region x Remoteness Structure (%)

<table>
<thead>
<tr>
<th>Remoteness Structure</th>
<th>North</th>
<th>North West</th>
<th>South</th>
<th>Tasmania</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inner Regional Australia</td>
<td>67.92%</td>
<td>20.82%</td>
<td>84.80%</td>
<td>65.43%</td>
</tr>
<tr>
<td>Outer Regional Australia</td>
<td>31.62%</td>
<td>73.17%</td>
<td>14.65%</td>
<td>32.79%</td>
</tr>
<tr>
<td>Remote Australia</td>
<td>0.07%</td>
<td>4.96%</td>
<td>0.55%</td>
<td>1.43%</td>
</tr>
<tr>
<td>Very Remote Australia</td>
<td>0.39%</td>
<td>1.05%</td>
<td>0.00%</td>
<td>0.35%</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

### CHILD PROTECTION IN TASMANIA

#### Table 6: Notifications by Region

<table>
<thead>
<tr>
<th>Number of Notifications</th>
<th>Tasmania</th>
<th>Northwest</th>
<th>North</th>
<th>South</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-2013</td>
<td>12 323</td>
<td>2 919 (23.7%)</td>
<td>3 5616 (28.5%)</td>
<td>5 885 (47.8%)</td>
<td>3</td>
</tr>
<tr>
<td>2011-12</td>
<td>11 838</td>
<td>3 016 (25.5%)</td>
<td>3 388 (28.6%)</td>
<td>5 434 (45.9%)</td>
<td>0</td>
</tr>
<tr>
<td>2010-11</td>
<td>10 730</td>
<td>2 275 (21.2%)</td>
<td>3 011 (28.1%)</td>
<td>5 444 (50.7%)</td>
<td>0</td>
</tr>
</tbody>
</table>
### OUT OF HOME CARE IN TASMANIA

**TABLE 5: NUMBER OF CHILDREN 0-17 IN CARE IN TASMANIA**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>667</td>
</tr>
<tr>
<td>2008</td>
<td>664</td>
</tr>
<tr>
<td>2009</td>
<td>808</td>
</tr>
<tr>
<td>2010</td>
<td>893</td>
</tr>
<tr>
<td>2011</td>
<td>966</td>
</tr>
<tr>
<td>2012</td>
<td>1009</td>
</tr>
<tr>
<td>@30 March 2013</td>
<td>1052</td>
</tr>
</tbody>
</table>

* The number of children previous to June 2007 is not comparable to the number reported for previous years due to the exclusion of a cohort of children on orders who did not meet the definition of out of home care 2007.
DISCUSSION PAPER

ADVOCACY FOR CHILDREN IN TASMANIA

PREAMBLE:

The Legislative Amendment Review Reference Committee (LARRC) was formed to guide a first stage review process for the Children, Young Persons and Their Families Act 1997. The Terms of Reference for the LARRC included consideration of whether the powers of the Commissioner for Children were sufficient to perform the functions associated with the role.

The Committee formed the view that the powers of the Commissioner are sufficient to perform the functions as specified within the legislation. The Committee also noted that Tasmania was at the forefront in its decision to appoint a Commissioner for Children but that in the intervening time there was considerable confusion in the minds of the public and professionals about the ambit of this role. It observed there is now a clear demand from some quarters for an increase in powers associated with this position and an urgent need to review the role, function and powers of the position – including that of advocacy.

The Committee recommended a process be undertaken to clarify the expectations of the role, function and powers of the Children’s Commissioner.

While the Commissioner for Children currently has a role in systemic advocacy for children, there are a limited number of advocacy services for children in Tasmania which are not focussed on vulnerable children, for example children with disabilities or learning challenges.

There are few organisations in Tasmania at present that provide advocacy services for children in care or detention. The CREATE Foundation provides advocacy services specifically for children in out of home care at a systemic level only. CREATE undertakes considerable research at a state and national level in order to inform their advocacy role to systemically improve care provision.

The Commissioner for Children is the formal advocate for young people in youth justice detention, as defined in the Children, Young Persons and Their Families Act 1997 (s79). Detainees are able to directly contact the Office of the Commissioner via an advertised phone number.
Detainees are also able to utilise some practical advocacy services such as those provided by Save the Children, who support exit-planning from Ashley Youth Detention Centre and may provide assistance to detainees with housing, education and job-seeking if requested.

The Ombudsman can respond to complaints that are about the administrative actions of Tasmanian public authorities and therefore provides a degree of advocacy under these specific circumstances.

The Minister for Children has committed to work being undertaken to clarify the expectations of the role, function and powers of the Children’s Commissioner within a broader context of advocacy requirements for Tasmanian children and youth. Dr Maria Harries has been appointed as Chairperson of a Committee established to undertake this work. Dr Harries will also be supported by an Expert Reference Group chosen for their diverse expertise in the area.

The work of the Committee will include broad review and consideration of:

- the need for investigatory powers and whether these are better placed within the Office of the Ombudsman;
- who is best placed to give independent oversight of children and young people in Out-of-Home Care;
- whether there is a need in Tasmanian legislation for a combined or independent role of children’s guardian; and
- whether there is a need for an Office of Children’s Commissioner.

The Committee will meet over the next five months with an interim report required by the Minister by September 2013, with the final report due to the Minister by the 31 October 2013. The Terms of Reference for the Committee have been endorsed by the Minister and are as follows.

**TERMS OF REFERENCE:**

**Purpose**

To provide policy advice to Government on the provision of:

**Functions**

- *Advocacy for all Tasmanian children and youth:*
  Whether existing advocacy services for all Tasmanian children are adequate, and if not from where the additional capacity would be best provided? and

- *Advocacy for children and youth in care due to child protection concerns.*
Whether existing advocacy for children and youth in care due to child protection concerns is adequate, and if not, from where the enhanced capacity would be best provided? and

- **Advocacy for youth in detention:**
  Whether existing advocacy for youth in Ashley Youth Detention Centre (AYDC) is adequate, and if not, from where the enhanced capacity would be best provided? And

- **Responding to complaints relating to children in care or detention:**
  Whether existing responses for individual complaints arising from children in care or detention are adequate, if there is a need to increase capacity in this area, and if so, from where this would be best provided? and

- **Investigation and inquiry functions:** Is there a need for increased capacity to have an external authority undertake an own initiative investigation, if so, what are the options to establish this? Whether this should be limited to services provided under the Children, Young Persons and Their Families Act 1997 and the Youth Justice Act 1997 or all services provided to Children in Tasmania.

Powers

- In order to fulfil the role of advocate for children, what powers are needed to be associated with the function of the Commissioner and, which if any, need to or can be located elsewhere? Are these powers suitably placed in the Children, Young Persons and Their Families Act 1997 or some other legislation?

Governance arrangements for any statutory roles suggested including:

- Term of appointment
- Whether there should be an Office for Children or a Commissioner for Children
- Accountability
- Independence / reporting arrangements
- Ministerial direction
- Financial management and reporting
- Skills and attributes required for Commissioner

THE PROCESS

The focus of this consultation is on the presence and voice of children and young people and advocacy for all Tasmanian children. The primary question is whether existing advocacy services for all Tasmanian children are adequate and if not, where the additional capacity would be best provided. Children’s Commissioners have a primary focus on advocacy for
children but it is not the only location for advocacy, and neither is it the only function for the Commissioner.

In forming advice to the Minister, the Committee is seeking opinions from a wide range of sources in order to obtain a full picture of what advocacy is currently available for children and young people in Tasmania and to identify the gaps therein. This will provide the backdrop for an analysis of options and structural arrangements necessary for improving provisions for this advocacy.

The following mechanisms will be used to inform the Committee:

- a desk top review of literature and a cross jurisdictional analysis;
- individual discussions with a range of experts including previous Children’s Commissioners and advocates; and
- the release and wide dissemination of this Discussion Paper seeking views on particular matters.

This Discussion Paper seeks advice on advocacy for children and young people in general and addresses matters within the Terms of Reference. The Terms of Reference do not include examination of legal advocacy services.

In responding to this Discussion Paper, please utilise whichever definition of advocacy is familiar to you.

**OLE AND FUNCTIONS FOR COMMISSIONERS AND GUARDIANS**

The roles and functions of Commissioner’s for Children and Children’s Guardians across Australia vary greatly. The role of Commissioner’s for Children (ACT, Tasmania, Northern Territory, New South Wales and WA) broadly include systems advice and work with all children whereas Children’s Guardians (New South Wales, South Australia) undertake work with children in out of home care, protecting the rights of these vulnerable children while monitoring how well government is meeting the needs of children in out of home care. In Queensland the role is a dual one, both Commissioner and Guardian, and in Victoria the role is that of the Commission for Children and Young People, with functions similar to those of a Commissioner.

These legislated roles and functions include the capacity to:

- act on issues for children only through public promotion and public awareness functions;
- act on a request from a Minister but not undertake own motion inquiries;
- provide advice to a Minister on any matter relating to children;
- undertake individual advocacy and inquiry dispute resolution;
• provide advice on policy and practice relating to children;
• request a Minister to undertake an inquiry, and;
• act on a wide range of issues through research, promotion and monitoring functions.

1. ISSUES FOR CONSIDERATION

1.1. ADVOCACY FOR TASMANIA’S CHILDREN AND YOUTH

Question 1:
Do you consider the existing advocacy services for children and youth in Tasmania to be adequate? If not how can they be improved?

1.2. ADVOCACY FOR CHILDREN AND YOUTH LIKELY TO BE/ARE/HAVE BEEN IN CONTACT WITH CHILD PROTECTION SERVICES

Question 2
Are existing advocacy services for children and youth who are likely to be, are, or have had involvement with Child Protection Services adequate? If not how can they be improved?

1.3. ADVOCACY FOR CHILDREN IN CARE OR DETENTION:

Question 3
Are the existing advocacy services for children and youth who are likely to be, are, or have been involved with youth justice (including Ashley Youth Detention Centre) adequate? If not how can they be improved?

1.4. RESPONDING TO COMPLAINTS:
There are two processes for children and youth in dealing with complaints/reviews of decisions at a Departmental level. They may either request a review of a decision through a panel established for this purpose or they may lodge a formal complaint. Information leaflets are provided to all children and youth when they become involved with Children and Youth Services, and this information is also available on the DHHS website.

In addition to internal DHHS processes for managing Child and Youth Services’ complaints, clients can seek a resolution to their complaint through the Ombudsman. The Ombudsman can respond to complaints that are about the administrative actions of Tasmanian public authorities.

Question 4
Are you aware of these appeal and review processes? Do you think that young people are aware of these processes? Do you have a view on whether the current processes for responding to individual complaints are adequate or sufficient? If not how might they be improved?
In some jurisdictions the role of the Commissioner for Children includes responding to individual complaints relating to children and youth in care. In other jurisdictions individual complaints are addressed through mechanisms such as that of a “Guardian for Children” with similar powers, or they are undertaken through other internal Departmental complaints processes.

**Question 5**
Please comment on how you perceive the need or otherwise for the role of Commissioner for Children to include the capacity to respond to individual complaints relating to children and youth in care.

**1.5. Guardian for Children**
Some jurisdictions have legislation in place for a Children’s Guardian. The responsibility of the Guardian is to monitor the circumstances relating specifically to the health and wellbeing of children in the care of the State. Having a Guardian for children is seen to help the Commissioner to remain focused on the needs of all children and youth.

**Question 6**
Do you think there needs to be a particular role of Guardian for the children and youth in Tasmania?

**1.6. Investigation and Inquiry Functions:**
Currently, as in most States, the Commissioner for Children does not have the authority to initiate their own investigations, but can do so at the request of the Minister. In all jurisdictions the Auditor General and the Ombudsman do have these powers.

**Question 7**
Is there a need for the Commissioner for Children to initiate their own investigations, independent reviews and inquiries about particular children and circumstances and/or systemic issues?

**Question 8**
If there is a need for increased capacity to undertake independent reviews and inquiries for all children and youth in Tasmania; should this be provided for all children and youth receiving State funded services or limited to services provided under the Children, Young Persons and Their Families Act 1997 and the Youth Justice Act 1997?

**2. Powers**

**Question 9**
What powers are required for the Commissioner to undertake the recommended functions?

**Question 10**
Are these powers suitably placed in the *Children’s Young Persons and Their Families Act 1997* or do we require new legislation?

### 3. GOVERNANCE

**Question 11**

Please comment on any governance arrangements you think may enhance the role and capacity of the Commissioner for Children in meeting the needs of children and youth in Tasmania.

Please provide your comments, and any additional observations you would like to make in relation to requirements we might consider for increasing the effectiveness of advocacy for children and youth in Tasmania, to [advocacy@dhhs.tas.gov.au](mailto:advocacy@dhhs.tas.gov.au) by July 15, 2013. If you have any questions please call 03 6233 4120.
12.4 SUBMISSIONS

Written Submissions received

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Name</th>
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<tbody>
<tr>
<td>Advocacy Tasmania</td>
<td>Office For Children</td>
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<tr>
<td>Association for Children with Disability (Tas) Inc.</td>
<td>Save The Children</td>
</tr>
<tr>
<td>Association of Social Workers</td>
<td>Tasmanian Council of Social Services Inc. (TasCOSS)</td>
</tr>
<tr>
<td>Child Health and Parenting Service</td>
<td>Youth Network of Tasmania</td>
</tr>
<tr>
<td>Commissioner For Children Tas Office Staff</td>
<td>M Pegg, Children and Youth Services’ staff member</td>
</tr>
<tr>
<td>Department of Police and Emergency Management</td>
<td>Woodbridge Soccer Club</td>
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<tr>
<td>Early Childhood Australia</td>
<td>Former Children’s Visitors</td>
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<tr>
<td>Foster Carers Association of Tasmania</td>
<td>A Melton, Disability, Housing and Community Services’ staff member</td>
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<td>Carers Tasmania</td>
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12.5 INTERVIEW PARTICIPANTS

Formal Interview participants

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Name</th>
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<tbody>
<tr>
<td>Advocacy Tasmania</td>
<td>Mr Ken Hardaker and staff</td>
</tr>
<tr>
<td>Anglicare</td>
<td>Dr Chris Jones</td>
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<tr>
<td>Australian Association of Social Workers</td>
<td>Ms Carol Dorgelo</td>
</tr>
<tr>
<td>Child and Mental Health Services</td>
<td>Dr Fiona Wagg</td>
</tr>
<tr>
<td>Commissioner for Children</td>
<td>Ms Elizabeth Daly and staff</td>
</tr>
<tr>
<td>CREATE</td>
<td>Ms Tenielle Moore</td>
</tr>
<tr>
<td>Department of Education</td>
<td>Ms Alison Stone</td>
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<tr>
<td>Aboriginal Early Learning</td>
<td>Mr Kym Duggin “Batman”</td>
</tr>
<tr>
<td>Department of Education</td>
<td>Mr Colin Pettit</td>
</tr>
<tr>
<td>Early Years Foundation/Former Commissioner for Children</td>
<td>Dr Sue Jenkins</td>
</tr>
<tr>
<td>Foster Care Association of Tasmania</td>
<td>Mr John Flack</td>
</tr>
<tr>
<td>Magistrate’s Court, Tasmania</td>
<td>Magistrates</td>
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<tr>
<td>Office for Children</td>
<td>Dr Kathryn Campbell</td>
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<tr>
<td>Ombudsman</td>
<td>Mr Leon Atkinson-MacEwen</td>
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<tr>
<td>Sexual Assault Support Services</td>
<td>Ms Liz Little</td>
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<tr>
<td>TasCOSS</td>
<td>Ms Meg Webb</td>
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<tr>
<td>UTAS</td>
<td>Prof. David Adams</td>
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<tr>
<td>Whitelion</td>
<td>Mr Neil Warnock</td>
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<tr>
<td>Youth Network of Tasmania</td>
<td>Mr Jo Siejka</td>
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Additional interviews and/or discussions were conducted via telephone conversation, email or face to face with the following:
• Auditors-General Departments
• Australian Law Reform Commission
• Child Advocate – Department for Child Protection and Families – Western Australia
• Commissioners for Children – Victoria, Northern Territory, ACT, Western Australia
• Disability Services
• Kids Helpline
• National Children’s and Youth Law Centre
• NDIS
• Ombudsman’s Offices – Victoria and Western Australia
• Previous Tasmanian Children’s Commissioners – Paul Mason and David Fanning
• Victorian Aboriginal Child Care Association and newly appointed Victorian Aboriginal Commissioner