



**Commission of Inquiry into  
the Tasmanian Government's  
Responses to Child Sexual  
Abuse in Institutional Settings**

## WITNESS STATEMENT OF LEANNE McLEAN

I, Leanne McLean, Commissioner for Children and Young People (Tasmania), of [REDACTED]  
[REDACTED] Hobart, in the State of Tasmania, say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.
2. I made a submission to this Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (**Commission of Inquiry**) on 29 July 2021. I refer to and adopt that submission. Attached to this statement and marked **LM-01** is a copy of the Commissioner for Children and Young People submission dated 29 July 2021.

### BACKGROUND AND QUALIFICATIONS

3. I hold a Bachelor of Science from the University of Tasmania (1998 – 2000).
4. Prior to my appointment as Commissioner for Children and Young People:
  - (a) From 2016 to 2018, I occupied the position of Chief of Staff to the Hon. Jeremy Rockliff MP, Deputy Premier of Tasmania. My duties included the provision of strategic support to the Minister in the planning and execution of all Ministerial duties including parliament and strategic policy advice across various portfolios including Education and Training.
  - (b) From 2014 to 2016, I was a Senior Adviser, also to Jeremy Rockliff MP, Deputy Premier of Tasmania, providing policy advice and parliamentary support in the Education and Training portfolio.
  - (c) Prior to 2014, I occupied a variety of strategy and policy focussed roles with the Tasmanian State Service relevant to education, skills and training. From 2005 to 2007, I occupied the position of Youth Learning Officer – South with the Tasmanian Department of Education. My duties included the case management of young people experiencing barriers to participation in education and training, and brokering education solutions.

## CURRENT ROLE

5. I am currently employed as the Commissioner for Children and Young People (Tasmania). I commenced as Commissioner for Children and Young People (**Commissioner**) on 26 November 2018.
6. The Commissioner is an independent statutory officer whose functions, powers, and other matters relevant to the role are described in the *Commissioner for Children and Young People Act 2016* (Tas) (**CCYP Act**). The CCYP Act commenced on 1 July 2016. Prior to the commencement of the CCYP Act, the role of Commissioner for Children was governed by Division 1 of Part 9 of the *Children, Young Persons and Their Families Act 1997* (Tas) (**CYPTF Act**). The first Commissioner was appointed in October 2000.
7. The CCYP Act introduced a range of changes including refocusing the Commissioner's role on the wellbeing and best interests of children and young people generally, including an express requirement for any person performing a function or exercising a power under the CCYP Act to observe any relevant provisions of the United Nations *Convention on the Rights of the Child*. The Commissioner's powers were also expanded to include an own motion investigative function of a systemic nature, in addition to conducting inquiries when requested by the Minister. Attached to this statement and marked **LM-02** is a document describing a more detailed history of the role of Commissioner.

### ***Functions, Powers and Principles***

8. Section 8(1) of the CCYP Act outlines the Commissioner's general functions as follows:
  - (a) advocating for all children and young people<sup>1</sup> in the State generally;
  - (b) acting as advocate for a detainee under the *Youth Justice Act 1997*;
  - (c) researching, investigating and influencing policy development into matters relating to children and young people generally;

---

<sup>1</sup> Section 4 of the CCYP Act provides that 'child' means a person who has not attained the age of 18 years, and 'young person' means a person, who has not attained the age of 18 years, as determined by the Commissioner in accordance with section 8(4). Section 8(4) states 'For the purpose of performing any function, or exercising any power, the Commissioner may determine when a child is considered a young person for the purpose of the function or power.'

- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;
  - (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
  - (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally;
  - (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them; and
  - (h) such other functions as are prescribed.
9. Apart from the advocacy function for a detainee under the *Youth Justice Act 1997* (Tas) (**YJ Act**), the functions of the Commissioner are extremely broad and general in nature. Although I do not have a legislated function specific to the protection of children and young people from child sexual abuse in institutional contexts, this is a matter that is encompassed by my legislated functions. Currently, I can, for example, review and provide comment on proposed policies and legislation and provide advice to the Tasmanian Government on issues relevant to the protection of Tasmanian children and young people from child sexual abuse. By way of examples, I have provided submissions on the draft Child Safe Organisations Bill 2020, the Proposal Paper on renaming sexual offences as well as the Tasmanian Government's Consultation Paper: Developing a program to prevent harmful sexual behaviours for children and young people. Attached to this statement and marked **LM-03** are copies of those submissions. As discussed further in paragraphs 140-157 below, if the Commissioner is given oversight of Tasmania's child safe legislative framework and reportable conduct scheme, specific functions relevant to child sexual abuse should be included in the legislation governing the Commissioner's role.
10. Section 11 of the CCYP Act outlines the general powers of the Commissioner and section 12 outlines the powers of the Commissioner to compel information.
11. Section 3(1) requires that the performance of functions and the exercise of powers under the CCYP Act must be done in accordance with the principle that the wellbeing and best interests of children are paramount, and relevant provisions of

the United Nations *Convention on the Rights of the Child* are observed. Subject to section 3(1), the CCYP Act is to be administered according to the following principles:

- (a) children are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;
- (b) the interests and needs of children and young people who are disadvantaged for any reason or vulnerable should be given special regard and serious consideration;
- (c) the contributions made by children to the community should be recognised for their value and merit;
- (d) the views of children on all matters affecting them should be given serious consideration and taken into account;
- (e) parents, families and communities have the primary role in safeguarding and promoting the wellbeing of children and should be supported in carrying out their role.<sup>2</sup>

### ***Independence***

12. Unless otherwise specified, the Commissioner must act independently, impartially and in the public interest when performing a function, or exercising a power, under the CCYP Act or any other Act.<sup>3</sup>

### ***Investigation***

13. Section 9(1) of the CCYP Act states that if requested to do so by the Minister, the Commissioner must undertake an investigation or review into such decision or recommendation made, or such act or omission, under any Act as is specified in the request of the Minister. Such an investigation or review can be outside the jurisdiction of the Commissioner as set out in section 14 of the CCYP Act.<sup>4</sup> During my term as Commissioner, I have not been asked by the Minister to undertake such an investigation or review.
14. As Commissioner, I may initiate an investigation or inquiry into a systemic issue which falls within my functions. The “own motion” investigatory powers are in

---

<sup>2</sup> Section 3(2) CCYP Act

<sup>3</sup> Section 8(3) CCYP Act

<sup>4</sup> See section 9(2) CCYP Act

section 11(2) of the CCYP Act. The exercise of these powers is discussed further at paragraphs 53-64, below.

### ***Out-of-home care monitoring***

15. In the 2017-18 State Budget, the Tasmanian Government committed dedicated resources to the Commissioner to conduct independent systemic monitoring of out-of-home care in Tasmania.
16. There is currently no function in the CCYP Act specific to the monitoring of out-of-home care, however the program is enabled through various more general functions,<sup>5</sup> including sections 8(1)(c) and 8(1)(d), as follows:
  - (c) researching, investigating and influencing policy development into matters relating to children and young people generally;*
  - (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;*
17. I would be supportive of amendments to the CCYP Act which would give a specific function in relation to the systemic oversight of Tasmania's out-of-home care system.
18. As detailed below under Systemic monitoring of out-of-home care at paragraphs 53-64, I would also support further clarification of powers in relation to own motion investigations particularly as they relate to matters pertaining to a specific provider of out-of-home care and the care it provides to children.

### ***Advocate for a detainee under the YJ Act***

19. Section 10 of the CCYP Act outlines the additional functions of the Commissioner when acting as an advocate for a detainee under the YJ Act. The Commissioner is also a prescribed officer within the meaning of section 135A(1) of the YJ Act and the CCYP Act is a prescribed Act for the purposes of sections 135A(2)(a) and (b) of the YJ Act.<sup>6</sup> I provide further information about how I perform this individual advocacy function in the Ashley Youth Detention Centre (AYDC) section of this Statement.

### ***Matters not within my jurisdiction***

---

<sup>5</sup> Please see out-of-home care section below for further details.

<sup>6</sup> See *Youth Justice Amendment Regulations 2016* and *Youth Justice Regulations 2019*.

20. Section 14 of the CCYP Act outlines the matters which are not in the jurisdiction of the Commissioner:

*14. Certain matters not within jurisdiction of Commissioner*

*(1) Unless otherwise specified, the Commissioner does not have the authority to investigate or review –*

- (a) a specific decision made in respect of an individual case or specific circumstances; or*
- (b) information, or a document, that is subject to a lawful claim or right of privilege; or*
- (c) the application of the systems, policies and practices of the Director of Public Prosecutions, or the Police Service, in specific circumstances to determine whether or not to institute, or continue with, proceedings for an offence in those circumstances; or*
- (d) the application of the systems, policies and practices of the Police Service in specific circumstances to determine whether or not to apply for a police family violence order, or a family violence order, under the Family Violence Act 2004 in those circumstances; or*
- (e) the application of the systems, policies and practices of the Legal Aid Commission of Tasmania in respect of the legal advice given in specific circumstances by lawyers employed, engaged or funded by the Legal Aid Commission of Tasmania; or*
- (f) any other prescribed matter or decision.*

*(2) Subsection (1) (a) does not prevent the Commissioner from –*

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

**Information Management**

21. Division 3 of Part 2 of the CCYP Act deals with Information Management. The *Right to Information Act 2009* (Tas) does not apply to information in the possession of the Commissioner unless the information relates to the administration of the Commissioner (*Right to Information Act 2009* (Tas) s 6(1)).<sup>7</sup>

<sup>7</sup> The *Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Act 2019* amended the *Right to Information Act 2009* to include the Commissioner as a person or body within the meaning of section 6 of the *Right to Information Act 2009*.

22. The Second Reading Speech to the Commissioner for Children and Young People Bill 2015 (Tas) stated that information sharing powers were clarified to ensure the Commissioner can access the information necessary to perform their functions. In my view, these powers are useful in obtaining information from Information Sharing Entities (either proactively provided to me or by request), whilst giving protections to Information Sharing Entities provided they have acted in good faith.
23. I regularly request de-identified information to inform the performance of my functions, in particular promoting, monitoring and reviewing the wellbeing of children and young people, and researching, investigating and influencing policy development into matters relating to children and young people. For example, I have requested that relevant Departments provide me with regular data relating to the experiences of children and young people during the COVID-19 pandemic.
24. I also receive identifying information relevant to my function as an advocate for a detainee under the YJ Act. The Department of Communities Tasmania provides me with the AYDC daily roll, minutes of Weekly Review Meetings (previously Centre Support Team meetings) and provides monthly reports containing data and information related to incidents, isolation, use of force and searches. When young people arrive at AYDC I receive their intake information, including medical assessments. I am also notified of serious incidents and receive Suicide and Self-Harm (**SASH**) Notification Reports by email.
25. During my term, I have assisted young people in detention to make a complaint to the Ombudsman, and I have also referred matters to the Ombudsman and the Custodial Inspector pursuant to section 17(2) of the CCYP Act. Examples of complaints by young people include an alleged assault by police, a disagreement between a young person and AYDC management about a disciplinary measure and the alleged treatment of a young person whilst being held at a reception prison. Examples of referrals I have made pursuant to section 17(2) are at paragraph 99.

#### ***Annual Plans and Reports***

26. Section 7 of the CCYP Act requires me to prepare and provide to the Minister by no later than 31 March in each year an annual plan describing my proposed program of work and activities for the following financial year. These Annual Plans

are available on my website. Attached to this statement and marked **LM-04** is the CCYP Annual Plan for 2022-2023.

27. Section 19 of the CCYP Act outlines my reporting obligations and in accordance with that section I submit a report to the Minister and the Secretary and also cause an Annual Report to be tabled in the Tasmanian Parliament. My Annual Reports are available on my website. Attached to this statement and marked **LM-05** is the CCYP Annual Report for 2020-2021.

### ***Review of the Act***

28. A review of the CCYP Act was anticipated in the Second Reading Speech to the Commissioner for Children and Young People Bill 2015 (Tas), 'to ensure it satisfies the needs and expectations of the community'.<sup>8</sup> As the CCYP Act commenced 1 July 2016, that review is now due. In discussions with the then Minister for Children and Youth and the Attorney-General I have raised the need to undertake a review of the CCYP Act given the proposal outlined in the Second Reading Speech that it be reviewed within 5 years of commencement. A review of the CCYP Act is also timely and should consider whether there is a potential role for the Commissioner in the independent oversight of child safe standards and a reportable conduct scheme in Tasmania, once implemented.

### **RESOURCING OF THE COMMISSIONER**

29. The 2020-21 budget for the Commissioner for Children and Young People was \$1,369,000<sup>9</sup> and the 2021-22 budget is \$1,386,000.<sup>10</sup>
30. As the functions of the Commissioner are extremely broad, I have, during my term as Commissioner, and consistent with my legislated functions, prioritised the allocation of resources to undertake the following:
- (a) listening to and promoting the voice of children and young people, in particular through the CCYP Ambassador Program;

<sup>8</sup> Second Reading Speech, Commissioner for Children and Young People Bill 2015 (No.59), 17 November 2015.

<sup>9</sup> Tasmanian Government, *Government Services Budget Paper No 2, Volume 1*, p. 55.

<sup>10</sup> Ibid.



- (b) promoting and monitoring the wellbeing of children and young people generally, such as advocating for the development of a Child and Youth Wellbeing Strategy for Tasmania;
  - (c) independent monitoring of Tasmania's out-of-home care system;
  - (d) systemic advice and advocacy on matters affecting children and young people including commenting on draft Bills and engaging in other consultative processes; and
  - (e) providing individual advocacy to young people detained under the YJ Act.
31. Resourcing for the office, however, has remained a constant challenge. Over the last year in particular, there has been an increased interest from external parties seeking assistance with facilitating mechanisms for children and young people to have a voice in decision-making. Furthermore, the office received more requests to provide expert and independent comment and advice on draft Bills and was invited to contribute to numerous other consultations relating to or having impacts upon the rights and wellbeing of children and young people. Coupled with the ebb and flow of staffing movements during the year, this meant that it was necessary at times for me to make the difficult decision to not contribute to consultative processes due to competing calls on limited office resources. Further, resource constraints have hampered my ability to comprehensively analyse data received from government departments and publish the findings of that analysis.
32. Resourcing has also constrained my ability to proactively engage in preventative education, engagement, and capability building activities for organisations and individuals on child safe principles and practice. Since coming into the role, I have had discussions with the Department of Justice regarding the additional resourcing that I believe would be required to expand the capacity of my office to provide education, training and advice on child safe organisations. I am aware that former Commissioner Morrissey also held similar discussions with Government, but this office has not been provided with such funding to date. Commissioners have however played and continue to play an important role in promoting awareness of the importance of child safe organisations and advocating for the establishment of a child safe legislative framework in Tasmania.

33. Recently, the then Minister for Children and Youth, and the Secretary of the Department of Communities Tasmania have acknowledged the resourcing constraints of my office and have provided additional resourcing. Recently established positions are detailed in paragraph 34 below.
34. Section 6 of the CCYP Act provides for staff to be provided to the Commissioner to assist in the performance of the Commissioner's legislated functions. At the time of submission, I am supported by the following staff members (total FTE including myself is 9.6), all of whom are Tasmanian State Service employees attached to the Department of Communities Tasmania:
- (a) Director – Office of the Commissioner (Permanent, Funded: 1.0 FTE; Actual: 1.0 FTE);
  - (b) Manager, Policy and Monitoring (Permanent, Funded: 1.0 FTE; Actual: 1.0 FTE);
  - (c) Senior Marketing and Communications Officer (Permanent, Funded: 0.8 FTE; Temporary increase in hours: 1.0 FTE);
  - (d) Senior Research and Policy Officer (Permanent, Funded: 0.8 FTE; Currently recruiting);
  - (e) Senior Research and Policy Officer (Fixed-term, Funded: 1.0 FTE; Actual: 0.8 FTE);
  - (f) Policy and Engagement Officer (Fixed-term, Funded: 1.0 FTE; Actual: 0.6 FTE) – this position is funded through unexpended funding for a Senior Policy Officer position (Permanent, Funded 1.0 FTE; Currently recruiting);
  - (g) Senior Policy and Engagement Officer (Permanent, Funded 0.8 FTE; Actual: 0.8 FTE);
  - (h) Senior Policy Officer (Permanent, Funded: 1.0 FTE; Actual: 0.8 FTE);
  - (i) Administrative Support Officer (Permanent, Funded: 1.0 FTE; Actual: 1.0 FTE).

**Recently established positions**

- (j) Senior Research and Policy Analyst (Fixed-term, Funded:1.0 FTE; Actual: 0.6 FTE);

- (k) Advocate for Young People in Detention (Fixed-term, Funded: 1.0 FTE; Actual: 1.0 FTE);
  - (l) Senior Policy and Engagement Officer (Fixed-term, Funded 1.0 FTE; Actual: Currently recruiting).
35. Other fixed term positions may be established in the coming months utilising existing funds to further support engagement functions and the analysis of data in relation to the wellbeing of children and young people.
  36. Action 52 of the Tasmanian Government's Child and Youth Wellbeing Strategy<sup>11</sup> commits additional funding for my engagement activities, including providing best practice opportunities for all Tasmanian children and young people to express their views, participate in decision making processes that affect their lives and have their voices heard, with a focus on children and young people who are not usually provided the opportunity to participate and be heard.
  37. A budget submission has also been submitted to Government to fund an Information and Business Administration Officer position and to make permanent the fixed-term Senior Research and Policy Officer.
  38. The Department of Communities Tasmania provides business services such as Human Resources, Finance, and IT support to my office. Staff members employed in my office are State Service employees of the Department of Communities Tasmania and are therefore bound by the *State Service Act 2000*. This creates an inherent conflict as I am an independent statutory officer who sometimes communicates different policy views to those of the Government, but my staff are State Service employees who are employed to implement the Government's policies and programs.<sup>12</sup>
  39. The current resourcing of the office has implications for my capacity to initiate and undertake an own motion investigation or inquiry. Current resourcing is fully occupied with the activities described above in paragraph 30. Therefore, my ability to initiate and undertake an own motion investigation or inquiry would require additional resourcing or diversion of existing resources away from other core activities.

---

<sup>11</sup> Tasmanian Government (2021), *It Takes a Tasmanian Village, Child and Youth Wellbeing Strategy*.  
<sup>12</sup> Section 7(1)(e) *State Service Act 2000*

## ASPECTS OF MY ROLE RELEVANT TO THE COMMISSION OF INQUIRY

### *Systemic monitoring of out-of-home care*

#### *Background*

40. In the 2017-18 State Budget, the Tasmanian Government committed dedicated resources to the Commissioner to conduct independent systemic monitoring of out-of-home care in Tasmania to be conducted over four years, commencing in July 2017. This commitment arose from the Tasmanian Government's decision to accept all seven recommendations made by former Commissioner Morrissey in his January 2017 report of his review of out-of-home care, *Children and Young People in Out of Home Care in Tasmania*. Attached to this statement and marked **LM-06** is a copy of that review. Funding for the out-of-home care monitoring program is now recurrent in the Commissioner's budget.
41. The main aim of this program is to promote and protect the rights and wellbeing of Tasmanian children and young people in Tasmania's out-of-home care system. This is achieved through 'systemic monitoring' of Tasmania's out-of-home care system, which means I look at how Tasmania's children and young people in out-of-home care are going overall, and I look into the processes or features of the out-of-home care system that affect their wellbeing.
42. The key considerations and guiding principles for the Commissioner's out-of-home care monitoring program are outlined in *Laying the Foundations: A Conceptual Plan for Independent Monitoring of Out-of-Home Care in Tasmania* (April 2018), which was prepared by then Interim Commissioner Clements. Attached to this statement and marked **LM-07** is copy of that plan. The plan also outlined the three interrelated components of the monitoring program:
- (a) **Part A: Regular Data Monitoring:** This monitoring entails the regular, routine flow of a discrete set of data to the Commissioner on specified matters relevant to out-of-home care. Information gathered through this component may inform the focus of Part B and Part C of the monitoring program. For example, the Commissioner receives quarterly data reports from the Department of Communities Tasmania on child safety activities, numbers of children in out-of-home care (placed with government vs non-government providers), foster care households, and indicators

relevant to the Tasmanian Government's *Outcomes Framework for Children and Young People in Out of Home Care Tasmania*.

- (b) **Part B: Thematic Monitoring:** Monitoring activities in Part B are focussed on a different theme, using the six domains of the Tasmanian Government's *Child and Youth Wellbeing Framework* and the *Outcomes Framework for Children and Young People in Out-of-Home Care Tasmania*: being loved and safe; being healthy; participating; having material basics; learning; and having a positive sense of culture and identity. In addition to the annual thematic focus, the monitoring undertaken in Part B of the monitoring program is guided by the cross-cutting consideration of children and young people's participation.
- (c) **Part C: Responsive Investigations:** In this component of the monitoring program, the Commissioner, whether utilising "own motion" investigatory powers or undertaking an investigation at the request of the Minister, may dedicate resources to undertake a targeted, in-depth investigation of a particular issue in out-of-home care. Investigations can only be undertaken consistent with my legislated functions, so are limited to systemic and general issues, rather than individual incidents or allegations. See paragraphs 53-64 for further discussion. I am, from time to time, informed about individual incidents resulting in serious injury or death in relation to children in out-of-home care by the Department of Communities Tasmania. The quarterly data reports mentioned in (a) provide information on the number of care concerns and number of substantiated care concerns (by date of assessment completion). From the information provided to me by the Department of Communities Tasmania, I do not have a sense of the types of complaints or concerns, nor am I informed of all incidents concerning children in out-of-home care.
43. It was originally envisaged that the monitoring program would centre monitoring activities around compliance with the Tasmanian standards for out-of-home care. However, as Tasmania still does not have a Quality and Accountability Framework for out-of-home care that includes Tasmanian Standards for out-of-home care, the monitoring program instead focusses on thematic monitoring activities based on the six domains of the *Child and Youth Wellbeing Framework*. The thematic area

investigated in the first Monitoring Report was “Being Healthy” and was determined by Interim Commissioner Clements. The current thematic area is “Loved and Safe” and was selected after consulting and gaining feedback from out-of-home care providers and stakeholders, and children and young people in out-of-home care.

44. The budget for the monitoring program covers the equivalent of two senior policy officers. In addition, the program draws on my time and the time of other senior members of my team (in particular the Manager, Policy and Monitoring and the Director).
45. The focus of the monitoring program for 2018-19 was set out in detail in the *Out-of-Home Care Monitoring Plan 2018-19* (July 2018). Monitoring activities began formally in July 2018 during the tenure of Interim Commissioner Clements and upon commencement of my term as Commissioner I continued the monitoring activities initiated by him. Attached to this statement and marked **LM-08** is copy of that plan.
46. In October 2019, I released the first report of the out-of-home care monitoring program, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and “Being Healthy”, Out-of-Home Care Monitoring Program 2018-19*. Attached to this statement and marked **LM-09** is copy of that report.
47. I note in particular Recommendation 2 and associated commentary in this report which addressed the need for independent external oversight of the out-of-home care system in Tasmania, and for the development and implementation of a Quality and Continuous Improvement Framework for out-of-home care,<sup>13</sup> noting relevant recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) including:
  - (a) Mandatory accreditation scheme for government and non-government providers incorporating child safe standards (Recommendation 12.4);
  - (b) Independent body with responsibility for accreditation of out-of-home care providers, and responsibility for compliance with standards (Recommendation 12.5); and

---

<sup>13</sup> Which includes a child safe standard which reflects the National Principles for Child Safe Organisations.

- (c) Monitoring and enforcement of child safe standards to be undertaken by an independent oversight body (Recommendation 6.10).
48. I also made recommendations designed to encourage and empower children and young people in out-of-home care to express their views and participate in decisions affecting them (refer Recommendation 1).
49. In March 2020, the Tasmanian Government published its response to my monitoring report, *Tasmanian Government Out of Home Care Response Report and Action Plan 2020*. Attached to this statement and marked **LM-10** is copy of that report. In its response, the Government committed to implementing 15 Priority Actions as well as several other actions, across the five themes and recommendations in my report, and to reporting in December 2020. The Department of Communities Tasmania provided me with a draft Progress Report in December 2020. I provided comments in February 2021 and was provided with an updated report in March 2021.<sup>14</sup> A further report was provided in September 2021<sup>15</sup> and in this report the Secretary advises that future reporting on initiatives relevant to my recommendations will occur through the *Strong Families Safe Kids Next Steps Action Plan 2021-2023* annual progress reporting and the Children, Youth and Families *Strategic Plan Annual Progress Report*. The Department of Communities Tasmania did provide a short update on progress in its *Annual Report 2020-21*. Attached to this statement and marked **LM-11** is copy of that annual report.
50. Although I acknowledge there has been work undertaken to progress relevant reform initiatives,<sup>16</sup> Tasmania still does not have:
- (a) A Quality and Accountability Framework for out-of-home care that includes Tasmanian Standards for out-of-home care, ensuring there is a specific standard (or standards) which incorporate(s) the National Principles for Child Safe Organisations;<sup>17</sup>

<sup>14</sup> *Progress Report: Response to the Out of Home care Monitoring Report No 1. Recommendations 2020* (March 2021) (unpublished).

<sup>15</sup> *Progress Report: Response to the Out of Home care Monitoring Report No 1. Recommendations 2020* (September 2021) (unpublished).

<sup>16</sup> See for example, Department of Communities Tasmania, *Striving for Practice Excellence: Our Strategic Direction 2021-2024* and Department of Communities Tasmania, *Feedback Sought on the Development of Tasmanian Out of Home Care Standards and a Carers Register*.

<sup>17</sup> Recommendation 2 b., Commissioner for Children and Young People, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and "Being Healthy", Out-of-Home Care Monitoring Program 2018-19*.

- (b) Accreditation of out-of-home care providers against Tasmanian Standards for out-of-home care by an independent external body;<sup>18</sup>
  - (c) A Visiting Program available to all children and young people in out-of-home care;<sup>19,20</sup>
  - (d) Independent individual advocacy for all children and young people in out-of-home care;<sup>21</sup>
  - (e) A Tribunal vested with jurisdiction that includes decisions made about children's wellbeing in out-of-home care;<sup>22,23</sup> or
  - (f) A carers' register.<sup>24</sup>
51. The lack of these mechanisms creates obvious and unacceptable gaps in our system, with the potential to negatively impact on the wellbeing and safety of children and young people in our out-of-home care system.
52. For most of 2020, the primary focus of my monitoring was the impact of the COVID-19 pandemic on the wellbeing of Tasmanian children and young people, including those in the Tasmanian out-of-home care system. During that time, my out-of-home care monitoring activities were largely conducted under the umbrella of COVID-19 pandemic monitoring and advocacy as outlined in the *CCYP Pandemic Framework: Monitoring & Advocacy During COVID-19*. Attached to this statement and marked **LM-12** is copy of that document. During this period, I published four COVID-19 Insight papers, one of which was an Insight paper focussing on children and young people in out-of-home care. These Insight papers are attached to this statement and marked **LM-13**.

### Current

<sup>18</sup> Recommendation 2 c.(iii) B., Commissioner for Children and Young People, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and "Being Healthy", Out-of-Home Care Monitoring Program 2018-19*.

<sup>19</sup> Recommendation 6 (A), Commissioner for Children and Young People, *Children and Young People in Out of Home Care in Tasmania*.

<sup>20</sup> Recommendation 1 c., Commissioner for Children and Young People, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and "Being Healthy", Out-of-Home Care Monitoring Program 2018-19*.

<sup>21</sup> Recommendation 6 (A), Commissioner for Children and Young People, *Children and Young People in Out of Home Care in Tasmania*.

<sup>22</sup> Recommendation 6 (C), Commissioner for Children and Young People, *Children and Young People in Out of Home Care in Tasmania*.

<sup>23</sup> Recommendation 1 e., Commissioner for Children and Young People, *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and "Being Healthy", Out-of-Home Care Monitoring Program 2018-19*.

<sup>24</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. 2017. *Final Report: Volume 8, Recordkeeping and information sharing*, Recommendations 8.17 – 8.23, p.27.



53. In February 2021, I released the *Out-of-Home Care Monitoring Plan: "Being Loved and Safe"* which describes the current structure and scope of my out-of-home care monitoring activities, and outlines a thematic focus on the wellbeing domain of 'Being Loved and Safe' in out-of-home care, along with the cross-cutting theme of children and young people's participation. This monitoring plan introduces a new, fourth part to the monitoring program - **Part D: Monitoring the Tasmanian Government's implementation of the Commissioner's recommendations to strengthen Tasmania's out-of-home care system.** Attached to this statement and marked **LM-14** is a copy of that plan.
54. As mentioned above, Part C of the out-of-home care monitoring program is concerned with Responsive Investigations, which arguably can be enabled utilising "own motion" investigatory powers or undertaking an investigation at the request of the Minister.
55. I refer to the Second Reading Speech of the Commissioner for Children and Young People Bill 2015<sup>25</sup> which relevantly provides:

**'Own Motion Power**

Powers of the Commissioner have been expanded to include an own motion investigative function as well as conducting inquiries when requested by the Minister.

The ACTC report recommended that the Act include an 'Own Motion' investigation/inquiry capacity (recommendation 10) and cites Western Australian legislation as an example which provides the Commissioner in that State with such capacity.

The report also notes the provisions within the Victorian Commission for Children and Young People Act 2012, and how these may provide the basis for the Tasmanian legislation.

The Victorian legislation provides for inquiries that are intended to promote continuous improvement and innovation in children's services, which is appropriate in Tasmania, given the role of the Commissioner in terms of policy advice and systemic advocacy.

The Victorian legislation provides a model which allows systemic inquiries, but still allow such inquiries to (sic) conducted on an own motion basis, or via Ministerial request.

---

<sup>25</sup> Second Reading Speech, Commissioner for Children and Young People Bill 2015 (No.59), 17 November 2015.

The approach taken in the Bill also allows the Commissioner a broad scope for own motion inquiry including, but not limited to, those statutory services such as Child Protection (including out of home care) and Youth Justice Services.

The Commissioner also has significant discretion in how inquiries are conducted, including the use of public hearings, calling for submissions or direct requests for necessary information.'

56. I regularly request information from Tasmanian government agencies and non-government organisations about Tasmania's out-of-home care system and in all but two instances I have been provided with the information I have requested. Whilst not officially titled 'own motion' investigations, I have used my investigatory functions and powers to request information from Departments on a range of issues related to the safety and wellbeing of children and young people in out-of-home care. Please see below for further details.
57. There is a need to ensure that any own motion investigation or inquiry undertaken under the CCYP Act is into a systemic and general issue, noting in particular the relevance of the word 'generally' as it appears in the general functions outlined in section 8(1) of the Act. I believe there is a degree of ambiguity and internal conflict within the CCYP Act about what matters I can and cannot investigate. Solicitor-General advice has been obtained in order to better understand the scope of the Commissioner's functions and the extent of the Commissioner's powers.
58. Depending on the circumstances, it is my view that the initiation of an own motion investigation or inquiry into, for example, a specific provider of out-of-home care or the care that is provided by that organisation to specific individuals, may not fall within my legislated functions and jurisdiction.
59. It is also important to note that I cannot directly require a person or organisation outside Tasmania to provide me with information about the way they provide services to, and care for, the children placed with them. This means, for example, that I cannot directly require information from Many Colours One Direction (**MC1D**), a Northern Territory-based provider of residential out-of-home care services to Tasmanian children. As part of my systemic monitoring of out-of-home care, I have contacted MC1D on several occasions to request data and information on the children and young people in their care. MC1D did not provide me with the information requested as part of my first round of Part A and Part B monitoring in 2018-19. I was however invited to visit the facility and did so in June 2019, and earlier in 2021, I met with a program manager from MC1D.

60. In June 2019, following my visit to the facility, I did not have any direct concerns about the safety and wellbeing of children and young people at MC1D. My understanding was that children and young people were only being placed at MC1D in the Northern Territory as there were no equivalent facilities in Tasmania. After being appointed as the Independent Chair of the Expert Panel on the essential therapeutic elements required for an improved service system response for Tasmanian children and young people with highly complex needs, I became firmly of the view that the Tasmanian out-of-home care system should be significantly bolstered to be able to cater to the needs of this cohort of young people within Tasmania.
61. Contributing to our efforts to protect and promote the safety and wellbeing of Tasmania's children and young people, including those in out-of-home care, is an important role of the Commissioner. Ambiguities about what I can and cannot investigate can give rise to issues around the independence of my role and my ability to perform functions and exercise my powers in the manner that I believe was originally envisaged and consistent with community expectations.
62. The issue I have highlighted in relation to matters I am able to investigate as part of the out-of-home care monitoring program are clearly relevant to other functions under section 8(1) of the CCYP Act that are general in nature. This also has implications for my capacity to take action in relation to concerns or allegations raised regarding child sexual abuse in specific institutional contexts.
63. The Tasmanian Government should make it a priority to clarify my role in relation to the systemic monitoring of out-of-home care. The functions of the Victorian Commission for Children and Young People in relation to children in out-of-home care could provide a useful starting point.<sup>26</sup>
64. There may be other aspects of the legislative framework governing the Commissioner's role that no longer reflect contemporary standards or expectations. Therefore, it is in my opinion appropriate for the CCYP Act to be reviewed.

*Public enquiries, complaints or concerns*

---

<sup>26</sup> See Part 4 – Monitoring of out-of-home care services, *Commission for Children and Young People Act 2012* (Vic.)

65. In the context of the out-of-home care monitoring program, when I have requested information, generally speaking I have been provided with the information I have requested, with the exception of information about the safety and wellbeing of children and young people at MC1D in the Northern Territory.

#### MC1D

66. In September 2020, I wrote to the Secretary of the Department of Communities Tasmania requesting information about the safety and wellbeing of children and young people placed with MC1D following concerns raised with me around the quality of care being provided by that provider to Tasmanian children. I also requested specific details of any allegations regarding abuse or quality of care provided to children and young people at MC1D, and copies of any reports of investigations/evaluations or reviews undertaken in response to allegations of abuse or the quality of care provided to children and young people at MC1D. I requested this information from the Department as the out-of-home care system owner (noting that I cannot compel information from MC1D because the organisation is located outside of Tasmania).
67. In reply to my letter, I was provided with general information about the departmental systems and processes in place to protect the safety and wellbeing of children and young people placed at MC1D, including processes in place to resolve or respond to any identified concerns. I was not provided with any specific details of any allegations regarding abuse or quality of care provided to children and young people at MC1D, nor was I provided with copies of any reports of investigations/evaluations or reviews undertaken in response to allegations of abuse or the quality of care provided to children and young people at MC1D. Given the ambiguities about the extent of the scope of my functions and powers discussed above, I chose not to pursue my request for more specific information.
68. I raise the above as an example of the ambiguity of my role in relation to allegations raised about the safety and wellbeing of children in specific institutional settings.

#### ***Ashley Youth Detention Centre (AYDC)***

69. As Commissioner, I have both a systemic advocacy and an individual advocacy role for children and young people detained under the YJ Act, including at AYDC.

70. As I have already indicated, section 10 of the CCYP Act outlines the additional functions of the Commissioner when acting as an advocate for a detainee under the YJ Act. The Commissioner is also a prescribed officer within the meaning of section 135A(1) of the YJ Act and the CCYP Act is a prescribed Act for the purposes of sections 135A(2)(a) and (b) of the YJ Act.

*History of the Ashley Advocate*

71. Based on information in my possession and a perusal of relevant Commissioner for Children Annual Reports, I understand that the individual advocacy function for children in youth justice detention was established in November 2007 by the then Department of Health and Human Services, as part of the Commissioner for Children's staff and funded outside the Commissioner's budget.<sup>27</sup>
72. I further understand:
- (a) In August 2005, at the request of the Secretary of the Department of Health and Human Services, a Review Team was tasked with examining the systems and protocols in place at AYDC to ensure the ongoing safety and wellbeing of residents. Their final report was delivered in September 2005 with Recommendation 19 being that an AYDC Residents' Advocate be created within the Commissioner for Children's Office, 'to meet with residents on a regular basis, discuss issues and concerns with them, and represent their interests at a range of forums, including CST (Centre Support Team) weekly meetings'.<sup>28</sup>
  - (b) The Residents' Advocate commenced in March 2008 and began visiting AYDC on a weekly basis from May 2008.<sup>29</sup> The Residents' Advocate reported directly to the Commissioner. The position was funded for 5 hours per week for a period of twelve months.<sup>30</sup> From April 2009, the position was increased to one full day per week.<sup>31</sup>

<sup>27</sup> Commissioner for Children, Annual Report 2007-08, p11-12.

<sup>28</sup> Department of Health and Human Services, (2005), *Review for the Secretary DHHS of Resident Safety Ashley Youth Detention Centre*.

<sup>29</sup> Commissioner for Children, Annual Report 2007-08, p12.

<sup>30</sup> *Ibid.*

<sup>31</sup> Commissioner for Children, Annual Report 2008-09, p12.

- (c) Former Commissioner Ashford took on the advocacy role herself when she commenced in 2010, a situation I understand has continued under subsequent Commissioners.

73. On 1 August 2009, amendments<sup>32</sup> to section 79(1) of the CYPTF Act commenced which added the following two functions:

*(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.*

74. I am not in a position to comment on how previous Commissioners carried out this advocacy function.

#### **Current Individual Advocacy Role**

75. To carry out the individual advocacy function for young people detained under the YJ Act, I have prioritised developing and maintaining relationships with young detainees and the staff working with them and overseeing the facility.
76. Shortly after my commencement in the role, I provided a range of new CCYP promotional material for children and young people at the AYDC. This included contact cards, brochures and posters promoting awareness of my role, including a caricature image of myself. Attached to this statement and marked **LM-15** are the AYDC resources. I sought the views of young detainees in developing the materials to ensure they were accessible to them. The materials include information on my advocacy role for young people in detention, my contact information, as well as their rights in youth justice detention. I also made an introductory video for young people.
77. I am advised by AYDC management that detainees are provided with these materials throughout their admission and induction processes and are informed that they can contact me at any time. I have also produced wallet cards with information about the support services available to young people once they leave AYDC. Young people who are detained at AYDC regularly contact me via phone, either of their own volition, or through the encouragement of youth workers. These

---

<sup>32</sup> Section 17 *Children, Young Persons and Their Families Amendment Act 2009*.

contacts can be in relation to a range of issues affecting the young person's daily life at the centre as well as plans upon release. Issues raised by young people include allocation to particular units in AYDC, treatment at reception prisons, medical requirements including treatment, and access to housing upon release.

78. In addition to the above, I personally visit AYDC approximately every three weeks. During the 2020-2021 financial year, I visited AYDC on 15 occasions. I endeavour to visit every detainee at the centre during each visit. I do not necessarily notify AYDC staff of my visits, although my three-weekly schedule is well known. I have full and open access to the facility, including entry access, which was more recently provided. I have occasionally visited unannounced, and on a weekend. I do not occupy any particular space whilst I am at the centre or expect young people to meet me at any particular space or at any particular time, unless they indicate they would like to do so.
79. During my visits I focus on building rapport and trust with detainees to ensure young people feel comfortable with raising an issue with me, should they wish. I move throughout the centre unaccompanied, visiting young people in their units, whilst they are participating in programs, or joining them for meals in the dining room. I try, where possible, to join in on activities to build rapport and increase engagement. This has included participating in athletics activities, café/morning tea activities, dropping in on school programs, joining in watching films, table tennis, or at the gym. I have also judged resident "funny hat" competitions, and a "planking" challenge. I also attend other events at AYDC such as Christmas functions and school award presentations.
80. During visits I prioritise visiting any new detainees to personally explain my role and make a connection between the image on the promotional materials they have been provided with, and myself as Commissioner.
81. If, during a visit, a young person indicates they would like to speak with me, we find a quiet space that suits the detainee, and discuss their concerns. Sometimes young people indicate they would like a youth worker to be present for our conversation as well. Generally, at least one young person will request a one-on-one discussion with me per visit. Concerns raised by young people in this context are similar to those communicated when I am contacted by phone (as detailed in paragraph 77). If the young person would like to make a complaint (for example to the Ombudsman) I can assist them to fill out a complaint form.

82. Young people can also contact me at any time by phone (including when I am on leave) and I can assist young people to make a complaint to relevant authorities including AYDC management, the Secretary of the Department of Communities Tasmania, the Tasmanian Ombudsman or to Tasmania Police.
83. Once I have communicated with a young person to understand their concerns and need for advocacy, I decide on the most appropriate advocacy path. The most common form of advocacy I undertake is to ensure a young detainee's concerns are raised directly with AYDC management. Often this results in more direct communication between AYDC staff and detainees and an increased understanding of the needs and drivers of detainee behaviour. Solutions are often communicated directly to detainees by AYDC staff, or, if a detainee's requests cannot be met, I encourage staff to discuss the reasons why with detainees to ensure they know their concerns have been heard and given due consideration. If residents raise concerns about the use of force, or unfair treatment, I offer to help them to make a complaint. Complaints are usually directed to the Ombudsman or the Secretary of the Department of Communities Tasmania or both.
84. Sometimes residents indicate they do not wish to complain but want an internal review of the actions of staff or a particular decision, and I communicate this to AYDC management. Occasionally, if requested to do so by a detainee, I have reviewed video footage associated with specific incidents — which is usually footage of a young person being restrained. Viewing the footage has helped to inform my view as to the type of advocacy required. I have not requested to view footage upon my own instigation, only when requested by a young person.
85. Further, the Department of Communities Tasmania regularly provides me with data and information relating to children and young people at AYDC. My ability to analyse, in significant detail, all the data I receive is constrained by my resources. However, I do regularly request information on or seek to discuss with Departmental officials, issues relevant to the wellbeing of children and young people detained under the YJ Act including at AYDC. As mentioned in paragraph 24, the Department of Communities Tasmania provides me with the AYDC daily roll, minutes of the Weekly Review Meetings (previously Centre Support Team meetings) and provides monthly reports containing data and information related to incidents, isolation, use of force and searches. When young people arrive at



AYDC I receive their intake information, including medical assessments. I am also notified of serious incidents and receive SASH Notification Reports by email.

86. An Advocate for Young People in Detention began with my office in mid-February 2022 to provide advocacy services for and on behalf of children and young people detained under the YJ Act. Attached to this statement and marked **LM-16** is a copy of the Statement of Duties for this position. At the time of submission, the interrelationship between the Advocate role and my role as Commissioner is continuing to evolve. I am maintaining my regular three-weekly visits and remain available to young people if they require my advocacy. The Advocate is building on these arrangements with a more regular presence including through out-of-hours and on weekend visits. In my opinion, the scale of the advocacy services provided to children and young people in detention is being significantly enhanced through the presence of the Advocate.
87. This position was established as I felt that the call on me as an advocate for young people detained under the YJ Act had grown, and I was unable to meet the need that I would like to within existing resourcing. I also anticipated the potential for a further increase in advocacy for young people following the announcement of the closure of AYDC, due to related flow-on effects such as staffing pressures. I advocated directly with the Government for additional resources and was asked to provide the Government with a proposal for consideration.
88. Beyond the closure of AYDC I cannot provide any comments on the continuation of this role, however independent and individual advocacy for children and young people in detention should be prioritised. Please see paragraphs 185-188 regarding the possible establishment of a Children's Guardian in Tasmania.

#### *Systemic Advocacy*

89. As outlined in my submission to the Commission of Inquiry, I have been a strong advocate for the development and implementation of an integrated therapeutic approach to youth justice in Tasmania.
90. In 2016, former Commissioner Morrissey provided advice to the Hon Jacqui Petrusma MP, the then Minister for Human Services, advocating for the pressing need to implement a therapeutic approach to the provision of youth justice detention in Tasmania and outlining the key elements of such an approach based on global best practice.

91. In July 2019, around six months after commencing in the role of Commissioner, I requested a briefing from the Department of Communities Tasmania on the actions completed and progress towards the implementation of an integrated state-wide therapeutic youth justice model, including at AYDC. I also refer the Commission to my October 2019 letter to the Hon Roger Jaensch, the then Minister for Human Services, in which I advocated for an overarching strategic plan governing the implementation of an integrated therapeutic youth justice model in Tasmania: Letter to Minister Therapeutic Approach to Youth Justice 18 October 2019. Attached to this statement and marked **LM-17** is copy of that letter.
92. In May 2019, I provided advice to the Tasmanian Government to end the systemic practice of routinely strip-searching children and young people in custodial settings in Tasmania.<sup>33</sup> Attached to this statement and marked **LM-18** is a copy of that advice. The government accepted or accepted in principle all eight recommendations. There have been significant procedural shifts within the Tasmanian Prison Service and at AYDC as a result of the advice, and there has been a reduction in searches demonstrated in the data, particularly at reception prisons. In October 2021, I wrote to the Attorney-General expressing my disappointment in the length of time it has taken to introduce legislation into the Parliament to implement my recommendations. Attached to this statement are my letter to the Attorney-General (22 October 2021) and the Attorney-General's response (19 November 2021) at **LM-19**. At the time of submission, a Bill addressing the eight recommendations I made in my 2019 advice had been tabled in the Tasmanian Parliament. Attached to this statement is my media release at **LM-20**.
93. The Department of Communities Tasmania has consulted with me on a range of ongoing initiatives to implement a therapeutic approach at AYDC, including changes to the physical environment and the implementation of the trauma-informed Practice Framework and Learning and Development Framework for AYDC. Attached to this statement and marked **LM-21** is copy of the Practice Framework.
94. A therapeutic approach to youth justice detention is globally accepted as best practice. It is a rights-based approach, where policies and practices are guided by

---

<sup>33</sup> Commissioner for Children and Young People (May 2019), Memorandum of Advice – Searches of children and young people in custody in custodial facilities in Tasmania.

the rights and wellbeing of young people in detention, as well as their views and experiences. It is an approach which encompasses all aspects of the detention environment, from staffing and professional development, to educational and community programs, participation of young people in decision making, robust complaint handling mechanisms, as well as the physical environment.

95. Since my commencement in the role of Commissioner I have observed a strong emphasis on a shift to a therapeutic model at AYDC from Departmental and AYDC management and staff. There have, however, been ongoing challenges in implementing this shift practically. For example, one of the key drivers of a therapeutic approach is staff and their interactions with young people. This requires a different set of skills and abilities to what may have previously been required. In addition, despite attempts to make the physical environment more therapeutic, the fact remains that AYDC is a historical facility so there are limitations as to what can be achieved with existing structures and layout. I do, however, commend the Department in its attempts to improve the physical layout at AYDC including better access to outdoor spaces, and break-out rooms.
96. Despite these challenges, I have generally observed strong commitment and support from both staff and management in shifting to the new trauma-informed Practice Framework and Learning and Development Framework.
97. My systemic advocacy on AYDC was, until recently, influenced to a large extent by the Tasmanian Government's decision to maintain and upgrade the existing AYDC facility rather than adopting the recommendation of the 2016 Custodial Youth Justice Options Paper (Noetic Report) to build two smaller, purpose-built facilities in the North and the South of the State. Throughout 2021, allegations of historical abuse at AYDC were publicly aired. This, along with more recent concerns being expressed about the safety and wellbeing of young people at AYDC, as well as investigations relating to handling of a staff complaint, and multiple staff stand-downs, resulted in ongoing concerns about the safety and wellbeing of young people at AYDC. Therefore, in September 2021, in light of the historical and contemporary concerns that continued to be raised about the safety and wellbeing of young people at AYDC, I recommended the government reconsider the future of AYDC and again consider implementing the preferred

option of the Noetic Report.<sup>34</sup> Attached to this statement at **LM-22** is my media release.

98. The Tasmanian Government is currently consulting on a whole-of-government *Youth Justice Blueprint for Tasmania*. The Blueprint will outline ‘a strategic direction for a contemporary, integrated, therapeutic youth justice system for Tasmania and will have a focus on prevention, early intervention, diversion and rehabilitation for those young people at risk of and/or involved with the youth justice system.’<sup>35</sup> Phase 1 of this project (October 2021 – June 2022) includes the development of a functional brief and high-level scoping of potential sites for the two new facilities. My submission to the *Reforming Tasmania’s Youth Justice System Discussion Paper* is attached to this statement at **LM-23**. As I have previously stated publicly, it is my strong view that the minimum age of criminal responsibility should be raised to at least 14 years.

#### *Oversight*

99. It is important to acknowledge that I perform my individual advocacy role in a manner which acknowledges the important roles also played by the Tasmanian Ombudsman and the Custodial Inspector, and the Department of Communities Tasmania’s Child Advocate for children in care (where a child is under a Care and Protection Order). Section 17(2) of the CCYP Act expressly provides that I may refer any matter to the Ombudsman or the Custodial Inspector appointed under section 5 of the *Custodial Inspector Act 2016* if I think it is appropriate to do so. For example, when I have been made aware of serious allegations relating to the wellbeing of children detained at the AYDC, described in more detail below, I have forwarded those concerns to the Custodial Inspector. I have made two referrals to the Custodial Inspector; on 28 August 2020 and 24 September 2021 (both referred to below).

#### *Public enquiries, complaints or concerns*

100. As was highlighted in the Royal Commission Final Report, there is a high cumulative risk of child sexual abuse (by both adult perpetrators and children exhibiting harmful sexual behaviours) occurring in ‘total or closed institutions’ such as youth detention centres.

---

<sup>34</sup> Commissioner for Children and Young People (September 2021), Media Release on Ashley Youth Detention Centre. <https://www.childcomm.tas.gov.au/wp-content/uploads/CCYP-Media-AYDC-091021.pdf>

<sup>35</sup> Department of Communities Tasmania (December 2021) *Reforming Tasmania’s Youth Justice System*, p4.

101. During my time as Commissioner no child or young person detained at AYDC has directly raised with me allegations of sexual abuse perpetrated by staff employed at AYDC. I have, however, been made aware of alleged sexual assaults, sexualised behaviour or language between detainees via a range of sources below (see Incidents). I have also, during my term as Commissioner, been made aware of serious allegations concerning the wellbeing and safety of children and young people detained at AYDC, including behaviour relevant to the Terms of Reference, which are also outlined below.
102. Section 10(2)(b)(i) of the CCYP Act states that as Commissioner I must preserve, as far as practicable in the circumstances, the privacy of the detainee when acting as an advocate. In outlining the incidents below, I have been mindful of this requirement.

#### Incident 1

103. On 10 December 2019, I wrote to the Secretary of the Department of Communities Tasmania, conveying concerns raised with me by a member of staff at AYDC regarding the AYDC response to a number of incidents (between August and December 2019) of young people detained at AYDC displaying what may amount to harmful sexual behaviours towards other detainees. In that letter I asked to be kept up to date with a proposed Serious Event Review (**SER**) and to be provided with a copy of any report or recommendations arising. On 19 May 2020, I received a copy of the SER report and have since requested and been provided with updates on actions in response to the SER report recommendations. I was generally satisfied with the process that the Department undertook in response to the incidents, however the timeframe for making and implementing the recommendations was drawn out. I was last updated on the implementation of recommendations on 24 December 2020.

#### Incident 2

104. On 3 August 2020, my office was contacted via email by a Tasmanian legal practitioner about a number of cases of 'historic' institutional abuse as well as significant current risks to child safety at AYDC. No specific dates of alleged incidents were provided to me. After meeting with this lawyer on 25 August 2020 and receiving written information from them by letter dated 26 August 2020, I referred their concerns to the Department of Communities Tasmania and Tasmania Police on 27 August 2020 and, pursuant to section 17(2) of the CCYP

Act, on 28 August 2020 to the Custodial Inspector, and asked to be advised of action taken in response. Throughout the investigations I was kept informed by both the Department of Communities Tasmania and Tasmania Police. I was advised that Tasmania Police and the Department of Communities Tasmania were unable to investigate the claims further due to a lack of detail given by the legal practitioner involved.

#### Incident 3

105. On September 7, 2021 the leader of the Tasmanian Greens, Ms Cassy O'Connor MP, raised concerns about the safety and wellbeing of young people at AYDC during Tasmanian Parliament House of Assembly Estimates Committee B Hearing on the Children and Youth portfolio. On 8 September 2021, I emailed Ms O'Connor asking to meet with her to discuss the concerns raised. After meeting with Ms O'Connor on 23 September 2021, on 24 September 2021, I referred the information disclosed to me by Ms O'Connor to the Secretary of the Department of Communities Tasmania (seeking information about specific matters), Tasmania Police, and to the Custodial Inspector. No specific dates of incidents were provided to me by Ms O'Connor. On 28 October 2021, I received a response from the Secretary. I was given reassurance by the Department of Communities Tasmania of the actions they were undertaking to keep children and young people safe at AYDC, however the Secretary advised me he could not provide specific details on the employment matters due to the *Personal Information Protection Act 2004* (Tas). I do understand, however, that all allegations of abuse were referred to Tasmania Police as well as the Registrar, Registration to Work with Vulnerable People.

#### Incident 4

106. Also in 2021, I was contacted by the Director, Youth and Family Violence Services regarding an incident involving sexualised behaviour at AYDC. The Director provided me with a list of actions undertaken during and after the incident by Centre Management and the Department of Communities Tasmania. In my role as individual advocate, I spoke to a young person involved in the incident and they were of the view that the action taken by AYDC and the Department of Communities was excessive in proportion to the incident. In my opinion, which is largely influenced by my discussions with young people at AYDC, while I was

generally satisfied by the response, its implementation could have been more child-centred.

*AYDC Concluding Remarks*

107. The lived experience of victim/survivors of alleged abuses at AYDC that have emerged via legal proceedings and through the media are harrowing. We must learn from these experiences and our future system should be guided by the lived experience of victim/survivors. The timeframes during which these incidents occurred are not entirely clear to me. It is therefore also unclear if they occurred prior to the establishment of a Commissioner, or indeed the establishment of an individual advocacy function at AYDC. Nevertheless, it concerns me greatly that there does not seem to be a clear history of young people successfully disclosing abuses through internal, or independent mechanisms.
108. As I have already noted, during my time as Commissioner no child or young person detained as AYDC has raised allegations of sexual abuse perpetrated by staff employed at AYDC. Whether this is because no incidents of sexual abuse perpetrated by staff have occurred, or whether the child or young person did not feel they were able to disclose it to me is not clear. I'm hopeful that this Commission of Inquiry will shed more light on this important question. If the current individual advocacy, independent oversight or complaint handling models are not enabling the disclosure of abuse then they must be addressed as a priority and improvements embedded into the new model of youth justice currently being designed. I note that the existence of legislated, regulated child safe standards, and a reportable conduct scheme would also significantly bolster existing mechanisms.

***Education***

109. The Royal Commission recommended adoption of a public health approach as an overarching framework for preventing and responding to harmful sexual behaviours exhibited by children and young people.
110. In December 2019, the Tasmanian Government released a consultation paper on developing a program to prevent harmful sexual behaviours for children and young people. In my submission to the consultation paper I discussed the need for Tasmania to implement and improve the following:

- (a) a public health approach to preventing and responding to harmful sexual behaviours;
- (b) improving service systems (including assessment and referral pathways); and
- (c) specialist therapeutic responses to harmful sexual behaviours.

111. I have been advised that the Department of Education does not have a policy or procedure relating to harmful sexual behaviours occurring in educational contexts. However, a flowchart to guide decision making around specific incidents is under development. The lack of a policy or procedure is concerning considering that during my term as Commissioner, a number of incidents have been raised with me by members of the public related to harmful sexual behaviours in educational contexts, and in particular, the responses of Department of Education employees to such allegations (this is discussed further in paragraphs 113-115 below).

112. The lack of a Departmental policy or procedure may be indicative of the lack of a broader Tasmanian policy position on harmful sexual behaviours. As I noted in my submission to this Commission of Inquiry, in my view there is a clear need for the development of an overarching policy framework in which to embed Tasmania's service system response to harmful sexual behaviour.

#### *Public enquiries, complaints or concerns*

##### Incident 1

113. On 17 August 2021, a member of the public contacted me to raise concerns about how their daughter's primary school was handling incidents of harmful sexual behaviour between another student and her daughter. The incident was disclosed by the child involved in July 2019. The parent was dissatisfied with the response of the Principal and had made a complaint about the Principal to the Department of Education, and the Minister for Education. A member of my staff spoke with the parent over the phone, and I subsequently met with her in person to better understand her concerns. I provided some information about where she could report her concerns (e.g. Tasmanian Ombudsman) and I also gave her information about the Commission of Inquiry and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

##### Incident 2



114. On 28 July 2021, I was contacted by a member of the public stating that her daughter had experienced sexual abuse at her primary school between April and December 2020. She was dissatisfied with the response of the school and the Department of Education. The abuse had already been reported to the school, the Department of Education, the Department of Communities Tasmania (Strong Families Safe Kids Advice and Referral Line), the child's paediatrician and Tasmania Police, as well as to sexual assault and advocacy support services.
115. I wrote to the parent with some additional information about services or supports she or her daughter could access, as well as information about how to make a complaint to the Department of Education or the Tasmanian Ombudsman. She was also given information about the Commission of Inquiry.

***Information, and handling of public enquiries, complaints or concerns***

116. As Commissioner, I receive information on the broad scope of issues that affect the wellbeing of Tasmania's children and young people from a range of sources including Government agencies, Members of Parliament, professionals, non-government organisations and members of the public generally. The way I manage information, including sharing it with or referring it to relevant Government agencies or other independent statutory officers or authorities, is governed by the CCYP Act (Part 2, Division 3).
117. I am not a mandatory reporter for the purposes of the CYPTF Act and neither are members of my staff. As I understand it, the Commissioner is a juristic person, and operates in accordance with the principles outlined in section 3 of the CCYP Act. The CCYP Act contains very specific functions about when and how the Commissioner is required or permitted to share or disclose information. The Commissioner may disclose information to a relevant authority (i.e. a Community-Based Intake Service within the meaning of the CYPTF Act<sup>36</sup>) if the information is necessary to lessen or prevent a serious threat to any individual's health, safety or welfare.<sup>37</sup> Therefore it doesn't necessarily makes sense to provide the Commissioner with these functions and powers, whilst at the same time, requiring the Commissioner to provide a risk notification under the CYPTF Act. As I see it, it

---

<sup>36</sup> Section 17 CCYP Act.

<sup>37</sup> Section 18(1)(c)(i) CCYP Act.

is therefore a matter for the Commissioner to determine if it is appropriate to divulge information under section 17 of the CCYP Act.

118. When I am presented with information which gives rise to a safety concern for a child or young person, I act in a manner consistent with the CCYP Act (taking particular account of sections 17 and 18), and the Criminal Code. As the CCYP Act, CYPTF Act and the Criminal Code all provide some guidance on reporting of safety concerns, it would be useful if these sections could be streamlined to reduce ambiguity.
119. As Commissioner I may not be compelled to give evidence about information disclosed or obtained under the CCYP Act.<sup>38</sup> I believe that (similar to the above paragraph) this allows the Commissioner to act in accordance with the functions and powers bestowed upon them and for the Commissioner to determine if divulging information in accordance with section 17 the CCYP Act is appropriate. This is consistent with similar provisions in the *Ombudsman Act 1978*<sup>39</sup> and *Custodial Inspector Act 2016*.<sup>40</sup>

#### *Information sharing*

120. In a manner consistent with my role as an independent statutory officer and in accordance with my legislated functions, I:
- (a) Engage and interact with a range of relevant Government agencies, non-government organisations and independent statutory office holders, through regular or ad hoc meetings as required.
  - (b) Share information with relevant entities or refer matters to them as appropriate and in accordance with Division 3 of Part 2 of the CCYP Act which deals with Information Management.
  - (c) Request information and data from Government and non-government agencies. Such requests are generally made through letters or emails or communicated in regular or ad hoc meetings. For example, I have requested that relevant Departments provide me with regular data relating to the experiences of children and young people during the COVID-19 pandemic. I also regularly request information on the situation

---

<sup>38</sup> Section 17(3) CCYP Act.

<sup>39</sup> Section 26(5) *Ombudsman Act 1978*

<sup>40</sup> Section 24(5) *Custodial Inspector Act 2016*

of children and young people in out-of-home care and at AYDC. I have not to date had to rely on my power to compel the production of information.

121. I meet regularly with or attend ad hoc meetings with officials (Secretaries, Deputy-Secretaries, and Directors) in Government agencies including:
- (a) the Department of Communities Tasmania;
  - (b) the Department of Education;
  - (c) the Department of Justice; and
  - (d) the Department of Health.
122. I also meet regularly with the Custodial Inspector.
123. I do not have any formal memoranda of understanding with other agencies or independent statutory entities. However, I am advised there may have been a memorandum of understanding between a former Commissioner and the Ombudsman in the past. So far during my time as Commissioner, I have not found that there has been a need for a memorandum of understanding with a particular Department or organisation in order to perform my functions.
124. I also regularly engage with representatives of non-government organisations as appropriate.
125. In the course of performing my out-of-home care monitoring role, I seek information from the Department of Communities Tasmania, out-of-home care providers (government and non-government) and engage with carers and children and young people in the Tasmanian out-of-home care system. For example, I receive quarterly data reports from the Department of Communities Tasmania on child safety activities, numbers of children in out-of-home care (placed with government vs non-government providers), foster care households, and indicators relevant to the Tasmanian Government's *Outcomes Framework for Children and Young People in Out of Home Care Tasmania*. During my out-of-home care monitoring visits on the theme of "Loved and Safe" I have been asking out-of-home care providers about care teams and care planning, care concerns, accreditation, and placement breakdowns.

*Handling of Public Enquiries, Complaints or Concerns*

126. I do not have an explicit complaint handling function and my powers do not extend to investigating a specific decision made in respect of an individual case or specific circumstances, except when asked to do so by the Minister. Further, I do not have an individual advocacy role (other than for a detainee under the YJ Act).
127. Nevertheless, members of the public often contact my office by email or telephone to discuss issues of concern relating to the safety or wellbeing of a child (or children) or young person(s).
128. Where contact with the office is made by telephone, the matter is referred to the Director of the Office of the Commissioner who determines whether she or another dedicated senior staff member will respond to the caller. This is to ensure a consistency of responses. Callers are provided with relevant information about my legislated functions and powers, including information about any limitations on action I may take. Options for action that may be taken by the caller, including referrals to support services and/or to the appropriate authorities to look into the caller's concerns, are explored. A view as to the merits of the matters raised is not expressed. I am briefed on these calls and I consider what if any further options are available to me as Commissioner. In some circumstances, given the nature of the information conveyed by the caller (and also taking account of referral action already taken by the caller) I may directly refer the matter on for consideration and action by the appropriate agency or authority, a matter discussed further below.
129. Where contact is made by email or letter, I respond in a manner similar to that outlined above.
130. There is no requirement for agencies or authorities to whom I have referred a matter or information to provide me with information on action taken in individual cases. However, where an issue related to an individual child raises issues of a systemic nature, I request a briefing on any action taken, and if the matter leads to an agency committing to undertake changes to systems, practices or procedures, I can and do monitor the implementation of those changes.
131. I also receive information about the wellbeing of specific children or groups of children from Members of Parliament, professionals and others whose work affects the wellbeing of Tasmanian children and young people.
132. If a concern or information provided to me raises allegations (including in relation to sexual abuse) relevant to the safety of a specific child or young person or

specific group of children or young people, my practice is to immediately refer the details of that concern or information provided to me to the agencies and authorities best placed to investigate or take action and, where appropriate, enforce the law, including Tasmania Police, the Department of Communities Tasmania, the Custodial Inspector and the Department of Education.

133. I am not in a position to comment on how previous Commissioners have responded to complaints and concerns or information provided to them relating to the wellbeing and safety of children and young people.
134. I am, however, advised that the first Commissioner for Children, Commissioner Ambikapathy, did have a system whereby an adult or child could lodge a complaint with the Commissioner's office. Commissioner Ambikapathy occupied the role between 16 October 2000 and 16 April 2004. I have in my possession files related to the complaint function undertaken by Commissioner Ambikapathy. I am aware that some of these files do contain information concerning allegations of child sexual abuse.
135. I note the following information provided in the Commissioner for Children 2003-04 Annual Report:
- 'In May 2004, advice was requested from the Solicitor-General in relation to this office accepting and dealing with complaints from individual persons, in the absence of a specific request from the Minister of Health and Human Services in relation to an individual matter as provided in section 79(1)(a) of the *Children, Young Persons and Their Families Act 1997*. In the light of the Solicitor-General's advice the practice of accepting complaints of individual matters ceased. However individuals who wish to make a complaint about a government department are assisted in lodging their complaint with the Ombudsman.'<sup>41</sup>

---

<sup>41</sup> Commissioner for Children, Annual Report 2003-04, p 13.

## **STRENGTHENING TASMANIA'S APPROACH TO KEEPING CHILDREN SAFE – NEXT STEPS**

136. In my submission to this Commission of Inquiry (see attachment **LM-01**) I outlined what I think are the essential elements of a co-ordinated and integrated system for keeping children safe from abuse in organisational settings.
137. At Part 2.1 in my submission I said we need to implement the following five interrelated elements:
- (a) empower children and young people to have a voice in matters that affect them;
  - (b) introduce mandatory child safe standards with independent oversight;
  - (c) establish a nationally consistent reportable conduct scheme;
  - (d) implement a whole of community approach to preventing child sexual abuse; and
  - (e) ensure appropriate information sharing between agencies responsible for children's safety and wellbeing.
138. I respectfully refer Commissioners to my submission where I elaborate upon these five elements.
139. I do, however, also want to emphasise the following matters and provide some additional information on the following topics:
- (a) Child safe standards; reportable conduct and independent child-centred oversight;
  - (b) Additional initiatives, such as visitors programs, independent legal advocacy, independent external review and independent oversight.

### *Child safe standards, reportable conduct and independent child-centred oversight*

140. In my view, Tasmania can and should implement a best practice child safe system, including mandatory legislated child safe standards accompanied by a reportable conduct scheme with child-centred independent oversight consistent with the recommendations of the Royal Commission.
141. I respectfully refer the Commission of Inquiry to Part 2 of my submission where I elaborate further on these matters, noting that I am of the firm belief that

Tasmania can implement an effective child safe system in ways that are cost effective, including by expanding or combining current roles and offices, a matter I comment on further below.

142. I also refer the Commission of Inquiry to the recommendations I made in my 2019 *Out-of-Home Care Monitoring Report No. 1*, specifically those listed under the heading *Recommendation 2 Making sure everyone involved in the care of children and young people in out-of-home care is doing a good job*. Attached to this statement and marked **LM-09** is copy of that report.
143. Tasmania does not currently have a coordinated approach to child safe education and prevention. There is a clear and immediate need to resource an independent entity to provide freely available advice, guidance and assistance to organisations, parents and carers on implementation of a child safe organisational framework and culture. In addition to community education, we need to undertake a clear and comprehensive legislative development process to embed child safe standards and a reportable conduct scheme. This process should include community and organisational consultation and the opportunity to provide feedback on discussion papers and draft legislation.
144. We can and should learn from the experience of other jurisdictions, especially Victoria and New South Wales, and I respectfully refer the Commission of Inquiry to my submission, where I provide high level information about the approach taken in these jurisdictions to keeping children safe in institutional contexts, including through compliance with child safe standards and reportable conduct schemes.
145. I reiterate my strong view that Tasmania should have both child safe standards and a reportable conduct scheme. I believe that mandatory child safe standards are necessary to proactively drive systemic and cultural change. Tasmania should adopt the National Principles for Child Safe Organisations as Tasmania's Child Safe Standards into its child safe legislation. The National Principles are intended to be implemented in a way which allows flexibility and recognises the variety of organisational sizes, types and capacities. Adopting the National Principles will serve to avoid confusion, and to enhance national coordination on child safety. Attached to this statement and marked **LM-24** are the National Principles.

146. Consistent with the recommendations of the Royal Commission, it is essential that a child safe standards framework for Tasmania is accompanied by a reportable conduct scheme. The Royal Commission defines a reportable conduct scheme as “a legislated scheme for the reporting, investigation and independent oversight of a range of complaints or allegations made against employees and volunteers in certain government and non-government agencies, which may include child abuse, child neglect, and child-related misconduct.”<sup>42</sup> Under such a scheme, agencies must report complaints, allegations (and convictions) against their employees and volunteers to an independent oversight body. The oversight body is then authorised to monitor and scrutinise the agency’s handling and investigation of the complaint. An allegation of reportable conduct may reveal information about the effectiveness of the systems used by an organisation to prevent child abuse and respond to allegations of child abuse.<sup>43</sup> This information can be used to improve systems and better protect children from child abuse.
147. It is essential that provision be made for an independent child-centred entity in Tasmania to undertake oversight, educative and other functions, as outlined in the Royal Commission’s recommendations 6.10 and 6.11.
148. The Royal Commission commented that ‘Governments might enhance the roles of existing children’s commissioners or guardians for this purpose.’<sup>44</sup> This is a position I fully support, noting however the need for legislative reform accompanied by adequate resourcing and a clear implementation plan to permit this to occur in Tasmania.
149. As I said in my submission, independent oversight is fundamental to community confidence in the integrity of our organisations and institutions. It is also vital that independent oversight is supported by a culture within government and non-government organisations alike that recognises and embraces independent oversight as a critical contributor to improving children’s safety within their organisations (including through improved transparency, accountability, continuous quality improvement and capacity building).

---

<sup>42</sup> Royal Commission into Institutional Responses to Child Sexual Abuse Final Report, *Volume 8, Recordkeeping and information sharing*, p. 35.

<sup>43</sup> Commission for Children and Young People (Victoria), Information sheet 6, Child Safe Standards and Reportable Conduct

<sup>44</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. 2017. Final Report: Volume 6, Making institutions child safe, p. 16.



150. As has been done in Victoria and New South Wales, the Tasmanian child safe legislative framework should provide that the same independent child-centred oversight entity has responsibility for the administration of both the child safe standards and a reportable conduct scheme, noting however the comments I made in my submission regarding the desirability of a co-regulatory model of oversight.
151. Clearly, if adoption of a co-regulatory model in Tasmania is an option, there will be a need for informed debate and discussion about how this might be implemented, noting we can learn from the Victorian experience.
152. As acknowledged by the Royal Commission, it is important that the right balance is struck between ensuring child safe standards are implemented effectively and that organisations are not overly burdened by the weight of compliance.<sup>45</sup> In Victoria, the *Child Wellbeing and Safety Act 2005 (Vic)* establishes a co-regulatory model of Child Safe Standards by both the Victorian Commissioner for Children and Young People and other relevant bodies (Victorian government departments and authorities that regulate in-scope organisations). The co-regulatory model does appear to be the most pragmatic approach to implementing a child safe legislative framework to reduce burden on organisations and sectors which are already heavily regulated.
153. The 2019 Review of the Victorian Child Safe Standards found that there were substantial challenges arising from the co-regulatory model established by their legislation. The review led to amendments to the relevant legislation which provide, among other things, for increased functions and powers for the Victorian Commissioner for Children and Young People and establish and set out the role of sector regulators and integrated sector regulators and the allocation of responsibility for relevant entities.<sup>46</sup>
154. I note that in August 2021, the Victorian Principal Commissioner for Children and Young People, Liana Buchanan, at my invitation briefed Tasmanian government and non-government stakeholders on the Victorian child-safe system including

---

<sup>45</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. 2017. *Final Report: Volume 6, Making institutions child safe*, p.16.

<sup>46</sup> *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021 (Vic.)*.

oversight and regulation of child safe standards and reportable conduct. Based on my discussions with the Principal Commissioner and my consideration of the Victorian child safe organisational framework, including the legislative framework underpinning it, I believe the Victorian child safe model provides a particularly useful example of how we could take the steps needed to further protect the safety and wellbeing of children and young people in Tasmanian institutional contexts.

155. If the Tasmanian Commissioner was tasked with the oversight and administration of Tasmanian child safe standards and/or a reportable conduct scheme, as well as legislative review and reform, there would, in my view, be a need to consider:
- (a) the scope and purpose of the existing out-of-home care monitoring program;
  - (b) the appropriateness or otherwise of the Commissioner retaining an individual advocacy role for young people detained under the YJ Act in conjunction with responsibility for a reportable conduct scheme; and
  - (c) the establishment of a Tasmanian Commission for Children and Young People.
156. It will be important to ensure that if changes to the role and functions of the Commissioner are implemented, such as the introduction of a co-regulatory model for child safe standards, that the Commissioner retains an overall oversight and monitoring role. For more details please see the sections on a Commission and Children's Guardian at paragraphs 185-193 below.
157. I would like to acknowledge that the Tasmanian Government has committed to developing a comprehensive Child and Youth Safe Organisations Framework for Tasmania, overseen by an independent oversight and regulation body.<sup>47</sup> I am currently involved in consultations led by the Department of Justice as part of the development of this Framework.

### ***Additional initiatives***

---

<sup>47</sup> Tasmanian Government, *Fourth Annual Progress Report and Action Plan 2022 – Implementing the Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse*, December 2021.

158. As well as mandatory child safe standards and a reportable conduct scheme accompanied by independent child-centred oversight, there are other initiatives which could be adopted to enhance system oversight in Tasmania to further protect children and young people who are particularly vulnerable from harm, including sexual abuse.
159. The Royal Commission thoroughly investigated a range of high-risk institutional contexts and factors which increase the risk of abuse in institutions. The level of risk can be influenced by, for example, the type of activities and services the institution provides, the physical environment, organisational management, the characteristics of the children in the institution, the nature of the institution (for example closed institutions), leadership and organisational culture, and environmental factors.
160. I note that the Royal Commission identified 'Contemporary out-of-home care' and 'Contemporary detention environments' as two particular institutions which generally present higher levels of risk of child sexual abuse when appropriate safeguards are not in place. It is clear to me that the nature of these particular institutions leads to enhanced risks for children and young people, and they therefore require additional safeguards to ensure children and young people's safety is promoted and protected.
161. As noted by the Royal Commission, the following four factors contribute to the risk of child sexual abuse in 'total or closed institutions' such as youth detention centres:
- (a) the context gives perpetrators ample opportunity to be alone with children unsupervised;<sup>48</sup>
  - (b) children are completely under the authority of the adults in the institution and so may have no realistic alternative but to comply with their demands to engage in sexual activities;<sup>49</sup>

---

<sup>48</sup> P Parkinson & J Cashmore, *Assessing the different dimensions and degrees of risk of child sexual abuse in institutions*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, 2017 p 89.

<sup>49</sup> *Ibid.*

- (c) children in these institutions have no parents actively involved in their lives to whom they could disclose abuse or seek protection, making them particularly vulnerable to sexual abuse;<sup>50</sup> and
  - (d) the closed nature of the institutions isolates them from society's expectations and oversight.<sup>51</sup>
162. Similarly, the Royal Commission stated that children in out-of-home care are inherently vulnerable and that 'Despite major reforms to out-of-home care in every state and territory in Australia, our [Royal Commission] work has identified persistent weaknesses and systemic failures that continue to place children at risk of sexual abuse.'<sup>52</sup>
163. This is why it is critical that children and young people in youth justice detention and in out-of-home care are afforded additional safeguards including through increased oversight and advocacy to ensure that their safety and wellbeing are promoted and protected.
164. Recommendation 1(c) of my *Monitoring Report No. 1: The Tasmanian Out-of-Home Care System and "Being Healthy"*, *Out-of-Home Care Monitoring Program 2018-19*, (annexure **LM-09**, referenced at paragraph 46 above) recommended that the Tasmanian Government establish a visitor program (funded by the Tasmanian Government) initially focusing on children and young people in out-of-home care who are living in non-family-based care settings.
165. I note that former Commissioner Morrissey also recommended in his January 2017 report *Children and Young People in Out of Home Care in Tasmania* that a visitors program be established which might sit with another statutory authority or organisation independent from Child and Youth Services and from those providing out-of-home care services in the non-government sector. Attached to this statement and marked **LM-06** is a copy of that report, referenced at paragraph 40 above.
166. As I said in my Monitoring Report (at page 47) (annexure **LM-09**, referenced at paragraph 46 above):

---

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Royal Commission into Institutional Responses to Child Sexual Abuse Final Report, *Volume 12, Contemporary out-of-home care*, p 9.

The Royal Commission also emphasised the importance of ensuring that appropriate processes are in place to facilitate and encourage children and young people in OOHC to express their views on matters that affect their lives, to promote their safety in organisational settings.

167. I also recommended (taking account of a recommendation made by former Commissioner Morrissey in his report *Children and Young People in Out of Home Care in Tasmania*) (annexure **LM-06**, referenced at paragraph 40 above) that the Government should expedite the establishment of a Tribunal in Tasmania that can review decisions about children and young people's wellbeing while they are in out-of-home care. An example of such external review is discussed below.

168. I respectfully refer Commissioners to the following extract from former Commissioner Morrissey's report (at page 21):

In other jurisdictions children and young people in OOHC have access to individual advocacy and/or children's visitors programs; in most cases they can also complain to a body independent of the Department responsible for child protection and OOHC and seek reviews of decisions made about the way in which their wellbeing is promoted while in OOHC. These mechanisms and processes also form part of the external, independent oversight system of child protection/OOHC.

169. He went on to say (at page 23):

In addition to the benefits individual advocacy and children's visiting programs would offer to the individual children and young people affected, this advocacy and support could, in my opinion, also contribute significantly to fostering cultural change within the system towards more child centred decision making.

170. In July 2018, the Tasmanian Government established the Child Advocate for children and young people in out-of-home care. Based in the Department of Communities Tasmania, the Child Advocate's role is to provide advocacy services for and on behalf of all children and young people under the custody and/or guardianship of the Secretary of the Department of Communities Tasmania. In 2021, as part of the *Strong Families Safe Kids Next Steps Action Plan 2021-2023*, the Government also committed to appoint an additional Child Advocate for the north and north-west regions.

171. The Child Advocate is providing a valuable service to children and young people from within the Department of Communities Tasmania, the system owner of out-of-home care. I consider this role as crucial to ensuring the voices of children and young people in care are considered appropriately in decision making and policy

development. However, the Child Advocate is not functionally or structurally independent of the Department of Communities Tasmania as a provider of out-of-home care services or as the out-of-home care system owner, which in my view creates an inherent conflict. While the Department of Communities should continue to provide appropriate and accessible mechanisms to enable the participation of children and young people in care in matters that may affect them, consideration should be given to changing the model of individual advocacy so that independent advocacy services are provided for this highly vulnerable group.

#### *Visitors programs*

172. While definitions vary, ‘community visitors’ or ‘official visitors’ can be broadly described as persons who are engaged, on a paid or volunteer basis, to observe and safeguard the standards of care and the rights and dignity of defined groups of people in their place of residence. In Tasmania, for example, the Office of the Ombudsman and Health Complaints Commissioner administers the Mental Health Official Visitors Program and the Prison Official Visitors Program. I have also been advised by the Department of Communities Tasmania that in February 2020 the Child Advocate implemented a visitors program in non-family based care settings with one non-government out-of-home care provider. Visits with children in other non-government out-of-home care providers, providing care through Special Care Packages, are being planned.<sup>53</sup> While acknowledging the importance of the role of the Child Advocate, it would be my preference that a children’s visitors program be implemented by a body or organisation independent of the Department of Communities Tasmania.
173. I believe that we need to look to other jurisdictions in Australia which are implementing independent visiting programs for children and young people in out-of-home care and youth justice detention. By way of example, I refer the Commission to the Queensland Office of the Public Guardian (OPG)’s Community Visitor Program. Community Visitors are independent people that visit and assist children and young people in foster care, kinship care, residential care, youth detention, a disability service or a mental health facility. Community Visitors make

---

<sup>53</sup> *Progress Report: Response to the Out of Home care Monitoring Report No 1. Recommendations 2020 (September 2021) (unpublished).*

sure children and young people's concerns, views and wishes are listened to and seriously considered.

174. In the past in Tasmania there was a pilot children's visitors program for children and young people in out-of-home care in the south of the state. The Commissioner for Children 2011-12 Annual Report outlines background to the establishment and scope of the former children's visitors program in Tasmania (at page 12):

'A pilot Children's Visitors Program for children in out of home care was introduced for a 12 month period from March 2010 to March 2011 and was based in the southern part of the state. The program was designed to provide children with a volunteer support person that was independent from the child protection system whom they could spend time with and discuss issues they may have.

An evaluation of the program was undertaken at six months and at 12 months of operation. The recommendation from the 12 month evaluation was that the current pilot be established as an ongoing program within the Commissioner for Children's office, subject to the development of an appropriate legislative framework and redevelopment of the model. It was also identified that the children valued that the Children's Visitors were volunteers and wanted to be there for them rather than paid to be there.

In 2011/12 the model for the program was reviewed and a new model was developed with the outcomes to be achieved that children and young people who receive children [sic.] visitors are better engaged in their care planning processes; better engaged in their learning and achievement and their health and wellbeing is improved. It was also important that the children and young people involved in the program had a better understanding of their level of family contact and that they benefited from having contact with children's visitors.

The model was developed through a consultation process with all key stakeholders including the children and young people in out of home care, carers, volunteer children's visitors, the Department of Health and Human Services and community service organisations providing out of home care services.

In June 2012 the Department of Health and Human Services assumed responsibility for the continued operation of the program after advising me that my functions and powers as Commissioner did not extend to the operation of such a program.<sup>54</sup>

175. Attached to this statement and marked **LM-25** is copy of that report.

---

<sup>54</sup> Commissioner for Children, Annual Report 2011-12, p12.

176. To assist Commissioners, I respectfully refer Commissioners to an Evaluation of the Program which is attached. Attached to this statement and marked **LM-26** is copy of that report.
177. Although I have in my possession a number of other documents about the history and administration of the Children's Visitors Program, I am not in a position to provide comment given I was not personally involved. However, given the limited scope of the historical Children's Visitors Program, I don't think this model should be reintroduced. As mentioned in paragraph 173 above, I think the Tasmanian Government should be looking to implement a visitors program which is more comprehensive, such as the one currently run by the OPG in Queensland.

*Independent legal advocacy*

178. I respectfully refer the Commission to Queensland OPG's Child Advocate Legal Officers Program. OPG Child Advocate Legal Officers are lawyers who protect the rights of children and young people in the child protection system and ensure their voice is heard, particularly when decisions are made that affect them and their care arrangements.<sup>55</sup> According to the information available on the OPG website, this includes those in out-of-home care, such as a foster home, the home of a kinship carer, a residential care facility, a youth detention or adult correctional centre, disability service or mental health facility.<sup>56</sup> Community Visitors from the OPG visit children and young people to check on them while they are in care and help with issues that they might have.<sup>57</sup> Most of the time, a Community Visitor can help with children and young people's concerns but there are other times where a Child Advocate Legal Officer might need to help too.<sup>58</sup> Child Advocate Legal Officers can provide information and advice on legal issues, resolutions of disputes, making a complaint, as well as advocate and/or speak for the child or young person in meetings, in court or a tribunal. I believe that the Tasmanian Government should be considering implementing a similar Child Advocate Legal Officers Program in Tasmania to ensure that children and young people in out-of-home care can have access to free, independent legal advocacy to raise issues regarding placement decisions and quality.

---

<sup>55</sup> <https://www.publicguardian.qld.gov.au/i-am-a-child-or-young-person/know-your-rights/opg-child-advocates>

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.



### *Independent external review*

179. Processes for independent external review of decisions made about the wellbeing of children in out-of-home care exist in some jurisdictions. For example, the Queensland Civil and Administrative Tribunal (QCAT) can review some decisions made by the Department of Children, Youth Justice and Multicultural Affairs.<sup>59</sup> Reviewable decisions concerning children and young people in out-of-home care include decisions about who a child lives with, contact arrangements with parents and family, and ongoing care arrangements.<sup>60</sup> Anyone can apply to QCAT for a review of a decision within 28 days of being notified of the decision.<sup>61</sup> OPG Child Advocate Legal Officers can assist children and young people to file and/or participate in applications to the QCAT to review contact and placement decisions made by Child Safety.<sup>62</sup>
180. The recent establishment of the Tasmanian Civil and Administrative Tribunal (**TasCAT**) presents an excellent opportunity to introduce and incorporate a new jurisdiction to enable the independent review of administrative decisions made affecting the wellbeing of children in out-of-home care, similar to that of Queensland. In 2020, the Tasmanian Attorney-General advised that the Tasmanian Government will consider incorporating independent review of decisions made affecting children in out-of-home care as part of the third stage of TasCAT's establishment in late 2021. For children in out-of-home care to be able to participate in Tribunal processes, there would be a need to ensure individual advocacy assistance is available to children and young people who wish to have a relevant decision reviewed that is independent of the Department of Communities Tasmania.

### *Independent Oversight*

181. The Royal Commission made several recommendations regarding the establishment of nationally consistent independent child-centred monitoring and oversight of child safe standards, youth detention, out-of-home care and reportable conduct.

---

<sup>59</sup> <https://www.qcat.qld.gov.au/matter-types/children>

<sup>60</sup> *Ibid.*

<sup>61</sup> <https://www.qcat.qld.gov.au/resources/faqs>

<sup>62</sup> Office of the Public Guardian, Annual Report 2019-20, p21.

182. In Tasmania we currently have a disconnected patchwork of systems and processes which do not provide an integrated and systematic approach to keeping children safe from abuse in institutional settings. The flow-on effects of the current system are that navigation by the public and agencies is difficult, there is limited co-ordination or communication between regulatory agencies, there is no central body with responsibility for systemic oversight, and we do not have child safe standards or a reportable conduct scheme.
183. When conceptualising a new system of independent child-centred monitoring and oversight in Tasmania, there are several options including establishing new bodies or redefining the scope of existing bodies. Oversight bodies and their functions in other jurisdictions are worthy of consideration when contemplating changes to the current Tasmanian system.
184. Two possible options are discussed below: the establishment of a Children's Guardian in Tasmania; and the establishment of a Tasmanian Commission for Children and Young People.

#### Children's Guardian

185. Some Australian states and territories have established a Children's Guardian. In South Australia, New South Wales and Queensland there is a Children's Guardian as well as a body with responsibility for systemic advocacy and monitoring. Attachment **LM-27** provides the current table of functions of Australian and New Zealand Children's Commissioners and Guardians.
186. As illustrated in Attachment **LM-27**, Children's Guardians have a range of functions and powers. For example, the Office of the Children's Guardian (New South Wales) will be responsible for oversight of a new mandatory child safe scheme (pending commencement of the Children's Guardian Amendment (Child Safe Scheme) Bill 2021), as well as monitoring compliance with Working with Children Check laws, a Reportable Conduct Scheme, regulating, monitoring and accrediting government and non-government agencies authorised to provide statutory out-of-home care and adoption services, and management of a carer's register.<sup>63</sup>

---

<sup>63</sup> Office of the Children's Guardian, Annual Report 2021.

187. As already mentioned above, in Queensland, the Office of the Public Guardian was established as an independent statutory office under the *Public Guardian Act 2014* to provide a Public Guardian to promote and protect the rights, interests and wellbeing of adults with impaired decision-making capacity, as well as children and young people in the child protection system and those accommodated in disability services, authorised mental health services, residential health services and youth detention centres.<sup>64</sup> Child and young person advocacy functions of the Office of the Public Guardian promote and protect the interests of children and young people in the child protection system or staying at a visitable location and elevate their voice and participation in the decisions that affect them.<sup>65</sup>
188. I would support the establishment of a separate Children's Guardian in Tasmania. For example, the functions of the existing Office of the Public Guardian Tasmania could be extended to accommodate advocacy functions for children and young people in the child protection system (including out-of-home care), youth detention, a disability service, or a mental health facility. If this was to occur, a logical delineation of functions would be for systemic advocacy and monitoring (including of out-of-home care), oversight of child safe standards and a reportable conduct scheme to be functions of the Commissioner, and individual advocacy functions (including advocacy for young people detained under the YJ Act) to be functions of a Children's Guardian.

#### Commission

189. A second option is to establish both guardianship and systemic monitoring, oversight, and regulatory functions within a single Commission. I note, for example, my office currently mixes individual advocacy for AYDC residents with systemic oversight and advocacy for children and young people generally.
190. In considering the establishment of a Commission, Tasmania could learn from the experiences of other jurisdictions and develop a system which draws on best practice including individual advocacy, systemic oversight, and regulatory functions.
191. For example, the Victorian Commission for Children and Young People is responsible for independent oversight of services for children and young people

---

<sup>64</sup> Office of the Public Guardian, 2019-20 Annual Report, p 8.

<sup>65</sup> Ibid.

(particularly those in out-of-home care, child protection and youth justice), an independent visitors program for children and young people in youth justice centres, participation and engagement activities with children and young people, oversight and regulatory responsibility for the Victorian Child Safe Standards and administration and oversight of the reportable conduct scheme.

192. Several other Australian jurisdictions have established independent statutory offices for promoting, monitoring and reviewing the rights and wellbeing of Aboriginal and Torres Strait Islander children and young people. Both myself and former Interim Commissioner Clements are on the record as supporting the establishment of a Commissioner for Aboriginal Children and Young People for Tasmania. For example, see attached several Communiqués from the Australian and New Zealand Children’s Commissioners and Guardians (November 2018, May 2019 and November 2019) at **LM-28** and my submission to the Indigenous Voice Co-design Process at attachment **LM-29**.
193. The establishment of such a role would honour the ongoing commitment of the Tasmanian Government to reset its relationship with Aboriginal communities and enable self-determination. A dedicated Aboriginal Children’s Commissioner for Tasmania would be uniquely positioned to engage in a culturally safe and respectful manner with Tasmanian Aboriginal children and young people, and their families and communities, and to advocate for their rights and wellbeing.

## **CONCLUSION**

194. Independent oversight is fundamental to community confidence in the integrity of our organisations and institutions. It is also vital that independent oversight is supported by a culture within government and non-government organisations alike that recognises and embraces independent oversight as a critical contributor to improving children’s safety within their organisations (including through improved transparency, accountability, continuous quality improvement and capacity building).
195. In my respectful opinion, Tasmania needs to significantly expand its investment in various oversight mechanisms including for child safe standards and a reportable conduct scheme, as well as individual advocacy for children and young people (including visitors programs and legal advocacy) through some child guardian-like functions. While the establishment of this type of oversight would require

significant additional investment, a range of direct and indirect positive effects for children and young people and the broader community (including economic savings) would flow from adopting preventative and protective measures rather than responding when or after harm occurs.

196. The Early Intervention Foundation, The Front Project, CoLab at the Telethon Kids Institute and the Minderoo Foundation released a report in 2019 which found that “the cost to government of late intervention in Australia is \$15.2bn each year”.<sup>66</sup> Responding early and providing evidence-based supports to children and young people can prevent or reduce the severity of difficulties that children and young people experience, which will in turn reduce the demand for high-intensity and crisis interventions throughout their lifetime.<sup>67</sup>
197. For all Tasmanian children we should be adopting and implementing a public health approach focused on primary and secondary prevention of child sexual abuse, by investing in education, awareness raising and supporting organisations to be child safe. The benefits of this approach will be individual, social and economic, as prioritising and investing in the safety and wellbeing of children and young people early safeguards today’s children as well as securing their future wellbeing and prosperity.

  
Leanne McLean

Dated: 12 April 2022

Before me

  
Dated: 12 April 2022

<sup>66</sup> Teager, W., Fox, S., and Stafford, N. (2019). *How Australia can invest early and return more: A new look at the \$15b cost and opportunity*. Early Intervention Foundation, The Front Project and CoLab at the Telethon Kids Institute, Australia. <https://colab.telethonkids.org.au/siteassets/media-docs---colab/coli/full-report-how-australia-can-invest-in-children-and-return-more---final.pdf>

<sup>67</sup> Ibid.