



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

**WITNESS STATEMENT OF CATHERINE ANNE MOYNIHAN**

I, Catherine Anne Moynihan c/ of Level 16, 50 Ann Street Brisbane, in the State of Queensland, Acting Deputy Public Guardian [REDACTED], do solemnly and sincerely declare that:

1. I am the Acting Deputy Public Guardian at the Office of the Public Guardian Queensland.
2. I am authorised by the Office of the Public Guardian Queensland to make this statement on its behalf.
3. 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.

**BACKGROUND AND QUALIFICATIONS**

4. I have the following qualifications:
  - (a) Bachelor of Laws, Queensland University of Technology (1990-1994); and
  - (b) Master of Business, Queensland University of Technology (2001-2002).
5. I am currently employed as the Acting Deputy Public Guardian and I have been in this role since 6 June 2022.
6. Prior to this position I hold, or have held the following relevant roles:
  - (a) Acting/Director of Community Visiting and Advocacy, Office of the Public Guardian;
  - (b) Official Solicitor & Director of Legal Services and Investigations, Office of the Public Guardian;
  - (c) Principal Project Officer, Legal Aid Queensland;
  - (d) Director, Research Team, Queensland Child Protection Commission of Inquiry;
  - (e) Youth Advocate, Legal Aid Queensland; and
  - (f) Principal Lawyer, Child Protection Team, Legal Aid Queensland.
7. Attached to this statement and marked **CAM-1** is a copy of my curriculum vitae setting out my qualifications and professional experience.

## THE ROLE OF THE PUBLIC GUARDIAN - QUEENSLAND

8. In this statement I refer to the Public Guardian and the Office of the Public Guardian. Where I use those terms in this statement the reference is to those functions in Queensland.
9. The Office of the Public Guardian in Queensland is an independent statutory office established to promote and protect the rights and interests of children and young people in visitable locations and who come within the definition of "relevant children" under the *Public Guardian Act 2014* (Qld) (**PGA**). I set out below at paragraph 15 what is meant by "relevant children". The purpose of the Office of the Public Guardian is to advocate for the human rights of those individuals.
10. The function of the Public Guardian in individual advocacy for children is operationalised in two activities: community visiting program and child advocate program. I set out below at paragraphs 18 and 47 details about each of those activities.

## HISTORY OF REPORTS/REFORMS LEADING TO ESTABLISHMENT OF THE ROLE OF THE PUBLIC GUARDIAN

11. In 2013 there was a Commission of Inquiry into Child Protection in Queensland, which was known as the Carmody Inquiry. This inquiry handed down a report titled "Taking Responsibility: A Roadmap for Queensland Child Protection." Attached to this statement and marked **CAM-2** is a copy of the Carmody Inquiry Report. The report concluded, among other things, that:
  - (a) there was a need for greater individual advocacy for children;
  - (b) the complaint handling process in the child protection system should be changed to provide greater support for children in the process. This included access to legal representation and improving the mechanisms for children's views and wishes to be heard in both decisions being made about them and in legal proceedings, such as child protection proceedings; and
  - (c) the Commission for Children and Young People and Child Guardian (**CCYPCG**) be discontinued and be amalgamated with the

Queensland Adult Guardian, and for that amalgamated role to be a statutory role of the Public Guardian.

12. Previously the CCYPCG provided individual advocacy for children, but not legal advocacy. There was not a Child Advocate function but the Child Guardian function was fulfilled by:
  - (a) monitoring and investigating service delivery;
  - (b) surveying children and young people in out-of-home care;
  - (c) resolving complaints;
  - (d) advocating about laws, policies, and practices;
  - (e) visiting children and young people in out-of-home care;
  - (f) analysing trend data associated with these activities; and
  - (g) chairing the Child Death Case Review Committee, which reviews services delivered to children and young people in the child protection system who have died.

The community visitor program provided the other program areas within the Child Guardian statutory functions (detailed above) with information about trends and by advocating for and facilitating the resolution of concerns raised by, or on behalf of children and young people in out-of-home care.

13. Following that inquiry, the recommendations of the Carmody Inquiry Report were acted upon and the Commission for Children and Young People and Child Guardian was decommissioned and the independent statutory role of the Public Guardian was created. The Public Guardian has responsibilities for advocating for adults with impaired decision-making capacity, and to provide individual advocacy for children in the child protection system, to administer the child visiting program for the most vulnerable children and to give children a voice and assist them in legal proceedings.
14. The Public Guardian's functions under the *Public Guardian Act 2014* (Qld) (**PGA**) in relation to relevant children and children at visitable locations are performed by the Community Visiting and Advocacy Program, and Child Advocates.

15. Child Advocate's perform child advocate functions in relation to *relevant children*. Pursuant to section 52 of the PGA, a child will be a *relevant child* if they are subject to one of the following under the *Child Protection Act 1999* (Qld):
  - (a) Intervention with Parental Agreement (**IPA**);
  - (b) Care Agreement (**CA**);
  - (c) Temporary Assessment Order (**TAO**);
  - (d) Court Assessment Order (**CAO**);
  - (e) Temporary Custody Order (**TCO**);
  - (f) Directive Order;
  - (g) Protective Supervision Order (**PSO**);
  - (h) Transition Order (**TO**);
  - (i) Short Term Custody Order (**STC**);
  - (j) Short Term Guardianship Order (**STG**);
  - (k) Long Term Guardianship Order to the Chief-Executive (**LTG-CE**);
  - (l) Long Term Guardianship Order to Other (**LTG-O**); or
  - (m) Permanent Care Order (**PCO**).
16. Child advocate functions are outlined in section 13 of the PGA as follows:
  - (1) *The public guardian has the following functions in relation to a relevant child (**child advocate functions**)-*
    - (a) *developing a trusting and supportive relationship with the child, so far as is possible;*
    - (b) *providing advice and information to the child about matters the child is concerned about;*
    - (c) *supporting the child at, and participating in-*
      - (i) *conferences or mediations ordered or facilitated by a court or the tribunal at which the child may attend;*  
or

- (ii) *family group meetings; or*
- (iii) *any other meetings;*
- (d) *helping the child to resolve issues or disputes with others;*
- (e) *monitoring any plan prepared for the child's health, education or benefit to ensure it is being adhered to;*
- (f) *working with government agencies that provide a service or facility to the child and other non-government providers of a service or facility to the child;*
- (g) *seeking to resolve, with the chief executive (child safety), disputes about reviewable decisions as defined under section 128(1);*
- (h) *helping the child to make an official complaint about a matter to someone;*
- (i) *helping the child to seek, or respond to, the revocation or variation of an order made under, or taken to be an order for, the Child Protection Act affecting the child;*
- (j) *helping the child to initiate or, on the child's behalf, initiating an application to the tribunal for review of a child protection matter;*
- (k) *helping an independent Aboriginal or Torres Strait Islander entity for the child to support the child in referring a matter to the tribunal;*
- (l) *supporting the child at a proceeding before a court or the tribunal;*
- (m) *for a proceeding before a court relating to a court assessment order or child protection order - making submissions, calling witnesses and testing evidence in the proceeding, including by cross-examining witnesses;*
- (n) *for a proceeding before the tribunal relating to a child protection matter -making submissions, calling witnesses*

*and testing evidence in the proceeding, including by cross-examining witnesses.*

(2) *The public guardian also has the following additional functions (also child advocate functions)-*

- (a) *for a child under care staying at a visitable home or a child staying at a visitable site -providing a program called the community visitor program for the child to promote and protect the rights and interests of the child;*
- (b) *for a child mentioned in the Child Protection Act, section 74(1) - to help the child if the child considers that the charter of rights set out in the Child Protection Act, schedule 1 is not being complied with in relation to the child.*

17. Pursuant to section 51 of the PGA:

- (a) **a visitable location** means a *visitable home* or *visitable site*.
- (b) **a visitable home**, for a child under care means:
  - (a) *if the child is in the custody or guardianship of the chief executive (child safety) under the Child Protection Act and, under section 82 of that Act, has been placed in the care of someone other than a parent of the child - the home or other accommodation where the child is staying with the other person; or*
  - (b) *if the child, under a care agreement under the Child Protection Act, has been placed in the care of someone other than a parent of the child - the home or other accommodation where the child is staying with the other person.*
- (c) **a visitable site**, for a child means:
  - (a) *a residential facility where the child is staying; or*
  - (b) *a detention centre where the child is staying; or*
  - (c) *a corrective services facility where the child is staying; or*

- (d) *an authorised mental health service where the child is staying.*

## **COMMUNITY VISITING AND ADVOCACY**

18. A community visitor program existed when the Commission for Children and Young People and Child Guardian was in existence however whilst the former Commission did undertake individual advocacy on behalf of children and young people, Carmody found that it was not sufficient. The Office of the Public Guardian (**OPG**) was established in 2014, with a new community visitor program now called Community Visiting and Advocacy which is focused on individual advocacy. Pursuant to section 13(2)(a) of the PGA, the community visitor program is stated to be a child advocate function.
19. Pursuant to section 56 of the PGA, a community visitor has the following functions in relation to a child under care staying at a visitable home or a child staying at a visitable site:
  - (1) *A community visitor (child) has the following functions relating to a child under care staying at a visitable home or a child staying at a visitable site-*
    - (a) *to develop a trusting and supportive relationship with the child, so far as is possible;*
    - (b) *to advocate on behalf of the child by listening to, giving voice to, and facilitating the resolution of, the child's concerns and grievances;*
    - (c) *to seek information about, and facilitate access by the child to, support services appropriate to the child's needs provided by service providers;*
    - (d) *to inquire into and report on the adequacy of information given to the child about the child's rights;*
    - (e) *to inquire into and report on the physical and emotional wellbeing of the child;*
    - (f) *for a visitable home-*

- (i) *to inspect the home and report on its appropriateness for the accommodation of the child; and*
    - (ii) *to ensure the child's needs are being met by persons caring for the child at the home;*
  - (g) *for a visitable site-*
    - (i) *to inspect the site and report on its appropriateness for the accommodation of the child or the delivery of services to the child, having regard to relevant State and Commonwealth laws, policies and standards; and*
    - (ii) *to ensure the child's needs are being met by staff members at the site;*
  - (h) *at the request of the public guardian, to inquire into and report on any other matter relating to a child under care staying at a visitable home or a child staying at a visitable site.*
- (2) *A community visitor (child) may perform any other child advocate function if directed by the public guardian.*
  - (3) *A community visitor (child) also has the function of giving advice and reports to the public guardian about anything relating to the visitor's functions and powers.*
  - (4) *Without limiting subsection (1)(b), the function of a community visitor (child) mentioned in that subsection includes referring a matter in relation to a child's concerns and grievances to the NDIS commissioner if the visitor considers the NDIS commissioner has functions in relation to the matter.*
  - (5) *If a community visitor (child) reasonably considers that the visitor can discharge the visitor's functions or a particular function by contacting a child or someone else at a visitable home or visitable site by using relevant technology, the visitor may discharge the functions or function in that way.*



20. Pursuant to section 57 of the PGA, the Public Guardian may direct a community visitor to visit a child under care staying at a visitable home. The Public Guardian may decide the regularity or frequency of visits to the child. In deciding whether to direct a community visitor to visit a child under care at a visitable home, the public guardian may have regard to the following matters:

- (a) *the child's age;*
- (b) *the number of children staying at the home;*
- (c) *the appropriateness of the accommodation at the home;*
- (d) *whether the chief executive (child safety) has a reasonable suspicion under the Child Protection Act, section 14 that the child is in need of protection;*
- (e) *the number of visitable locations the child has stayed at;*
- (f) *whether the child has moved out of visitable locations without the approval of the chief executive (child safety);*
- (g) *the child's cultural or linguistic background;*
- (h) *whether, under the Youth Justice Act 1992-*
  - (i) *a caution has been administered to the child; or*
  - (ii) *an offence allegedly committed by the child has been referred to the chief executive of the department in which that Act is administered for a restorative justice process under that Act; or*
  - (iii) *an opportunity to attend a program has been offered to the child; or*
  - (iv) *other action has been taken against the child;*
- (i) *any other matter the public guardian considers relevant, including, for example, any physical disability or impairment.*

21. Pursuant to section 58 of the PGA, a community visitor for a visitable site (child) must regularly visit the visitable site to perform the visitor's functions. The Public Guardian may decide priorities for visiting sites that affect the frequency of visits. The OPG has an internal policy and procedures to

determine the frequency of visits to visitable sites. Under the internal policy and procedures, there are a range of factors and vulnerabilities which are considered when determining the frequency of visits. The default visiting frequency for a visitable site (child) is quarterly and the frequency can be increased to monthly under the screening criteria outlined in the internal policy.

22. Children under care at a visitable home or children staying at a visitable site can also request a community visitor visit the site to perform the community visitor's functions or communicate with the child. In accordance with sections 59 and 60 of the PGA, if a request is made, the community visitor must comply with the request to visit or communicate with the child as soon as is practicable.
23. Community visitors are appointed by the Public Guardian and are not employed as public servants. There are currently approximately 100 community visitors.
24. The Community visitors are a casual and remote workforce. The ordinary work hours during which visits to visitable sites involving children must commence is Monday to Friday 8.00 am to 6.00 pm.
25. A person is eligible to be a community visitor only if the Public Guardian considers the person has the knowledge, experience or skills needed to perform the functions of a child community visitor. The nature of the role of a community visitor is an inquiry, and the person must be able to enter locations, ask a range of questions of children and examine the physical environment.
26. Allocation of community visitors to visit sites is influenced by operational and financial factors including:
  - (a) availability of community visitors to work particular days and times;
  - (b) relevant professional experience of the community visitor;
  - (c) geographic location of sites and community visitors, as community visitors are paid costs for traveling to the site location;
  - (d) safety considerations and safety plan recommendations specific to the site or children located at the site;
  - (e) movement of children across different placement and site locations;
 and

- (f) cultural factors.
27. When a community visitor visits a visitable site, they may do all things necessary or convenient to be done to perform the visitor's functions, including, for example, the following things:
- (a) enter a visitable site during normal hours without notice;
  - (b) with the public guardian's authorisation, enter a visitable site outside normal hours without notice;
  - (c) inspect a visitable site;
  - (d) have access to a child staying at a visitable site;
  - (e) talk with a child staying at a visitable site out of the hearing of other persons at the site (including staff members of the site);
  - (f) require a staff member of a visitable site to answer questions, and produce visitable site documents, relevant to the visitor's functions;
  - (g) inspect and take extracts from, or make copies of, any visitable site document;
  - (h) confer alone with a staff member of a visitable site; and
  - (i) require a staff member of a visitable site to give the visitor reasonable help, if it is practicable to give the help, to enable the visitor to do the things mentioned in paragraphs (a) to (h).
28. The community visitor must look at the physical environment and whether the living arrangements are safe and appropriate. In addition to observing the physical environment, during the visits the community visitor has private conversations with the children and young people at the site and asks them a range of questions. The community visitor's inquiries may be informed by information contained in previous visit reports. Community visitors may also access visitable site documents to inform the inquiries during a visit, including the site's policies and procedures or documents relating to a child staying at the visitable site including a document in the child's personal or medical file. When accessing site documents, community visitors must consider whether the records are necessary for, and directly related to, the statutory functions of the community visitor pursuant to section 56 of the PGA and consider

confidentiality and privacy requirements under other legislation including the *Human Rights Act 2019* (Qld) and the *Information Privacy Act 2009* (Qld).

29. If a child is having a placement issue, the visit by a community visitor may be for this purpose and the community visitor will ask the child specific questions about that issue. If a child wants to move placement, this can be an advocacy issue raised in the context of decision-making and the child's right to appeal reviewable decisions (schedule 2 of the *Child Protection Act 1999* (Qld)) to the Queensland Civil and Administrative Tribunal (**QCAT**).
30. Pursuant to section 70 of the PGA, community visitors must complete a report on the visit and give a copy of the report to the public guardian. Internal policy and procedures provides for completion of a child visit report for each child located at a visitable site (other than a youth detention centre or authorised mental health service). There is a template visit report used. The child visit report covers:
  - (a) Concerns and grievances of the child;
  - (b) Support services including education and child safety services;
  - (c) Child rights including family and community contact and cultural rights;
  - (d) Physical and emotional wellbeing of the child; and
  - (e) Placement conditions and suitability.
31. Pursuant to section 70(4) of the PGA, the public guardian may consider it appropriate to give a copy of the report about a visit to a child staying at a visitable site, or information from the report to any of the following entities:
  - (a) a person in charge of the site;
  - (b) a government service provider responsible for regulating the site;
  - (c) the chief executive officer of an entity responsible for operating the site;
  - (d) the chief executive of a department responsible for providing funding or services to the site;
  - (e) the chief executive of a department responsible for providing services to children staying at the site;

- (f) the chief psychiatrist under the *Mental Health Act 2016* (Qld);
  - (g) the child; and
  - (h) the NDIS commission.
32. Following on from a visit, community visitor's record advocacy issues identified during the visit or reported to a community visitor by a child. Issue advocacy is based on the Statement of standards (section 122 of the *Child Protection Act 1999* (Qld)) and the Charter of rights for a child in care (Schedule 1 of the *Child Protection Act 1999* (Qld)). The community visitor will attempt to resolve any issues at the local site level first with the service provider and the Department of Children, Youth Justice and Multicultural Affairs (Child Safety). Depending on the nature of the issue, if the issue is not resolved, the community visitor may consider options including referral to a child advocate or may formalise the issue into a complaint. There is a Memorandum of Understanding between the Public Guardian and the Child Safety which facilitates the formalising of complaints and how the Department will respond to those complaints.

#### ***Review of the community visitor program***

33. The community visitor program has not been reviewed for its effectiveness since it was taken over by the Public Guardian on 1 July 2014. The program has been included in a range of broader system reviews. For example, the Queensland Family and Child Commission did a wide-ranging review into foster care and the community visitor program was included in that review and there were recommendations made in relation to the community visitor program.
34. The Office of the Public Guardian currently has an internal service delivery and design project which is reviewing how visits are prioritised and allocated a frequency appropriate to PGA, community visitor workload allocation that efficiently meets operational and financial responsibilities, and practice guidance provided to frontline staff to fulfil visiting, monitoring and advocacy functions.
35. The community visitor program assists elevating the views of the children in the decisions being made which relate to the children, and to resolve issues raised by the children on the children's behalf. The community visitor program is the

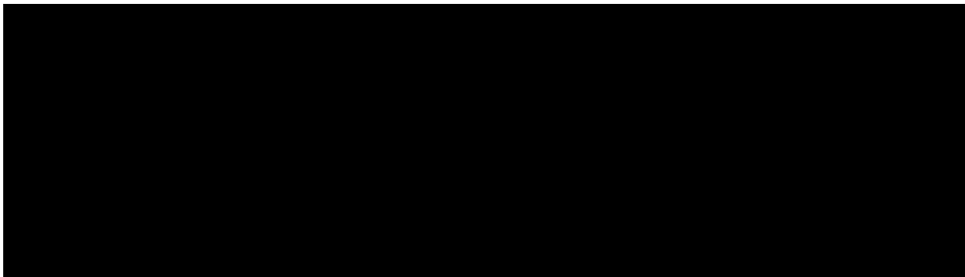
main referral point for the child advocates, which I address in more detail below.

### ***Visits to youth detention centres***

36. There are a range of other oversight organisations, in addition to the Public Guardian, that enter youth detention centres and it is a challenge to operate in this space. The Department of Children, Youth Justice and Multicultural Affairs (**DCYJMA**) has internal complaint mechanisms together with interaction with the Crime and Corruption Commission. Other oversight bodies are the Queensland Family and Child Commission, the Queensland Ombudsman, the Queensland Human Rights Commission. There is also a current proposal for the establishment of an Independent Inspector of Detention Services.
37. The frequency of visits by community visitors to youth detention centres is under review. Currently each detention centre is visited as follows:
  - (a) Brisbane Youth Detention Centre – weekly visit;
  - (b) West Moreton Youth Detention Centre – weekly visit; and
  - (c) Cleveland Youth Detention Centre – two visits per week.
38. The frequency and duration of visits by community visitors to children detained in youth detention centres is impacted by the numbers and diversity of children remanded for brief periods, and the complexities of the site. A child in youth detention can also request a community visitor to visit the youth detention centre to meet and discuss any matters in private.
39. Community visitors complete a site report after each visit to a youth detention centre. The site report covers:
  - (a) rights of child including knowing how to make a complaint;
  - (b) safety, harm, abuse, risk of harm or abuse;
  - (c) participation in decision-making;
  - (d) cultural needs of Aboriginal and Torres Strait Islander children;
  - (e) appropriate living conditions;
  - (f) educational and vocational support;
  - (g) physical and emotional wellbeing; and

- (h) rehabilitation, access to services, supported transition to reintegrate into society.

#### ***Disclosures of mistreatment***

40. Community visitors obtain a variety of information which may include information about harm. Community visitors discharge their functions by visiting children at sites, making observations, reviewing visitable site documents, and making inquiries with children, service providers and other stakeholders. There have been instances of community visitors receiving disclosures from children of being mistreated, including potentially sexually mistreated at visitable sites. Community visitors are mandatory reporters as per section 13E of the *Child Protection Act 1999* (Qld) and are obliged to report any disclosures or occurrences or reasonable suspicion that a child has suffered, is suffering, or is at unacceptable risk of suffering significant harm caused by physical or sexual abuse; and the child does not have a parent able and willing to protect the child from harm.
41. There is an interagency Memorandum of Understanding (**MOU**) for data exchange and information sharing between the OPG and Child Safety 2017.  

42. Mandatory reports are made to Child Safety using the online harm report form. The public guardian has determined that if the facts warrant a referral to Queensland Police Service, then the community visitor may be directed by their manager to make a referral.
43. All Community Visiting and Advocacy staff are responsible for referring harm of child or adult clients to the appropriate authority if they are the first receiver within Office of the Public Guardian of the disclosure or information. In most instances this is the community visitor. Child advocates have also been called on to report disclosures and are subject to mandatory reporting obligations.



44. Community visitors visiting youth detention centres have additional considerations when referring suspicions of harm, outlined in the Protocol between the Department of Justice and Attorney-General and the Office of the Public Guardian for regular visits to Youth Detention Centres 2016. Additional reporting requirements related to youth detention centres (section 5.1.1) include that community visitors will make a written report to the Youth Detention Centre Representative.
45. It is not the role or function of the OPG to investigate disclosures of mistreatment of children, other than to provide to Child Safety, or any other investigating authority such as the Queensland Police Service, any community visitor reports or documents relevant to the matter.
46. There is an arrangement with Child Safety to ensure the OPG is notified of the outcome of any investigations regarding children, to ensure that community visitors have all necessary information prior to scheduling a visit to the child. Such relevant information would include if a carer had had their approval revoked.

#### **CHILD ADVOCACY**

47. The delivery of a community visitor program is one of the individual child advocacy functions performed by the Public Guardian. However, the Public Guardian also has child advocates who perform child advocacy functions.
48. Paragraph 16 of this statement details the child advocate functions of section 13 of the PGA.
49. The Public Guardian has 11 child advocates available to perform child advocate functions for children who come within the definition of a relevant child defined by section 52 of the PGA.
50. Most of the functions performed by child advocates are around assisting children, supporting children, and helping children. The child advocates also have a function in legal proceedings including child protection proceedings before the Children's Court and matters heard at QCAT.
51. A child advocate can only provide child advocacy to a *relevant child* (as defined in paragraph 15 of this statement) whereas community visitors can only



exercise their powers to protect the rights and interests of children staying at a visitable site.

52. Pursuant to section 13 of the PGA, a child advocate may support a child/young person to participate in child protection proceedings, including participation at family group meetings, court ordered conferences, court mentions and hearings. A child advocate may independently advocate for a child/young person's views and wishes in child protection proceedings where the child/young person does not wish to participate directly and may make submissions and test evidence in child protection proceedings. However, the child advocate is not there as the direct legal representation for the child. The OPG child advocates are legally trained.
53. A child advocate may be involved in the proceedings even though there is a separate representative appointed for the child.
54. When a child advocate is assisting a child/young person in child protection proceedings they build a relationship with the child. It is their usual practice to meet with the child regularly and keep the child informed about what is happening in the proceedings. The child advocate keeps in regular contact with the child throughout the proceedings to ensure that the child's views and wishes are made known.
55. The child advocate function is referral based. Anyone can make a referral to the OPG requesting a Child Advocate be assigned for a *relevant child*. The OPG prioritises providing advocacy to children and young people who have legal issues. Where a child or young person is not visitable by a community visitor, we prioritise the allocation of a Child Advocate for these young people even in circumstances where there may be no legal issues. Our child advocates prioritise children and young people who are not visitable given that there may be no other advocates providing advocacy for the child or young person. The definition of 'relevant child' at paragraph 15 covers the intervention continuum from intervention with parental agreement, assessment orders, interim orders, child protection orders and permanent care orders.
56. Most referrals for a Child Advocate come from the OPG's Community Visiting and Advocacy staff and Child Safety Officers (**CSOs**) from the DCYJMA. However, referrals for a Child Advocate may also come from:

- (a) young people themselves (OPG has a dedicated mobile number that children/young people can text);
- (b) parents;
- (c) Foster and Kinship Carers;
- (d) Family Group Meeting Convenors (both within and external to the DCYJMA);
- (e) Queensland Children's Hospital;
- (f) Magistrates/Court;
- (g) Residential Care Youth Workers;
- (h) Youth Justice Direct Representative Lawyers;
- (i) Separate Representative Lawyers (who appear in the Child Protection Proceedings);
- (j) Community Legal Centres (e.g. Hub Community Legal Centre, Youth Advocacy Centre, Queensland Advocacy for Inclusion (**QAI**), YFS and Knowmore);
- (k) Legal Aid Queensland;
- (l) private law firms;
- (m) Aboriginal and Torres Strait Islander Legal Service;
- (n) Office of the Child and Family Official Solicitor (**OCFOS**);
- (o) Director of Child Protection Litigation (**DCPL**); and
- (p) non-government organisations (e.g. BEROs, Darumbal Community Youth Service, Community Living Association, Mackay and Regional Aboriginal and Islander Development Association Inc, Townsville Multicultural Support Group).

57. Some of those referrals are directed by the court. Referrals are not received directly from the court or from magistrates, but we find that magistrates will sometimes strongly encourage a referral to be made by parties to the proceedings.

58. Children can contact us directly and we do not require them to fill in a form. We have had children contact us and say they need help for their sibling, so we would also look into referrals received in this way. There is consideration given to whether or not the same child advocate is appropriate to advocate across a sibling group and there is capacity to appoint different child advocates if that is warranted for instance if siblings are taking a different position.
59. When prioritising referrals, we undertake a risk assessment which includes ascertaining whether or not there is a separate representative involved and if so, what is their level of involvement. Essentially, we are not there to duplicate functions so there must be a gap that we are there to fill, and thus a real need for a child advocate to be involved. An instance where a child advocate may be involved when there is a separate representative appointed in child protection proceedings is where there may be significant placement and case planning advocacy required related to transition to adulthood. Separate representative involvement is limited to the duration of court proceedings and by legal aid grants relevant to the stages of those court proceedings. A child advocate is able to perform statutory functions whether or not there are active legal proceedings before the Children's Court.
60. A prime consideration for the involvement of child advocate is whether or not the child wants us involved. If the child is *Gillick competent* (by which I mean the child is able to consent to their own treatment, without the need for parental permission or knowledge) we will be strongly lead by the child's views and wishes. However, there is also capacity for a child advocate to be involved where a child is not *Gillick competent*. In those instances we will be strongly focussed on the child's rights and interests.
61. In the case of child protection proceedings, if a child wants us involved, the conversation can then turn to what are the rights or interests that we can advocate be met that are not being met currently in the proceedings.
62. A child advocate can also assist with education law matters. For example challenging suspensions or an exclusion decision, or a refusal to enrol.
63. A child advocate can assist children and young people to participate in proceedings about reviewable decisions, such as their contact or placement arrangements to QCAT. An application for review may be made by a parent, a

carer, or the child themselves. A child advocate can assist the child to make an application and to apply for legal aid for a direct representative in those proceedings. The OPG have been involved in matters where there is an application for an advance appointment for a guardian for a young person with impaired capacity to make personal decisions, in preparation for them transitioning to adulthood. The Public Guardian has a power in its own right under section 133 of the PGA, to apply to QCAT for review of a reviewable decision in circumstances where the Public Guardian is dissatisfied with a reviewable decision *and* has been unable to resolve the matter with the chief executive (child safety) to the public guardian's satisfaction.

64. We also assist to provide complementary youth justice advocacy. In addition to instructed direct representative criminal lawyers we may appear to provide contextual information about a child/young person's care experience and to advocate for access to placement and service provision that will support an application for bail or provide relevant information addressing mitigation factors on sentence.

***Advocacy in matters of child sexual abuse***

65. Concerns relating to the prevention of child sexual abuse may come into play when determining whether a young person will reside in residential care and placement advocacy. For example, we have had instances where a young girl has been due to be placed in care with another young person who has a background of inappropriate sexual behaviour. In this example, we would likely be involved in placement advocacy both in the community visitor program but also a child advocate may assist a child/young person if they are wanting to review a decision as to where they live.
66. We have also had a child advocate make a mandatory disclosure in relation to disclosures made by a young person in relation to her involvement with an older person and there were concerns of inappropriate sexual behaviour. However, in this particular instance this was less about the young person wanting to make a disclosure and more that we had to report the matter as mandatory notifiers.
67. We are open in our communication with children and young people about our obligations as mandatory reporters. Child Advocates clearly explain this

obligation in their first engagement with a child/young person and across the course of working with them. This explanation makes clear that we respect their privacy and the need to keep information confidential but that we will need to tell someone if we are concerned about them being hurt or unsafe.

#### **CHILD AND ADULT SAFEGUARDING**

68. The Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission**) was established 11 January 2013 to inquire into allegations of the sexual abuse of children in institutional settings in Australia.
69. The Royal Commission's Final Report identified ten Child Safety Standards that are essential for a child safe institution and can guide institutions by setting best practice to drive cultural change and guide performance. The OPG is committed to upholding these standards for our child and adult clients and extends the intent of the National Principles to all children and adults we advocate for.
70. The OPG as part of its response to the National Redress Scheme prioritised project work that was focussed on operationalising these National Principles in our day to day work this includes these key elements:
  - (a) Committed leadership, governance, and culture;
  - (b) Reviewing processes and practice against key indicators of National Principles for Child Safe Organisations;
  - (c) Robust recruitment and screening, effective complaints management and ongoing education and training; and
  - (d) Development of Child and Adult Safeguarding Framework to reflect alignment to the National Principles.

#### **ISSUES RELEVANT TO ABORIGINAL OR TORRES STRAIT ISLANDER CHILDREN**

71. Aboriginal and Torres Strait Islander agencies are best placed to address the issues relevant to Aboriginal and Torres Strait Islander children and young people. As is the case across the country there is an over-representation in Queensland of Aboriginal and Torres Strait Islander children in both the child protection and youth justice systems. In Queensland extensive legislative reform progressed by the DCYJMA established a progressive legislative

framework to support cultural considerations in decision making by the Department and the Queensland Family and Child Commission are advocating on these issues from a systemic perspective.

72. Community visitors and child advocates consider the Child Placement Principle in the performance of their statutory functions including advocating for appropriate placement with kin and community and case planning connection to culture and country.
73. We have training for all staff in relation to culturally safe and appropriate service delivery. We have staff that are Aboriginal and/or Torres Strait Islander, including a number of community visitors that are Aboriginal and/or Torres Strait Islander and one child advocate that is Torres Strait Islander. We have an Office of the Public Guardian First Nation's Staff Working Group, and staff can consult this group regarding culturally appropriate and safe work practices and client-focused frontline service.

#### **ISSUES RELEVANT TO CHILDREN WITH DIVERSE BACKGROUNDS**

74. There is significant knowledge, experience, and training about disability within our agency that is transferrable across business units. This includes learning and development relevant to children effectively working with children and young people from a trauma informed perspective and who have decision making impairments and disability. Visiting and advocating for children from non-English speaking backgrounds is an ongoing challenge and although general communication training and resources are provided to the staff group, it is acknowledged that there are barriers in terms of establishing relationships with people from non-English speaking backgrounds.

#### **PUBLIC GUARDIAN AS PART OF BROADER SYSTEM – INFORMATION SHARING ISSUES**

75. The Office of the Public Guardian's statutory purposes is focussed on the promotion and protection of the rights and interests of children and young people in visitable locations and who come within our legislative definition of "relevant children". The focus of our agency is on individual child advocacy. We work with the Queensland Family and Child Commission given their systemic focus across a range of meetings and forums to share information and

progress advocacy priorities for children and young people in the child protection system.

76. The Queensland Family and Child Commission have a broader focus for families and children outside of the child protection system. The information we share is based on the statutory functions we perform as community visitor and child advocate. In our current practice review we are exploring strengthening our ability to identify trends in our issues advocacy that will be of interest to external stakeholders and oversight agencies such as DCYJMA, the Queensland Family and Child Commission, Human Rights Commission, and the Queensland Ombudsman.

#### ***Individual advocacy***

77. Individual advocacy for children is critical in bringing the voices and rights of children to the attention of decision-makers. There can be a tension between 'best interests' and views and wishes and we always advocate for children to participate and be informed about decisions that impact their lives.
78. Community visitors and child advocates provide information to children about their rights to be informed of decisions, participate in decision-making, and know their rights to request appeal of decisions or make a complaint. Decisions made by Child Safety are reviewable by QCAT. Decisions made by the Department of Education are not reviewable by QCAT and children require support and advocacy in relation to having formal reviews of decisions such as expulsions and refusal to enrol.

#### ***Independence***

79. The Office of the Public Guardian is a statutory office and not an independent statutory body so it is administratively attached to the Department of Justice and the Attorney-General. All the staff are public servants with the exception of community visitors. Section 15 of the PGA provides that in performing the public guardian's functions and exercising the public guardian's powers, the public guardian is not under the control or direction of the Minister.
80. The Public Guardian is still invited as an independent statutory officer to many government meetings and forums where government policy and practice is discussed.



81. I think in terms of being a communication tool with children, it is important for community visitors to be able to say they are independent from Child Safety. Section 7 of the PGA sets out the principles to be applied to the performance of statutory functions or exercise of statutory powers under the Act includes these two principles:
- (a) the child is entitled to be heard, even if others may agree with the views expressed by the child; and
  - (b) the child should be able to exercise their rights and participate in decisions that affect their life.
82. Section 74 of the *Child Protection Act 1999* (Qld) establishes a positive obligation on staff of Child Safety to make children and young people aware of their Charter Rights and their ability to get support to participate in decision making. We are encouraged by the number of referrals the OPG receives from Child Safety staff who are ensuring that children and young people have access to advocates that are independent to Child Safety. The Department has also recently progressed legislative amendments to strengthen children and young people's participation in decision making.

#### ***Human rights framework***

83. The *Human Rights Act 2019* (Qld) bolsters our position in terms of being able to advocate for rights and interests.
84. Pursuant to section 144 of the PGA, the Public Guardian may make a complaint about services provided by a service provider to a relevant child to a complaints agency or other government service provider. The Public Guardian may also, on behalf of a relevant child, refer a complaint about the services to a complaints agency or other government service provider. The relevant *complaints agencies* are:
- (a) the Human Rights Commissioner under the *Anti-Discrimination Act 1991* (Qld);
  - (b) the Crime and Corruption Commission under the *Crime and Corruption Act 2001* (Qld);
  - (c) the Health Ombudsman under the *Health Ombudsman Act 2013* (Qld); or



(d) the Ombudsman under the *Ombudsman Act 2001* (Qld).

A *service provider* includes an entity providing a service under an arrangement that involves a written agreement to which the service provider is a party.

The OPG has encountered issues with the making of complaints to the Human Rights Commission, particularly in terms of children being able to engage with that process and see that process through, and what the role of the child advocate or even public guardian or community visitor is in supporting a child through that complaints process with the Human Rights Commission. This is a current issue that we are trying to tease out with the Commission, because we do not want to end up in a position where the child disengages i.e. they are no longer present and involved in the complaint process. From the Human Rights Commission's point of view they would like to see matters followed through, so that has been challenging from an operational perspective.

85. Further to the aforementioned challenge, the framework does not appear to have contemplated that a child would be bringing the human rights complaint against their guardian, who is Child Safety. We have the charter of rights for a child in care in Queensland and we have the standards of care. Both of these involve specific rights for a child who is involved with Child Safety, and we probably still continue to rely on them more. The human rights framework certainly adds weight but the specific rights that we are advocating for are generally more usefully covered in the Child Protection Act already.

I make this solemn declaration under the *Oaths Act 1867* (Qld).

Declared at Brisbane in the State of Queensland  
on 10 June 2022

Before me

