



Joint Standing Committee on the Commissioner for Children and Young People

A Review of the Exercise of the Functions of the Commissioner for Children and Young People

Report No. 11
November 2012

Legislative Assembly
Parliament of Western Australia

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Review of the Exercise of the Functions of the Commissioner for Children and Young People

Report No. 11

Presented by

Hon Dr E Constable, MLA, and Hon N P Goiran, MLC

Laid on the Table of the Legislative Assembly and the Legislative Council on
15 November 2012

Chairman's Foreword

The Western Australian Commissioner for Children and Young People was established to enhance the wellbeing of all Western Australian children, including their care, development, education, health and safety. The state's first Commissioner, Ms Michelle Scott, took up her role in December 2007.

Being the first at anything can be a mixed blessing, and being the first Commissioner for Children and Young People presented both opportunities and challenges. One of the biggest opportunities would have been the privilege of traveling throughout the state to consult with children and young people, and to then advocate on their behalf. It is very clear that during her term as Commissioner, Ms Scott has taken her advocacy role very seriously, with all of her work being in support of her primary advocacy function.

One of the challenges was to establish a Commissioner's office and begin to prioritise the functions that are set out in the Commissioner for Children and Young People Act 2006. In reviewing the exercise of the Commissioner's functions, it was very obvious that these are very broad and extensive functions.

This review has highlighted some of the good work undertaken by the Commissioner and her staff. This includes developing participation, legislation and complaints handling guidelines for government and non-government agencies. These are important steps in helping the voices of children and young people to be heard. The Commissioner has also undertaken a number of research projects on matters that significantly impact on their wellbeing. Importantly, the Commissioner has sought to get the views and advice of children and young people themselves.

The Commissioner also undertook her first major inquiry, which was on the mental health and wellbeing of children and young people in Western Australia. The Committee's review of this inquiry includes suggestions for the Commissioner to assist with future inquiries.

The review has also revealed some areas of the Commissioner's activities where the Committee has made recommendations for improvement. For example, the Committee considers that there is a need for an improved system for monitoring complaints by children and young people. There is also a need for improved reporting to Parliament and a review of the Commissioner's performance reporting framework.

Having said that, I am mindful that some of the Commissioner's challenges stem from the ambiguity and lack of clarity in the Commissioner for Children and Young People Act 2006. This led to the Committee and the Commissioner having different interpretations of some sections of the Act. The Committee's review found a number of sections of the Act that need to be amended to enhance clarity.

This review has also provided the Committee with an opportunity to revisit the work it has undertaken over the past four years. One of the most important issues raised in this process has been the way in which children and young people are able to make a complaint about service provision. Not all children, for a variety of reasons, are able to make a complaint about a problem they are having. For example, some are too young, others may be too traumatised. It is absolutely essential that for those children and young people the legislation provides for an adult to speak and make a complaint on their behalf. It is also essential that the Commissioner has the ability to investigate or deal with individual children and young people's complaints and/or circumstances where she believes they may indicate a systemic problem.

Another important issue is the continuing disadvantage experienced by many Aboriginal children and young people, and I encourage the government to reconsider the establishment of a Deputy Commissioner position with a focus on Aboriginal children and young people. This does not mean a diminishment in the Commissioner's responsibility; but would enhance and strengthen her position as an advocate for all Western Australian children.

A third important matter concerns the perceived ambiguity in the Commissioner for Children and Young People Act 2006. The review has also revealed considerable overlap in the Commissioner's functions, which needs to be addressed. It would also be useful for the act to clarify whether the Commissioner's functions are discretionary. It is important that functions relating to the Minister and the Committee are not discretionary.

Recently the Premier announced that the Commissioner was the government's preferred body to operate as a one-stop shop for people who wish to make complaints in relation to child abuse. The proposed additional role for the Commissioner is at this time quite broad and needs to be clarified. It has the potential to significantly impact upon her advocacy and monitoring roles.

In light of these matters it is timely that the Commissioner for Children and Young People Act 2006 is scheduled for its first review early in 2013. The Committee has made a number of recommendations for amendments to improve the Act. I trust

that the Attorney General, as the minister responsible, will consider the Committee's recommendations and consult with the Committee as part of the review process.

I thank my fellow Committee members for their support and their input into this review: the Deputy Chairman, Mr Martin Whitely, MLA (Member for Bassendean); Hon Nick Goiran, MLC (Member for South Metropolitan); and Hon L R Savage (Member for East Metropolitan). Thanks must also go to former Committee members: Ms A R Mitchell, MLA (Member for Kingsley) who was Committee Chairman until 16 August 2012, and Hon Helen Bullock, MLC (Member for Mining and Pastoral). I particularly acknowledge the assistance provided by Dr Loraine Abernethie, the Committee's Principal Research Officer, who has worked tirelessly to complete this report in a relatively short period of time.

A handwritten signature in black ink, appearing to read 'Elizabeth Constable', with a stylized flourish at the end.

HON DR ELIZABETH CONSTABLE
CHAIRMAN

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Executive Summary

This report of the Joint Standing Committee on the Commissioner for Children and Young People (the Committee) presents its review of the exercise of the functions of the Commissioner for Children and Young People (the Commissioner).

The role of the Commissioner was established in the *Commissioner for Children and Young People Act 2006* (WA) (the CCYP Act), and the first Commissioner, Ms Michelle Scott, was appointed in December 2007. The Commissioner's term of office is for five years, with a provision for reappointment only once. The Committee considers that a single term of office of eight years would be more appropriate and enhance the Commissioner's independence. The Commissioner has a broad range of functions and responsibilities, all of which inform her overall advocacy role. This report is structured around particular groups of functions.

Advocacy is the primary focus of the work of the Commissioner's office, and throughout her term, the Commissioner has taken her advocacy role very seriously. This report provides examples of the Commissioner's advocacy, including consulting with children and young people, and promoting their participation in decision-making on matters affecting their wellbeing. The Commissioner has also promoted public awareness and understanding of matters relating to children and young people's wellbeing. The Commissioner's work has also fulfilled her obligations to have special regard to Aboriginal and Torres Strait Islander, and to vulnerable and disadvantaged children and young people.

The Commissioner has undertaken a number of research projects, including a wellbeing research project; a project to determine the views of young people on alcohol-related harm and on the strategies they thought would reduce this harm; and two Thinker in Residence projects. The Commissioner has published reports on her research projects.

The CCYP Act also provides the Commissioner with quite extensive powers to undertake special inquiries. To date, the Commissioner has not exercised this function.

The Commissioner has developed guidelines on improving legislation for children and young people; on how government and non-government bodies can increase the participation of children and young people in decision-making on matters that impact on them; and on making agencies' complaints processes accessible and responsive to children and young people. In addition to producing the guidelines, the Commission has run training seminars on how to get the best out of the

guidelines. The Commissioner has reported receiving good feedback on the guidelines and training sessions.

One of the Commissioner's functions under the CCYP Act is to promote and monitor the wellbeing of children and young people. As well as promoting the wellbeing of children and young people through her advocacy work, the Commissioner undertook a Wellbeing Monitoring Framework project. This resulted in three separate reports: a demographic profile, wellbeing measures and a compilation of best practice programmes and services.

One of the Commissioner's functions is to initiate and conduct inquiries into any matter affecting the wellbeing of children and young people. To date the Commissioner has conducted one inquiry, being the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australian Children and Young People. The Committee recognises that this is the first inquiry undertaken by the Commissioner, and the comments made in this report are intended to provide feedback to the Commissioner to assist with further inquiries.

Under the CCYP Act, the Commissioner may establish advisory committees and reference groups to assist in the performance of her functions. The Commissioner has established reference groups for her research projects and inquiries. The Commissioner is required to establish advisory committees consisting of children and young people from a broad range of backgrounds. This report raises issues in relation to whether or not the Commissioner's current process of selecting advisory committees results in advisory committees of children and young people as intended in the CCYP Act.

There are several functions in the CCYP Act that relate to monitoring, including monitoring the wellbeing of children and young people generally; monitoring children and young people's complaints to government agencies; and monitoring legislation, policies and practices that impact on the wellbeing of children and young people. In relation to monitoring complaints, the Commissioner's functions include monitoring the way in which government agencies investigate and/or deal with a child or young person's complaint; monitoring the outcome of such complaints; and monitoring trends in complaints made by children and young people to government agencies.

Following its review of the exercise of the Commissioner's complaints monitoring functions, the Committee considers that the Commissioner's activities directed to this area may not constitute monitoring of agencies' handling of complaints made by children and young people, or monitoring the outcomes of and trends in

complaints, as intended in the CCYP Act. The Committee is also concerned about the extent to which the Commissioner relies on the Ombudsman to fulfil particular aspects of these functions.

In relation to monitoring agency policies, procedures and practices, the Committee acknowledges that it would be difficult, if not impossible, for the Commissioner to fulfil this function totally. The complexities of the process of drafting legislation also make it difficult for the Commissioner to fulfil this function as written in the CCYP Act. The Committee commends the Commissioner for developing her legislation guidelines for agencies, but notes that agencies did not consult with her on at least two major pieces of draft legislation that would impact on children and young people, namely the Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012 and the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012. The Committee considers that there is scope for the Commissioner to improve her legislation monitoring processes.

The CCYP Act states that it is not a function of the Commissioner to investigate or deal with a child or young person's complaint. However, the CCYP Act also states that the Commissioner can investigate or deal with any matter affecting the wellbeing of children and young people which is raised through an individual case or matter. This is an important function as particular complaints can be powerful indicators of systemic failures. The Committee and the Commissioner have different interpretations of these sections of the Act. This signals that they need to be amended to eliminate ambiguity and to clarify that the Commissioner can investigate matters arising from individual cases or circumstances where she considers they may be indicative of systemic issues or problems.

The Premier has recently announced that the Commissioner is the government's preferred body to provide a one-stop shop for children and young people's complaints of child abuse. The role as it is currently described is broad and ambiguous. If the Commissioner does undertake this role it will fundamentally change the balance between her advocacy and complaints functions.

There are two functions in the CCYP Act that relate to the Commissioner advising the Minister and the Committee on matters affecting children and young people, either at the request of the Minister or the Committee, or on the Commissioner's own initiative. The Commissioner has provided advice to the Minister both at his request and on her own initiative. The Commissioner has also provided advice to the Committee on a number of matters. The Committee has recently referred the matter of the sexualisation of children to the Commissioner for her consideration

and to make recommendations on actions that the state government might take in relation to this issue.

The CCYP Act provides that the Commissioner must publish annual reports, reports on special inquiries, and research, inquiry and other reports relating to the performance of her functions. The CCYP Act also provides that the Commissioner must give the Minister a draft of each report, and that the Commissioner's reports must be tabled in both Houses of Parliament. Due to the Commissioner's interpretation of the term 'report', not all of her reports have been provided to the Minister or tabled in Parliament.

This review has also considered the Commissioner's performance reporting in accordance with her outcome based management structure. The Committee acknowledges that developing key performance indicators is a challenge for authorities such as the Commissioner, but considers that there is room for improvement in the Commissioner's effectiveness KPIs to make them more comprehensive and meaningful. A review of the Commissioner's outcome based management structure would be timely.

The Committee acknowledges that some of the difficulties faced by the Commissioner result from ambiguity and a lack of clarity in the CCYP Act. The Committee also considers that a number of changes need to be made to the CCYP Act to improve the way in which the Commissioner is able to perform her functions.

As the CCYP Act is scheduled for review early in 2013, throughout this report the Committee has made a number of observations about, and recommendations for changes to, the Act. As well as improving the clarity of the CCYP Act overall, the Committee's recommendations include, but are not limited to, the Commissioner's term of office, reducing duplication in the Commissioner's functions and the Commissioner's advisory groups.

Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Commissioner for Children and Young People directs that the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Findings and Recommendations

Finding 1

Page 21

The Commissioner considers all s 19 functions of the *Commissioner for Children and Young People Act 2006* to be discretionary functions.

Finding 2

Page 21

The use of the words “or at the request of the Minister or the Standing Committee” are redundant as it duplicates the capacity under s 19(l).

Recommendation 1

Page 21

The words ‘or at the request of the Minister or the Standing Committee’ be deleted from section 19(k) of the *Commissioner for Children and Young People Act 2006* so that it reads ‘on the Commissioner’s own initiative, to advise the Minister on any matter relating to the wellbeing of children and young people’.

Recommendation 2

Page 21

If recommendation 1 is implemented, section 19(l) of the *Commissioner for Children and Young People Act 2006* should be amended to make it clear that this function is not discretionary.

If recommendation 1 is not implemented, sections 19(k) and 19(l) should be amended to make clear that responding to the Minister or the Committee is not discretionary.

Page 21

Finding 3

Page 21

Some section 19 functions of the *Commissioner for Children and Young People Act 2006* are duplicated.

Recommendation 3

Page 21

The *Commissioner for Children and Young People Act 2006* should be amended to remove any perceived unnecessary duplication.

Finding 4

Page 23

A single term of office of eight years would be more appropriate for Western Australia’s Commissioner for Children and Young People.

Recommendation 4	Page 24
The <i>Commissioner for Children and Young People Act 2006</i> should be amended to provide for a single the term of office for the Commissioner for Children and Young People of eight years.	Page 24
Recommendation 5	Page 33
The issue of having a Deputy Commissioner position with an emphasis on Aboriginal children and young people should be reviewed.	
Finding 5	Page 38
The Commissioner’s participation guidelines and complaints guidelines do not include specific advice for agencies on particular issues to consider when dealing with Aboriginal and Torres Strait Islander, and vulnerable or disadvantaged children and young people.	
Recommendation 6	Page 38
All of the Commissioner’s guidelines should include specific advice for agencies on particular issues to consider when dealing with Aboriginal and Torres Strait Islander, and vulnerable or disadvantaged children and young people.	
Finding 6	Page 40
The Commissioner has consistently fulfilled her obligations under section 20(1)(a)(i) with respect to her advocacy role.	
Finding 7	Page 46
The Commissioner takes her advocacy role very seriously, with advocacy being the primary focus of the work of her Office.	
Finding 8	Page 66
It is not clear how the Commissioner is monitoring government agency complaints handling processes, and complaints outcomes and trends, as outlined in sections 19(d) and 19(e) of the <i>Commissioner for Children and Young People Act 2006</i> .	
Recommendation 7	Page 66
The Commissioner develop and implement a rigorous and formal system of monitoring government agency complaints handling processes, complaint outcomes and complaint trends to better reflect sections 19(d) and 19(e) of the <i>Commissioner for Children and Young People Act 2006</i> .	
Finding 9	Page 69
The government’s proposed broad remit for the Commissioner to provide a one-stop shop for complaints in relation to child abuse is broad and ambiguous, and will fundamentally change the Commissioner’s advocacy and complaints functions.	

Recommendation 8**Page 69**

Prior to proposed changes being made to the Commissioner's remit and the resulting amendments to the *Commissioner for Children and Young People Act 2006*, the Attorney General refer the matter of the Commissioner taking on the 'one-stop shop' responsibility to the Joint Standing Committee on the Commissioner for Children and Young People of the 39th Parliament for consideration.

Finding 10**Page 85**

The Commissioner has published guidelines for government agencies on making complaints processes accessible for, and responsive to, children and young people.

Recommendation 9**Page 85**

The Commissioner systematically monitor legislation, including its development, passage through Parliament, application, and impact on children and young people.

Finding 11**Page 103**

The title of the role 'Independent Reviewer' for the Mental Health Inquiry was misleading and, given, the wide audience intended for the report, needed to be more clearly explained in the report.

Recommendation 10**Page 107**

The Commissioner incorporate an appropriate process into research and inquiry projects to deal with real or perceived conflict of interest for members of an Expert Reference Group.

Recommendation 11**Page 109**

Internal evaluation be included as a formal stage of any of the Commissioner's projects and included in documents such as Project Plans and Project Status Reports.

Finding 12**Page 110**

The statement that the Mental Health Inquiry Report provides 'a "road map" for the broad community, governments and the non-government sector to guide action immediately and over the next decade' is an overly ambitious claim.

Recommendation 12**Page 114**

The Commissioner should incorporate into all future research and inquiries, the following 'lessons learned' from the Commissioner's first inquiry:

- Better explanation of the methodology employed, including but not limited to improved information on the processes involved in sample selection, data analysis methods, Expert Reference Group formation, the role of the Expert Reference Group and the role of the Independent Reviewer;

- Ensure that the titles of those involved in the project clearly and accurately reflects their role;
- Enhance processes for reducing the potential for real or perceived conflict of interest in those involved in the project;
- Provide sufficient referencing to assist readers of reports better understand and evaluate the project and its findings and recommendations.
- Ensure the claims for a report are not overly ambitious.

Finding 13

Page 133

The Commissioner has utilised sections 19(f) and 19(i) of the *Commissioner for Children and Young People Act 2006* to conduct research projects and undertake an inquiry.

Recommendation 13

Page 133

Notwithstanding that the Commissioner's special inquiry function at section 19(j) has not been used to date, it should be retained.

Finding 14

Page 147

Adults rather than children are the main complainants in relation to the wellbeing of children and young people.

Finding 15

Page 147

The Commissioner currently has the power to investigate individual cases and circumstances where the Commissioner considers it may reveal system failure.

Recommendation 14

Page 147

The Commissioner should follow up with the agency and the complainant on the outcomes of complaints referred by her Office to other agencies.

Recommendation 15

Page 147

The *Commissioner for Children and Young People Act 2006* be amended to clarify that the Commissioner has the power to investigate matters arising from children and young people's complaints or individual circumstances when such matters impact generally on the wellbeing of children and young people and to remove any perceived ambiguity in relation to section 23(2)(c).

Finding 16

Page 153

The Commissioner has fulfilled her obligations under sections 19(k) and 19(l) of the *Commissioner for children and Young People Act 2006*.

Finding 17**Page 156**

The intention of section 52 of the Commissioner for Children and Young People Act 2006 and the obligations it places on the Commissioner are confusing and ambiguous.

Finding 18**Page 157**

An amendment of section 52(2) from 'must' (mandatory) to 'may' (discretionary) could assist in unlocking creativity in the establishment of advisory committees that better reflect the intent of obtaining advice from a broad spectrum of children and young people.

Recommendation 16**Page 157**

Section 52 of the *Commissioner for Children and Young People Act 2006* be amended to make its meaning clear and unambiguous.

Finding 19**Page 164**

The Commissioner's current system for establishing advisory committees of children and young people may result in small groups of children and young people acting in this capacity for a two-year period, to the exclusion of other potential groups of children and young people.

Recommendation 17**Page 164**

Section 52(2) of the *Commissioner for Children and Young People Act 2006*, which relates to the establishment of advisory committees of children and young people, be amended to delete the word 'must' and insert the word 'may'.

Finding 20**Page 168**

The Commissioner has prepared and published reports in accordance with sections 42, 43 and 44 of the *Commissioner for Children and Young People Act 2006*.

Finding 21**Page 169**

The Commissioner has not provided to the Minister a draft of each of her reports as required under section 48(1) of the *Commissioner for Children and Young People Act 2006*.

Finding 22**Page 171**

The Commissioner for Children and Young People has not tabled all of her reports in Parliament as required under section 49 of the *Commissioner for Children and Young People Act 2006*.

Recommendation 18**Page 171**

The Commissioner should table all reports, including those that have not been previously tabled, in each House of the Parliament.

Finding 23**Page 182**

Now that the Office of the Commissioner for Children and Young People has been established for five years, a review of the Commissioner's Outcome Based Management structure would be timely.

Recommendation 19**Page 182**

The Commissioner, in consultation with the Under Treasurer, review the current Outcome Based Management Structure, including key performance indicators, to ensure they are appropriate and comprehensive.

Chapter 1

Introduction

Introduction

This report consists of a review of the exercise of the functions of the Commissioner for Children and Young People (the Commissioner) by the Joint Standing Committee on the Commissioner for Children and Young People (the Committee).

This chapter contains background information to provide context for the report.

The Commissioner for Children and Young People

The independent statutory office that is the Commissioner for Children and Young People was established as a result of the *Commissioner for Children and Young People Act 2006* (WA) (the CCYP Act).

The first Commissioner, Ms Michelle Scott, was appointed in December 2007.

The Office of the Commissioner and the Commissioner's role and functions are discussed further in Chapter 2.

The Joint Standing Committee on the Commissioner for Children and Young People

On 26 June 2008, the first Joint Standing Committee on the Commissioner for Children and Young People was established pursuant to s 51 of the CCYP Act. However, that Committee was dissolved on 7 August 2008 on the calling of the State election.

The current Committee was formed as a Committee of the 38th Parliament on 26 November 2008.

The Committee is charged with the following functions:¹

- a) Monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People
- b) Examine Annual and other Reports of the Commissioner

¹ The Committee's Terms of Reference are provided at Appendix 1.

Chapter 1

c) Consult regularly with the Commissioner

The Commissioner is an independent statutory authority, independent from government. This means that the Commissioner is not accountable to government, but is accountable to Parliament. Therefore, the role of the Committee in reporting to Parliament on the activities and reports of the Commissioner, and on its consultations with the Commissioner, is an important accountability mechanism of Parliament.

The membership of the Committee has undergone some changes over its term. Most recently, Hon Dr Elizabeth Constable, MLA, and Hon Linda Savage, MLC, have been appointed to the Committee, with Dr Constable being elected as Chairman.

The Committee has also operated at times with very limited resources. For example, Committee staff were seconded to the Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts from 24 September 2009 to 21 October 2010. Similarly, the Committee's one staff member was required to assist the Economics and Industry Standing Committee with its Inquiry into the 2011 Kimberley Ultramarathon from April 2012 to August 2012. This significantly restricted the work that could be undertaken by the Committee during these periods.

The Purpose of the Committee's Review

This report contains the Committee's review of the exercise of the functions of the Commissioner for Children and Young People. It represents the culmination of five year's work of the Committee, including:

- examination of the Commissioner's Annual and other Reports
- briefings and hearings with the Commissioner
- travel to other jurisdictions to meet with children's commissioners and guardians
- hearings with relevant stakeholders who work with children and young people and/or who handle complaints from children and young people.²

The Committee has previously examined and reported on the Commissioner's Annual Reports for the 2008-2009 and 2009-2010 reporting periods. The Commissioner's Annual Reports for 2010-2011 and 2011-2012 are considered throughout this review.

The Committee's consideration of the Commissioner's research reports such as the Wellbeing Monitoring Framework and the report from the Mental Health Inquiry are also included in this review.

² A list of submissions received and hearings held are contained in Appendices 5 and 6.

Timeliness of the Review

The Committee acknowledges that its review of the Commissioner's *Annual Report 2010-2011* and of the Mental Health Inquiry report have taken considerably longer than anticipated. In the case of the Mental Health Inquiry, part of the delay was due to the Committee wanting to receive the government response prior to reporting. This was provided in August 2012. Nevertheless, the Committee acknowledges its responsibility for the overall timing of its review of the Commissioner's functions and reports.

Under s 64 of the CCYP Act, the Attorney General, as the Minister responsible, is required to carry out a review of its operation and effectiveness 'as soon as is practicable after the expiry of 5 years from the commencement of this section'. Section 64 was proclaimed on 20 November 2007.³

Furthermore, as noted in chapters 3 and 5, the Premier recently announced that the Commissioner is the government's preferred office to perform the one-stop shop complaints role recommended by the Blaxell Inquiry.⁴ The Premier advised that the review of the CCYP Act, including matters resulting from the Blaxell Inquiry 'is scheduled to be completed in early 2013, including the scope of any amendments to that Act necessary to provide the Commissioner with the additional functions and powers'.⁵

The Committee's review of the exercise of the Commissioner's functions is, therefore, timely in that it has brought to light a number of matters in the CCYP Act that need to be clarified and/or amended. Where such matters have arisen, the Committee has made recommendations which should help make the CCYP Act clearer and remove actual and perceived duplication of functions.

The Committee is pleased that the Attorney General has advised that the Committee's work 'will be usefully considered as part of the statutory review'.⁶ Importantly, the Premier advised that this Committee 'will, of course, be consulted in the course of that review'.⁷

Structure of the Review Report

As this is a review of the exercise of the Commissioner's functions as set down in the CCYP Act, the Committee has structured the report around particular groups of related

3 'Proclamation No. 48 of 2006. Commissioner for Children and Young People Act 2006', *Government Gazette*, 23 November 2007, p5861.

4 The Blaxell Inquiry was an inquiry into the response of government agencies and officials to allegations of sexual abuse at St Andrew's Hostel, Katanning.

5 Hon Colin Barnett, MLA, Premier of Western Australia, Letter, 11 October 2012.

6 Hon Michael Mischin, MLC, Attorney General, Letter, 16 October 2012.

7 Hon Colin Barnett, MLA, Premier of Western Australia, Letter, 11 October 2012.

Chapter 1

functions as set down in that Act. Following chapters on the establishment of the Office of the Commissioner for Children and Young People (chapter 2), and the Commissioner's role (chapter 3), the report contains the following chapters:

- chapter 4: Broad advocacy functions, including advocacy, promotion and consultation
- chapter 5: Monitoring functions, including monitoring the way agencies investigate a complaint by children and young people, the outcomes of these complaints, and trends in complaints; and monitoring written and draft laws, and policies, practices and services affecting the wellbeing of children and young people
- chapter 6: Inquiries and research functions, including special inquiries
- chapter 7: Individual cases and systemic issues
- chapter 8: Functions relating to advising and making recommendations
- chapter 9: Advisory committees function
- chapter 10: Reporting functions.

The CCYP Act, at Sch 1 cl 3, has an unproclaimed function which, if enacted, would transfer to the Commissioner the administration of the *Working with Children (Criminal Record Checking) Act 2004 (WA)*.

As a statutory review of the *Working with Children (Criminal Record Checking) Act 2004 (WA)* was underway early in 2012, the Committee undertook an examination of whether the Commissioner should have a direct function within the working with children check system in Western Australia.

In its Report No. 8, Report on the Functions of the Commissioner for Children and Young People: Working with Children Checks, the Committee found that 'the administration of the Working with Children (Criminal Record Checking) Act 2004 is not an appropriate function for the Commissioner for Children and Young People'.⁸

In tabling the report of the review of the *Working with Children (Criminal Record Checking) Act 2004*, the Minister for Child Protection, Hon Robyn McSweeney, MLC, stated that one of the changes resulting from the review would be 'repealing clause 3 of schedule 1 of the Commissioner for Children and Young People Act 2006 and

8 Joint Standing Committee on the Commissioner for Children and Young People, *Report on the Functions of the Commissioner for Children and Young People: Working with Children Checks*, Legislative Assembly, Parliament of Western Australia, Perth, March 2012, p6.

enabling the Department for Child Protection to continue its responsibility for the implementation of the working with children checks'.⁹

Given the Committee's previous work on this issue, and the Minister's notice of the amendment to be made to the CCYP Act, the Committee has not undertaken any further work on this matter.

9 Hon Robyn McSweeney, MLC, Minister for Child Protection, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 13 September 2012, p5761b.

Chapter 2

The Office of the Commissioner for Children and Young People

Establishment of the Office of the Commissioner for Children and Young People

All Australian jurisdictions, with the exception of South Australia, have a statutory body in the form of a Commission or a Commissioner.¹⁰ South Australia has a Guardian for Children and Young People, and New South Wales has both a Commissioner and a Guardian. In some states such as Queensland, the Commissioner also acts as Child Guardian. In June 2012, the federal parliament passed legislation establishing the National Children's Commission as part of the Human Rights Commission. The inaugural National Children's Commissioner is yet to be appointed.¹¹ Table 1.1 details the statutory bodies that exist in Australia and their enacting legislation.

In discussing the exercise of the Commissioner's functions this report will draw on the roles and functions of Commissioners in other jurisdictions.

On 2 July 2004 the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) tabled its report in the Legislative Council.¹² The Select Committee recommended that a Commission for Children and Young People be established and that a Commissioner be appointed to head the Commission.

10 Developed from: Lamont, A and Holzer, P, *Children's Commissioners and Guardians*, National Child Protection Clearinghouse Resource Sheet, Australian Institute of Family Studies, Melbourne, July 2011, p1.

11 The Attorney-General's Department, Australian Government, Statutory Appointments, National Children's Commissioner. Available at: <http://www.ag.gov.au/Aboutthedepartment/Employment/Pages/NationalChildrensCommissioner.aspx>. Accessed on 18 September 2012.

12 The Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), *Final Report*, Legislative Council, Parliament of Western Australia, 2 July 2004. Available at: [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/9D446580E6A5689548257831003E9677/\\$file/cn.all.040702.rpf.002.xx.a..pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/9D446580E6A5689548257831003E9677/$file/cn.all.040702.rpf.002.xx.a..pdf). Accessed on 31 August 2012.

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Table 1.1: Children's Commissioners and Guardians in Australian Jurisdictions¹³

Jurisdiction	Title of Office	Act Establishing Office
Queensland	Commissioner for Children and Young People and Child Guardian	Commission for Children and Young People and Child Guardian Act 2000
New South Wales	Commissioner for Children and Young People	Commission for Children and Young People Act 1998
	Children's Guardian	Children and Young Persons (Care and Protection) Act 1998
Victoria	Child Safety Commissioner	Child Wellbeing and Safety Act 2005
Tasmania	Commissioner for Children	Children, Young Persons and Their Families Act 1997
South Australia	Guardian for Children and Young People	Children's Protection (Miscellaneous) Amendment Bill 2005
Northern Territory	Children's Commissioner	Care and Protection of Children Act 2007
ACT	Children and Young People Commissioner	The Human Rights Commission Act 2005
Australia	National Children's Commissioner	Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012

The Commissioner for Children and Young People Bill 2005 was introduced in the Legislative Assembly on 1 June 2005. In 2006 the *Commissioner for Children and Young People Act 2006* (WA) (the CCYP Act) established the office of the Commissioner for Children and Young People in Western Australia.¹⁴ Sections 7 and 10 of the CCYP Act provide for the appointment of a person on a full-time basis to the office of Commissioner for Children and Young People (the Commissioner). Western Australia's first Commissioner, Ms Michelle Scott, was appointed in December 2007.

Independence of the Commissioner

The office, as an independent statutory body, is not an office in the Public Service; nor is it a Senior Executive Service organisation.¹⁵

¹³ Developed from: Lamont, A and Holzer, P, *Children's Commissioners and Guardians*, National Child Protection Clearinghouse Resource Sheet, Australian Institute of Family Studies, Melbourne, July 2011, p2.

¹⁴ Section 6 *Commissioner for Children and Young People Act 2006* (WA).

¹⁵ Sections 6(2) and 6(3) *Commissioner for Children and Young People Act 2006* (WA). Senior Executive Service organisation is defined at s 3 of the *Public Sector Management Act 1994* (WA).

The independence of the Commissioner was a contentious issue during the debate on the Commissioner for Children and Young People Bill 2005. The following quotations are indicative of the differing positions on the independence of the Commissioner.¹⁶

The then Minister for Community Development, Hon Sheila McHale, MLA, stated that:

*the commissioner will be independent and free from direction or control in the performance of his or her functions ... [and will have] independence and freedom to advocate for the wellbeing of children and to be inclusive of their views, while maintaining appropriate levels of ministerial responsibility and accountability.*¹⁷

Concern was expressed that the role as set out in the Bill would not be independent from government. Hon John Day, MLA, expressed this concern as follows:

*[T]here is too much of a connection with the government and too much ability for the government to determine the activities of the commissioner in the performance of his or her role under this legislation ... the office should have complete independence so that it will not be possible for the responsible minister to direct, or sway through consultation, the activities of the office.*¹⁸

Part 4 of the CCYP Act details the Commissioner's relationship with the Minister. Section 25 states that 'except as provided in this Act, the Commissioner is not subject to direction by the Minister or any other person in the performance of the Commissioner's functions'. Under s 26(1), the Minister 'may give written directions to the Commissioner as to the general policy to be followed in the performance of the Commissioner's functions'. Section 26 also details the procedure to be followed if the Commissioner refuses to comply with a Minister's direction.

The Commissioner is also required to provide the Minister with a draft of each report for comment. This matter will be discussed further in chapter 10 on the Commissioner's reporting.

The extent of a Commissioner's independence from government varies across Australian jurisdictions. In Queensland, for example, the Commissioner for Children and Young People and Child Guardian is 'a unit of public administration under the *Crime and Misconduct Act 2001*' (Qld).¹⁹ The Queensland Minister for Community Services

16 There was considerable debate on this issue. Refer to the Second Reading debates in the Legislative Assembly and the Legislative Council.

17 Hon Shelia McHale, MLA, Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 1 June 2005, p2582.

18 Mr John Day, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p1 and p2 of pp3975b–4012a.

19 Section 16 *Commission for Children and Young People and Child Guardian Act 2000* (Queensland).

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and Housing, Hon Karen Struthers, MP, advised the Committee that the independence of the Commission's role is very important. Some reports produced by the Queensland Commissioner have been very critical of the government and help to hold the government of the day to account.²⁰ The Queensland Department of Communities also considered that the independence of the Commission was important, and advised the Committee that the advantages of having an independent commission meant that the department must keep the Commission at arm's length.²¹

In Victoria, however, the Child Safety Commissioner is a public servant employed under the *Public Administration Act 2004* (Qld) and is accountable to the Minister for Community Services. Nevertheless, Mr Bernie Geary OAM, Victoria's Child Safety Commissioner, advised the Committee that the government allowed him a great deal of independence; he has latitude to be critical of government and to engage with the media.²²

The Western Australian Commissioner believes the role to be independent and that this independence lends credibility to issues that she takes up.²³ The Commissioner's website states that 'an important part of the Act states that the Commissioner reports to the WA Parliament through a Parliamentary Committee. This means the Commissioner is independent'.²⁴

This statement does not articulate the Commissioner's responsibility to Parliament. As the second reading debate on the Commissioner for Children and Young People Bill 2005 shows, the Commissioner is independent from government. However, the Commissioner is accountable to Parliament. Under s 49 of the CCYP Act, the Commissioner's written reports must be tabled in each House of the Western Australian Parliament. Furthermore, it is a function of the Committee to:

- monitor, review and report to Parliament on the exercise of the functions of the Commissioner
- examine Annual and other Reports of the Commissioner
- consult regularly with the Commissioner.²⁵

20 Hon Karen Struthers, MP, then Minister for Community Services and Housing, *Committee Briefing*, 10 May 2011.

21 Department of Communities, Queensland, *Committee Briefing*, 10 May 2011.

22 Mr Bernie Geary OAM, Child Safety Commissioner, Victoria, *Committee Briefing*, 23 August 2010.

23 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p2.

24 Commissioner for Children and Young People, *The Role of the Commissioner*, nd. Available at: <http://www.cyp.wa.gov.au/content/The-role-of-the-Commissioner.aspx>. Accessed on 31 August 2012.

25 A full description of the terms of reference for the Committee can be found at Appendix 1.

It is in this way that the Commissioner is accountable, not to government, but to Parliament.

Further evidence of the independence of the Commissioner from government and her accountability to Parliament is provided in s 8(1) of the CCYP Act, which states that 'the Commissioner may, at any time, be suspended or removed from office by the Governor on addresses from both Houses of Parliament'.

Chapter 3

The Role of the Commissioner for Children and Young People

Role of the Commissioner

The role of the Commissioner in Western Australia is primarily advocacy for children and young people, defined under s 5 of the *Commissioner for Children and Young People Act 2006* (WA) (the CCYP Act) as being people under the age of 18 years of age.

While advocacy is not defined in the CCYP Act, drawing on *The New Oxford Dictionary of English*, it is taken to have the general meaning of supporting children and young people through consulting with, and listening to, them and making recommendations on their behalf to improve their wellbeing.

As the Commissioner advised, her broad role 'is to be an advocate for all children under the age of 18 years'.²⁶ The Commissioner further advised that:

*some of [... her] critical roles are, firstly, consulting directly with children and young people throughout the state; listening to the views of children and young people and their families and their communities; and reporting back to children and young people about any action that I may have taken on their behalf. A very significant part of my role as commissioner is to advocate for policies, programs, services and laws that enhance the wellbeing of all children and young people here in Western Australia.*²⁷

Two years into her role, the Commissioner reiterated her key role as being:

to turn the spotlight on gaps in services and programs for children and young people and also to turn the spotlight on the positive contribution they are making and the positive programs that are supporting them and their families here in Western Australia. That has

²⁶ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p2.

²⁷ *ibid.*

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*been a focus in the first two years, and it will continue to be a focus for me as commissioner.*²⁸

In trying to clarify the role of the Commissioner, the Committee asked the Western Australian Ombudsman, Mr Chris Field, about the Commissioner's advocacy function. Mr Field stated that 'it is not obviously and exclusively an advocacy role, but I would have thought that is the core role of the children's commissioner'.²⁹

Mr Field further advised that the Commissioner's advocacy function was 'also potentially to advocate to me [the Ombudsman] and to contact me and say, "We would like you to have a look at something." That is an entirely proper role for the children's commissioner as well'.³⁰ This means that the Commissioner's advocacy can extend to 'all forms of government and presumably also to the private sector as well'.³¹

The Commissioner holds the view that the role in Western Australia is very broad in comparison with that of other Australian jurisdictions:

*Many commissioners have a much more narrow focus on child protection matters; whereas the commissioner here in Western Australia, in accordance with the legislation, is expected to have a very far-reaching role in all aspects of a child's life. [...] I think the main difference is that the main role of many of the commissioners is in relation to monitoring the child protection system in their particular jurisdiction. Occasionally they also might have a mandate to look at other things as well.*³²

The Commissioner argued that her role was not just focused on the child protection system and that this set her apart from most other Australian Commissioners and enabled her 'to have a very broad brief and remit in terms of carrying out her functions'.³³

Many Commissioner's offices in Australian jurisdictions were established in response to child protection issues or scandal. However, most Commissioners have all children and young people as their target group, with some having a particular focus on children in out-of-home care, the juvenile justice system, particularly vulnerable children and/or

28 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 14 October 2009, p11. See also: *Transcript of Evidence*, 17 August 2011, p9.

29 Mr Chris Field, Western Australian Ombudsman, *Transcript of Evidence*, 28 September 2011, p4.

30 *ibid.*

31 *ibid.*

32 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p2.

33 *ibid.* See also: *Transcript of Evidence*, 17 August 2011, p5.

disadvantaged children.³⁴ For example, the design of Queensland's Children's Commission was significantly impacted by the Ford Inquiry of 1999. Initially the Queensland Commission, established in 1996, was involved in advocacy work only. However, following the Ford Inquiry, the functions were broadened to allow the Commission to monitor, review and report on systemic issues.³⁵ The then Queensland Minister for Community Services and Housing advised the Committee that the functions performed by the Commission were very broad and had proven to be effective.³⁶

Refer to Appendix 3 for a summary of the roles, functions and activities of the Commissioners in other Australian jurisdictions.

Focus and Scope of the Commissioner's role

In carrying out her functions, the Commissioner 'must regard the best interests of children and young people as the paramount consideration'.³⁷ The CCYP Act also sets out four principles which must be observed when administering the Act:

(a) children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;

(b) the contributions made by children and young people to the community should be recognised for their value and merit;

(c) the views of children and young people on all matters affecting them should be given serious consideration and taken into account;

(d) parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.³⁸

These legislative provisions clearly reflect the considerations made in the Preamble to the United Nations *Convention on the Rights of the Child*, including:

34 Commissioner for Children and Young People, *Role of Australian Commissioners for Children and Child Guardians*, nd, p7. Available at: <http://www.ccyip.wa.gov.au/files/article/Roles%20of%20Australian%20Commissioners%20and%20Guardians%20-%20November%202009.pdf>. Accessed on 3 September 2012.

35 Department of Communities, Committee Briefing, 10 May 2011; Hon Karen Struthers, MP, Minister for Community Services and Housing, Committee Briefing, 10 May 2011.

36 Hon Karen Struthers, MP, Minister for Community Services and Housing, Committee Briefing, 10 May 2011.

37 Section 3 *Commissioner for Children and Young People Act 2006* (WA).

38 Section 4 *Commissioner for Children and Young People Act 2006* (WA).

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Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding [... and]

*Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.*³⁹

As well as these principles, s 20(1)(b) of the CCYP Act directs the Commissioner to 'have regard to the United Nations Convention on the Rights of the Child'. It also requires the Commissioner to 'give priority to, and have special regard to, the interests and needs of' children and young people who are Aboriginal, Torres Strait Islander, and/or who are vulnerable or disadvantaged for any reason.⁴⁰

In her first hearing with the Committee the Commissioner acknowledged this responsibility, as follows:

*I must also have regard at all times to the best interests of children and young people. I must also take into account the United Nations Convention on the Rights of the child, and I must give priority to Aboriginal children and young people throughout the state, and children and young people who are vulnerable.*⁴¹

The Commissioner also notes this requirement in her first annual report, stating that in performing her functions she must:

- *give priority and have special regard to the interests and needs of Aboriginal and Torres Strait Islander children and young people and children and young people who are vulnerable and disadvantaged*
- *have regard to the United Nations Convention on the Rights of the Child.*⁴²

Similar statements are also contained in publications such as the Commissioner's guidelines, Improving Legislation for Children and Young People, and her Report of the

39 Office of the United Nations High Commissioner for Human Rights, *Convention on the Rights of the Child Preamble*, 20 November 1989, p1. Available at:

<http://www2.ohchr.org/english/law/crc.htm>. Accessed on 31 August 2012.

40 Section 20 *Commissioner for Children and Young People Act 2006* (WA).

41 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p2.

42 Commissioner for Children and Young People, *Annual Report 2008*, Perth, 2008, pp13–14.

Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia.⁴³

The Commissioner advised the Committee that she had:

*attempted with the [Improving Legislation] guidelines to say that when Parliament passed my legislation and asked me to take into account certain principles and also have regard to the United Nations Convention on the Rights of the Child and that the best interests of children and young people is paramount, that that also should be a guide to others developing legislation.*⁴⁴

Functions of the Commissioner

While the functions of the Commissioner will be discussed in greater detail in other chapters of this report, it is useful here to outline the functions as set out in the CCYP Act.

The functions of Commissioner as set down in the Act under s 19 are:

- (a) to advocate for children and young people;*
- (b) to promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity;*
- (c) to promote and monitor the wellbeing of children and young people generally;*
- (d) to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint;*
- (e) to monitor the trends in complaints made by children and young people to government agencies;*
- (f) to initiate and conduct inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people;*

⁴³ Commissioner for Children and Young People, *Improving Legislation for Children and Young People*, 2010, p12; and *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, 2011, p21.

⁴⁴ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p11.

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(g) to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people;

(h) to promote public awareness and understanding of matters relating to the wellbeing of children and young people;

(i) to conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing of children and young people;

(j) to conduct special inquiries under Part 5;

(k) on the Commissioner's own initiative or at the request of the Minister or the Standing Committee, to advise the Minister on any matter relating to the wellbeing of children and young people;

(l) to consider, and make recommendations in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Standing Committee;

[(m) deleted]⁴⁵

(n) to consult with children and young people from a broad range of socio-economic backgrounds and age groups throughout Western Australia each year;

(o) to do anything which the Commissioner considers is necessary or convenient to further the principle in section 3 or any of the guiding principles in section 4;

(p) to perform any other function conferred on the Commissioner by or under this Act or any other written law.

In addition to these functions, the Commissioner is also to:

(c) Develop means of consulting with children and young people that are appropriate to their age and maturity; and

(d) Develop guidelines for government agencies and non-government agencies regarding the participation by children and young people in decisions which affect them.⁴⁶

⁴⁵ Section 19(m) was amended by No. 46 of 2009 s. 5(3). Refer s8 Statutes (Repeals and Minor Amendments) Bill 2008, Bill 265. Section 19(m) was 'to perform any other function conferred on the Commissioner by or under this Act or any other written law', which became s 19(p).

⁴⁶ Sections 20(1)c and 20(1)(d) *Commissioner for Children and Young People Act 2006* (WA).

The Commissioner may also conduct special inquiries in accordance with Part 5 of the CCYP Act. To undertake special inquiries, the Act provides the Commissioner with considerable powers, including the ability to hold hearings, to require attendance of any person at a hearing, to require any person to produce specified documentation and the authority to enter and inspect any place. These powers are outlined in ss 31 to 41 of the CCYP Act.

The Commissioner is also required to prepare annual reports, reports on special inquiries and on inquiries or research conducted by the Commissioner.⁴⁷ The Commissioner's reports are to be tabled in each House of Parliament within 21 days of their finalisation.⁴⁸

Section 52 of the CCYP Act stipulates that the Commissioner may establish advisory committees, and that such committees consisting of children and young people from a broad range of socio-economic and cultural backgrounds and age groups must be established. Representatives of relevant non-government organisations should also be included in advisory committee membership. Advisory committees are to be established in regional and metropolitan areas. Advisory committees are discussed in detail in chapter 9 of this report.

The Commissioner advised that 'one of the difficulties' with the position of Commissioner was the extensive nature of s 19 of the CCYP Act.⁴⁹ The Commissioner explained that this meant that she needs to balance competing functions.⁵⁰

Are Section 19 Functions Obligatory or Discretionary?

In October 2010 the Commissioner, then in her third year of office, described the range of functions under s 19 as 'extensive' and said that at the time she had 'not yet fully tested all the functions'.⁵¹ While at the time she had commissioned research, and was conducting a major piece of research and an inquiry, the Commissioner thought it would be 'a number of years' before 'all the mechanisms available' under s 19 were 'fully utilised'.⁵²

The Committee considered whether the s 19 functions of the CCYP Act were obligatory or optional. The Committee raised this with the Commissioner.

The Commissioner responded:

47 Sections 42, 43 and 44 *Commissioner for Children and Young People Act 2006* (WA).

48 Section 49 *Commissioner for Children and Young People Act 2006* (WA).

49 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p8.

50 *ibid.*

51 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p2.

52 *ibid.*

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I think that they are discretionary. However, I think Parliament intended that I have a wide range of functions so that I had different techniques at my disposal. Research is one thing. The other is the inquiry function. As members would be aware, section 19 of the act allows me to conduct inquiries, so the mental health inquiry is an inquiry under that function rather than under part V. I have not exercised that function yet. I suppose that is really what I was referring to. If we look at section 19, many of the functions listed in that section I have undertaken or am in the process of doing. I could spend all my time doing research or conducting inquiries.⁵³

At a hearing in October 2012, the Commissioner stated that ‘if I wanted to do everything completely, fully, under section 19, I would probably have a very large department’.⁵⁴ The Commissioner also stated that s 19 of the CCYP Act ‘needs to be streamlined ... [and that] when you read some of the functions, they seem to be duplicated or replicated’.⁵⁵ In a November 2012, the Commissioner reiterated this point, stating that some of the s 19 functions ‘are repetitive, overlap, and whether we could streamline them, if you like, make them a bit clearer’.⁵⁶

The Committee concludes that this raises a serious issue in relation to the intentions of Parliament when it passed the CCYP Act. The matter of whether or not the Commissioner’s functions would be discretionary was not raised in the debates on the Commissioner for Children and Young People Bill 2005.

The wording of s 19 is that ‘the Commissioner has the following functions’. It does not say whether or not she must exercise all of those functions. However, it does not seem reasonable that the Commissioner could consider, for example, function 19(a) ‘to advocate for children and young people’ or function 19(d) concerning monitoring government agencies’ handling of children and young people’s complaints as discretionary.

The Committee understands that it would not be reasonable to expect a Commissioner undertaking a newly created role to fulfil all of these functions in the first few years of office. However, it does not consider that the functions intended by Parliament should be discretionary, or if that is the intention, they should be clearly identified as such.

The Committee also agrees that some of the functions seem to be duplicated. For example, 19(c) is ‘to promote and monitor the wellbeing of children and young people

53 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p12.

54 *ibid*, p10.

55 *ibid*, p11.

56 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p8.

generally’, and 19(h) is ‘to promote public awareness and understanding of matters relating to the wellbeing of children and young people’.

Finding 1

The Commissioner considers all s 19 functions of the *Commissioner for Children and Young People Act 2006* to be discretionary functions.

Finding 2

The use of the words “or at the request of the Minister or the Standing Committee” are redundant as it duplicates the capacity under s 19(l).

Recommendation 1

The words ‘or at the request of the Minister or the Standing Committee’ be deleted from section 19(k) of the *Commissioner for Children and Young People Act 2006* so that it reads ‘on the Commissioner’s own initiative, to advise the Minister on any matter relating to the wellbeing of children and young people’.

Recommendation 2

If recommendation 1 is implemented, section 19(l) of the *Commissioner for Children and Young People Act 2006* should be amended to make it clear that this function is not discretionary.

If recommendation 1 is not implemented, sections 19(k) and 19(l) should be amended to make clear that responding to the Minister or the Committee is not discretionary.

Finding 3

Some section 19 functions of the *Commissioner for Children and Young People Act 2006* are duplicated.

Recommendation 3

The *Commissioner for Children and Young People Act 2006* should be amended to remove any perceived unnecessary duplication.

Term of Office

The CCYP Act provides that the Commissioner’s term of office is ‘not longer than five years’. A person appointed as Commissioner is eligible for reappointment only once.⁵⁷

⁵⁷ Sections 9(1) and 9(2) *Commissioner for Children and Young People Act 2006* (WA).

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In accordance with the CCYP Act, the current Commissioner, Ms Michelle Scott, was appointed on 10 December 2007.

The term of office of many Commissioners in other Australian jurisdictions is also for a maximum of five years. There is greater difference in re-appointment of Commissioners following their first term of office. For example, New South Wales has similar provisions to Western Australia in that the term of office must not exceed five years. However, the New South Wales Commissioner may not be appointed for more than two successive terms.⁵⁸ Queensland also has a maximum five year term, and the Queensland Commissioner is eligible for reappointment. However, the *Commission for Children and Young People and Child Guardian Act 2000* (Qld) is silent on the number of times a Commissioner may be reappointed.⁵⁹ Similarly, in the Northern Territory the Commissioner holds office for a period of not more than five years and is eligible for reappointment, with no mention made of limits to reappointments.⁶⁰

The term of office for Tasmania's Commissioner is much shorter, with the *Children, Young Persons and Their Families Act 1997* (Tas) specifying a maximum of three years. This Act is also silent on reappointment.⁶¹

Victoria's *Child Wellbeing and Safety Act 2005* (Vic) is silent on the term of office of the Child Safety Commissioner. The Commissioner's appointment is made through the Premier and the term of office is negotiated. Mr Bernie Geary was appointed in May 2005 for a three year term and subsequently reappointed for a further 5 year term.⁶²

Five years also seems to be the favoured term of office in international jurisdictions. For example, both the United Kingdom and New Zealand Commissioners are appointed for maximum five year terms. The UK Commissioner may also be reappointed only once.⁶³ In New Zealand the *Children's Commissioner Act 2003* (New Zealand) is silent on reappointment.

Under the original legislation that established the office of Scotland's Commissioner, the *Commissioner for Children and Young People in Scotland Act 2003*, the term for Commissioner's term was originally five years. Following a parliamentary review of the range of existing Commissioners and Commissions, the *Scottish Parliamentary Commissions and Commissioners etc. Act 2010* (Scotland) was enacted. Under this Act,

58 Section 5 *Commission for Children and Young People Act 1998* (New South Wales).

59 Section 27 *Commission for Children and Young People and Child Guardian Act 2000* (Queensland).

60 Section 285 *Care and Protection of Children Act 2007* (Northern Territory).

61 Schedule 1 *Children, Young Persons and Their Families Act 1997* (Tasmania).

62 Office of the Child Safety Commissioner, *About Us*. Available at: <http://www.kids.vic.gov.au/about.htm>. Accessed on 3 September 2012. This was confirmed by the Office of the Child Safety Commissioner, Telephone Conversation, 3 September 2012.

63 Schedule 1(3)(4) *Children Act 2004* (United Kingdom), Section 2.

the Commissioner's office was retained as a separate entity and the Commissioner's term of office was changed to a single term of eight years.⁶⁴

In 2009, as part of a review by the Scottish Parliament, the Children's Commissioner's office was merged with the Scottish Human Rights Commission.

In August 2011 Ms Scott advised that:

*if you completed 10 years in this position, you would be doing very well, because I think it is a very responsible position. [...] I think that when you take on an independent statutory officer position, you have to accept some of the challenges with the position, which are that you are constantly seeking to change things, and sometimes that might bring you up against people who are satisfied with the status quo and do not believe there should be change. There will be differences of opinion; that is democracy. Parliament has charged me with certain responsibilities to always be acting in the best interests of children and young people, regardless of whether I seek another term or might be reappointed. That has not impacted on my role.*⁶⁵

In November 2012, the Commissioner advised that:

*it is worth considering the seven years ... Seven years, more than five, would give a commissioner that level of security for seven years, so I think that is worth considering. Ten might be okay, too.*⁶⁶

In relation to whether or not a Commissioner's term should be limited to one, with no reappointment provision, the Commissioner stated that her personal experience was that 'whether it is five year and no reappointment, or the possibility of reappointment, has not affected my approach'.⁶⁷

The Committee considers that a single term of not more than eight years would be more appropriate as it would increase the Commissioner's independence.

Finding 4

A single term of office of eight years would be more appropriate for Western Australia's Commissioner for Children and Young People.

64 Ms Pauline McIntyre, Enquiries Officer, Scotland's Commissioner for Children and Young People, Electronic Mail, 3 September 2012. This review included a proposal that the Commissioner's office be merged with the Scottish Human Rights Commission, a move strongly opposed by Scotland's Commissioner.

65 Ms Michelle Scott, Children's Commissioner, *Transcript of Evidence*, 17 August 2011, pp12-13.

66 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, pp10-11.

67 *ibid*, p11.

Chapter 3

Recommendation 4

The *Commissioner for Children and Young People Act 2006* should be amended to provide for a single the term of office for the Commissioner for Children and Young People of eight years.

Chapter 4

Advocacy

Introduction

As noted in chapter 3, the role of the Commissioner is primarily to advocate for Western Australian children and young people under the age of 18, and the Commissioner's advocacy could extend to all forms of government and the private sector. Chapter 3 also highlighted the Commissioner's acknowledgement that advocacy was her key role.

Chapter 3 also noted that the *Commissioner for Children and Young People Act 2006* (WA) (the CCYP Act) prescribes that:

- the Commissioner's primary consideration must be the best interests of children and young people
- the Commissioner must take into account the United Nations Convention on the Rights of the Child⁶⁸
- the Commissioner must give priority to the interests and needs of Aboriginal and Torres Strait Islander children and young people.

This chapter discusses the Commissioner's advocacy functions in more detail. To this end, the discussion is based around three activities, namely advocacy, promotion and consulting. These activities clearly overlap and have been separated only for ease of discussion.

Advocacy

As noted previously, the CCYP Act does not describe advocacy. In its *Final Report*, the Legislative Council's Select Committee on Advocacy for Children (Appointment of a

68 The Standing Committee on Uniform Legislation and Statutes Review's Report 77 discusses the inclusion of objects relating to the United Nations Convention on the Rights of the Child in Western Australian legislation and the potential impact this has on Parliamentary sovereignty and law-making. See: Standing Committee on Uniform Legislation and Statutes Review, Report 77 *Family Court Amendment (Family Violence and Other Measures) Bill 2012*, Western Australia, Legislative Assembly, Perth, November 2012.

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Commissioner for Children) reported that its evidence suggested that advocacy was ‘at least colloquially, a well understood term’.⁶⁹

The Select Committee on Advocacy for Children found that advocacy was ‘best described’ as:

*not simply about providing representatives to speak on a child’s behalf, or about providing opportunities to incorporate a child’s view. It also involves ensuring appropriate systems exist to recognise the rights and needs of all children and young people, and respond to them appropriately.*⁷⁰

The Committee agrees that this is a very useful definition and that it is reflected in the Commissioner’s functions prescribed in the CCYP Act.

Under s 19(a) of the CCYP Act, the Commissioner is ‘to advocate for children and young people’. While it is reasonable to assume that the CCYP Act intends the Western Australian Commissioner to advocate for all children and young people in Western Australia, this is not specifically stated in the legislation. Nor does the definition of children and young people or child and young person in s 5 of the CCYP Act limit the scope to Western Australian children and young people. The Committee notes, though, that s 19(n) requires the Commissioner to consult with a range of children and young people from throughout Western Australia.

While this has not to date proved a major problem, it would be useful for the legislation to more clearly and consistently delineate the Commissioner’s jurisdiction and role.

Given the Commissioner’s broad advocacy role, most, if not all, of her activities could be said to be either advocacy in and of itself or to provide the basis for her advocacy. In October 2012 the Commissioner confirmed this view, stating that ‘broadly all of the work of my office fulfils this function’.⁷¹ Consequently, each of the individual chapters in this report contains a discussion of some aspects of the activities that inform the Commissioner’s advocacy.

Therefore, the balance of this section is limited to a discussion of particular sections of the CCYP Act that impact upon the Commissioner’s advocacy functions.

69 Legislative Council’s Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), *Final Report*, Parliament of Western Australia, Perth, July 2004, p6.

70 *ibid*, p7. This was the definition adopted by the Select Committee and was sourced from the New South Wales Parliament’s Standing Committee on Social Issues 1996 report on its Inquiry into Children’s Advocacy.

71 Submission No. 2 from Commissioner for Children and Young People, 2 October 2012, ‘Report against the Functions of the *Commissioner for Children and Young People Act 2006*’.

Section 19(o) states that it is the Commissioner's function 'to do anything which the Commissioner considers is necessary or convenient to further the principle in section 3 or any of the guiding principles in section 4'.

The principle in s 3 requires the best interests of children and young people to be the Commissioner's paramount consideration. The four guiding principles in s 4 are set out in chapter 3 of this report and relate to the entitlement of children and young people to a safe, caring and nurturing environment; to have their contributions to the community recognised and valued; to have their views seriously considered; and to recognise and support parents, families and communities as the primary guardians of children and young people's wellbeing.

The Commissioner advised that she saw her office as:

having a very proactive and important leadership role here in Western Australia. Over the past 12 months, the commissioner and the resources of my office have been initiating policies and strategies that will enhance the wellbeing of children and young people. Although I have a function to monitor existing laws and policies, I think we actually have a very strong role in promoting and initiating laws and policies. A lot of my work over the past 12 months—we have discussed one of the areas, which is the early years. Another example is the juvenile justice area, and another area is regional and remote issues in relation to children and young people. I am not just monitoring what is already there; I am initiating and challenging what should be there, and raising the bar.⁷²

The Commissioner listed the following work conducted by her office as fulfilling her advocacy function:

- *Wellbeing Monitoring Framework*
- *Inquiry into the mental health and wellbeing of children and young people*
- *Participation and consultation work*
- *Meet regularly with ministers, directors general and non-government sector*
- *Bringing expert speakers to Perth to focus attention on particular issues*

72 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p13.

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- *Over 480 representations made in five years.*⁷³

The Committee is satisfied that the Commissioner regards advocacy as her primary role and that in carrying out her functions the Commissioner observes the principles of ss 3 and 4 of the CCYP Act.

This is clearly illustrated by the many activities undertaken by the Commissioner, including, but not limited to:

- consulting with over 4,000 children over five years;
- hosting seminars and forums such as the Dr Clyde Hertzman Early Years Seminar and the Reducing Alcohol-related Harm on Children and Young People forum;
- conducting Commissioner for a Day Challenges;
- Undertaking Children's Week activities;
- undertaking major research projects and inquiries; and
- appointing ambassadors for Children and Young People.

Section 20 is also very important to the exercise of the Commissioner's advocacy and other functions. This chapter deals specifically with Section 20(1)(a) which states that:

In performing the Commissioner's functions, the Commissioner must —

(a) give priority to, and have special regard to, the interests and needs of —

(i) Aboriginal children and young people and Torres Strait Islander children and young people; and

(ii) children and young people who are vulnerable or disadvantaged for any reason.

Special Regard to Aboriginal and Torres Strait Islander Children and Young People

In 2002, the report into the *Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, referred to as the Gordon Inquiry, made two recommendations in relation to the establishment of a children's commissioner.

⁷³ Submission No. 2 from Commissioner for Children and Young People, 2 October 2012, 'Report against the Functions of the *Commissioner for Children and Young People Act 2006*'.

At paragraph 144 of Section 5, the Gordon Inquiry report recommended 'that a Children's Commissioner be established which is independent and reports directly to the Premier'.⁷⁴ Paragraph 145 recommended that 'the proposed Children's Commissioner should have a Deputy Children's Commissioner with responsibility for issues in relation to Aboriginal children'.⁷⁵

The 2004 report from the Legislative Council's Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) stated that it had received:

*support for the concept of a deputy commissioner from two sources. The Hon David Malcolm AC, Chief Justice of Western Australia, said a deputy would be useful because of the commissioner's numerous functions. The YLS [Youth Legal Service Inc Western Australia] said it endorses recommendation 145 of the Gordon Inquiry Report which proposed a "...Deputy Children's Commissioner with responsibility for issues in relation to Aboriginal children."*⁷⁶

Nevertheless, the Select Committee:

*while recognising the particular disadvantages experienced by Aboriginal children and young people, rejected the call for a deputy commissioner to specifically represent them. The Committee resolved that a commissioner for all children was the best option.*⁷⁷

The issue of a Deputy Commissioner was raised during the debate on the Commissioner for Children and Young People Bill 2005. During that debate the fact that the Bill did not incorporate the Gordon Inquiry recommendations in relation to a Deputy Children's Commissioner was raised.

Hon Dr Elizabeth Constable, MLA, argued that the Bill should be amended to include a 'dedicated deputy commissioner for the needs of Aboriginal children', stating that:

it is really important, because there are so many issues that many of us are concerned about to do with Aboriginal children. ... There is deep concern with all aspects of the welfare of Aboriginal children, including education, drugs and health. To have that dedicated person would be

⁷⁴ Gordon, S, Hallahan, K, and Henry, D, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of the Premier and Cabinet, Perth, 2002, p494.

⁷⁵ *ibid*, p494.

⁷⁶ Legislative Council's Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), *Final Report*, Parliament of Western Australia, Perth, July 2004, p48.

⁷⁷ *ibid*, p50.

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*a great follow-on from the Gordon report and a very important part of the office of the Commissioner for Children and Young People.*⁷⁸

Then Minister for Community Development, Hon Sheila McHale, MLA, stated that she did not endorse the Gordon Inquiry recommendation for a Deputy Commissioner as she wanted:

*the issues of Aboriginal children elevated to the role of the commissioner, not necessarily the role of the deputy commissioner. Issues affecting Aboriginal children are significant and they do not necessarily affect other vulnerable groups, such as children with disabilities, although the disability lobby group might claim that people with disabilities should have a special person, as might people from non-English speaking or culturally and linguistically diverse groups.*⁷⁹

Hon Sheila McHale, MLA, argued that because the CCYP Act required the Commissioner 'to have regard for and give priority to Aboriginal children and, indeed, children who are vulnerable and disadvantaged for any reason', she expected the Commissioner to do so.⁸⁰

In a briefing in February 2009, the Commissioner stated that she did not favour the creation of a Deputy Commissioner position to focus on Aboriginal issues while the Commissioner focused on all other issues. The Commissioner considers that she should represent everyone and that, rather than being set apart, Aboriginal issues should be integrated into the overall organisation.⁸¹

The Committee agrees that such a separation of roles would not be appropriate. It is important that the Commissioner represent all children and young people in Western Australia.

In May 2009 the Committee received 13 letters and emails from individuals and organisations highlighting issues confronting Aboriginal children and young people, and supporting the establishment of a Deputy Commissioner for Aboriginal children and young people.

In response to this correspondence, the Committee considered the appropriateness of appointing a Deputy Commissioner, with that role having an emphasis on Aboriginal children and young people, to help support and enhance the Commissioner's role.

78 Hon Dr Elizabeth Constable, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2012, p27 of pp3975b–4012a.

79 Hon Sheila McHale, MLA, then Minister for Community Development, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 16 August 2005, p27 of pp3975b–4012a.

80 *ibid*, p28 of pp3975b–4012a.

81 Ms Michelle Scott, Commissioner for Children and Young People, *Committee Briefing*, 4 February 2009.

Given the developing nature of the Commissioner's role, the Committee determined that it would not have been appropriate at that time. Now that the Commissioner's role is more established, the Committee considers that it may be appropriate to reconsider this matter.

The Committee's view that consideration of the interests and needs of Aboriginal children should remain a priority for the Commissioner has not changed.

In a November 2012 hearing with the Commissioner, the Committee raised the issue of a Deputy Commissioner role with a focus on Aboriginal children and young people. The Commissioner advised that consideration of the role of Deputy Commissioner needed to be placed in the context of the Gordon Inquiry, which 'was specifically focused on child protection, and the role of the commissioner really focused on ... care and protection'.⁸²

The Committee acknowledges that the focus of the Gordon Inquiry was government agency responses to complaints of family violence and child abuse in Aboriginal communities.

The Committee notes that the Commissioner's own inquiries and reports, which were conducted post the Gordon Inquiry, recognise the ongoing disadvantage experienced by Aboriginal children and young people. For example, the Commissioner's Mental Health Inquiry report notes the lower life expectancy, higher infant mortality and very poor mental health outcomes experienced by Aboriginal children and young people.⁸³ This report also stated that 'this continuing disadvantage has a fundamental impact on the mental health of Aboriginal individuals and communities'.⁸⁴

The Commissioner's Wellbeing Monitoring Framework's *Profile of Children and Young People in Western Australia* also clearly shows the disadvantage experienced by Aboriginal children and young people relative to non-Aboriginal children and young people, particularly in relation to living in overcrowded housing, having higher teenage pregnancy rates and being highly over-represented in Western Australia's child protection system and in the juvenile justice system.⁸⁵

The Commissioner's findings reflect those contained in the three volumes of the *Western Australian Aboriginal Child Health Survey* which investigated the health,

82 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p12.

83 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, Perth, April 2011, pp72–73.

84 Ibid, p73.

85 Commissioner for Children and Young People, *Profile of Children and Young People in Western Australia*, Perth, 2011.

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wellbeing and development Aboriginal and Torres Strait Islander children and young people in Western Australian.⁸⁶ For example, this survey found that:

- ‘despite Aboriginal health being an important priority issue for governments, progress in improving Aboriginal health status has been poor’.⁸⁷
- Almost one quarter (24 per cent) of ‘Aboriginal children aged 4–17 years were assessed ... as being at high risk of clinically significant emotional or behavioural difficulties’.⁸⁸
- Western Australian Aboriginal students are ‘faring poorly in terms of academic performance when compared with all Western Australian students’ and evidence suggests the disparity is much greater than that experienced by Indigenous students in New Zealand, Canada and the United States.⁸⁹

The Committee is mindful of the pressure on governments to close the gap between Aboriginal and non-Aboriginal people.

The Commissioner was asked whether there would be value in a specific position of a Deputy Commissioner.⁹⁰ The Commissioner stated that ‘there are advantages and there are disadvantages’ and that ‘many senior Aboriginal people’ had raised concerns about having ‘one position to represent all the needs of Aboriginal people’.⁹¹ The Commissioner further stated that what these senior Aboriginal people ‘do not want is Aboriginal issues being put off to the side, whether it is with a deputy commissioner or anyone else’.⁹²

86 There are four volumes to this survey: Volume 1, published in June 2004, relates to the physical health of Aboriginal children and young people; Volume 2, published in April 2005, relates to the social and emotional wellbeing of Aboriginal children and young people; volume 3 relates to the educational experiences of Aboriginal children and young people; and volume 4 relates to the role of families and communities in supporting the health and wellbeing of Aboriginal children and young people. Available at: <http://aboriginal.childhealthresearch.org.au/kulunga-research-network/waachs.aspx>.

87 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey Volume 1*, June 2004, p287.

88 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey Volume 2*, April 2005, p30.

89 Telethon Institute for Child Health Research, *Western Australian Aboriginal Child Health Survey Volume 2*, March 2006, p226.

90 This question was in relation to whether having a senior adviser has been adequate to provide the input and the profile for matters relating to Aboriginal children and young people. The issue of an Aboriginal Advisor is discussed further in this chapter.

91 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p12.

92 *ibid.*

The Committee's view is that this would not necessarily happen and that such a role might actually strengthen the overall work of the Commissioner by having that senior person.

The Commissioner agreed that 'it would not necessarily happen, just as it does not necessarily happen that as a commissioner I do not have regard to Aboriginal children and young people without a deputy who is Aboriginal'.⁹³

Recommendation 5

The issue of having a Deputy Commissioner position with an emphasis on Aboriginal children and young people should be reviewed.

In February 2009, the Commissioner also advised that she had created the position of Aboriginal Advisor, but that it had not been filled at that time. Although the position had been advertised twice and networks have been exploited to try and find a candidate, this has proven unsuccessful. The Commissioner believed that the tight labour market and competition from the resources sector had led to a shortage of suitable candidates. To remedy this, a senior policy and research position with an Aboriginal emphasis was being advertised with a view to this person ultimately growing into the role of the Aboriginal Advisor.⁹⁴

In March 2009, the Commissioner advised the Committee that she had 'created a special Aboriginal adviser position' that reported directly to her.⁹⁵ The Commissioner's *Annual Report 2008–2009* states:

Two extensive national recruitment processes were undertaken to fill the Aboriginal Advisor position but, in both situations, the position could not be filled. As an interim measure, the Commissioner engaged Aboriginal consultants to provide advice and expertise.

The Commissioner stated that 'it was quite difficult, and we went through three or four selection processes before we were able to recruit someone'.⁹⁶

The Commissioner also advised that soon after the March 2009 hearing the position of Aboriginal Advisor had been filled. However, the person who took up that role has now 'obtained another senior position in government, so it is vacant at the moment'.⁹⁷ In the interim the Commissioner is 'seeking to recruit some other Aboriginal people,

93 *ibid.*

94 Ms Michelle Scott, Commissioner for Children and Young People, *Committee Briefing*, 4 February 2009.

95 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p3.

96 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p12.

97 *ibid.*

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though, also to work in the office in the absence of this person now obtaining a position'.⁹⁸

The Commissioner's *Annual Report 2009-2010* includes the Aboriginal Advisor as one of three strategic business positions, and describes the position as follows:

This position:

- *helps to set the strategic direction and development of policies and initiatives from an Aboriginal perspective*
- *assists the Commissioner to consult effectively and appropriately with Aboriginal and Torres Strait Islander children and young people and their families and encouraging their participation and engagement in all functions of the office*
- *negotiates with stakeholders, particularly Aboriginal families, organisations and communities*
- *provides advice and assistance to ensure the interests and needs of Aboriginal and Torres Strait Islander children and young people are appropriately considered in the delivery of services and programs in all sectors of the community.*⁹⁹

In November 2012, the Commissioner advised that 'the role of that Aboriginal adviser ... was not only to attend every corporate executive but also to ensure that the office and the work that we undertook assisted us in ensuring that Aboriginal children and young people are given the special regard as required under section 20 [of the CCYP Act]'.¹⁰⁰

In October 2012 the Commissioner reported that 'the disadvantage that Aboriginal children and young people continue to face is of great concern and has been a primary focus for me'.¹⁰¹ The Commissioner stated that:

the views and needs of Aboriginal children and young people, (sic) permeates all of the work of my office. Through this work, and through inquiries into matters affecting the wellbeing of young people generally, I have acted to promote awareness and understanding in

98 *ibid.*

99 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p9 and p10.

100 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p12.

101 Submission No. 2 from Commissioner for Children and Young People, 2 October 2012, 'Report against the Functions of the *Commissioner for Children and Young People Act 2006*'.

*the community about the wellbeing of Aboriginal children and young people.*¹⁰²

The Commissioner further stated that:

*my priority areas of early years, youth justice, mental health and reducing alcohol-related harm are particularly relevant to improving outcomes for Aboriginal children and young people. I have also maintained a strong focus on developing and building relationships with Aboriginal communities and non-government agencies responsible for services to these communities. Wherever possible I have consulted with Aboriginal children and young people on matters affecting them and I have disseminated these views widely through publications and other representations.*¹⁰³

Special Regard to Children and Young People who are vulnerable or disadvantaged

In February 2009, the Commissioner advised that her Participation Strategy would involve those who might be influenced by outcomes, but who do not typically get involved. This would include, for example, economically disadvantaged, less articulate and/or Indigenous children and young people.¹⁰⁴

Further to involving those who do not typically participate in consultations, the Commissioner indicated that external organisations such as Millennium Kids had assisted on some consultations to date and that part of their terms of involvement included the requirement to involve Indigenous children. In other instances, consultations have been able to target groups with representation by Indigenous and/or disadvantaged children and young people; for example, recent consultations undertaken in Port Hedland for 'Shout Out'.¹⁰⁵

The Commissioner indicated that there are methods for engaging those less likely to get involved, and that selection of the method is very important. For example, on-line polls such as those conducted by the NSW Commissioner will only target certain types of children. The Commissioner stated that this issue would be covered by the Participation Strategy.¹⁰⁶

102 *ibid.*

103 *ibid.*

104 Ms Michelle Scott, Commissioner for Children and Young People, *Committee Briefing*, 4 February 2009.

105 *ibid.*

106 *ibid.*

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Special Regard to Aboriginal and Torres Strait Islander, and to Vulnerable and Disadvantaged Children and Young People as Indicated by the Commissioner's Publications

The following information, as provided in the Commissioner's publications, provides evidence of the efforts made to pay special regard to Aboriginal and Torres Strait Islander, and vulnerable and disadvantaged children and young people.

Speaking Out About Reducing Alcohol-Related Harm on Children and Young People

In total, 272 young people aged 14 to 17 years from a diverse range of backgrounds.

128 (47%) males and 144 (53%) females

78 (29%) from regional WA and 194 (71%) from metropolitan WA

18 (7%) Aboriginal young people

38 (14%) young people from culturally and linguistically diverse backgrounds.¹⁰⁷

Speaking Out About Wellbeing - The Views of Western Australian Children and Young People

The sample comprised 959 children and young people aged 5 to 18 from across Western Australia. This was made up of 377 participants in the qualitative activities and 582 respondents to the quantitative (online) survey.

- *67% were from Perth metropolitan area and 33% were from regional and remote locations*
- *51% boys and 49% girls*
- *28% were aged 5 to 12 years and 71% were aged 13 to 18 years (10 participants' ages were not known)*
- *10% were Aboriginal*
- *6% had a disability*
- *4% were in foster care.*

The research also included children and young people with learning difficulties, chronic health conditions, refugee and newly arrived migrants and young carers.¹⁰⁸

¹⁰⁷ Commissioner for Children and Young People, *Speaking Out about Reducing Alcohol-related Harm on Children and Young People*, Perth, nd, p5.

Improving Legislation for Children and Young People: Guidelines for Assessing the Impact of Proposed Legislation on Children and Young People

The guidelines state that special regard is also to be given to the best interests of Aboriginal children and young people, and vulnerable or disadvantaged children and young people.

The guidelines note **Specific groups of children and young people** as being:

Disabled

Young accused/offenders

Vulnerable or disadvantaged

Aboriginal and Torres Strait Islanders

Refugees and victims of war or neglect

Step 2 of the guidelines includes asking the question:

Is the proposed legislation in the best interests of all children and young people and specific groups including Aboriginal children and young people and vulnerable or disadvantaged children and young people?

Step 3, which involves analysing the impact of legislation, includes asking:

To what degree will they be affected? Proposals can impact differently on different groups so consider:

- *Degrees of disadvantage – family income, available family and community supports including services, special needs*
- *Cultural background – Aboriginal children and young people, children from culturally and linguistically diverse backgrounds*
- *Developmental needs – early years, primary school age, adolescence, and young adulthood*
- *Geographic location.*¹⁰⁹

The Committee notes that the Commissioner's participation guidelines and complaints guidelines do not include specific advice for agencies on particular issues to consider

108 Commissioner for Children and Young People, *Speaking Out about Wellbeing. The Views of Western Australian Children and Young People*, Perth, October 2010, p5.

109 Commissioner for Children and Young People, *Improving Legislation for Children and Young People: Guidelines for Assessing the Impact of Proposed Legislation on Children and Young People*, Perth, October 2010, p8, p9 and p10.

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when dealing with Aboriginal and Torres Strait Islander, and vulnerable or disadvantaged children and young people.

Given the importance of participation and complaints handling for these particularly vulnerable groups of the community, including specific information on these groups is something the Committee encourages the Commissioner to include in updated editions of the guidelines.

All guidelines produced by the Commissioner would benefit from the inclusion of specific advice for agencies on particular issues to consider when dealing with Aboriginal and Torres Strait Islander, and vulnerable or disadvantaged children and young people.

Finding 5

The Commissioner's participation guidelines and complaints guidelines do not include specific advice for agencies on particular issues to consider when dealing with Aboriginal and Torres Strait Islander, and vulnerable or disadvantaged children and young people.

Recommendation 6

All of the Commissioner's guidelines should include specific advice for agencies on particular issues to consider when dealing with Aboriginal and Torres Strait Islander, and vulnerable or disadvantaged children and young people.

The State of Western Australia's Children and Young People

The data in this report confirms the ongoing disadvantage of Aboriginal children and young people across a range of wellbeing measures.¹¹⁰

This report provides comparative information on Aboriginal and non-Aboriginal children and young people for categories grouped under the eight domains considered in the Wellbeing Monitoring Framework project.

Regional Visit Reports

- | | |
|------------------------------------|--|
| • Albany - March 2009 | • Geraldton - June 2010 |
| • Bunbury - March 2009 | • Leonora and Leonora Alternative Place of Detention - December 2010 |
| • Carnarvon - July 2010 | • Margaret River - March 2012 |
| • Derby and Mowanjum - August 2008 | • Narrogin - September 2012 |
| • Esperance - March 2011 | • Newman and Jigalong - July 2009 |
| • Fitzroy Crossing - December 2009 | |

110 Commissioner for Children and Young People, *The State of Western Australia's Children and Young People – Edition One*, Perth, February 2012, p13.

- Halls Creek - June 2008
- Kalgoorlie - July 2008
- Katanning and Kojonup - September 2011
- Geraldton - June 2009
- Northam and Merredin - March 2010
- Wiluna - June 2010
- Wyndham and Kununurra - August 2009

Many of these reports are on rural and remote areas and necessarily include the Commissioner's thoughts on issues relating to Aboriginal and Torres Strait Islander children and young people.¹¹¹

Thinker in Residence Programme

The 2012 Thinker in Residence, Dr Stuart Shanker, visited Roebourne as part of his residency. His report includes his response to this visit.

The 2011 Thinker in Residence was Mr Paul Collard. His report includes his observations of the significance of Aboriginal culture to the cultural and creative life of young people in Western Australia.¹¹²

Mental Health Inquiry Report

The Mental Health Inquiry report notes the special regard and priority the Commissioner must give to Aboriginal and Torres Strait Islander, and vulnerable and disadvantaged children and young people. The Commissioner's report makes the following statement:

The Commissioner acknowledges the unique contribution of Aboriginal people's culture and heritage to Western Australian society and Aboriginal people's whole-of-life view of mental health that incorporates the importance of connection to the land, culture, spirituality, ancestry, family and community.

*The Inquiry acknowledges that this recognition and identity is fundamental to Aboriginal people's social and emotional wellbeing and that mutual resolve, respect and responsibility are required to close the gap on Aboriginal disadvantage and to improve mental health and wellbeing.*¹¹³

111 These reports can be found on the Commissioner's website. Available at: <http://www.cyp.wa.gov.au/content/Publications.aspx>. Accessed on 31 October 2012.

112 These reports can be found on the Commissioner's website. Available at: <http://www.cyp.wa.gov.au/content/Publications.aspx>. Accessed on 31 October 2012.

113 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p27.

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Chapter 5 of the Mental Health Inquiry Report is dedicated to children and young people who are vulnerable or disadvantaged. As well as including information on Aboriginal children and young people, chapter 5 of the Commissioner's report discusses children and young people:

- living in regional and remote communities
- in contact with the criminal justice system
- in care
- of parents with a mental illness
- experiencing difficult circumstances
- from culturally and linguistically diverse communities
- with diverse sexuality, sex and/or gender
- with a disability

Finding 6

The Commissioner has consistently fulfilled her obligations under section 20(1)(a)(i) with respect to her advocacy role.

Promotion

The following functions relate specifically to the promotion activities of the Commissioner:

- Section 19(b) — 'to promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity'.
- Section 19(c) — 'to promote and monitor the wellbeing of children and young people generally'.
- Section 19(h) — 'to promote public awareness and understanding of matters relating to the wellbeing of children and young people'.
- Section 20(1)(d) — 'develop guidelines for government agencies and non-government agencies regarding the participation by children and young people in decisions which affect them'.

As noted above, in February 2009 the Commissioner advised that her Participation Strategy would involve those who might be influenced by outcomes, but who do not usually get involved.

At a March 2009 hearing, the Commissioner outlined the six main activities being undertaken in relation to participation of children and young people. First, during the Commissioner's travels she:

*tr[ies] to meet with children and young people just to introduce [her]self and listen to them firsthand. ... I make a point of meeting with those individuals and organisations ... The first thing is that they see that they can have a relationship with the commissioner and meet with the commissioner.*¹¹⁴

Second is the Commissioner's 'modelling good practice around participation of children and young people'. For example, 'involving children and young people; their participation in the logo; the website, those sorts of things'.¹¹⁵ For the Commissioner, this meant that when she went to agencies and said, 'How do you involve children and young people in your services, in your programs?' she could 'point to some solid examples in my own office's operation'.¹¹⁶

Third, the Commissioner developed participation guidelines as a means of actively promoting the participation of children and young people in both government and non-government agencies. The development of the participation guidelines also fulfils the requirements of s 20(1)(d).

These guidelines were launched in October 2009 and 'have been widely distributed'.¹¹⁷ The guidelines were not produced in hard copy, but placed on the Commissioner's website. At March 2010 there had been approximately 300 downloads.¹¹⁸

In March 2010, the Commissioner reported that feedback from both government and non-government agencies on the participation guidelines had been 'very positive', and that she had 'had a lot of interest from different organisations wanting us to provide assistance so that they can actively seek participation of children and young people'.¹¹⁹

114 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p5.

115 *ibid.*

116 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p5.

117 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 10 March 2010, pp3-4.

118 *ibid.*

119 *ibid.*

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The Commissioner has held training sessions on the guidelines, and in August 2011 advised that '100 per cent of people who participated in the training said that they valued the training and the resource that is provided in the guidelines'. However, as the guidelines had only been published for less than a year, it was too early for agencies to say how they were influencing their behaviour.¹²⁰

Nevertheless, the Commissioner was able to provide the following examples of the impact of her participation guidelines:

- the development of the Children and Young People's Advisory Committee for the new children's hospital.¹²¹
- the Western Australian museum wanted to consult directly with children and young people about the museums; the regional museum and perhaps whatever the new museum might be in Western Australia.¹²²
- the Clinical Health Senate, which provides advice to the corporate executive of the Department of Health, had conducted a forum to directly engage with children and young people to find out what they thought about health services.¹²³

In November 2012, the Commissioner reported that while her speaking with government agencies and parliamentary committees about involving children and young people in their deliberations was initially 'met with surprise', after 5 years there had been a 'tremendous change in appetite'.¹²⁴ The Commissioner pointed to the new children's hospital as a 'really good example where we have a children and young people youth advisory committee informing that process'.¹²⁵ Furthermore, a federal parliamentary committee investigating cyber-bullying had 'embraced' the idea that they should hear from children and young people, and 'developed two survey instruments for children and for young people'.¹²⁶

120 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p4.

121 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 10 March 2010, pp3–4; Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11; and Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p4.

122 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, pp5–6.

123 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11; and Ms Michelle Scott, Commissioner for Children and Young People, *Committee Briefing*, 19 August 2009.

124 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p8.

125 *ibid.*

126 *ibid.*

The fourth main activity undertaken by the Commissioner in relation to participation of children and young people was working with the Ombudsman, the Office of Health Review and the Equal Opportunity Commission to develop 'complaints guidelines that are more responsive to children and young people'.¹²⁷

Fifth, when the Commissioner sees 'something that has worked very effectively' she promotes it in all public presentations and written information. As an example the Commissioner cited the Public Transport Authority's amendment of a planned advertising campaign. The Authority had been concerned about dangerous and high-risk behaviour by young people on railway lines, and about antisocial behaviour on the Armadale line. An advertising campaign was developed, but following consultation with young people, the Authority recognised that the campaign was flawed, and it was amended. The Commissioner reported that it is good models such as this that she promotes.¹²⁸

The sixth promotion activity was a 'major forum [held] in Children's Week', which 'showcased the participation of children and young people. We had several young people—I think it was five or six—throughout the state who presented to a forum of decision makers here in Western Australia about how active they had been in their local communities. We received a very positive response and feedback around that forum'.¹²⁹

A list of the Commissioner's activities undertaken in relation to ss 19(b), 19(c) and 19(h) can be found in the table provided by the Commissioner and included at Appendix 4.

Consulting

Under s 19(n) it is a function of the Commissioner 'to consult with children and young people from a broad range of socio-economic backgrounds and age groups throughout Western Australia each year'. Section 20(1)(c) also requires the Commissioner 'to develop means of consulting with children and young people that are appropriate to their age and maturity'.

Table 4.1 provides data on the number of consultations undertaken and the number of children and young people consulted.

127 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p6.

128 *ibid.*

129 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p6.

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Table 4.1: Commissioner's Consultations with Children and Young People¹³⁰

Reporting Period	Regional	Metropolitan	Number of Children and Young People Consulted		
			Project Related	Other Consultations	Total
2011–2012	18	25	300	408	708
2010–2011	9	16	700	260	960
2009–2010	11	18	959	412	1371
2008–2009	~5	~9	–	550	550
2007–2008	~5	~5	–	>500	>500
Total	~48	~73	1959	2130	4089

In Table 4.1 the 2011–2012 project involving consultations with 300 children and young people was the reducing alcohol-related harm project. The project involving 700 children and young people in 2010–2012 was the Mental Health Inquiry. The 959 children and young people consulted in 2009–2010 were involved in the wellbeing research project.

There are approximately 550,000 children and young people in the state and the Commissioner's consultations have included 4,089 over 5 years. Given this, and together with the fact that the Commissioner writes reports and policy briefs that incorporate information from these consultations, it is essential that the children and young people consulted by the Commissioner are representative of the wider population of Western Australian children and young people.

Citing the Mental Health Inquiry and the project about reducing alcohol-related harm as examples, the Commissioner advised that 'considerable effort' is made to ensure the children and young people consulted are representative.¹³¹

The Commissioner also advised that information is kept about those children and young people consulted, including 'their circumstances and their background, whether they are aboriginal, whether they are from a migrant background or from a low socioeconomic group'.¹³²

While demographic data is kept, to date it has not been analysed to produce the demographic profile of children and young people consulted.¹³³ Therefore, while

¹³⁰ Sourced from information in the Commissioner for Children and Young People's Annual Reports and from information provided by Ms Caron Irwin, Executive Director, Commissioner for Children and Young People, Email (Dated 2 November 2012).

¹³¹ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p30.

¹³² *ibid.*

¹³³ *ibid.*

acknowledging the efforts the Commissioner has made in consulting a widely, the Committee cannot be sure that the children and young people consulted are representative of the wider population of Western Australian children and young people.

In October 2012 the Commissioner reported the following activities as relating to s 19(n):

- *I have consulted with 4089 children and young people over the five years*
- *Wellbeing research – 1000 children and young people*
- *Developed and promoted the Complaints Guidelines*
- *Reducing alcohol related harm consultation with young people*
- *Inquiry – consultation with eight different groups of vulnerable or disadvantaged young people*
- *Commissioner for a day consultations with children*
- *i-build – built environment consultation with children and Curtin University architecture students*
- *Visits to schools, services and regional centres*
- *Youth friendly website*
- *Advisory Committees.*¹³⁴

Advocacy Overall

At a hearing in November 2012, the Commissioner was asked how she might sum up her term as the first Commissioner in Western Australia. In response, the Commissioner stated that:

for the first time in many, many areas of community and government, we have been able to focus on “What are children’s interests?” as distinct from “What are adults’ interests?” Every day I am amazed, whether it is a piece of legislation or some program or some service or policy has not paid specific attention to children and young people. So I think the benefit of the position is that it has really put children and

¹³⁴ Submission No. 2 from Commissioner for Children and Young people, 2 October 2012, ‘Report against the Functions of the *Commissioner for Children and Young People Act 2006*’.

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*young people firmly on the agenda in so many areas. So I will just say that.*¹³⁵

The Commissioner further stated that:

*there has been tremendous support in the community from a whole range of people who are pleased that the Parliament passed this legislation and that now someone has been given this authority to comment publicly, but also to monitor the wellbeing of children and young people and provide advice to the community and to government and to the Parliament about what we require here in Western Australia.*¹³⁶

The Commissioner also pointed to her research asking children and young people ‘what they thought was important to their wellbeing’, to the Mental Health Inquiry, and to the Wellbeing Monitoring Framework as significant achievements.¹³⁷

It is very clear to the Committee that the Commissioner takes her advocacy role very seriously and recognises the importance of working to ensure that children and young people in Western Australia are listened to and to advocate for their health and wellbeing.

The Committee is reassured by all the good work the Commissioner does in fulfilling her advocacy function. There is no doubt that advocacy is the primary focus of the Commissioner’s work.

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The Commissioner takes her advocacy role very seriously, with advocacy being the primary focus of the work of her Office.

135 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p8.

136 *ibid.*

137 *ibid.*

Chapter 5

Monitoring

Under the *Commissioner for Children and Young People Act 2006* (WA) (the CCYP Act) the Commissioner has the following monitoring responsibilities:

- Section 19(c): to promote and monitor the wellbeing of children and young people generally
- Section 19(d): to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint
- Section 19(e): to monitor the trends in complaints made by children and young people to government agencies
- Section 19(g): to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people.

This chapter discusses these functions under three broad headings:

- monitoring the wellbeing of children and young people;
- monitoring agency complaints processes, and complaints outcomes and trends; and
- monitoring legislation, policies, practices and services.

Monitoring the Wellbeing of Children and Young People

As well as promoting the wellbeing of children and young people, the Commissioner is required to monitor their wellbeing. As promoting the wellbeing of children is discussed in chapter 4, this section will report on the exercise of the Commissioner's function to monitor the wellbeing of children and young people. Specifically, it is concerned with the Commissioner's wellbeing monitoring framework.

From early in her term the Commissioner advocated for the development of a mechanism for monitoring outcomes for children and young people in Western

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Australia.¹³⁸ According to the Commissioner, the ‘need to measure outcomes for children and young people’ was a ‘key part’ of her platform.¹³⁹

The Commissioner’s *Annual Report 2008–2009* states that during this reporting period the Commissioner advocated for ‘an Outcomes Monitoring Framework that comprises a set of agreed outcomes for all children and young people with a report produced every two years’.¹⁴⁰ The annual report notes ‘improved outcome reporting’ as a significant issue affecting the agency.¹⁴¹ It further states that:

billions of dollars are invested to deliver services to children and young people across the health, disability, education, justice and related sectors in Western Australia, but without better reporting to measure the impact of government financial investments, the success of those programs will continue to remain unknown. So government and organisations can focus their investment in the future on programs that are proven to work, the Commissioner will:

- *continue to advocate for the need to develop and implement measurement indicators to strengthen information about children and young people and to help target investment.*¹⁴²

Despite the Commissioner finding ‘significant appetite within government’ to start measuring the outcomes achieved through the substantial public investment in children’s health and education, it was difficult for her to get a ‘commitment to do something about that, and actually start measuring the outcomes’.¹⁴³

The Commissioner advised that there were two major reasons put forward by agencies for not committing to measuring outcomes for children and young people. First, when service delivery crosses a number of agencies, ‘many departments think they do not have total responsibility’.¹⁴⁴ Second, ‘they do not have the resource allocation in their budgets’.¹⁴⁵

138 For example: Ms Michelle Scott, Commissioner for Children and Young People, *Committee Briefing*, 4 February 2009; Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 14 October 2009; Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p11.

139 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p11.

140 Commissioner for Children and Young People, *Annual Report 2008–2009*, Perth, 2009, p34.

141 *ibid*, p44.

142 *ibid*.

143 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 14 October 2009, p3.

144 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p2.

145 *ibid*.

Nevertheless, the Commissioner advised that ‘whilst government agencies were not prepared to take on responsibility for the funding and management of the Wellbeing Monitoring Framework, every agency that I approached to participate in the Reference Group I convened or to provide data agreed and cooperated fully’.¹⁴⁶

The Committee does, however, understand that there are a number of outcome measures in areas such as education and health. For example, the National Assessment Program - Literacy and Numeracy (NAPLAN) (and its precursor the Western Australian Literacy and Numeracy Results) was introduced into Australian schools in 2008 and every year assesses all students in years 3, 5, 7 and 9 on reading, writing, language conventions and numeracy.¹⁴⁷ The Australian Early Development Index (AEDI) is also available as a population measure of the development of young children in Australian communities. It measures five key areas of early childhood development, namely physical health and wellbeing; social competence; emotional maturity; language and cognitive skills; and communication skills and general knowledge.¹⁴⁸

In relation to health, the Western Australian Department of Health’s report *Health and Wellbeing of Children in Western Australia 2011, Overview and Trends* provides information generated by the Western Australian Health and Wellbeing Surveillance System (HWSS). The department describes this as ‘a continuous data collection system, which was developed to monitor the health and wellbeing of Western Australians’.¹⁴⁹ Of the approximately 60,000 interviews conducted as at December 2011, 11,602 were with parents/carers of children up to the age of 15 years. The report presents information on these children for 2011, plus trend data on a range of indicators related to children’s health and wellbeing, including chronic health conditions; lifestyle risk factors; school and friendships; protective factors and socio-demographics. The department’s report states that the survey information ‘is used to monitor the health status of Western Australian (WA) children, to inform health education programs, to evaluate interventions, to inform health policy development, to identify and monitor emerging trends and to evaluate the new National Public Health Initiatives’.¹⁵⁰

Given that the Commissioner’s view was that Western Australia ‘is one of the few jurisdictions that does not collect and report on a series of wellbeing indicators for children and young people’,¹⁵¹ and the importance of measuring outcomes for children

146 Submission No. 6 from Commissioner for Children and Young People, 2 November 2012, p2.

147 Information on NAPLAN can be found at: <http://www.naplan.edu.au/>.

148 Information on AEDI can be found at: <http://training.aedi.org.au/Secondary-Pages/Key-Questions.aspx>.

149 Department of Health, Epidemiology Branch, *Health and Wellbeing of Children in Western Australia 2011, Overview and Trends*, Government of Western Australia, Perth, 2011, p9.

150 *ibid.*

151 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p25. See also: Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 14 October 2009, p3.

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and young people, the Commissioner assumed responsibility for developing a Wellbeing Monitoring Framework.¹⁵²

The Committee notes that developing a set of indicators does not necessarily provide information on outcomes for children and young people.

The Wellbeing Monitoring Framework was designed to be ‘an evidence-based, repeatable data collection framework that monitors specific indicators of children and young people’s health and wellbeing’.¹⁵³ The framework, which brings together data from various agencies, is comprised of three components:

- (a) Profile—a demographic profile of the state’s children and young people
- (b) Wellbeing measures—data of 33 measures within the eight domains of the ARACY (Australian Research Alliance for Children and Youth) Report Card
- (c) Compilation of best practice and most promising programmes and services.¹⁵⁴

The reports produced by the Commissioner for each of these components are linked and intended to be read and used in conjunction with each other.¹⁵⁵

Component (a): Demographic Profile

The demographic profile component of the framework, entitled *Profile of Children and Young People in Western Australia*, drew solely from Australian Bureau of Statistics (ABS) data.¹⁵⁶ The Commissioner intended the profile, which was tabled on 29 February 2012, to be a ‘resource to organisations, both non-government and government, about where children live, their ages—just some basic demographics sort of data [...] that just gives people a bit of a picture of Western Australian children’.¹⁵⁷ The Commissioner advised that the profile component will be regularly updated to ensure that the information in this central resource remains ‘current and relevant’.¹⁵⁸ Its first update was to be on the release of the 2011 Australian census which occurred in June

152 For further information on this issue refer to the Committee’s reports numbers 3 and 6.

153 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth 2010, p25.

154 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth 2011, pp15–16; Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p4. The ARACY Report Card on the Wellbeing of Young Australians is produced by the Australian Research Alliance for Children and Youth, and is available at: http://www.aracy.org.au/index.cfm?pageName=report_card_overview.

155 Commissioner for Children and Young People, *Building Blocks: Best Practice Programs that Improve the Wellbeing of Children and Young People – Edition One*, Perth, p4; and Commissioner for Children and Young People, *The State of Western Australia’s Children and Young People*, Edition One, 2012, p19.

156 Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p2.

157 *ibid*.

158 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth 2011, p15.

2012.¹⁵⁹ At the time of this report, the profile had not been updated. The maintenance of the complete Wellbeing Monitoring Framework is discussed further below.

The *Profile of Children and Young People in Western Australia* report was not tabled in Parliament. This will be discussed further in chapter 10 on the Commissioner's reporting functions.

Component (b): Wellbeing Measures

The wellbeing measures component of the Commissioner's framework 'was initiated to develop an evidence-based, repeatable data collection framework that monitors specific indicators of children and young people's health and wellbeing'.¹⁶⁰ It comprises a set of 33 measures or indicators of children and young people's health and wellbeing over eight domains.

The Commissioner's *Annual Report 2009–2010* states that 'Western Australia is one of the few jurisdictions that does not collect and report on a series of wellbeing indicators for children and young people'.¹⁶¹ In developing the wellbeing indicators component of the framework the Commissioner drew upon work done in Victoria, Tasmania and South Australia, as well as that by ARACY.¹⁶²

For the wellbeing indicators component, the Commissioner was assisted by a 16 person reference group comprised of government and non-government agency representatives who provided advice on the framework.¹⁶³

The Commissioner stated that the reference group gave advice on the domains and measures to be used in the framework. Agencies such as the Department of Education and the Department of Health 'worked very closely' with the Commissioner 'in accessing the data from their particular agencies'.¹⁶⁴ The Commissioner also advised that there had been very detailed discussions with some individuals, particularly in relation to verifying data.

The Commissioner further stated that members of the reference group were given the opportunity to review and make comments on the final report, and could not 'recall any significant or major concerns that the reference group had'.¹⁶⁵

159 Commissioner for Children and Young People, Transcript of Evidence, 16 March 2011, p2.

160 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p25.

161 *ibid.*

162 Commissioner for Children and Young People, Transcript of Evidence, 16 March 2011, p2.

163 *ibid*; Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, pp6–7. Reference group members are listed in: Commissioner for Children and Young People, *The State of Western Australia's Children and Young People – Edition One*, Perth, February 2012, p8. The Commissioner is able to establish reference groups under s 51(1) of the CCYP Act.

164 Commissioner for Children and Young People, Transcript of Evidence, 17 October 2012, p4.

165 *ibid.*

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The wellbeing indicators were published in a 2011 report entitled, *The State of Western Australian Children and Young People*. The Commissioner stated that the report 'is intended to be a practical document which increases access to data and information concerning the many complex factors impacting on children and young people's wellbeing'.¹⁶⁶ The Commissioner also stated that 'the indicators will, over time, be able to measure how children are performing across those eight domains and we are anticipating we would be able to not only track Western Australian children, but compare children interstate in terms of their wellbeing'.¹⁶⁷ According to the Commissioner, the 'report helps to form the basis for policy and program direction'.¹⁶⁸

In June 2012, the Commissioner advised that the data 'identified in the first report is not exhaustive' and that new editions likely would include additional data.¹⁶⁹

Component (c): Compilation of Best Practice Programmes and Services

The third component of the Wellbeing Monitoring Framework was a compilation of programmes and services considered to be either 'best practice' or 'most promising'.¹⁷⁰ This was contracted to the Australian Institute of Family Studies through a tender process.¹⁷¹

The Commissioner's *Annual Report 2010–2011* states that this compilation was of programmes and services in Western Australia.¹⁷² However, at a hearing in June 2012, the Commissioner stated that 'some of them are already operating here in Western Australia and some of them are not'.¹⁷³ The Committee's review of the compilation report entitled, *Building Blocks: Best Practice Programs that Improve the Wellbeing of Children and Young People – Edition One*, confirmed that it includes a selection of programmes and services from all Australian states and Territories, with the exception of Tasmania.

The Commissioner believes *Building Blocks* will 'assist government, non-government agencies and the private sector to make informed decisions about evidence-based programs and thereby achieve maximum benefits with limited resources'.¹⁷⁴

166 Commissioner for Children and Young People, *The State of Western Australia's Children and Young People*, Edition One, 2012, p19. See Tabled Paper number 4543, Legislative Assembly, Parliament of Western Australia.

167 Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p2; Commissioner for Children and Young People, *Transcript of Evidence*, 20 June 2012, p7.

168 *ibid*, p6.

169 *ibid*.

170 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p16.

171 *ibid*; Commissioner for Children and Young People, *Transcript of Evidence*, 20 June 2012, p6.

172 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p16.

173 Commissioner for Children and Young People, *Transcript of Evidence*, 20 June 2012, p6.

174 Commissioner for Children and Young People, *Building Blocks: Best Practice Programs that Improve the Wellbeing of Children and Young People – Edition One*, Perth, p4.

The Commissioner stated that her office had conducted an internal evaluation of the framework project and that this involved going to the reference group and other relevant agencies and asking whether or not they had found the framework useful. The Commissioner was also in the process of:

*calling together focus groups of relevant offices who are assisting us in how we can improve, not only on the data but the design of the web information, the design of the report, to make it as useful as possible.*¹⁷⁵

The Commissioner also provided information on the positive feedback received in relation to the framework:

- many letters from ministers, agencies and the Premier, congratulating the Commissioner on undertaking the project and on the collaborative effort involved.
- agencies in the regions have found it useful and valuable to have information on their regions and communities
- very good and positive feedback on the online interactive information that is available.¹⁷⁶

The Commissioner provided examples of the feedback from ministers and directors general as part of Submission No. 6.

Funding the Wellbeing Monitoring Framework Project

In her 2009–2010 budget submission, the Commissioner requested an additional \$500,000 to develop a report on how Western Australian Children and Young People are faring. The development of the Wellbeing Monitoring Framework was a project that has been supported by the Committee. For example, in its review of the Commissioner's 2007–2008 Annual Report, the Committee made a recommendation to the Treasurer to approve the Commissioner's request for additional funding.¹⁷⁷

Notwithstanding this recommendation, the Commissioner's budget request was not successful. As the Committee reported in April 2010, then Attorney General, Hon Christian Porter, MLA, stated:

The state government supports the principle that, wherever possible, there should be measurement and reporting of the outcomes of

175 Commissioner for Children and Young People, Transcript of Evidence, 17 October 2012, p5.

176 *ibid*, p3 and p5.

177 Joint Standing Committee on the Commissioner for Children and Young People, *Review of the 2007–2008 Annual Report of the Commissioner for Children and Young People*, Report No. 1, Parliament of Western Australia, May 2009, pp11–12.

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*government programs and funding. However, much of the data that it is proposed to collect is already available from a variety of sources. Whilst it is appreciated that there would be some advantages in collating this data in one report, this proposal will need to go through the normal budgetary process and be considered on its merits alongside other funding requests.*¹⁷⁸

Subsequent to this, the Commissioner had ‘some discussions with the Attorney General about using the cash reserves, or part of my cash reserves—some savings—for that project’.¹⁷⁹ In October 2010, the Commissioner advised that the Attorney General had ‘indicated to me that he was agreeable to that’ and that existing resources had been dedicated to the project.¹⁸⁰

In June 2012 the Commissioner explained that the project was undertaken using ‘some savings that were left over from [her ...] first year of operation’.¹⁸¹ In October 2012, the Commissioner confirmed that originally she had anticipated being able to draw on cash reserves, and that the Attorney General had approved the use of these reserves. However, as the Commissioner also advised, the Treasurer, under the delegated authority of the Economic and Expenditure Reform Committee, did not support the Commissioner’s request.¹⁸² Therefore, the Commissioner funded the project through her budget allocation.¹⁸³

It is not clear how the anticipated updates on the individual framework components will be funded.

Maintaining the Wellbeing Monitoring Framework

Tracking the wellbeing of Western Australian children and young people necessarily requires regular updating of the wellbeing indicators data. As noted above, the Commissioner advised that the demographic profile component was to be updated following the release of the 2011 Census data. The Commissioner’s intention also was to repeat data collection for the framework, and in June 2012 she anticipated doing this every two years using the same methodological basis.¹⁸⁴

178 Hon Christian Porter, then Attorney General, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 September 2009, p7149.

179 Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p4.

180 *ibid.*

181 Commissioner for Children and Young People, *Transcript of Evidence*, 20 June 2012, p7.

182 Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p5 and p6; Submission No. 6 from Commissioner for Children and Young People, 2 November 2012, p1.

183 Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p5 and p6.

184 Commissioner for Children and Young People, *Transcript of Evidence*, 20 June 2012, p7.

In October 2012 the Commissioner advised that she was ‘reviewing the structure of the reports’, and was currently in discussion with agencies that had assisted with the first edition to determine how it might be improved.¹⁸⁵

One possibility is that the demographic profile component ‘would actually be not a separate publication but absorbed into “The State of Western Australia’s Children”, which was the substantial report across the eight domains with the 33 specific measures’.¹⁸⁶

The Commissioner also stated that she would like to update and build on the Building Blocks component of the framework, and that would most likely be contracted out as it had been for the first edition.¹⁸⁷

The Commissioner stated that:

*we are in the process of reviewing everything we have done and working out a schedule. I have given a commitment that we will do a second edition of the reports. With the profile, though, we are looking at easily updating online some of the data you are talking about rather than waiting”.*¹⁸⁸

Overall, the Commissioner believed that the ‘second edition will be within the two years’ of tabling the first edition, which occurred in February 2012.¹⁸⁹

Monitoring Government Agency Complaint Processes, Outcomes and Trends

Under s 19(d) the Commissioner is required to monitor government agencies’ handling of complaints by children and young people, and the outcome of those complaints. Section 19(e) requires her to monitor trends in such complaints.

The Committee notes that ss 19(d) and 19(e) are limited to complaints ‘made by children and young people’. While this matter is discussed further in chapter 7, it is important here to note the Committee’s considerable concern at the limitations of these sections. Children and young people, particularly those with significant complaints, may not know how to make a complaint or not feel able to for a variety of reasons. Such children and young people may need an adult to make a complaint on their behalf.

¹⁸⁵ Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p2.

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*, pp4–5.

¹⁸⁸ *ibid.*, p3.

¹⁸⁹ *ibid.*, p5.

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The Commissioner has regularly acknowledged her ss 19(d) and 19(e) monitoring functions, as indicated by the following excerpts from her annual reports.

*The Commissioner is required to monitor the way in which government agencies investigate or otherwise deal with complaints made by children and young people.*¹⁹⁰

*The Commissioner has responsibility under the Commissioner for Children and Young People Act 2006 to monitor complaints systems to ensure they are responsive to children and young people.*¹⁹¹

*Work will also commence on monitoring government agencies' handling of complaints.*¹⁹²

*[Plans for the future include] monitoring of trends in complaints made by children and young people.*¹⁹³

*The Commissioner continues to work in partnership with the Ombudsman to monitor complaints made by children and young people and to act on the findings of the Ombudsman's survey of organisations' complaints systems conducted in 2010.*¹⁹⁴

The CCYP Act does not define the meaning of the term 'monitor', so the Committee has turned to the *New Oxford Dictionary of English* for guidance. Here, the verb 'monitor' is defined as 'observe and check the progress or quality of (something) over a period of time; keep under systematic review', and a monitor is 'a person who observes a process or activity to check that it is carried out fairly or correctly, especially in an official capacity'.¹⁹⁵

In her first annual report, the Commissioner stated that she had 'consulted children and young people directly about complaints processes and how they can be made child friendly'.¹⁹⁶ She also reported that she had met with the 'WA Ombudsman, Equal Opportunity Commissioner and the Director of the Office of Health Review to discuss ways their organisations could improve their accessibility and response to children and young people with complaints'.¹⁹⁷ Additionally, she had written to the 'Directors General of the Departments of Education and Training, Child Protection and Health

190 Commissioner for Children and Young People, *Annual Report 2007–2008*, Perth, 2008, p22.

191 Commissioner for Children and Young People, *Annual Report 2008–2009*, Perth, 2009, p20.

192 *ibid*, p27.

193 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p20.

194 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p33.

195 Pearsall, Judy (ed), *The New Oxford Dictionary of English*, Clarendon Press, Oxford, 1998, p1194.

196 Commissioner for Children and Young People, *Annual Report 2007–2008*, Perth, 2008, p22.

197 *ibid*.

encouraging each to assess their complaints policies for useability and accessibility – in effect how child and youth friendly they are’.¹⁹⁸

Following these activities, in June 2009 the Commissioner published guidelines for government agencies on making complaints processes accessible for, and responsive to, children and young people.¹⁹⁹ The Commissioner’s annual reports refer to the development of these complaints guidelines as the way in which her s 19(d) function is exercised.²⁰⁰

The Committee acknowledges that consulting with children and young people about their experiences when making a complaint to a government agency, and developing guidelines to help agencies improve their processes, contributes to several of the Commissioner’s functions. On the other hand, these activities do not constitute monitoring agencies’ complaints handling processes, the outcomes of complaints or complaint trends as described in s 19(d) of the CCYP Act.

Complaints From or in Relation to a Child or Young Person

The Commissioner advised that for the 2011–2012 reporting period she received 32 complaints from or in relation to a child or young person, and 41 complaints in 2010–2011.²⁰¹

In November 2012, the Commissioner advised that she took complaints and concerns about child safety very seriously.²⁰² The Commissioner stated:

*Any allegations around sexual abuse, I take very, very seriously; if they come to me, or a member in the community raises this with me—or physical abuse of a child or neglect—they are very, very serious issues. Even though my act does not allow me to take an individual complaint, I do take an individual complaint, and I take them very seriously and I raise them directly with the Director General of the Department for Child Protection. So, regardless of what my legislation says, I do take it seriously.*²⁰³

In 2011–2012, the main areas of concern in the complaints received were ‘child protection; custody/Family Court matters; concern relating to exposure to

198 Commissioner for Children and Young People, *Annual Report 2007–2008*, Perth, 2008, p22.

199 Commissioner for Children and Young People, *Annual Report 2008–2009*, Perth, 2009, p19.

200 Commissioner for Children and Young People, *Annual Report 2008–2009*, Perth, 2009, p27; *Annual Report 2009–2010*, Perth, 2010, p19.

201 Submission No. 5 from Commissioner for Children and Young People, 2 November 2012, p1.

202 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p20.

203 *ibid.*

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inappropriate material or practices; bullying; draft Mental Health Bill; access to mental health services'.²⁰⁴

For 2010–2011, the main areas of complaint concerned 'child protection; custody/Family Court matters; justice; mental health services; bullying and discrimination'.²⁰⁵

Table 5.1 provides data on the number of complaints received from or in relation to a child or young person by selected agencies.

Table 5.1: Number of Complaints Received from or in Relation to Children and Young People

Agency	2010–2011		2011–2012	
	Number of complaints concerning children and young people	Number of complaints overall	Number of complaints concerning children and young people	Number of complaints overall
WA Ombudsman	153	1,970	178	2,426
Department for Child Protection	396	396	476	476
Equal Opportunity Commission	Unknown	638	Unknown	795
Health and Disability Services Complaints Office	Unknown	2,511	Unknown	2,716

The Commissioner provided the following information obtained from the Ombudsman in relation to the main areas of complaints involving children and young people.²⁰⁶

Department for Child Protection

- *Care arrangements and fostering of children*
- *Contact with parents or family for children in the CEO's care*
- *Action on reports or allegations about child wellbeing*
- *Decisions to remove the child from the family and custody and reunification matters*
- *Financial support for families*

Department of Corrective Services

- *Access for children to visit parents in prison*
- *Facilities of juvenile detention centres*

Department of Education

- *Student safety issues including bullying*
- *Student discipline*
- *Exclusion from school or school functions*
- *Education of students with a disability*

²⁰⁴ Submission No. 5 from Commissioner for Children and Young People, 2 November 2012, p1.

²⁰⁵ *ibid.*

²⁰⁶ *ibid.*, pp3–4.

<i>Department of Housing</i>	<ul style="list-style-type: none"> • <i>Housing to accommodate children and families</i> • <i>Priority assistance to families with children</i> • <i>Maintenance in properties that accommodate children</i>
<i>Western Australian Police</i>	<ul style="list-style-type: none"> • <i>Charges or lack of charges where the child is either the victim or perpetrator</i> • <i>Parental consent for interviewing a child</i>
<i>Tertiary Institutions</i>	<ul style="list-style-type: none"> • <i>Termination of enrolment</i> • <i>Refunds of education fees</i>

The Committee recognises the value of trend data in complaints management and has discussed this with the Commissioner. The Committee asked the Commissioner what trends, if any, could be seen in the areas of complaint received by her Office and by other agencies.

In response, the Commissioner provided the following information:

- *As reported in my 2009-10 Annual Report, agencies that responded to my survey reported that the most common themes of complaints from children and young people were about access to and quality of services and facilities, and the conduct of staff.*
- *The trend in complaints received by my office is that the greatest volume relate to issues around child protection and to custody/Family Court matters.*
- *In 2011-12 overall complaints received by the Equal Opportunity Commission showed the following trends: 18.4% related to impairment, 16.4% to race, 6.4% to sexual harassment, 5.8% to age, 4.7% to sex, 4.5% to bullying*.*
- *My staff meet regularly with the staff of the Ombudsman who have advised that from 2009-2011, key trends identified in the Child Death Review that are of particular concern to the Ombudsman were:*
 - *The over representation of investigable deaths of Aboriginal children and young people in regional locations*
 - *The number of sleep-related infant deaths*
 - *The number of youth suicide notifications.*

**This information is not disaggregated by complaints concerning children and young people.²⁰⁷*

Rather than providing the trends in those complaint areas, this information provided by the Commissioner is restricted to the types of complaints. Therefore, the Committee

207 Submission No. 5 from Commissioner for Children and Young People, 2 November 2012, p4.

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was still not clear as to what trend data was available from the Commissioner's monitoring of trends in complaints made by children and young people, as required under s 19(e) of the CCYP Act.

At a hearing of 5 November 2012, the Commissioner was asked to provide further information to show the trends in areas of complaints received by her office or other agencies.²⁰⁸

In response the Commissioner stated:

In my letter dated 2 November 2012 in response to Question 4 from the Joint Standing Committee, I provided data from the Department for Child Protection and the WA Ombudsman in relation to the main areas of complaints they received relating to 2010–11 and 2011–12 (two years of data).

Then in response to Question 5 from the Joint Standing Committee I provided:

- *data from my Annual Report in relation to 2009–10*
- *data from the Equal Opportunity Commission in relation to 2011–12*
- *data from the WA Ombudsman Child Deaths Review relating to 2009 – 2011.*

*This information covers three different years of data from four different agencies including my own. From this data I provided information regarding trends in complaints.*²⁰⁹

The Committee acknowledges the information provided by the Commissioner. However, the Committee does not consider the information provided sufficient to indicate trends in areas of complaint.

The Commissioner's Complaints Monitoring Process

In discussing complaints from children and young people received by the Commissioner and forwarded to the Ombudsman, the Commissioner stated:

From time to time, individual complaints are referred to me and I refer them to the Ombudsman. I have referred particular issues to the

208 Joint Standing Committee on the Commissioner for Children and Young People, Transcript of Evidence, 5 November 2012, p21.

209 Submission No. 7 from Commissioner for Children and Young People, 7 November 2012.

*Ombudsman and I have asked him to consider not only the individual issues, but whether a more systemic issue arises.*²¹⁰

The Commissioner has a memorandum of association (MOU) with the Ombudsman in relation to complaints from children and young people. This MOU provides for the sharing of information about individual matters and systemic issues. There is also an MOU between the Commissioner and the Department for Child Protection that allows the Commissioner to follow up on serious matters raised with her.²¹¹

The Commissioner reiterated this at a hearing, stating that she does 'track the individual matters'²¹² and monitors complaints received by her office.²¹³ In discussing matters referred to the Ombudsman, the Commissioner stated that 'we always follow up the complaints to ensure that the person making the complaint has the information'.²¹⁴

However, the process through which the Commissioner monitors complaints, complaint outcomes and trends is not clear. The Commissioner's *Annual Report 2008–2009* stated that one of the priorities for the coming year would be:

*focusing on developing systems to monitor the way government agencies deal with complaints from children and young people. This will be achieved through relationships established by the Commissioner with the Department [for] Child Protection, the Department of Education and Training and the Department of Health.*²¹⁵

The Committee is not aware of what formal systems have been developed to facilitate this monitoring.

In 2009 the Commissioner noted that she has 'established and implemented a project to work with key State Government agencies to evaluate the effectiveness of the complaints guidelines and to also collect data (via a survey) about the volume and types of complaints agencies received from children and young people'.²¹⁶

210 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p8.

211 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p7.

212 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p5.

213 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p7.

214 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p8.

215 Commissioner for Children and Young People, *Annual Report 2008–2009*, Perth, 2009, p45.

216 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p20.

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The Commissioner advised that in April and May 2010 her office administered a survey of 25 government agencies ‘to determine the effectiveness of these guidelines and provide an opportunity for agencies to suggest what information would assist them further in improving their complaints processes’.²¹⁷

The Commissioner further advised that ‘the survey also requested data on the number and types of complaints made by children and young people to government agencies to enable the Commissioner to meet her statutory function to monitor trends in complaints’.²¹⁸

The Committee notes that obtaining information on the number and types of complaints goes partway to fulfilling the function at s 19(e), but that the survey would need to be administered annually to allow the Commissioner to determine and monitor trends in complaints by children and young people to government agencies.

The survey data from 28 agencies revealed that ‘accesses to and quality of services and facilities, and the conduct of staff’ were the most common areas of complaints from children and young people.²¹⁹

The Commissioner’s *Annual Report 2009–2010* also states that the Ombudsman had sought the Commissioner’s advice in relation to a complaints management questionnaire for government agencies and local government authorities.²²⁰ Subsequently, the Ombudsman’s survey included questions ‘relating to the accessibility and responsiveness of systems and processes to meet the needs of children and young people’.²²¹

In November 2009, the Ombudsman administered a survey in relation to complaint handling processes to 167 state government agencies and 141 local governments. Information was received from 208 of the possible respondents.²²² The Ombudsman’s survey found that:

217 Submission No. 6 from Commissioner for Children and Young People, 2 November 2012, p5.

218 *ibid.*

219 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p20. Twenty-eight out of thirty-two government agencies responded to the Commissioner’s survey. Note, however, that in Submission No. 6 the Commissioner states that 25 agencies were surveyed. The difference is accounted for by the fact that the Department of Health distributed its survey internally to different Health branches and hospitals.

220 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p20.

221 *ibid.*

222 Ombudsman Western Australia, *2009–10 Survey of Complaint Handling Practices in the Western Australian State and Local Government Sectors*, 2010, p9 and p11. Note that 18 state government agencies advised that they were not responsible for handling complaints made about them and, so, did not complete the survey. The overall response rate was 72 per cent.

- *of those respondents who knew their customer's demographics, ... fifty respondents identified that between 10 per cent and 50 per cent of their customers are children and young people.*²²³
- *between 30 per cent and 50 per cent of organisations did not know the percentage of customers from these different demographic groups [children and young people, Aboriginal and Torres Strait Islander people, those over 65 years, people born overseas in a non-English speaking country and people with a disability].*²²⁴
- *68 of the 168 (40%) respondents that identified having children and young people as customers indicated that they provide information in formats suitable for children and young people.*²²⁵
- *respondents that reported having children and young people as customers, and those that did not know (168 organisations or 80% of all respondents), were asked if they make special arrangements to assist them make complaints. 25 organisations (15%) reported doing so [... including] information written in plain English, individual assistance from staff, very clear procedural information and information in different format such as flow charts.*²²⁶

The Ombudsman has not undertaken a survey of complaints handling processes since 2001.

The Committee acknowledges the steps taken by the Commissioner in working with the Ombudsman to generate survey data. However, and particularly as the Commissioner is proposed to become the one-stop shop for complaints about child abuse, the Commissioner needs to establish processes which allow her to monitor complaints handling and outcomes in a more systematic manner.

The Commissioner's *Annual Report 2010–2011* states that the Commissioner:

continues to work in partnership with the Ombudsman to monitor complaints made by children and young people to act on the findings

223 Ombudsman Western Australia, *2009–10 Survey of Complaint Handling Practices in the Western Australian State and Local Government Sectors*, 2010, p16.

224 *ibid*, p27.

225 *ibid*, p28.

226 *ibid*, p29.

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*of the Ombudsman's survey of organisations' complaints systems conducted in 2010.*²²⁷

The Committee asked the Commissioner to provide information for 2010–2011 and 2011–2012 on the specific matters that she had acted upon in relation to the findings of the Ombudsman's survey, as mentioned in the Commissioner's *Annual Report 2010–2011*. The Commissioner provided the following information:

For 2010-2011

- *Provided feedback to agencies on the results of my survey*
- *Promoted Are you Listening? complaints guidelines publication*
- *Provide assistance to government, non-government or local government agencies who seek assistance in developing child friendly complaints systems on request*
- *Regular meetings with the Ombudsman and other oversight agencies*
- *Quarterly internal complaints reports. These reports collate, analyse and monitor trends about the complaints received by CCYP regarding external agencies.*²²⁸

For 2011-2012

- *Promoted Are you Listening? complaints guidelines publication*
- *Planning and liaison to conduct Complaints Workshop and Webinar (held in October 2012)*
- *Provide assistance to government, non-government or local government agencies who seek assistance in developing child friendly complaints systems on request*
- *Regular meetings with the Ombudsman and other oversight agencies*
- *Quarterly internal complaints reports. These reports collate, analyse and monitor trends about the complaints received by CCYP*

227 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p33. The survey was conducted in November 2009, but is titled *2009–2010 Survey of Complaint Handling Practices in Western Australian State and Local Government Sectors*.

228 Submission No. 6 from Commissioner for Children and Young People, 2 November 2012, p6.

*regarding external agencies, including where a child or young person contacts the office to make a complaint.*²²⁹

The Committee commends the Commissioner on undertaking these activities. However, as noted above, the Committee considers that they do not constitute monitoring the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint, as intended by s 19(d) of the CCYP.

The Ombudsman provided information to the Committee on the way in which he and the Commissioner share information under their MOU:

*The commissioner certainly refers to me complaints that she receives or issues that she is concerned about from visits that she has done regionally or in the metropolitan area, and information she has otherwise received from concerned stakeholders, non-government organisations and others, and she will usually get on the phone and give me a quick call. A letter will then come through saying, "Here's something that I think you ought to consider having a look at in terms of an individual complaint." We always take those very seriously and they are acted upon when they are referred through. We will continue to liaise about how they are progressing and the outcomes of those investigations.*²³⁰

In August 2011 the Commissioner stated that she 'rel[ies] on the Ombudsman to tell me [the Commissioner] what the trends are in the complaints'.²³¹

Given that it is the Commissioner's role to monitor complaints and the Ombudsman is responsible for complaints handling, the Ombudsman would be one of the agencies the Commissioner is required to monitor. The question then arises as to any potential conflict of interest in the Commissioner's reliance on the Ombudsman.

This issue was raised with the Commissioner, who stated:

Potentially that could be the case. There could be a conflict of interest with any agency that has that responsibility. I suppose the reason that I did that, Madam Chair, is the Ombudsman is an independent statutory officer. I think he actually has even more extensive powers than myself, and reports to the Parliament. He is much more independent than many other agencies. Secondly, he is not the first

229 Submission No. 6 from Commissioner for Children and Young People, 2 November 2012, p6.

230 Mr Chris Field, Ombudsman, *Transcript of Evidence*, 28 September 2011, p2.

231 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p7.

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*complaint mechanism. He is actually a peak complaint body, if you like. Any complaint that is taken by an agency, like Health, Education or the Department for Child Protection, the Ombudsman has to review that complaint to see, if the complaint is taken further, whether the agency acted appropriately or not. In that sense I think the Ombudsman has a specific and particular role in monitoring complaints by other agencies.*²³²

Finding 8

It is not clear how the Commissioner is monitoring government agency complaints handling processes, and complaints outcomes and trends, as outlined in sections 19(d) and 19(e) of the *Commissioner for Children and Young People Act 2006*.

Recommendation 7

The Commissioner develop and implement a rigorous and formal system of monitoring government agency complaints handling processes, complaint outcomes and complaint trends to better reflect sections 19(d) and 19(e) of the *Commissioner for Children and Young People Act 2006*.

The Commissioner as a One-stop Shop for Child Abuse Complaints

One of the five recommendations made by Hon Peter Blaxell in the report from his inquiry into the response of government agencies and officials to allegations of sexual abuse at St Andrew's Hostel, Katanning, was:

That the State Government develop a function and role within or across central and independent agencies to fulfil a robust child focussed central complaints system that is a 'one stop shop' for any complaint concerning child abuse regardless of the public sector agency that the matter relates to.

*A central agency taskforce should be established to consider and recommend the most appropriate agency or agencies to be responsible for fulfilling this function, and to recommend the steps necessary for ensuring that complainants/informants utilising such a system do not fear legal liability as a result of contacting the agency.*²³³

232 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p5.

233 Hon Peter Blaxell, *St Andrew's Hostel Katanning: How the System and Society Failed our Children*, Government of Western Australia, 2012, p341.

In tabling Mr Blaxell's report the Premier stated that one of the recommendations was that 'the state government develop a central child-focused complaint system, referred to in the report as a one-stop shop, to encourage and protect disclosure of child abuse'.²³⁴

The Premier advised the Legislative Assembly that:

*the government has selected the Commissioner for Children and Young People as the preferred body to perform the one-stop shop complaints role recommended by the inquiry to prioritise the welfare of children in any government facility.*²³⁵

The Premier further stated that giving this function to the Commissioner:

*does not replace or duplicate current reporting options. It provides a mechanism to support children or young people in making such a complaint. In some cases a child or young person may feel more comfortable in making a complaint directly to the commissioner as this office is removed from direct service delivery. The commissioner is a child-friendly advocate for children and young people and is well placed to support any person requiring assistance to make a complaint of child abuse independent of the investigative bodies to whom such complaints may be referred. The community must have faith that allegations of child abuse will be given the serious attention they deserve by the relevant government agencies and investigative bodies.*²³⁶

In clarifying the government's intention in this regard, the Premier advised the Committee that he envisaged the key elements of the Commissioner's proposed new role as including:

- *assisting and supporting children and young people, including those in regional areas, who seek to make a complaint of child abuse;*
- *performing an education and awareness raising function in relation to the Commissioner's child abuse complaints functions;*

234 Hon Colin Barnett, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 19 September 2012, p6137.

235 *ibid.*

236 *ibid.*

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- *promoting the receipt of complaints of child abuse through diverse means, including those that involve the use of technology commonly used by young people;*
- *referring complaints of child abuse to relevant authorities;*
- *oversighting the way in which relevant authorities, including those mentioned above, investigate or otherwise deal with complaints of child abuse, whether referred by the Commissioner or otherwise;*
- *accessing information held by government agencies, their service providers and other relevant authorities, for the purpose of performing the child abuse complaints functions;*
- *reporting independently to Parliament on the effectiveness of responses to complaints referred to relevant authorities by the Commissioner; and*
- *ensuring that persons who seek assistance in good faith from the Commissioner to make a complaint of child abuse are protected from civil and criminal liability in so doing.*²³⁷

While the Committee appreciates the intent in the first point above in relation to assisting and supporting children and young people to make a complaint of child abuse, children are often not equipped to make a complaint by virtue of their age, language skills, isolation and trauma. In light of this, it needs to be recognised that many children, particularly the young and/or traumatised will not be able to make a complaint. Therefore, the legislation needs to allow for an adult to be able to make the complaint on their behalf. This will allow their voices to be heard.

The Committee notes that there is some overlap with these elements and the existing complaints monitoring function of the Commissioner under s 19 of the CCYP Act. The Committee also notes that the function is not limited to complaints of sexual abuse, but the more broad area of child abuse.

The Commissioner understood that the CCYP Act ‘might be amended to give effect to the special inquirer’s [Hon Peter Blaxell’s] recommendation’,²³⁸ and that this would

237 Hon Colin Barnett, MLA, Premier of Western Australia, Letter, 11 October 2012.

238 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p9.

form part of the scheduled review of the Act. In addition to this, the Commissioner pointed to ‘the practicalities of how that will work’.²³⁹

The Commissioner advised that in light of the Premier’s announcement she had begun to examine models in other jurisdictions where the Commissioner has a ‘dual responsibility’.²⁴⁰ For example, the Commissioner was looking into models used in the United Kingdom, Ireland and Canada. At that time, though, the Commissioner did not favour any particular model, stating that ‘it would be premature of me to say that I am clear about how it will work here in Western Australia or provide my view at this stage’.²⁴¹

The Commissioner also advised that there would be ‘significant resource implications’ attached to any such additional functions. Furthermore, her office did not currently have ‘the expertise that a complaint handling body might have, so I will need that kind of expertise’.²⁴²

The Committee notes that the review of the CCYP Act provides an opportunity for the Commissioner’s complaint’s monitoring functions to be clarified.

The government’s proposed one-stop shop for complaints about child abuse, based on the Blaxell Inquiry recommendations, will need to be staffed by people with the appropriate expertise.

Finding 9

The government’s proposed broad remit for the Commissioner to provide a one-stop shop for complaints in relation to child abuse is broad and ambiguous, and will fundamentally change the Commissioner’s advocacy and complaints functions.

Recommendation 8

Prior to proposed changes being made to the Commissioner’s remit and the resulting amendments to the *Commissioner for Children and Young People Act 2006*, the Attorney General refer the matter of the Commissioner taking on the ‘one-stop shop’ responsibility to the Joint Standing Committee on the Commissioner for Children and Young People of the 39th Parliament for consideration.

239 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p9.

240 *ibid.*

241 *ibid.*

242 *ibid.*

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Monitoring and Reviewing legislation, policies, practices and services

Section 19(g) of the CCYP Act requires the Commissioner ‘to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people’.

The Commissioner views her office as having ‘a very proactive and important leadership role here in Western Australia’.²⁴³ Given this, throughout the 2007–2008 annual reporting period, the Commissioner had ‘initiat[ed] policies and strategies that will enhance the wellbeing of children and young people’.²⁴⁴ The Commissioner stated that:

*although I have a function to monitor existing laws and policies, I think we actually have a very strong role in promoting and initiating laws and policies. A lot of my work over the past 12 months—we have discussed one of the areas, which is the early years. Another example is the juvenile justice area, and another area is regional and remote issues in relation to children and young people. I am not just monitoring what is already there; I am initiating and challenging what should be there, and raising the bar.*²⁴⁵

In relation to monitoring and reviewing policies, practices and services, the Committee questioned whether it was possible for the Commissioner to fulfil this part of the function. The Commissioner agreed that it would be impossible for her ‘to monitor every practice of every government agency or every service’.²⁴⁶

Nevertheless, the Commissioner provided the following example of how she tries to undertake this aspect of her work:

Parliament passed legislation to establish a secure care centre for children in the care of the Department for Child Protection. I took a special interest in how that service might operate because of the vulnerability of the children involved. I have discussions regularly with the Director General of the Department for Child Protection. I have asked to see that he has independent assessors who visit the facility. I have asked to see those reports and monitor those reports and have sought further clarification from the director general about

243 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p12.

244 *ibid.*

245 *ibid.*

246 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p10.

*improvements that might need to be made to that particular service.*²⁴⁷

In relation to reviewing legislation, the Commissioner argued that the 'ideal time' for her to be involved is before the legislation 'goes to cabinet, seeking approval to draft the legislation'.²⁴⁸

In her first annual report, the Commissioner stated that she had written 'to directors general and WA Parliamentary committees advising of her function to review laws and other matters relating to children and young people and requesting she be consulted on development of laws affecting children and young people in Western Australia'.²⁴⁹

At a hearing on 18 March 2009, the Commissioner advised that:

*in relation to proposals to change legislation in particular, I have written to the majority of directors general, in cases in which I think they have a significant role to play in relation to children and young people, and they will be developing legislation.*²⁵⁰

This correspondence advised of the Commissioner's 'role and functions in relation to monitoring', and suggested 'that they might like to brief me and engage with my office prior to legislation being developed'.²⁵¹ The Commissioner advised that subsequently she had received briefings from some directors general and letters from others formally advising of legislation being developed.²⁵²

There are some circumstances where this approach may be appropriate. However, with the majority of legislation it is the Minister, not the department, who has responsibility for the development and introduction of legislation into Parliament. This means that the Minister and the staff assisting to draft the legislation would not be able to consult with the Commissioner as the legislation would be subject to Cabinet confidentiality. Furthermore, the Ministerial responsibility and Cabinet confidentiality makes this a more complex process than it might otherwise appear. These complexities are not recognised in s 19(g) of the CCYP Act.

The Committee appreciates that the Commissioner may have a role in reviewing legislation, particularly as the Commissioner has noted that agencies concerned with

247 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p10.

248 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p12.

249 Commissioner for Children and Young People, *Annual Report 2007–2008*, Perth, 2008, p37.

250 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p12.

251 *ibid.*

252 *ibid.*

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such matters as infrastructure planning, for example, often do not recognise the relevance of their legislation to children and young people.²⁵³ However, the Committee is also cognisant of the complexities associated with this function.

The level of success of the Commissioner's strategy of writing to directors general is not clear. In June 2010 the Commissioner advised that she had 'also been invited by a number of agencies to comment on specific legislation'.²⁵⁴

The primary means by which the Commissioner exercises her s 19(g) function is through making submissions to federal and state government agencies, parliamentary committees and other inquiries. She also appears before parliamentary committees to provide evidence. These activities are outlined in the Commissioner's annual reports. For example, in *Annual Report 2008–2009* the Commissioner reported that:

- *6 pieces of draft legislation were formally reviewed*
- *21 submissions (including 7 joint submissions, prepared with other children's Commissioners or other agencies) were lodged*
- *7 parliamentary committees were formally contacted requesting the Commissioner be advised on pending inquiries/bills relating to the wellbeing of children.*²⁵⁵

In a 2011 hearing the Committee noted that none of the legislation reviewed by the Commissioner during the 2010–2011 reporting period had been before the Western Australian Parliament during that year.²⁵⁶ Four out of the five pieces of legislation reviewed by the Commissioner in 2010–2011 were in the federal jurisdiction. While the Commissioner made a submission in relation to the review of the *Bail Act 1982* (WA) there was no Bill before Parliament that year.

According to the Commissioner, the Attorney General dealt with some law reform by producing a discussion or issues paper 'to try to refine what the draft Bill might be that might come before the Parliament'.²⁵⁷ The Attorney General also released a discussion paper on the role of the justices of the peace and whether they should be making

253 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p5.

254 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p6.

255 Commissioner for Children and Young People, *Annual Report 2008–2009*, Perth, 2009, p29. See also p33. The Commissioner also advised of these in her hearings with the Committee. See *Transcripts of Evidence*, 10 March 2010, pp4–5; 23 June 2010, pp6–7; and 23 November 2011, pp4–5.

256 Hon Nick Goiran, MLC, Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p4.

257 *ibid.*

judicial decisions or only administrative ones.²⁵⁸ This would be one way the Commissioner would learn about some proposed legislation and amendment.

The Commissioner's *Annual Report 2011–2012* shows that she made 11 'Comments on legislation'.²⁵⁹ In October 2012, the Commissioner advised that this refers to the following:

1. *WA Police- Misuse of Drugs Amendment Bill 2011*
2. *Standing Committee on Uniform Legislation and Statutes Review – Submission to the Inquiry into Criminal Appeals Amendment (Double Jeopardy) Bill 2011*
3. *Standing Committee on Uniform Legislation and Statutes Review – Submission on the Residential Tenancies Amendment Bill 2011*
4. *Standing Committee on Uniform Legislation and Statutes Review – Submission on the Criminal Investigation (Covert Powers) Bill 2011*
5. *Statutory Review of Working with Children (Criminal Record Checking) Act 2004*
6. *Mental Health Commission - Draft Mental Health Bill 2011*
7. *Standing Committee on Uniform Legislation and Statutes Review – Submission on the Community Protection (Offender Reporting) Amendment Bill 2011*
8. *Crimes Amendment (Fairness for Minors) Bill 2011 (ACCG)*
9. *Submission to the Inquiry into the Crimes Amendment (Fairness for Minors) Bill 2011- additional comments from WA*
10. *Senate Standing Committee on Legal and Constitutional Affairs- Submission to the Parliamentary Inquiry into the Classification (Publications, Films and Computers) Amendment (R+ 18 Computer Games) Bill*
11. *Senate Standing Committee on Legal and Constitutional Affairs – Australian Human Rights Commission Amendment (National Children's Commissioner) Bill.*

In trying to determine the level of awareness in government agencies of the Commissioner's role in reviewing draft legislation, the Committee asked the Commissioner how many agencies consulted with her office before drafting legislation.

The Commissioner provided the following list of agencies that have consulted with her before drafting legislation:²⁶⁰

258 Hon Nick Goiran, MLC, Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p4.

259 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p79.

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2009–2010

- Department of the Attorney General - Prohibited Behaviour Orders
- Commonwealth Department of the Attorney General - Child sex related offences reforms
- Department of the Attorney General - Children's Oath
- Safe Work Australia- National Model Occupational health and safety (ACCG)
- Minister for Police - Review of the Criminal Investigation (Identifying People) Act 2002
- Attorney General - Prohibited Behaviour Orders Bill 2009
- Commonwealth Department of the Attorney General's Discussion Paper: Should the Australian National Classification Scheme include an R18+ classification? (ACCG)
- Department of the Attorney General - Review of the *Dangerous Sexual Offenders Act 2006*
- Minister for Mental Health - legislation to establish the Mental Health Commissioner.

2010–2011

- Department of the Attorney General - Review of the *Bail Act 1982*
- Department of the Attorney General - Two tier Framework for Justices of the Peace in Western Australia
- Commonwealth Department of the Attorney General - public consultation Family Law Amendment (Family Violence) Bill 2010- exposure draft (ACCG)
- Senate Legal and Constitutional Committee - Inquiry into the Australian film and classification scheme
- WA Law Reform Commission- Community consultation on the *Community Protection (Offender Reporting) Act 2004*

2011–2012

- Commonwealth Department of the Attorney General and the Standing Committee of Attorneys-General - Commonwealth Guidelines for the classification of computer games (ACCG)
- Australian Law Reform Commission - National Classification Scheme review (ACCG)

- Australian Law Reform Commission- National Classification Scheme review Discussion Paper
- Australian Law Reform Commission - National Classification Scheme review – Discussion Paper (ACCG)
- Families, Housing, Community Services and Indigenous Affairs – Discussion Paper National Children's Commissioner (ACCG)
- WA Law Reform Commission - Review of coronial practice in Western Australia
- Joint Select Committee on Australia's Immigration Detention Network
- WA Police - Misuse of Drugs Amendment Bill
- Mental Health Commission - Draft Mental Health Bill
- Department for Child Protection - Review of the *Working with Children (Criminal Record Checking) Act 2004*

The Committee notes that of the agencies that consulted with the Commissioner prior to drafting legislation, six out of nine agencies for 2009–2010, three out of five for 2010–2011 and four out of ten for 2011–2012 were Western Australian agencies.

During the 2010–2011 financial year, there were 56 Bills passed by the Legislative Assembly, and 68 passed in the 2009–2010 reporting period.²⁶¹ There were 60 Bills passed through Parliament in 2011–2012.

When asked about how many pieces of legislation the Commissioner had had an opportunity to contribute to, whether that be proactively by the ministers or by her initiated intervention, the Commissioner responded:

I honestly have no idea how we could monitor that in terms of legislation. Some agencies are very, very good about this. They come to my office at a very early stage saying that they are considering amendments. I got one letter yesterday about the Young Offenders Act. There is going to be a review of that Act and they wanted to have my involvement in that very early stage of considering whether it should be reviewed and what might the gaps be in the legislation. However, there is a whole lot of activity that I am totally unaware of. Sometimes, as you are aware in the Upper House, the legislation committee contacts me and asks if I was consulted, and at the last

²⁶¹ Department of the Legislative Assembly, *Annual Report 2010–2011*, Parliament of Western Australia, Perth, 2011, p7.

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*minute I am providing advice to the legislation committee, and I know the Chair of the committee is coming to meet with me.*²⁶²

The Committee asked the Commissioner to provide information on the number of times that a state and a federal parliamentary committee has asked her to comment on legislation for the 2010–2011 and 2011–2012 reporting periods. The Commissioner provided the following information:

State Parliamentary Committees for 2011–2012

- Standing Committee on Uniform Legislation and Statutes Review for its:
 - Inquiry into Criminal Appeals Amendment (Double Jeopardy) Bill 2011
 - Community Protection (Offender Reporting) Amendment Bill 2011 review

The Commissioner also responded to the public submission process in relation to:

- Standing Committee on Uniform Legislation and Statutes Review for its reviews of:
 - the Residential Tenancies Amendment Bill 2011
 - the Criminal Investigation (Covert Powers) Bill 2011²⁶³

State Parliamentary Committees for 2010–2011

- Nil

Federal Parliamentary Committees for 2011–2012

- Senate Standing Committee on Legal and Constitutional Affairs in relation to the:
 - Commonwealth Commissioner for Children and Young People Bill 2012 – ACCG
 - Classification (Publications, Films and Computers) Amendment (R+ 18 Computer Games) Bill
 - Australian Human Rights Commission Amendment (National Children's Commissioner) Bill

262 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p5.

263 Submission No. 6 from Commissioner for Children and Young People, 2 November 2012, p7.

- Senate Legal and Constitutional Committee for its Inquiry into the Crimes Amendment (Fairness for Minors) Bill 2012²⁶⁴

The Committee acknowledges the Commissioner's work in reviewing federal legislation and advocating in the federal arena.

The Committee is aware that it cannot be mandatory for agencies to provide proposed legislation to the Commissioner for her input given that the responsibility for legislation lies in the hands of Ministers.

The Committee asked the Commissioner how she knew when legislation was being developed. The Commissioner responded as follows:

*Essentially, it is a number of reasons. I get invited to appear before a parliamentary committee, or a parliamentary committee writes to me seeking my view, or a department or agency says they are about to review an act, or they seek my input in relation to it, or an agency is at the very early stage of developing a policy around an issue. How I would be informed about it is ad hoc.*²⁶⁵

Given the complexities of the drafting of legislation, as mentioned above, it will continue to be difficult for the Commissioner to fulfil this function. In view of this, the Committee commends the Commissioner for developing the guidelines for agencies to assist with the drafting of legislation.

The Commissioner advised that her 'office monitors relevant legislation and those Acts scheduled for review that impact the wellbeing of children and young people',²⁶⁶ stating that 'we do monitor legislation generally'.²⁶⁷ However, the Commissioner also advised that 'it is one thing to monitor, but it is another thing to contribute to the process'.²⁶⁸

The Commissioner also advised that finite resources meant that she occasionally has to decide not to review a piece of legislation:

I have tried, whenever anybody has asked me to provide a comment, to do that. ... the research that I can do might be limited and my involvement might be just in relation to some particular aspects because that is where I have the information, the evidence and the

264 Submission No. 6 from Commissioner for Children and Young People, 2 November 2012, p7.

265 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p14.

266 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p2.

267 Hon Nick Goiran, MLC, Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p14.

268 *ibid.*

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*capacity to make a contribution. But on occasions I have had to say I cannot take on any more work. It is true it is all about allocating resources I have to make decisions all the time about inquiries, research, reports, travel, legislation, but I can honestly say whenever I have been invited to comment on legislation I do my utmost to provide that advice.*²⁶⁹

This raises the issue of how the Commissioner decides which pieces of state and federal legislation to review. As noted previously, in addition to monitoring relevant legislation, the Commissioner advised that she responds to specific requests made to her office.²⁷⁰

Furthermore, the Commissioner advised she has exercised the function of reviewing legislation by being 'pro-active with the resources that I have to educate people and to contribute where I can'.²⁷¹

It is still not clear to the Committee how the Commissioner monitors state legislation to allow her to make a fully informed decision on what to review. The Committee considers that there is merit in the Commissioner systematically monitoring legislation that is going through Parliament at any given stage.

As a case in point, the Committee is aware that the Department of the Attorney General did not take the Commissioner's legislation guidelines into account in drafting the Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012. Nor did the department consult with the Commissioner to seek advice on whether the Bill was sufficient to protect children and young people.²⁷²

The Commissioner informed the Committee that she was not consulted on the Criminal Law Amendment (Out-of-Control Gatherings) Bill 2012.²⁷³

The Committee asked how the Commissioner thought she could increase the number of agencies that seek advice during the drafting of legislations. The Commissioner suggested that there were 'several options' as follows:

269 Hon Nick Goiran, MLC, Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2011, p15.

270 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p2.

271 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 October 2012, p15.

272 Mr Jonathan Hainsworth, Manager, Advisory Services, Department of the Attorney General, *Transcript of Evidence*, Standing Committee on Uniform Legislation and Statutes Review, Legislative Council, 15 October 2012, p24.

273 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p10.

- *Cabinet could introduce a requirement as part of the Cabinet approvals process for all Cabinet Submissions to require an assessment of the proposals impact on children and young people*
- *The Act could be amended to require departments to undertake an assessment of all legislation for its impact on children and young people*
- *With significant additional resources I could run more training and monitor the legislative programs of individual departments and provide a specific advisory service to departments.*²⁷⁴

At a hearing on 5 November 2012, the Commissioner stated that:

*in an ideal world, what I would propose is before legislation is even drafted, that the Commissioner for Children and Young People is consulted. That does not mean that government might not make a decision for other policy reasons, and I have had this discussion on a number of occasions. A Commissioner for Children and Young People in this act is required to take into account the best interests of children and young people; not only take them into account, but they are paramount, so a children and young people commissioner is required always to act in the best interests of children and young people and take into account their best interests. Other departments, government, the Parliament is not necessarily charged with that same responsibility, but the best way to have these issues considered, in my view, is when developing up the legislation.*²⁷⁵

The Commissioner also acknowledged that developing legislation was a complex process and did not 'think there [... was] a simple solution'.²⁷⁶

Determining the Effectiveness of the Commissioner's Review of Legislation

In March 2010, the Commissioner advised that to help ensure consistency in her staff's approach to assessing legislation, a tool had been developed for use in her office.²⁷⁷ In November 2012 the Commissioner advised that this internal tool was 'very similar' to

274 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p1.

275 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p9.

276 *ibid*, p9 and p10.

277 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 10 March 2010, p5.

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the legislation guidelines produced for government agencies.²⁷⁸ The Commissioner's legislation guidelines are discussed further below.

Throughout her term of office the Commissioner has advised the Committee of the influence of her legislation review role. For example, in March 2010, in relation to the 12 pieces of legislation commented on that year, the Commissioner stated:

*In some cases there have already been changes. The legislation in relation to child exploitation is one example on which we did have an influence. In relation to other matters, for example, the stop-and-search legislation, which is currently before the legislation committee in the upper house, I am waiting on the committee's findings. But I have made a submission and appeared and given evidence. In some cases we have had a very positive response. In others it has not been as extensive as I would have liked. But I think the most critical thing is, having been established for two years, the role of the commissioner is that more people now are seeking comment from me and are aware of children's interests as being important. I think that is a very valuable role that the commissioner's position assists with.*²⁷⁹

In June 2010, the Commissioner further outlined what she described as her 'runs on the board':

- *in May and November 2008, I made a submission to the Productivity Commission's inquiry into paid parental leave. Last week federal parliament passed legislation enacting paid parental leave legislation, which will come into effect at the beginning of next year. I along with many agencies called for that.*
- *In relation to the criminal code amendment legislation and mandatory sentencing in relation to public officers, you will recall that I wrote to the Attorney General about my concerns. As a consequence of that, the legislation was amended in the upper house so that it would apply to children 16 years and over, rather than what was originally intended, which was 14 years and over.*
- *In relation to various submissions about children who work, I have made a number of submissions to the federal and state governments about child employment laws and the need to harmonise legislation across Australia. That recommendation has been accepted by both the federal and the state governments and ministers for employment across Australia are now addressing that issue.*

278 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p21.

279 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 10 March 2010, p5.

- *[...] I made a number of submissions to the three parliamentary committees about early childhood. All of those parliamentary committees endorsed my key findings about the early years. ... I wrote to the Premier and met with the Minister for Health specifically about those concerns. I also met with other ministers. An additional \$50 million was allocated in this year's budget for child development services, and I welcomed that allocation.*
- *[...] I have advocated strongly to directors general and made a detailed submission to the Public Accounts Committee about the Auditor General's report into the Young Offenders Act, which was tabled in Parliament in June 2008. One critical issue that I have canvassed repeatedly with the Attorney General, who is also the Minister for Corrective Services, is the need to invest in diversionary programs. I refer to the outstanding success of the Geraldton Regional Youth Justice Strategy and the Kalgoorlie youth justice service have achieved in this year's budget following our strong advocacy. I specifically wrote to the Attorney General in 2009 requesting that the Geraldton and Kalgoorlie programs be expanded to the Kimberley and the Pilbara. Forty-four million dollars was allocated in this year's budget for West and East Kimberley and also the Pilbara. Those are just a few examples of where I think we have been influencing governments.²⁸⁰*

The Committee is aware that determining influence, particularly when working collaboratively and/or making submissions to public inquiries, can be difficult. The Committee asked the Commissioner whether, once legislation on which she had been consulted had passed through Parliament, she reviewed it to see if it adequately considered the needs of, and impact on, children and young people. The Commissioner advised that she did, but did not say how or provide further information.²⁸¹

The Committee followed this matter up at a hearing of 5 November 2012, asking the Commissioner for further information on how this review of passed legislation was carried out and whether consideration was given to the impact of the legislation on children once it was in place.²⁸²

The Commissioner stated:

As I interpreted the question, Madam Chair, to give you a very simple, straightforward example, we are asked to comment on legislation. We propose our comments on the legislation, the legislation is

280 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, pp6–7.

281 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p3.

282 Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p21.

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*subsequently passed in the Parliament and the legislation does not take into account our comments.*²⁸³

The Commissioner confirmed that her office had not had a chance to take the next step of reviewing legislation once it had passed.²⁸⁴ The Commissioner stated:

*We do it on occasions, Madam Chair, for example when there is a statutory review of legislation, we do consider what the impact is. So, if there is a five-year review of an act, we would consider what the impact has been on children and young people, we would include that in our submission and we would not only include data and research, if that is available to us, but also the particular views of children and young people themselves.*²⁸⁵

Legislation Assessment Tool

During 2009 and 2010, with the assistance of other agencies, the Commissioner developed a tool that agencies could use to assess legislation.²⁸⁶ This tool took the form of a set of guidelines titled *Improving Legislation for Children and Young People*, and was 'designed to assist agencies to develop effective legislation by ensuring impacts on children and young people are identified, that the best interests of children and young people are considered and, where necessary, alternative options are generated'.²⁸⁷

The guidelines encourage agencies to apply the assessment tool prior to drafting legislation in order to maximise effectiveness, and to apply it in all instances, regardless of whether legislation is specifically directed at children and young people or not.²⁸⁸

There are a number of steps in the assessment process. The assessment phase of the process asks agencies to identify the impact of the legislation on children and young people, to assess if the legislation is in the best interests of children and young people, and to analyse and assess the significance of the identified impacts. Phase two involves considering possible 'legislative and non-legislative measures to address the negative impacts on the best interests of children'.²⁸⁹

283 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p21.

284 *ibid.*

285 *ibid.*, p22.

286 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p13; Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 10 March 2010, p5.

287 Commissioner for Children and Young People, *Improving Legislation for Children and Young People*, Perth, 2010, p5.

288 *ibid.*

289 *ibid.*, p11.

The Commissioner distributed these guidelines to 140 government and non-government agencies, and held a training session for Parliamentary Counsel and another for 40 different agencies. The Commissioner reported that the tool had been ‘very well received’,²⁹⁰ and that ‘nine out of 10 said that they were very good and that they had never given thought to children and young people in the development of legislation’.²⁹¹

In discussing the amount of legislation the Commissioner does not get the opportunity to comment on, the Commissioner reinforced the educative function of the guidelines:

*I think over the last four years there is a lot of legislation on which we have had involvement but, as you are saying rightly, there is much more, and often agencies do not think it would even be relevant. I will give you a good example: planning legislation. Often people would ask, “Well, what has that got to do with kids?” It has everything to do with kids and young people. We have a big education exercise, which is what we do throughout legislation guidelines—educating people about assessing whether there are any impacts on children and young people.*²⁹²

In the 2010–2011 reporting period, the Commissioner conducted two workshops on the legislation guidelines. The Commissioner’s evaluations of these showed that 95 per cent of attendees agreed or strongly agreed that:

- *the information session increased their understanding of the process of assessing legislation for its impact on children and young people; and*
- *they would use the guidelines and the information from the session in their work to identify and take into account the interests of children and young people.*²⁹³

The Commissioner advised that ‘in some cases they [agencies] are using them [the legislation guidelines] and in some cases they are not. What would be ideal is that if they were all using them in the development of policy’.²⁹⁴ The Commissioner

290 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p6. Refer also: Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11.

291 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11.

292 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p5.

293 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p33.

294 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p22.

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acknowledged that reviewing guidelines on experience to date 'is a different issue to whether they are being used or not being used, and I think the evidence is that they are being used by some and not being used by others'.²⁹⁵

The Committee notes that in addition to whether agencies are using the guidelines and finding them useful, the issue of whether they were being used effectively is important.

Therefore, the Committee also asked whether, aside from the number of downloads from the website, the Commissioner had any other means of determining the actual effectiveness of the legislation guidelines.

The Commissioner responded as follows:

The guidelines were initially developed with advice from:

- *Department of the Attorney General*
- *Department for Child Protection*
- *Department for Communities*
- *Department of Corrective Services*
- *Department of Health*
- *Disability Services Commission*
- *Western Australia Police*

*Evaluation forms are distributed at every Guidelines training workshop and webinar. The information collected from the legislation guidelines workshop has been used to inform the review of the guidelines publication which will be republished in the next few months.*²⁹⁶

The Committee appreciates that the guidelines were developed in consultation with other agencies. The Committee also commends the Commissioner for evaluating the training workshops for the legislation guidelines. However, neither of these measures constitutes assessing the effectiveness of the Commissioner's review of legislation or the advice given to agencies.

Nevertheless, the Committee appreciates that encouraging agencies to use the legislation guidelines and consult with the Commissioner is an ongoing process.

²⁹⁵ Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p22.

²⁹⁶ Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p3.

Finding 10

The Commissioner has published guidelines for government agencies on making complaints processes accessible for, and responsive to, children and young people.

Recommendation 9

The Commissioner systematically monitor legislation, including its development, passage through Parliament, application, and impact on children and young people.

Chapter 6

Inquiries and Research

The *Commissioner for Children and Young People Act 2006 (WA)* contains a number of provisions to allow the Commissioner to undertake inquiries and conduct or otherwise participate in research relating to the wellbeing of children and young people.

Under s 19(f) the Commissioner's function is 'to initiate and conduct inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people'. Section 19(j) requires the Commissioner 'to conduct special inquiries under Part 5' of the CCYP Act.

In debating the Commissioner for Children and Young People Bill 2005, Hon Sheila McHale, MLA, then Minister for Community Development, stated that one of the two 'fundamental and most important roles of the commissioner' was 'systemic investigation'.²⁹⁷

Section 19(i) refers to the Commissioner's function 'to conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing of children and young people'.

Given this emphasis, it is appropriate that this aspect of the Commissioner's work is addressed in the measurement of her performance outcomes. The Commissioner's desired agency-level outcome is that 'the views and issues of children and young people are heard and acted upon'.²⁹⁸ One of the effectiveness key performance indicators used to measure the Commissioner's progress toward achieving this outcome is the 'extent to which issues impacting upon children and young people are identified through consultation'.²⁹⁹ The Commissioner's 'Approved outcome-based management structure', including approved key performance indicators, is discussed in chapter 10 of this report.

297 Hon. Sheila McHale, MLA, then Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard) 16 August 2005, p19 of pp3975b–4012a. The other fundamental and most important role was advocacy.

298 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p77.

299 *ibid*, p78.

Chapter 6

The balance of this chapter separately addresses each of the research and inquiry functions of the Commissioner.

Inquiries into Matters Affecting the Wellbeing of Children and Young People

Under s 19(f) of the CCYP Act, the Commissioner has the following function:

to initiate and conduct inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people.

Following her appointment in 2007 the Commissioner travelled extensively throughout the state, ‘both in the metropolitan area and in regional and remote communities’.³⁰⁰ This travel provided families, children and young people, community organisations and other stakeholders the opportunity to raise issues of particular concern with the Commissioner.³⁰¹ One of the issues the Commissioner reported as being consistently raised was the mental health and wellbeing of children and young people. In light of these concerns being raised, and as the Commissioner ‘had been contemplating holding an inquiry’, Ms Scott sought advice from the State Solicitor’s Office about interpreting the CCYP Act.³⁰² Following this, the Commissioner decided to establish an inquiry into the mental health and wellbeing of Western Australian children and young people (Mental Health Inquiry). This inquiry was established under s 19 of the CCYP Act.³⁰³

The Commissioner explained the ‘genesis of the idea’ for the Mental Health Inquiry as follows:

Everywhere that I have travelled, people have raised with me their concerns about the mental health and wellbeing of children and young people, and what more needs to be done to strengthen the mental health and wellbeing of children and young people. In some cases, it is at the acute services end—the critical end, the crisis end, where children and young people may have a diagnosed condition—that there is a lack of services, in particular, in regional and remote

300 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p3. See also: Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p2; and Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p2 and p21.

301 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p7.

302 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p2.

303 *ibid*, p2.

*communities, or they are having trouble accessing those services in the metropolitan area. It is also about what needs to be done early in a child's life to maximise their mental wellbeing, if you like.*³⁰⁴

In addition to considering the concerns raised during her travels, the Commissioner consulted with a number of people, including the Mental Health Commissioner, the Minister for Mental Health, professional organisations, the mental health division of the Department of Health, the Telethon Institute, the Royal College of Psychiatrists and other practitioners, and non-government agencies.³⁰⁵

The Commissioner advised that 'the overwhelming response from everybody—from the minister, the Mental Health Commissioner and other stakeholders—was that this was a very important area to focus on and that the Commissioner for Children and Young People was well placed to undertake such an inquiry'.³⁰⁶

Therefore, in July 2010 the Commissioner's Mental Health Inquiry was announced.³⁰⁷ To assist with the inquiry, the Commissioner established an Expert Reference Group and appointed an Independent Reviewer to lead the inquiry process.³⁰⁸

The Mental Health Inquiry is the first, and so far the only, inquiry undertaken by the Commissioner under s 19(f) of the CCYP.³⁰⁹ The estimated total cost of the inquiry was \$349,370.³¹⁰ Given these two factors, the Committee has considered this inquiry in particular detail.

The Committee recognises that this is the first inquiry undertaken by the Commissioner. The Committee's review is intended to provide feedback to the Commissioner to assist with further inquiries.

The Committee also notes that some of its Members made submissions to the Commissioner's inquiry in their capacity as Members of Parliament.

304 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p3.

305 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p6; Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p8.

306 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p6.

307 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p14.

308 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p11.

309 *ibid*, p2.

310 Submission No. 1 from Commissioner for Children and Young People, 2 October 2012, p1.

Chapter 6

The balance of this section outlines the purpose of the Mental Health Inquiry, the inquiry process, the role of the Expert Reference Group and the Independent Reviewer, the inquiry's terms of reference, the Mental Health Inquiry report, the involvement of the Mental Health Commissioner in the inquiry process and progress made on the Mental Health Inquiry report recommendations.

Purpose of the Mental Health Inquiry

The Commissioner's purpose in undertaking the Mental Health Inquiry was to:

- 'report on the mental health and wellbeing of children and young people in Western Australia';
- 'make recommendations that strengthen and enhance the mental health and wellbeing of children and young people'; and
- 'highlight those interventions or programs and services that are working well in Western Australia and elsewhere, and those that may need to be strengthened and enhanced'.³¹¹

The report resulting from the Mental Health Inquiry was 'intended to be a "road map" for the broad community, governments and the non-government sector to guide action immediately and over the next decade'.³¹² The issue of the report as a road map will be returned to below.

The Commissioner was of the view that the mental health and wellbeing of children and young people was 'an area that had been neglected in terms of public policy and resources'.³¹³

Members of the Expert Reference Group established to assist the Commissioner throughout the Mental Health Inquiry generally agreed with the Commissioner's assessment. For example, Dr Caroline Goossens was:

very clear that the acute end of adult mental health has soaked up a lot of attention, and it is very difficult to shift things downstream to think coherently about children and young people. I think that it has been easier for the voice of adult people, adults with lived experience

311 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p22; Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p14. See also: Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p11.

312 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p3 and p14.

313 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 20 June 2012, p3.

*and their families, to be very vocal; whereas I think it is very hard to capture the voice of children and young people and their families in that.*³¹⁴

Professor Stephen Zubrick thought it was an area:

*neglected by the broader community in the sense that we always have work to do regarding stigma and mental health problems in elevating—there has been such a focus on physical health. People walk around and know about physical health in a way that they do not know about being mentally healthy. So, I think there is plenty of work that we can do in raising Western Australians' understanding of how to stay and be mentally healthy, how to recognise when a person is—and the kinds of steps they might want to take when people are not mentally healthy when they have concerns around that. So, the community piece of that, I think, always offers us work to do.*³¹⁵

Mr Julian Gardner, the Mental Health Inquiry's Independent Reviewer, stated:

*What was not evident at the start was a broad enough understanding within the community at large of the importance of mental health issues in people as young as those in preschool and the importance to the rest of us and the importance for early adolescents.*³¹⁶

Furthermore, Mr Gardner advised that in undertaking the literature review for the inquiry, nothing was found that provided an overview of mental health for children and young people in Western Australia.³¹⁷

Mental Health Inquiry Terms of Reference

The Mental Health Inquiry's terms of reference were to examine and report on:

- 1. The mental health and wellbeing of children and young people in Western Australia.*
- 2. The experiences of children and young people and their families in relation to the mental health and wellbeing of children and young people.*

314 Dr Caroline Goossens, Prior Chair of Faculty of Child Psychiatry (WA), and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p7.

315 Professor Stephen Zubrick, Psychologist, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p6.

316 Mr Julian Gardner, Independent Reviewer, Commissioner for Children and Young People's Mental Health Inquiry, *Transcript of Evidence*, 26 September 2012, p4.

317 *ibid*, p5.

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3. Agencies that have a critical role to play in strengthening the mental health and wellbeing of children and young people.

4. Models and interventions that strengthen the mental health and wellbeing of children and young people in Western Australia, including those that reduce the risk or prevent mental health problems or disorders.

5. Opportunities for coordination and collaboration within the government sector and between government, nongovernment and private sectors to assist in the promotion of the mental health and wellbeing of children and young people.

6. Positive approaches and partnerships that are evidenced-based and are proving effective in strengthening the mental health and wellbeing of children and young people (in Western Australia or elsewhere and which would be relevant to Western Australia).

*7. Recommendations to inform future directions that will strengthen the mental health and wellbeing of children and young people, including interventions aimed at reducing the risk or preventing mental health problems and disorders and effective treatment.*³¹⁸

While the terms of reference were initially drafted by the Commissioner, Mr Gardner, the Independent Reviewer for the Mental Health Inquiry 'was involved in the settling of ... [the terms of reference]'.³¹⁹ Mr Gardner stated that it was also his 'advice to the commissioner that one of the critical risks in these projects is that critical stakeholders criticise the inquiry on the grounds that they do not like the terms of reference'.³²⁰

The Commissioner provided a copy of her letter inviting particular people to be a member of the Expert Reference Group.³²¹ This letter, dated 15 June 2010, clearly advises potential group members that if they agree to participate in the Expert Reference Group, the Commissioner 'is also seeking your comments on the attached draft terms of reference for the project' by 30 June 2010.³²²

318 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p22.

319 Mr Julian Gardner, Independent Reviewer, Commissioner for Children and Young People's Mental Health Inquiry, *Transcript of Evidence*, 26 September 2012, p3.

320 *ibid.*

321 Submission No. 3 from Commissioner for Children and Young People, 15 October 2012, Appendix 4.

322 *ibid.*

One of the functions of the Expert Reference Group was to ‘provide advice and comment on the draft Terms of Reference for the inquiry’.³²³ Mr Gardner advised that input was sought from the reference group on finalising the terms of reference.³²⁴

Some members of the Expert Reference Group were able to confirm the group’s input into the terms of reference. For example, Mr Aram Hosie advised that ‘we were provided with a draft list of the terms of reference and were able to provide input into them’.³²⁵ Mr Hosie recalled that this was before the group’s first formal meeting.

However, other members of the group could not recall having input into the terms of reference. Ms Tricia Murray’s recollection was that ‘they [the terms of reference] were determined before we [the Expert Reference Group] were brought together’.³²⁶ Professor Helen Milroy also could ‘not remember personally contributing to the terms of reference other than accepting the terms of reference and not being uncomfortable with them when they were presented’.³²⁷

When asked by the Committee what input the group had into the terms of reference, Professor Stephen Zubrick stated that he did not know:

*I certainly had no—other than looking at the terms of reference and ensuring that you understood them, those were not subject to, as I recall, members saying, ‘I would prefer they were this.’ They were terms of reference were given to the committee—.*³²⁸

The fact that all members of the Expert Reference Group were not able to recall having contributed to the development of the terms of reference is possibly a function of the time that has elapsed since the inquiry was conducted. The report was released in April 2011. However, as the meetings of the Expert Reference Group were not formally minuted the Committee sought information from the Commissioner to clarify the level of input of the group into the terms of reference.

In November 2011 the Committee raised with the Commissioner the fact that the Mental Health Inquiry terms of reference were extremely broad. In response the Commissioner advised that ‘they were broad for a number of reasons’, including:

323 Submission No. 1 from Commissioner of Children and Young People, 2 October 2012, p3.

324 Mr Julian Gardner, Independent Reviewer, Commissioner for Children and Young People’s Mental Health Inquiry, *Transcript of Evidence*, 26 September 2012, p3.

325 Mr Aram Hosie, Director, Research and Public Affairs, Inspire Foundation, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3.

326 Ms Tricia Murray, Chief Executive Officer, Wanslea Family Services, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3.

327 Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

328 Professor Stephen Zubrick, Psychologist and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

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- ‘the mental health and wellbeing of children and young people is a very broad issue’;
- to narrow the terms would lead to a ‘focus on the acute end of service provision’ rather than a more comprehensive approach; and
- ‘a broad-ranging effort across the community’ is needed to address the issue.³²⁹

The Commissioner confirmed this view in a hearing held on 19 September 2012.³³⁰

In their discussions with the Committee, members of the Expert Reference Group expressed their overall satisfaction with the terms of reference, with several stating that they did not believe they were too broad.³³¹

One Expert Reference Group member, Mr Hosie stated that for the Commissioner’s first inquiry it ‘made sense to look at the subject broadly’.³³² However, ‘if there was going to be follow-up inquiries, probably that would be a good time to narrow it and drill down into specific areas’.³³³

The Committee is aware that developing terms of reference for an inquiry presents particular challenges, particularly in relation to the timing and scope. In the case of the Mental Health Inquiry, when asked whether in hindsight the terms of reference might have been too broad, Professor Milroy explained the researchers’ dilemma in the following way:

Yes and no. Part of the difficulty in child mental health is that it is very broad and it crosses so many different jurisdictions. If they were narrow, it would have been useless. However, when they are broad, they also become difficult to implement and you are always caught between that. I do not know how you ever find the right balance. I would not have made them narrower but it is also difficult to know

329 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p9.

330 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p7.

331 See, for example: Mr Aram Hosie, Director, Research and Public Affairs, Inspire Foundation, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3; Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2; and Ms Tricia Murray, Chief Executive Officer, Wanslea Family Services, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3.

332 Mr Aram Hosie, Director, Research and Public Affairs, Inspire Foundation, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3.

333 *ibid.*

*how you then influence other sectors when it is a principal mental health inquiry. It does make it difficult. That is one of the complexities of dealing with health and mental health in general, particularly with regard to when you are looking at the Indigenous issue, the complexity that is required in order to facilitate good wellbeing.*³³⁴

While some concerns the Committee had in relation to the breadth of the terms of reference were allayed by the comments from the Expert Reference Group members, one consequence of the broad terms of reference for the Mental Health Inquiry is that they resulted in a report that is broad in nature and includes broad recommendations. This, in turn, appears to have resulted in a government response to the Commissioner's recommendations that was also quite broad and high-level. This matter is discussed further below.

Role of the Expert Reference Group

Under s 52(1) of the CCYP Act the Commissioner is able to establish reference groups to assist in the performance of the Commissioner's functions. As noted above, an Expert Reference Group was established by the Commissioner for the Mental Health Inquiry.

The Commissioner decided that the Expert Reference Group should consist of:

*Aboriginal, government, non-government, academic/research, clinician representatives who had knowledge and or experience about mental health and wellbeing of children and young people and a person or organisation who could represent the views of children and young people.*³³⁵

Following consultation with key stakeholders the Commissioner used her 'professional knowledge and expertise' to select members of the Expert Reference Group on the basis of their 'relevant experience, personal expertise and knowledge at the same time ensuring a "mix" of participants'.³³⁶

Members of the Expert Reference Group saw the group as bringing together a diverse group of people with a range of experience and skills. For example, Mr Hosie explained that he:

understood the reference group to be drawn from a really broad range of organisations and expertise. ... I saw that the reference group was a

334 Professor Helen Milroy, Director, Centre for Aboriginal Medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

335 Submission No. 3 from Commissioner for Children and Young People, 15 October 2012, p2.

336 *ibid.* See also: Submission No. 1 from Commissioner for Children and Young People, 2 October 2012, p3.

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*very diverse group of people who brought particular expertise around children and young people and mental health to help advise on the direction that the inquiry took and the findings that we were making to make sure that we get a broad perspective captured.*³³⁷

Ms Murray confirmed that:

*the reference group was made up of a number of people from within the sector, including both government and non-government people. It brought together different components of people's thinking, so they came from different practice experiences and some had research capacity and some had management expertise, from both government and non-government backgrounds.*³³⁸

In addition to the project terms of reference, the Commissioner's letter to potential Expert Reference Group members contained a project outline, including the role of the reference group and the groups meeting schedule.³³⁹ These documents clearly set out what was expected of the group members, which was to:

- *Provide advice and comment on the draft Terms of Reference for the inquiry*
- *Assist in identifying stakeholders relevant to the inquiry*
- *Provide advice and comment on proposals for the consultation process*
- *Suggest sources of information that could be pursued by the inquiry*
- *Suggest articles, reports etc that should be considered in the literature review*
- *Provide advice on any matters raised with the group by the reviewer.*³⁴⁰

337 Mr Aram Hosie, Director, Research and Public Affairs, Inspire Foundation, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p1.

338 Ms Tricia Murray, Chief Executive Officer, Wanslea Family Services, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

339 Submission No. 3 from Commissioner for Children and Young People, 15 October 2012, Appendix 4. See also: Submission No. 1 from Commissioner for Children and Young People, 2 October 2012, p3.

340 Submission No. 3 from Commissioner for Children and Young People, 15 October 2012, Appendix 4. See also: Submission No. 1 from Commissioner for Children and Young People, 2 October 2012, p3.

Evidence from the Expert Reference Group members demonstrates their understanding of their role. For example, Dr Goossens understood the functions and responsibilities of the group would be that:

*we would alert the reviewer and the committee to all of the relevant information. In my role, that included alerting the committee to research, previous reports and previous statements; for example, from the faculty of child psychiatry, and from the college here in Australia, and also from colleges overseas, such as the Royal College of Psychiatrists in the United Kingdom, which had completed a lot of work looking at child and adolescent mental health and recommendations around service delivery, and recommendations around the spectrum of interventions that would be required to improve the mental health and wellbeing of infants, children and adolescents, and which has published a lot in the area. So I really saw it as my role to make sure that that expert information was made available and that people were aware of it.*³⁴¹

Professor Zubrick also saw the group's role as being to 'provide overviews on the development of mental health in children, expert information regarding normal development and abnormal development where it pertains to mental health, and information regarding strategies, both preventive and treatment, for children with mental health disorders'.³⁴²

Professor Milroy stated that her:

*particular function was more related to providing some Aboriginal and Torres Strait Islander expertise, given my role at both the university, my own cultural background and my experience of working in mental health services with Aboriginal children, as well as some more generic expertise in child psychiatry. My understanding, really, was that a reference group provided advice and support, as well as a review of the documents and other support, as required.*³⁴³

Ms Murray stated that 'the purpose of the group was to provide guidance to Julian Gardner, who was the researcher for the inquiry, and to provide feedback to both the

341 Dr Caroline Goossens, Prior Chair of Faculty of Child Psychiatry (WA), and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

342 Professor Stephen Zubrick, Psychologist and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p1.

343 Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

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commissioner and Julian as to some of the ways he could undertake seeking feedback from various constituents who needed to be consulted'.³⁴⁴

Mr Edward Bartnik, Western Australia's Mental Health Commissioner and a member of the Expert Reference Group, saw the Expert Reference Group meetings as:

*an opportunity for all members of the reference group to independently put their perspectives on the terms of reference and particular issues that would be of importance to the inquiry, and also, regarding the consultation process, to ensure that there were the right opportunities for people across the state to connect with the inquiry and to have input. Part of the role was to facilitate sound input into the inquiry, but the second role was—and I was really struck by this, because the reference group was a small but diverse group and there really was a strong ethos of independent putting of views about the inquiry and of particular issues of concern, and from my perspective that was pretty much the tone that was set. So we were not directing the inquiry, we were a source of expert information and guidance and advice about how they might consult aspects of the inquiry.*³⁴⁵

Mr Bartnik further explained that:

*the flavour of the whole thing was people's independent, professional input and expertise. Both Professor Milroy and Dr Goossens had other roles to deal with, the college of psychiatrists and other bodies, and I was taken by how professional and ethical it was. People were passionate, but they put forward very strong views. They were not putting forward departmental views that I could see. They were putting forward, in the interests of the inquiry, their professional view as to what the key issues were.*³⁴⁶

Expert Reference Group members' recollections of the number of times the group met varied—from monthly, to a number of times, to six to eight times. This may be due to the time that has elapsed since the inquiry was undertaken, or it may be that some members of the group met with the Independent Reviewer more often than others.

344 Ms Tricia Murray, Chief Executive Officer, Wanslea Family Services, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

345 Mr Edward Bartnik, Mental Health Commissioner, Mental Health Commission, *Transcript of Evidence*, 26 September 2012, p2.

346 *ibid*, p6.

Nevertheless, there does seem to be general agreement on the roles and responsibilities of the Expert Reference Group.³⁴⁷

Members of the Expert Reference Group were provided with a copy of the draft report.³⁴⁸ The Commissioner advised that while she had ‘the ultimate decision as commissioner as to what comments I would accept’, the group ‘certainly had the opportunity to comment’ on the draft report.³⁴⁹

Expert Reference Group members confirmed their role in reviewing the draft report. The following two statements are indicative of those made by the group members.

*Every single member of the reference group was asked to comment on the report and to note if they had any discrepancy with any of the findings of the report. ... I think we met for a final time, but there was not a formal sign-off process. But we certainly had ample opportunity to comment on the draft version of the report.*³⁵⁰

*We received a draft copy of the report with the opportunity to correct any errors of fact, clarify any matters of wording or to make comment on significant issues.*³⁵¹

The Role of the Independent Reviewer

At the beginning of the Mental Health Inquiry report the Commissioner acknowledges ‘the Inquiry’s Independent Reviewer, who led the Inquiry process and provided considerable assistance to me in undertaking the Inquiry’.³⁵²

Under the heading ‘Governance of the Inquiry’, the Mental Health Inquiry report states that ‘the Commissioner conducted the Inquiry with the assistance of an Independent Reviewer: Mr Julian Gardner’.³⁵³ The report outlines Mr Gardner’s experience and notes that he was supported by the Commissioner’s staff throughout the inquiry.³⁵⁴

347 Members of the Expert Reference Group were asked a series of questions in relation to the meetings of the group. See Transcripts of Evidence from the members of the Expert Reference Group held on 21 September 2012.

348 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p7.

349 *ibid.*

350 Dr Caroline Goossens, Prior Chair of Faculty of Child Psychiatry (WA), and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3.

351 Mr Edward Bartnik, Mental Health Commissioner, Mental Health Commission, *Transcript of Evidence*, 26 September 2012, p3.

352 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p11.

353 *ibid*, p23.

354 *ibid*, p23.

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The report also describes Mr Gardner's role in conducting the inquiry's information sessions.³⁵⁵

The precise role of the Independent Reviewer was not clear to the Committee. Nor was it clear how the Independent Reviewer could be independent while at the same time leading the inquiry and holding information sessions. The question arises as to how a person so intimately involved with the inquiry process could also be an independent reviewer of the process, as the title suggests.

In response to the Committee's question on this issue, the Commissioner advised that because of the time consuming nature of inquiries, she 'appointed an independent inquirer to work directly with me to assist me in the conduct of the inquiry'.³⁵⁶

The Committee suggested that the role of an Independent Reviewer, as someone who is outside the process, is very different from that of an independent inquirer, as someone who is, in fact, a key part of the process.

The Commissioner advised that she relied on the Independent Reviewer 'to provide strategic input in relation to the inquiry' and also on his expertise to evaluate some of the literature and evidence.³⁵⁷

Members of the Expert Reference Group expressed a range of views on what they believed the role of the Independent Reviewer to involve. For example, Dr Goossens believed 'that the role of the independent reviewer was to pull together all of the different information that was discussed by the committee in a coherent form, and to make sure that it was referenced and that there was a basis for some of the committee's thoughts and deliberations'.³⁵⁸ Dr Goossens also understood the independent reviewer to be 'the final author, with obviously the commissioner's involvement in that'.³⁵⁹

Mr Hosie's view was that the Independent Reviewer:

was doing a lot of the grunt work, along with the staff of the commission. He seemed to take a lot of the actions out of the meeting, with things to follow up in terms of literature review and working really closely with the commissioner's staff around that. My understanding is that he contributed pretty strongly to the writing of

355 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p25.

356 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p9.

357 *ibid.*

358 Dr Caroline Goossens, Prior Chair of Faculty of Child Psychiatry (WA), and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

359 *ibid.*, p3.

*the report, along with the commissioner's staff. Yes, very much driving the work that came out of the consultations and the information that was given by the reference group is my memory of his involvement with it.*³⁶⁰

Professor Zubrick saw the Independent Reviewer as being:

*someone, as it were, outside of the Western Australian jurisdiction, someone who is knowledgeable about the area and capable of what I would regard as being good listening, high-level synthesis, insight and knowledge in the area. I suppose it is in a sort of a review like that he created a safe vessel in which people could express their opinions, bring information and have it looked at, and kind of reach general views or recommendations on what was on the table at any particular time.*³⁶¹

Ms Murray described the Independent Reviewer as 'the researcher for the project', as 'an expert in the field', someone who 'provided direction to the group on some of the literature, on some of the aspects of the consultations that had been held and then guiding the process of putting the report together. He was a sounding board'.³⁶²

Professor Milroy 'saw him as the principal project automator cum investigator of the inquiry'.³⁶³

Some members of the Expert Reference Group thought that the title of the role did not reflect the work undertaken by the Independent Reviewer. Dr Goossens saw the role more as 'project support', being 'involved in the process from the beginning and being able to bring the information together'.³⁶⁴ Dr Goossens agreed that it would be fair to say that the Independent Reviewer had two roles: one was to act as the secretary of the reference group and the second was to be the chief drafter of the report.³⁶⁵

360 Mr Aram Hosie, Director, Research and Public Affairs, Inspire Foundation, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

361 Professor Stephen Zubrick, Psychologist and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

362 Ms Tricia Murray, Chief Executive Officer, Wanslea Family Services, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3.

363 Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

364 Dr Caroline Goossens, Prior Chair of Faculty of Child Psychiatry (WA), and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3.

365 *ibid*, p8.

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Mr Hosie was 'not sure' that he would call the Independent Reviewer a project leader; and Professor Milroy 'suppose[d] "independent reviewer" is perhaps an odd title'.³⁶⁶

Ms Murray explained that, while the role could be described as a 'facilitator or an investigator', Mr Gardner was a reviewer in that he 'review[ed] what is available and what the issue is in Western Australia, what services are available and maybe what needs to be done to improve the services to children and young people who are presenting with mental illness. I think he is reviewing the current state of the nation'.³⁶⁷ Ms Murray also interpreted the 'independent' descriptor as relating to being unbiased, something that was also assisted by Mr Gardner coming from interstate.³⁶⁸

Mr Gardner agreed that his title was 'not entirely explanatory' of the role he undertook.³⁶⁹ He described his role as 'providing an extra pair of hands for the Commissioner by providing specific expertise'.³⁷⁰ Mr Gardner saw the Independent Reviewer role as having two main parts, The first part of his role was 'procedural or organisational', requiring him to 'lead the inquiry in establishing a project route' through a 'very strict regimen of project management'.³⁷¹ The second part of his role was 'more substantive in terms of content', and involved, for example, advising on and leading community consultations, and ensuring the report and its findings reflected the submissions and other evidence.³⁷²

In response to the Committee's suggestion, Mr Gardner agreed that 'project director' might be a more accurate description of the role.³⁷³

The Committee accepts that it may have been difficult to clearly encompass within a position title Mr Gardner's functions and responsibilities. Nevertheless, it would have been less confusing to have a title that better reflected the work undertaken.

Furthermore, the Committee would expect that the role of the Independent Reviewer be more adequately explained in the Mental Health Inquiry report.

366 Mr Aram Hosie, Director, Research and Public Affairs, Inspire Foundation, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2; and Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

367 Ms Tricia Murray, Chief Executive Officer, Wanslea Family Services, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p3.

368 *ibid*, p4.

369 Mr Julian Gardner, Independent Reviewer, *Transcript of Evidence*, 26 September 2012, p2.

370 *ibid*.

371 *ibid*. Mr Gardner provides further details on this aspect of his role.

372 *ibid*, p2.

373 *ibid*, p3.

Finding 11

The title of the role ‘Independent Reviewer’ for the Mental Health Inquiry was misleading and, given, the wide audience intended for the report, needed to be more clearly explained in the report.

The Process of Appointing the Independent Reviewer

The Commissioner appointed the Independent Reviewer through a procurement process that was managed by the Department of Treasury.³⁷⁴ The Request for Quotation for the reviewer role was sent to five suppliers from the Commissioner for Children and Young People Panel of Suppliers. Two tenders were received through this process.³⁷⁵

The Commissioner advised that the two tenders were assessed by a Selection Panel that included an officer of the Public Sector Commissioner.³⁷⁶ The evaluation report from the Selection Panel was ‘unanimous’, and the tender was awarded to Mr Gardner.³⁷⁷

The Request for Quotation document clearly set out the requirements of a potential Reviewer. As part of the required demonstrated experience, potential Reviewers were to demonstrate their experience ‘in working within a legal framework’.³⁷⁸

Unsure as to why this would be a requirement for what, in effect, is a research project director role, the Committee sought advice from the Commissioner. According to the Commissioner, ‘this criterion was included because the inquiry was to be conducted under the Commissioner for Children and Young People Act 2006 and experience of working within the context of a statutory framework was required’.³⁷⁹

The Committee sought further clarification from the Commissioner as to why this criterion was required for the Mental Health Inquiry and not for her other major research projects, which were also undertaken under the CCYP Act.

374 Submission No. 1 from Commissioner of Children and Young People, 2 October 2012, p4; Submission No. 3 from Commissioner of Children and Young People, 15 October 2012, p3.

375 Submission No. 1 from Commissioner of Children and Young People, 2 October 2012, p4; Submission No. 3 from Commissioner of Children and Young People, 15 October 2012, p4.

376 *ibid.*

377 *ibid.*

378 Submission No. 1 from Commissioner of Children and Young People, 2 October 2012, Appendix 5, p9. Note that the Request for Quotation refers to Reviewer, not Independent Reviewer.

379 Submission No. 3 from Commissioner of Children and Young People, 15 October 2012, p4.

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The Commissioner advised that this was a requirement because, unlike other projects, the Mental Health Inquiry was not research contracted out to others but ‘an inquiry that was being undertaken on my behalf’.³⁸⁰

The Committee notes that the Mental Health Inquiry was conducted under s 19(f) of the CCYP Act and was not a special inquiry under s 19(j).

The Role of the Mental Health Commissioner

The Mental Health Commission was established in March 2010.³⁸¹ The Mental Health Commission, and therefore the Mental Health Commissioner, is responsible for, amongst other things:

- *development and provision of mental health policy and advice to the government*
- *leading the implementation of the Mental Health Strategic Policy.*³⁸²

The Mental Health Commissioner is responsible to the Minister for Mental Health.

At the beginning of the inquiry process, the then Acting Mental Health Commissioner, Mr Neil Guard, was invited to be a member of the Expert Reference Group for the Mental Health Inquiry.³⁸³ Mr Edward Bartnik was appointed as Mental Health Commissioner on 16 August 2010,³⁸⁴ and replaced Mr Guard as the Mental Health Commission’s representative on the Expert Reference Group. As such, Mr Bartnik undertook the roles and responsibilities of the group (as outlined above), including reviewing the Commissioner’s draft report.

380 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p27.

381 Mental Health Commission, *Annual Report 30 June 2010*, Government of Western Australia, Perth, June 2010, p5.

382 Mental Health Commission, *The Commission’s Role*, 2010, np. Available at: http://www.mentalhealth.wa.gov.au/media_resources/head2head.aspx. Accessed on 17 October 2012.

383 Mr Edward Bartnik, Mental Health Commissioner, Mental Health Commission, *Transcript of Evidence*, 26 September 2012, p7.

384 Mental Health Commission, *Annual Report 30 June 2010*, Government of Western Australia, Perth, June 2010, p3. Available at: http://www.mentalhealth.wa.gov.au/Libraries/pdf_docs/Mental_Health_Commission_Annual_Report_2009-10.sflb.ashx. Accessed on 17 October 2012.

When government departments were requested to provide specific information to the inquiry, the Mental Health Commissioner collated the whole-of-government response to this request.³⁸⁵

The Mental Health Inquiry report makes a number of recommendations to the Mental Health Commission.³⁸⁶

In November 2011 the Committee wrote to the Mental Health Commissioner requesting his view of the effectiveness of the recommendations and outcomes of the inquiry, and the Mental Health Commission's willingness and ability to adopt and implement changes as a direct result of the Mental Health Inquiry report recommendations.

In July 2012, in response to this request, the Committee received an 'Overview of Progress' from Hon Helen Morton, MLC, Minister for Mental Health. The Mental Health Commissioner advised the Committee that the progress overview 'was prepared by the Department for the Premier and Cabinet in consultation with State Government agencies', and that 'the Mental Health Commission was extensively consulted in the writing of the progress overview'.³⁸⁷

Given the range of roles Mr Bartnik had in relation to the Mental Health Inquiry, the Committee raised with the Commissioner the possibility of a conflict of interest for Mr Bartnik. The Commissioner agreed that 'theoretically' there was the potential for such a conflict.³⁸⁸ However, she believed that potential was reduced by two factors. First, in addition to the whole of government submission collated by the Mental Health Commissioner, the Commissioner requested additional information from agencies without going through the Mental Health Commission. Second, the Mental Health Commissioner was one member of the Expert Reference Group.³⁸⁹

The Commissioner explained that being a member of the Expert Reference Group afforded the Mental Health Commissioner 'an opportunity to understand more extensively what the gaps in services were'.³⁹⁰ Furthermore, as the Mental Health Commission was a new organisation, having its Commissioner as part of the group 'was

385 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p25.

386 Recommendation number 6, 7, 8, 9, 10, 11, 13, 16, 17, 22, 25, 44, 46, 47, 53 refer to the Mental Health Commissioner.

387 Mr Eddie Bartnik, Mental Health Commissioner, Letter, 9 October 2012.

388 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p6.

389 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p6.

390 *ibid.*

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quite important in terms of the capacity of the inquiry to influence how the mental Health Commission might decide to allocate scarce resources’.³⁹¹

Dr Goossens agreed that it was a ‘really important role for them [the Mental Health Commission] to attend to at least start to understand some of the issues in the area’.³⁹² Dr Goossens suggested it:

*was a way for them starting to become much more aware of the issues, because stepping into that role of the Mental Health Commissioner is a huge task, to understand the breadth of the issues involved and for it not just to be focused on adults but to broaden its scope to start to think about the cradle to grave.*³⁹³

Similarly, Professor Milroy argued that it was:

*better to actually be inclusive and have all the players present and understand what is going on and get the information as it comes to light. ... you are better off to try to promote collaboration from the beginning. That is the issue about having silos. If you are not collaborative from the beginning, then you are promoting silos.*³⁹⁴

The Committee also raised its concerns with Mr Bartnik who advised that he did not feel there was any conflict of interest in him being a member of the Expert Reference Group. He stated that his role in the group was clear—‘to provide independent advice and input into the scoping of the inquiry and the key issues, and particularly to help the inquiry understand areas that may not be well understood’.³⁹⁵

Mr Bartnik agreed that his membership of the group may ‘be seen to be an issue’, but that his ‘role and contribution was more about correction of errors of fact and of emphasis and less about changing the direction of the recommendations’.³⁹⁶

The Committee was reassured by the evidence presented, particularly as the Mental Health Commissioner had only been in his role a short time when he assisted the inquiry. Once the position of the Mental Health Commissioner becomes more mature,

391 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p8.

392 Dr Caroline Goossens, Prior Chair of Faculty of Child Psychiatry (WA), and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p2.

393 *ibid*, p9.

394 Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p10.

395 Mr Edward Bartnik, Mental Health Commissioner, Mental Health Commission, *Transcript of Evidence*, 26 September 2012, p2.

396 *ibid*.

the Committee considers it may not be appropriate for him or her to participate in all the activities of any future Expert Reference Group.

The Committee considers that in cases of real or perceived conflict of interest for reference group members it would be better for those members not to be involved in the report drafting, including the development of findings and recommendations. However, all members of a project expert reference group should be given the opportunity to comment on a draft report.

Recommendation 10

The Commissioner incorporate an appropriate process into research and inquiry projects to deal with real or perceived conflict of interest for members of an Expert Reference Group.

Research Method and Project Management

The Mental Health Inquiry used a number of methods to gather information:

- submissions
- consultations with children and young people
- literature review of international, national and local research
- referrals from the Expert Reference Group
- requests for information from government agencies
- information sessions in metro and regional areas³⁹⁷

The Committee commends the Commissioner on the range of methods used for this inquiry.

The information in the 'Conduct of the Inquiry' section of the Mental Health Inquiry report, however, raised a number of issues or questions for the Committee. For example:

- What was the response rate from the mail out to 500 stakeholders?
- Does the list of 500 stakeholders in the mail out include those key organisations listed in the consultation section of the report?
- Who were the information sessions provided to? Were these for members of the general community or for specific organisations?

³⁹⁷ Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, pp24–26.

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- Was there an intention to generate data that could be extrapolated to the general population?
- What method(s) were used to analyse the data, including the qualitative data?

In asking these questions the Committee is not being critical of the inquiry methods. Rather, the Committee is making the observation that more detailed and specific information on the inquiry methods should have been included in the 'Conduct of the Inquiry' section of the report. Providing information on, for example, the response rate to mail outs, the representativeness or otherwise of the sampling, who the information sessions were provided to, and how the various types of data generated were analysed would have given readers a better understanding of the inquiry methods. This, in turn, would have afforded readers an increased level of confidence that the Mental Health Inquiry findings could be extrapolated to the wider population of Western Australian children and young people.

A project plan for the Mental Health Inquiry was developed by the Independent Reviewer. Amongst other things, this project plan clearly sets out the key phases of the project, tasks to be undertaken, and the person(s) responsible for the task. The final phases of the project plan are 'report writing' and 'final report', which includes tabling of the report and communications.³⁹⁸ The Commissioner has provided copies of the Project Status Reports 1 to 13 and these clearly outline, for example, the project progress, plans for the next four-week period, milestones, risk issues and other matters impacting upon the project.³⁹⁹ These documents reflect a high standard in project management.

In relation to any evaluation of the project following its completion, the Commissioner advised that under her project management approach, all projects were reviewed and formally evaluated.⁴⁰⁰ The Commissioner's Evaluation Report for the Mental Health Inquiry clearly provides information on the project's strengths and weaknesses, and on the lessons learned from the project. The Evaluation Report includes a section titled 'At the end of the project'. This section includes the following questions and evaluation:

- Were the expected benefits of the project maximised? Yes
- Did the project evaluation framework include assessment and comparison of the 'before' and 'after' project situation to evaluate impact? n/a
- Was there any impact on the relevant CCYP strategic directions? n/a

398 Submission No. 3 from Commissioner for Children and Young People, 15 October 2012, Appendix 1.

399 *ibid*, Appendix 2.

400 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p5.

- Was there any impact on the relevant whole of government strategy? n/a⁴⁰¹

Given the nature and scope of the Mental Health Inquiry it was unclear to the Committee how an assessment could be made in relation to the expected benefits of the project being maximised, particularly when the Mental Health Inquiry Report aims to provide recommendations for the short-, medium- and long-term.

The Committee cannot understand the 'n/a' responses to the other three questions, particularly in relation to the impact on whole of government strategy.

While the Committee was pleased to learn of the internal evaluation of the project process, it notes that any such formal evaluation is not included in the Project Plan or the Project Status Report. As the Commissioner has stated that all projects are reviewed and evaluated, this step should be included in plans and status reports.

Recommendation 11

Internal evaluation be included as a formal stage of any of the Commissioner's projects and included in documents such as Project Plans and Project Status Reports.

The Committee would also like to see a formal evaluation of the direct impact of, or outcomes from, projects such as the Mental Health Inquiry incorporated into the Project Plan.

The Commissioner advised the Committee that 'following the release of the report, ongoing monitoring of feedback was collated' using Excel software.⁴⁰² These anecdotal responses, while providing informal feedback, do not constitute the necessary formal evaluation of impact or outcomes. Such a formal mechanism is required in order to fully understand the impact of inquiries such as this and to inform future inquiries.

The Mental Health Inquiry Report

The Commissioner's Background Paper to the inquiry states that:

*the inquiry's findings and recommendations will provide a roadmap to give Western Australia a clear direction for action on how to strengthen children and young people's mental health, from the prevention of problems and disorders, through to appropriate treatment.*⁴⁰³

401 Submission No. 3 from Commissioner for Children and Young People, 15 October 2012, Appendix 3.

402 Submission No. 1 from Commissioner for Children and Young People, 2 October 2012, p2.

403 Commissioner for Children and Young People, *Inquiry into the Mental Health and Wellbeing of Children and Young People—Background Paper*, 3 August 2010, p1. Available at: <http://www.ccp.wa.gov.au/files/mentalhealth/Background%20Paper%20->

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The Mental Health Inquiry Report also states that it was intended to be ‘a “road map” for the broad community, governments and the non-government sector to guide action immediately and over the next decade’.⁴⁰⁴

However, there was concern amongst Committee members that, largely due to the broad nature of the findings and recommendations, the Mental Health Inquiry did not provide such a road map.

When questioned at a hearing, Mr Gardner, the Independent Reviewer, confirmed the ‘road map’ intention for the report.⁴⁰⁵ Mr Gardner explained that he thought the report provided a road map as, prior to the inquiry, the importance of children and young people’s mental health issues was not understood within the community. Mr Gardner argued that:

*by drawing together evidence that indicated that there were issues that needed to be addressed to benefit society as well as those individuals earlier than, say, the early psychosis intervention centres which look at those 16-year-old-plus. It does provide a road map by saying here are some issues and here are some ways of tackling them or ideas that policy makers can think about and either accept or reject.*⁴⁰⁶

The Committee agrees that the report does indeed raise issues and suggest ways of addressing them. However, the Committee finds that the statement that the report is a road map is an overly ambitious claim.

Finding 12

The statement that the Mental Health Inquiry Report provides ‘a “road map” for the broad community, governments and the non-government sector to guide action immediately and over the next decade’ is an overly ambitious claim.

Given its concerns, the Committee raised this matter with members of the Expert Reference Group. Mr Bartnik advised that

there is a very strong alignment between the recommendations of the report and what is in our published policy, Mental Health 2020, and we

%20Inquiry%20into%20the%20Mental%20Health%20of%20Children%20and%20Young%20People.pdf. Accessed on 18 October 2012.

404 Commissioner for Children and Young People, *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, April 2011, Perth, p3.

405 Mr Julian Gardner, Independent Reviewer, *Transcript of Evidence*, 26 September 2012, p4.

406 *ibid.*

*are taking some of those ideas forward into the national roadmap for mental health.*⁴⁰⁷

However, other group members such as Dr Goossens, Professor Milroy and Ms Murray thought that, rather than being a road map, the report provided information on the current situation and makes recommendations for improvement.⁴⁰⁸ As Professor Milroy explained, the next step would be to develop a road map, which would be:

*a much more detailed overview of development and intervention points and things like that, and more of a framework or whatever. This is really a report with recommendations rather than a road map.*⁴⁰⁹

There was also concern amongst the Committee members in relation to the strength of the evidence base of the report, particularly in an evidence based report intended to be read by a wide audience. The Committee's concern was, in large part, due to the general nature of some of the statements in the report and the limited referencing in some areas.

The following provide some examples of where the Committee considers the evidence base to be insufficiently referenced.

At page 27 the report states: 'Estimates suggest that between one-quarter to one-half of adult mental illness may be preventable with appropriate interventions in childhood and adolescence'. This statement has one only reference – a 2003 publication cited in the UK Department of Health's framework for developing wellbeing. It is unclear as to whether any work was undertaken by the Commissioner to determine if this statistical data was transferable to an Australian and/or Western Australian context.⁴¹⁰

407 Mr Edward Bartnik, Mental Health Commissioner, *Transcript of Evidence*, 26 September 2012, p7.

408 Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p 9; Dr Caroline Goossens, Prior Chair of Faculty of Child Psychiatry (WA), and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p 8; and Ms Tricia Murray, Chief Executive Officer, Wanslea Family Services, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p6.

409 Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, pp9-10.

410 Department of Health, United Kingdom, *New Horizons—Confident Communities, Brighter Future. A Framework for Developing Well-being*, HM Government, United Kingdom, 25 March 2010, p12. Available at: http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_115936.pdf. Accessed 3 September 2012.

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At page 30 the report states: 'Extensive research in neurobiological and social sciences has provided a strong and well recognised evidence base for understanding how children's development is influenced by the very earliest years of their lives. This research confirms that early life experiences have a major impact on the development of the brain, social and emotional skills and play a central role in favourable or unfavourable health and development outcomes for children'. This statement is supported by one reference, an unpublished text produced by the Infant Mental Health Working Group, Perth, 2009.

Page 30 contains two paragraphs discussing 4 to 12 year olds, but does not include any references in support of the claims made.

Page 31 contains a section that discusses the transition to adulthood (16 to 25 years). Here the report states: 'Evidence suggests that this transition period is long and varies between individuals depending on their own developmental trajectory'. However, no supporting evidence or referencing is provided.

Chapter 2, at pages 32 and 33, contains definitions of terms, and include the statements that they are 'derived from widely accepted Australian and international research and policy documents, relevant in the Western Australian context'. The report provides a reference for each definition, but does not provide evidence of the definitions being widely accepted.

Recommendation 3, in chapter 4 at page 56, is for a collaborative service to be established as a demonstration project. The recommendations states that the models of Wraparound Milwaukee and the People with Exceptionally Complex Needs should be considered in the development of this service.

While the recommendation is that government should consider these models, the recommendation to consider Wraparound Milwaukee is based on information provided only from the Milwaukee government's website. There is no indication that the Commissioner sought information on whether or not this model has been independently evaluated and achieving what it is designed to achieve. It is not clear if the Commissioner has other evidence of the model apart from what was obtained from the government website.

At page 97 the report states: 'Research has confirmed that the mother's health and experiences during pregnancy are significant factors in mental health outcomes for young children'. The one reference for this statement is an unpublished paper. For such a general statement, there should have been more references or, at the least, a published reference.

The issues of references and the evidence base were raised with the Commissioner, the Independent Reviewer and the Expert Reference Group.⁴¹¹

The Commissioner advised that ‘we had so many references for this report, we had to limit the references, and I think there are more details in the back of the report’.⁴¹²

Mr Gardner explained that:

*one of the great problems was the size [of the report]. We formed the view that it was going to be less helpful if we came up with an 800-page report. That means that you make some judgements about which areas you can be less than complete in exposing the evidence that you have collated. At times I would be the first to admit that if a person has an area of particular interest, they will find that section less than enlightening. But we had set a goal of trying to contain the size and that, therefore, dictated to a certain extent how much evidence we could include.*⁴¹³

Several members of the Expert Reference Group, on consideration of the Committee’s concerns, agreed that it would be reasonable to say that the report referencing could have been improved.⁴¹⁴ Professor Milroy, for example, stated:

*I suppose it is the balance between how many references you need, how many opinions you take from experts and how much you take from the consultations. [...] Yes. There could have been more references.*⁴¹⁵

Nevertheless, members of the Expert Reference Group did not hesitate to agree with the statement that the report reflected the best national and international research as

411 See: *Transcript of Evidence*, Hearing with the Commissioner for Children and Young People, 19 September 2012, pp12–16; *Transcripts of Evidence*, 21 September 2012 and 26 September 2012.

412 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p16.

413 Mr Julian Gardner, Independent Reviewer, *Transcript of Evidence*, 26 September 2012, pp3-4.

414 Dr Caroline Goossens, Prior Chair of Faculty of Child Psychiatry (WA), and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p5; Mr Aram Hosie, Director, Research and Public Affairs, Inspire Foundation, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p4; Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p7.

415 Professor Helen Milroy, Director, Centre for Aboriginal medical and Dental Health, University of Western Australia, and member of the Mental Health Inquiry Expert Reference Group, *Transcript of Evidence*, 21 September 2012, p7.

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accepted by experts in the field of mental health of children and young people.⁴¹⁶ The Committee was reassured by the comments made by the Expert Reference Group.

This issue highlights the importance of writing for a report's audience, rather than experts in a particular field. In this case, as the Commissioner reports to Parliament, the primary audience was Parliament and its members. In addition to Parliament, the report would have a broad audience, providing information for government agencies, non-government organisations, mental health practitioners, general clinicians, child care organisations and other professions, as well as members of the general community. Improved referencing would have been of benefit to many of these people who may not have a detailed knowledge of the literature, just as it would have been to the Committee in its reading of the report.

Recommendation 12

The Commissioner should incorporate into all future research and inquiries, the following 'lessons learned' from the Commissioner's first inquiry:

- Better explanation of the methodology employed, including but not limited to improved information on the processes involved in sample selection, data analysis methods, Expert Reference Group formation, the role of the Expert Reference Group and the role of the Independent Reviewer;
- Ensure that the titles of those involved in the project clearly and accurately reflects their role;
- Enhance processes for reducing the potential for real or perceived conflict of interest in those involved in the project;
- Provide sufficient referencing to assist readers of reports better understand and evaluate the project and its findings and recommendations.
- Ensure the claims for a report are not overly ambitious.

Progress on Recommendations

The Mental Health Inquiry Report contained 54 recommendations, including recommendations to the Council of Australian Governments, the Commonwealth government, and the state government, as well as to individual agencies such as the Department for Communities and the Mental Health Commission.

⁴¹⁶ All members of the Expert Reference Group were asked about their confidence in the national and international research that provided the evidence base for the report. All members except one advised they were confident. Ms Murray did not feel qualified to comment.

As noted above, the Committee found many of these recommendations to be broad in nature.

The Committee also notes that the whole-of-government progress report on the implementation of the Commissioner's recommendations is also very broad and general in nature. It includes many statements that begin with phrases such as 'an increased focus...' 'greater use of...' and 'significant investment in ...'.

Furthermore, the government's progress report does not address all of the Commissioner's recommendations. Nor does it say whether it intends to implement all of these recommendations. Instead, the Overview of Progress states that it 'provides an overview of progress in areas identified by the CCYP (the Commissioner)'.⁴¹⁷ In this respect, the Committee was disappointed with the government response.

The Commissioner's *Annual Report 2011–2012* states that:

*I am pleased that over the last 12 months there has been significant progress on the Inquiry's 54 recommendations, and I will continue to collaborate with the relevant agencies and monitor their progress on this important work in 2012-13.*⁴¹⁸

This annual report also lists developments particularly welcomed by the Commissioner as well as areas that remain in need of attention.⁴¹⁹ The Commissioner also states that 'monitoring the recommendations will continue in 2012–13'.⁴²⁰

The Committee notes that it will be difficult for the Commissioner to determine what developments in service provision, designed to meet the mental health needs of children and young people, are directly related to the 54 recommendations in the Mental Health Inquiry Report. For example, in relation to the refurbishment of the Bentley Adolescent Unit and the increase in the number of community child health nurses, the Commissioner has been only one of multiple influences on government decision-making.

Special Inquiries

In introducing the Commissioner for Children and Young People Bill 2005 in the Legislative Assembly, then Minister for Community Development, Hon Sheila McHale, MLA, stated that 'perhaps the most significant function is the commissioner's capacity

417 The government response to the Mental Health Inquiry recommendations is discussed in: Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p7 and pp13-14.

418 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p13.

419 *ibid*, pp13–14.

420 *ibid*, p14.

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to conduct special inquiries into issues affecting children'.⁴²¹ It is therefore noteworthy that during her five-year term the Commissioner has not undertaken a special inquiry.

This function is provided under s 19(j) of the CCYP Act, with the particular power to establish special inquiries provided under Part 5 of the CCYP Act. Section 29(1) states that:

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

What differentiates the special inquiry function from the s 19(f) inquiry function are the extensive powers of the Commissioner granted under s 33 when undertaking a special inquiry. For the purpose of a special inquiry, the Commissioner may compel witnesses; require evidence to be provided on oath or affirmation; require people to produce documents; and inspect, copy and retain documents.⁴²²

In addition to these powers, under s 37, the Commissioner or an authorised staff member may 'enter and inspect any place', either with the owner/occupier's consent or under a warrant issued by a magistrate of the Children's Court.⁴²³ For example, in the case of an inquiry into a childcare centre:

*the special powers would enable the commissioner to enter childcare facilities. In the case of mental health facilities, the commissioner would be able to enter psychiatric wards or other facilities for children. The commissioner would have the power to enter schools and private businesses. The commissioner will be given the power to enter those premises and to also require that documents be provided.*⁴²⁴

Hon Sheila McHale, MLA, described these special inquiry powers as 'a serious and intrusive set of powers'.⁴²⁵

At a hearing, the Commissioner agreed that one of her 'most substantial powers is the capacity to conduct a special inquiry into any matter that I consider appropriate, and

421 Hon. Sheila McHale, MLA, then Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard) 1 June 2005, p2 of pp2582b–2585a.

422 See s 33(a) (b) (c) (d) and (e).

423 Section 37 *Commissioner for Children and Young People Act 2006* (WA).

424 Hon. Sheila McHale, MLA, then Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard) 25 August 2005, pp1–2 of pp4635a–4649a.

425 *ibid*, p6 of pp4635a–4649a.

the level and cooperation that is expected by others if I choose to hold such a special inquiry'.⁴²⁶

Early in her term the Commissioner acknowledged that she had not conducted any special inquiries due to her wish not to duplicate the functions or inquiries of other authorities such as the Ombudsman or the Auditor General.⁴²⁷ Using the Auditor General's 2008 performance examination of the juvenile justice system as an example, the Commissioner advised that she had contemplated an inquiry in this area, but had chosen not to proceed. Instead, the Commissioner used the information in the Auditor General's report 'to advocate to relevant government agencies about what action they might need to take'.⁴²⁸ The Commissioner explained that 'where I have the cooperation of a government agency or a significant agency, I engage with that agency rather than call a special inquiry'.⁴²⁹

Nevertheless, the Commissioner at that time anticipated that she:

*might hold a special inquiry during the five years [of her term of office]. I suppose, in terms of the criteria, it would be a serious issue that I did not believe was getting adequate attention elsewhere, and another agency was responsible for it but was not undertaking an inquiry, so that there is a gap and a need to focus on those issues. It would also have to be a serious issue of public interest.*⁴³⁰

In discussing the decision to undertake the Mental Health Inquiry as a s 19(f) function rather than a special inquiry, the Commissioner stated that there had been 'a number of considerations'.⁴³¹ The Commissioner advised that it was her interpretation of the parliamentary debate of the Commissioner for Children and Young People Bill 2005 and the legislation subsequently enacted that 'it would be highly unusual and extraordinary, because I already have inquiry functions under section 19'.⁴³² The Commissioner stated that 'it would be something of such great importance that it could not be achieved any other way and a special inquiry would be the only way to conduct the inquiry'.⁴³³ Furthermore, the Commissioner advised that, 'if there was concern

426 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p3.

427 *ibid.*

428 *ibid.*, p14. The 2008 Auditor General's report referred to is: *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994*.

429 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p14.

430 *ibid.*

431 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p23.

432 *ibid.*

433 *ibid.*, p23.

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about some systemic issue around abuse of children or some particular issue, which was broader than one individual, ... that might be something'.⁴³⁴

The capacity to undertake special inquiries is as relevant today as it was when the CCYP Act was assented. It is an essential function of the Commissioner, one that allows her to more fully exercise her 'broad mandate to consider the full range of issues affecting children and young people'.⁴³⁵ For example, a special inquiry would be a way for the Commissioner to consider individual complaints or other matters relating to particular children or young people as a means of investigating and revealing systemic issues. This issue is discussed in detail in chapter 7. There would be times when an independent inquiry into a matter relating to the wellbeing of children and young people is needed, and the Commissioner's special inquiry function provides a necessary formal vehicle for such an independent inquiry. Furthermore, undertaking a special inquiry is an important means by which the Commissioner is able to demonstrate and maintain her independence from government.

Research

Under s 19(i) of the CCYP Act, it is a function of the Commissioner 'to conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing of children and young people'.

In her first annual report, the Commissioner stated that she 'look[ed] forward to exciting initiatives including commissioning research into the wellbeing of children and young people in Western Australia'.⁴³⁶ The Commissioner reported that she had:

*initiated research and policy development in early childhood, juvenile justice, complaints processes and overcoming disadvantaged in key areas of health and education for Aboriginal children and young people.*⁴³⁷

In 2010, the Commissioner reported that she had consolidated the work of her office 'by further developing a focus on high quality research and evidence-based outcomes'.⁴³⁸

To review the Commissioner's exercise of the s 19(i) function, this section of the report focuses on three examples of research work undertaken under the auspices of her Office, namely the Wellbeing Research Project, the Speaking Out about Reducing

434 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p24.

435 Hon. Sheila McHale, MLA, then Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 1 June 2005, p2 of pp2582b–2585a.

436 Commissioner for Children and Young People, *Annual Report 2007–2008*, Perth, 2008, p10.

437 *ibid*, p11.

438 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p5.

Alcohol-related Harm on Children and Young People Project, and the Thinker in Residence Program.

Wellbeing Research Project

The Commissioner's *Annual Report 2007–2008*, states that one of the 'Emerging trends and initiatives for 2008–2009' was to 'initiate research into the well being of children and young people'.⁴³⁹ To this end, the Commissioner commissioned research to identify factors that children and young people in Western Australia saw as impacting on their wellbeing.⁴⁴⁰

A tender was advertised for the project and 15 submissions were received.⁴⁴¹ A contract for \$233,400 was awarded to Nexus Strategic Solutions on 13 May 2009, with an expiry date of 17 May 2010.

The Commissioner advised that:

*the major objective of the research was to ascertain from children and young people what they consider to be important to their wellbeing. [...] It identifies what children think is important to their wellbeing and what they think impacts both negatively and positively on their wellbeing.*⁴⁴²

To provide expert advice and feedback, including advice in relation to research ethics, the Commissioner formed a Project Reference Group. A Children and Young People's Advisory Group, consisting of '17 boys and girls aged 15–16 years, from a variety of government and private schools across the State', was formed to provide 'advice on issues such as the design and wording of the research questions and the name of the project (MyVoice)'.⁴⁴³ The research report states that the young people who formed the Advisory Group had all been participants in Curtin University's annual student leadership program. The report, though, is not clear on how young people were selected and whether there was an element of self-selection, something which has the potential to bias the influence of the group on the project.

439 Commissioner for Children and Young People, *Annual Report 2007–2008*, Perth, 2008, p12.

440 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p5.

441 Tenders WA, Contract Details, 2008/02891—Research Project to Engage Children and Young People about Views on their Wellbeing. Available at:

<https://www.tenders.wa.gov.au/watenders/contract/view.do?tenderId=908>. Accessed on 9 October 2012. See also: Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p5;

442 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p2.

443 Commissioner for Children and Young People, *Children and Young People's Views on Wellbeing*, report prepared by Nexus Strategic Solutions in conjunction with Sankey Associates and professor Janet Fletcher, Director, Child Study Centre, The University of Western Australia, Commissioner for Children and Young People, Perth, June 2010, p9.

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The Commissioner, in consultation with the Project Reference Group, refined the project's research aims to explore three questions:

- 1. What do children and young people in Western Australia perceive as important to their wellbeing? [...]*
- 2. What do they perceive as barriers to achieving wellbeing?*
- 3. What makes it easier to achieve wellbeing?*⁴⁴⁴

There were three components to the Wellbeing Research Project. First was a literature review of 'wellbeing studies based on direct input from children and young people'.⁴⁴⁵ Second was the qualitative research component, the design of which was informed by the literature review. The qualitative research involved a number of strategies, including focus groups and interviews, artwork and storytelling, mural painting, interactive forums, small groups/interviews, a hard copy survey and a photographic activity.⁴⁴⁶

Third was the quantitative component of the research, which consisted of an online survey. This component was informed by the literature review and the qualitative research components.⁴⁴⁷

One consideration in developing the research methodology was the 'broad range of demographics in terms of age (5–18 years), location (metropolitan, regional, remote), cultural background (Indigenous, non-Indigenous) and socio-economic status'.⁴⁴⁸ Given this, the views of Western Australian children and young people from a diverse range of backgrounds were sought.

Overall, 959 children and young people were respondents in the Wellbeing Research Project, 485 boys, 465 girls and 9 not disclosing their gender. Of these 959 children and young people:

- *67% were from the Perth metropolitan area; 33% from regional and remote locations*
- *28% were aged 5-12 years; 71% were aged 13–18 years*
- *10% were Indigenous*

444 Commissioner for Children and Young People, *Children and Young People's Views on Wellbeing*, report prepared by Nexus Strategic Solutions in conjunction with Sankey Associates and Professor Janet Fletcher, Director, Child Study Centre, The University of Western Australia, Commissioner for Children and Young People, Perth, June 2010, p14.

445 *ibid*, p17.

446 *Ibid*, p17.

447 *ibid*, p17.

448 *ibid*, p15.

- 6% had a disability
- 4% were in foster care.⁴⁴⁹

The Wellbeing Research Project report also notes that the sample ‘included children and young people with learning difficulties, children and young people with chronic health conditions, newly arrived migrant children, and young people who were carers for their parents or siblings’.⁴⁵⁰

The Wellbeing Research Project report states that use of multiple data sources increased the findings’ validity and reliability. It also states that:

*together, the focus groups and surveys offered high validity and reliability, while the artwork and storytelling, mural painting, forum and photographic activity offered the potential to engage a broader range of participants, provide fresh insights, and capture the voice of children and young people in different ways.*⁴⁵¹

The Commissioner advised that the Wellbeing Research Project ‘is the first time that research of this kind has been undertaken here in Western Australia’, and ‘represents the first time the views of Western Australian children and young people have been sought in such a comprehensive way about their own wellbeing’.⁴⁵²

Nexus Strategic Solutions delivered the final report to the Commissioner in June 2010, and the Commissioner released the research in October 2010.⁴⁵³ From this Nexus Strategic Solutions report, the Commissioner published a further report titled *Speaking Out about Wellbeing* which summarises the views of children and young people obtained by the contract researchers. This summary report presents this information grouped according to the eight elements children and young people felt they needed in order to have a full life, namely ‘a loving and supportive family, good friends, fun and activity, a safe environment, a good education, the basics, acknowledgement and

449 *ibid*, p4.

450 *ibid*, p4. See also: Commissioner for Children and Young People, *Annual Report 2009–2010*, p25; *Annual Report 2010–2011*, p6; and Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p2.

451 Commissioner for Children and Young People, *Children and Young People’s Views on Wellbeing*, report prepared by Nexus Strategic Solutions in conjunction with Sankey Associates and professor Janet Fletcher, Director, Child Study Centre, The University of Western Australia, Perth, June 2010, p15.

452 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p2; Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p25. See also: Commissioner for Children and Young People, Commissioner for Children and Young People, *Speaking Out about Wellbeing. The Views of Western Australian Children and Young People*, Perth, October 2010, p3.

453 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p16.

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freedom and independence'.⁴⁵⁴ It is interesting that these responses from children and young people confirm the general aspirations of the community for its young people.

The Commissioner's *Annual Report 2008–2009* states that the results of the Wellbeing Research Project would inform her 'work and activities from 2010–11 and beyond'.⁴⁵⁵ The Commissioner's *Annual Report 2009–2010* reiterates this, stating that the report would be used 'to inform her advocacy and the planning of the priority work areas of the office'.⁴⁵⁶

In response to the Committee's request for examples of how the report had influenced the Commissioner's advocacy and priority work area planning, the Commissioner gave the following example:

*Just starting with the first issue that children and young people raised, having a loving, supportive family was the most important issue for their wellbeing. So, many of my submissions, many of my advocacy, is about what strengthens and supports families to raise healthy children here in Western Australia. That is a really concrete example, I think.*⁴⁵⁷

The Commissioner's 2009–2010 'Plans for the future' included:

- *The findings of the research will be widely disseminated to key stakeholders to promote awareness about what impacts on children and young people's wellbeing*
- *The Commissioner will promote use of the report by government departments and community organisations by demonstrating its relevance, outlining its practical implications and, over time, developing shared projects and initiatives to address identified issues.*⁴⁵⁸

The Commissioner's *Annual Report 2010–2011* notes that she has used the Wellbeing Research Project findings 'to talk with government, non-government agencies, the private sector and the wider community about what more can be done to support children, young people and their families'.⁴⁵⁹ The Commissioner has also presented the

454 Commissioner for Children and Young People, *Speaking Out about Wellbeing. The Views of Western Australian Children and Young People*, Perth, October 2010, p6.

455 Commissioner for Children and Young People, *Annual Report 2008–2009*, Perth, 2009, p20.

456 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p25.

457 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p24.

458 Commissioner for Children and Young People, *Annual Report 2009–2010*, Perth, 2010, p25.

459 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p17.

research findings to the ARACY National Action Plan conference and to the Australian Commissioners and Child Guardians November 2010 meeting.⁴⁶⁰

In discussing the impact of the Wellbeing Research Project, the Commissioner raised the question of how this research could be translated into policy and affect change.⁴⁶¹ Having conducted the research and published reports, the Commissioner's concern was:

*what does it mean for a policy maker in a government or non-government agency or a service provider in a government or non-government agency? How could you take this research and translate it in a very practical way to your policy area in your department? What does it actually mean?*⁴⁶²

To assist agencies address the question of translating the research findings into 'practical solutions', the Commissioner developed 11 policy briefs which summarised particular issues raised by children and young people.⁴⁶³ These policy briefs are intended 'to inform and influence policy makers and service providers'.⁴⁶⁴

In August 2011, the Commissioner advised that preliminary feedback from agencies had been positive:

*those policy briefs were well received. They [agencies] think that they are bite sized—they are usually just two or three pages long. Most agencies have reported to us that they like that format because it is digestible for them, and they can get to the nub of the issue and identify what they can do with it. Even though the large report was, in our view, not really a huge report, they found it much easier to access the information in the briefs and identify the relevance to their area. So that has been quite useful to agencies.*⁴⁶⁵

In addition to distributing the report 'widely to various stakeholders and members of Parliament', and developing the 11 policy briefs, the Commissioner held 'two specific

460 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p17.

461 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p3; and 16 March 2011, p9.

462 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p3; and 16 March 2011, p9.

463 There is a separate policy brief for each of the following issues: families, alcohol and drugs, friends, fun and activity, being involved in decisions, safety, bullying, and education. There are also separate policy briefs on Aboriginal children and young people's views on families, on culture and identity, and on education.

464 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p6.

465 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p2.

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briefings for stakeholders about the findings from the inquiry'.⁴⁶⁶ One briefing addressed the general findings, while the other related specifically to Aboriginal children and young people.⁴⁶⁷ Approximately 80 agency representatives attended each session.⁴⁶⁸

In August 2011 the Commissioner provided some examples of how agencies were using the wellbeing research. First, the Department of Corrective Services (DCS) asked the Commissioner to brief 90 members of its juvenile justice team who, in turn, briefed other DCS staff.⁴⁶⁹ The Commissioners *Annual Report 2010–2011* states that these 'seminars were recorded for further distribution to regional staff'.⁴⁷⁰ The Commissioner advised that DCS:

*used the research as a model in terms of talking with children and young people in juvenile detention about—as you are probably aware, there is a major reorganisation going on with Rangeview and Banksia Hill, and they used the approach that we provided in the wellbeing research to talk with children and young people and help devise the systems that they are going to put in place in Rangeview and the new Banksia Hill. So the Department of Corrective Services has welcomed the research and used it in a very practical way in their organisation.*⁴⁷¹

The Department for Corrective Services confirmed the value of the wellbeing research and policy briefs, and advised that participants in the workshops for its Youth Justice Services division 'found merit in the CCYP research and the comparison between the broader youth community and those in detention'.⁴⁷² The department further advised that 'although no specific policy initiatives have resulted directly from the CCYP research, the findings have been incorporated into YJS [Youth Justice Services] policy and service developments, including the development of key documents such as: Goals, Cornerstones and Principles', which relates to the redevelopment of the Youth Custodial Services branch.⁴⁷³

466 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p2. These briefings were run in conjunction with the Western Australian Council of Social Service.

467 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p2.

468 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p9. See also: Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p16.

469 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p2.

470 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p17.

471 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p2.

472 Mr Ian Johnson, Commissioner, Department of Corrective Services, Letter, 25 October 2012.

473 *ibid.*

The second example of how agencies were using the wellbeing research is that of Wanslea Family Services, a non-government organisation providing out-of-home care and childcare. The Commissioner advised that:

*as a result of our inquiry, they [Wanslea] are now consulting with children and young people who are receiving services from Wanslea, so the research has had an impact in that way.*⁴⁷⁴

Wanslea Family Services stated that the wellbeing report ‘provided an opportunity to hear the voices of children on an issue that wasn’t “problem” focused, and as such gives a well balanced view of the participants in the survey’.⁴⁷⁵ Wanslea Family Services advised that the wellbeing research report had influenced its practice, particularly in the Out of Home Care programmes. For example, activities undertaken in a programme for children of foster parents now ‘include more time for talking and processing the impact fostering is having on them’.⁴⁷⁶ Wanslea Family Services now also makes ‘greater attempts to ensure that birth families are fully consulted and engaged with Wanslea when their children are in care’.⁴⁷⁷

Thirdly, the Commissioner advised that the wellbeing research was having an impact in her ‘negotiations with directors general’, citing the Director General of the Department for Communities as an example.⁴⁷⁸

Ms Jenni Perkins, Director General, Department for Communities, advised that due to the regular use that her department and the Commissioner make of each other’s expertise, publications and policy advice, ‘it can be difficult to distinguish between results of working together on initiatives and the influence of particular publications’.⁴⁷⁹ Nevertheless, Ms Perkins stated that the wellbeing research and policy briefs formed ‘part of the literature review that informed the Western Australian youth strategic framework “Our Youth—Our Future”’.⁴⁸⁰ Ms Perkins further stated that ‘the Commissioner’s publications have provided a source of information and data which informs the department’s service planning and delivery’.⁴⁸¹

The Commissioner also advised that ‘what people have said to us is that they expect it to have an ongoing impact on their work, and that they will use it in funding

474 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p2.

475 Ms Tricia Murray, Chief Executive Officer, Wanslea Family Services, Letter, 19 October 2012.

476 *ibid.*

477 *ibid.*

478 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p2.

479 Ms Jenni Perkins, Director General, Department for Communities, Letter, 22 October 2012.

480 *ibid.*

481 *ibid.*

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submissions and also in changing the culture of their organisations'.⁴⁸² In addressing a question concerning evaluation and assessment of the impact of the research, the Commissioner stated that:

*when I have gone out to evaluate both of these things [the wellbeing research and the participation guidelines], the feedback is overwhelmingly very supportive of the role of the Commissioner for Children and Young People. They are very pleased that the parliament passed the legislation, and the work is valued.*⁴⁸³

Notwithstanding these positive examples, agencies also advised the Commissioner that it was 'too early to tell' the impact of this work on their agency.⁴⁸⁴

In March 2011, the Commissioner stated that she would like to be able to track changes agencies make as a result of the wellbeing research, but that 'is far too ambitious given [her] resources'.⁴⁸⁵

In November 2012, the Committee asked the Commissioner if she was able to provide some concrete examples of the impact of the wellbeing research on the work of agencies. The Commissioner responded:

*I cannot add more than what I had said to the committee before. That research ... is referred to extensively in our submissions and in all my public speeches as well. I cannot really add any more other than that people have reported to me that they found it very, very useful. We have not done any further evaluation other than that.*⁴⁸⁶

The Commissioner confirmed that she was not, at this stage, planning on undertaking such an evaluation.⁴⁸⁷

Speaking Out about Reducing Alcohol-related Harm on Children and Young People Project

In August 2009 the Commissioner briefed the Committee on her recent activities, including further regional travel she had undertaken to Bunbury, Albany, Geraldton, Newman, Jigalong, Kununurra and Wyndham. One of the issues consistently raised by

482 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p2.

483 *ibid*, p3.

484 *ibid*, p3.

485 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p9.

486 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p24.

487 *ibid*.

children and young people during these visits was the effects of alcohol and the need for further restrictions.⁴⁸⁸

Recognising that ‘the harm caused by alcohol is an issue of concern for the whole community and impacts significantly on children and young people’s sense of safety and wellbeing’, the Commissioner commenced a major project in 2011 ‘to highlight the need for improved policies, services and laws to protect children from alcohol-related harm’.⁴⁸⁹

Part of this project involved commissioning research to determine the views of young people on alcohol-related harm and discover what strategies they thought would help to reduce this harm.⁴⁹⁰

A Request for Tender was issued in April 2011 for this research, and the contract was awarded to Painted Dog Research.⁴⁹¹

A reference group was also established to ‘provide expert feedback on the development of the consultation’.⁴⁹²

The Commissioner advised that the reference group ‘met formally twice and members were also contacted via email or individual meetings on an “as needs” basis’.⁴⁹³ The Commissioner further advised that the terms of reference for this reference group were:

- *To provide guidance to the Commissioner on the development of the alcohol consultation with young people including methodology; topics/questions for consultation; and participation and recruitment strategy.*
- *To provide advice and feedback to the Commissioner on the initial analysis of the information gathered in the consultation.*⁴⁹⁴

488 Commissioner for Children and Young People, *Committee Briefing*, 19 August 2009. The other issue raised was the lack of positive and constructive activities for young people, which led to boredom and the potential for involvement with the juvenile justice system.

489 Commissioner for Children and Young People, *Events and Projects Reducing Alcohol-Related Harm*, nd, np. Available at: http://www.ccyp.wa.gov.au/content/Reducing-alcohol_related-harm-.aspx. Accessed on 11 October 2012.

490 Commissioner for Children and Young People, *Events and Projects Reducing Alcohol-Related Harm*, ‘About this Project’, nd, np. Available at: http://www.ccyp.wa.gov.au/content/Reducing-alcohol_related-harm-.aspx. Accessed on 11 October 2012.

491 Commissioner for Children and Young People, *Speaking Out about Reducing Alcohol-related Harm on Children and Young People*, Perth, nd, p4.

492 *ibid.*

493 Submission No. 7 from Commissioner for Children and Young People, 7 November 2012, p2.

494 *ibid.*, p1.

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There were two main phases to this research project which was conducted between June and August 2011. Phase 1 consisted in 14 discussion groups involving 72 young people aged 14 to 17 years. These young people were selected based on a 'range of demographic factors including age and gender, socio-economic status, Aboriginal and Torres Strait Islander status, metropolitan versus regional location, ethnicity, parental alcohol use and young person alcohol use'.⁴⁹⁵

The second phase of the research involved the administration of an online survey to 200 young people aged 14 to 17 years. Painted Dog Research reports that the sample included 54 young people from regional Western Australia and 146 from metropolitan areas. Sampling also 'aimed to achieve an even split of gender and spread of ages, ethnicity and alcohol drinking experience'.⁴⁹⁶

The January 2012 Painted Dog Research report to the Commissioner notes that it focussed on access to alcohol, patterns of consumption, influencers on the decision to drink, attitudes towards alcohol consumption and strategies to reduce alcohol-related harm.⁴⁹⁷

The Commissioner's report entitled *Speaking Out about Reducing Alcohol-related Harm on Children and Young People* states that it 'draws on a consultation undertaken by Painted Dog Research on behalf of the Commissioner'.⁴⁹⁸ In light of this comment and the Commissioner's statement that this research was part of a major project, the Committee was interested to learn what other work had been undertaken.

To this end, the Committee asked the Commissioner whether it was correct to say that work in addition to the contracted research had been undertaken. The Committee stated: 'I think it implies that we drew on additional research. A lot of other experts like the centre at Curtin and so forth had that expertise, so we drew on that and others'.⁴⁹⁹

Following the research project, and in collaboration with the National Drug Research Institute, the McCusker Centre for Action on Alcohol and Youth, and the Drug and Alcohol Office, the Commissioner hosted a forum on the issue. This was attended by over 80 people, including the Minister for Mental Health and other members of Parliament. Five of the young people consulted for the research project also participated in the forum.⁵⁰⁰

495 Painted Dog Research, *2012 Consultation with Young People: Reducing Alcohol-Related Harm*, a report prepared for the Commissioner for Children and Young People Western Australia, January 2011, p13.

496 *ibid*, p15.

497 *ibid*, p12.

498 Commissioner for Children and Young People, *Speaking Out about Reducing Alcohol-related Harm on Children and Young People*, Perth, nd, p5.

499 Submission No. 7 from Commissioner for Children and Young People, 7 November 2012, p27.

500 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p19.

The Commissioner has also produced three policy briefs that outline the concerns expressed by children and young people in relation to alcohol related harm.⁵⁰¹

Importantly, the Commissioner's *Speaking Out about Alcohol-related Harm* report notes that caution is necessary in extrapolating comments made by the relatively low number of young people involved in the research to the broader population of younger people.⁵⁰²

The Committee's examination of the Commissioner's policy briefs did not reveal a similar caution did not find a similar caution in the Commissioner's policy briefs.

The Commissioner advised the Committee that:

*that may be the case but I think the report is referred to in full as a reference, so I imagine that that is what we were expecting people to do. I think there is an explanation in each policy brief about where this came from and what the purpose of it was.*⁵⁰³

Based on the Committee's collective experience, it would expect that people reading the policy briefs would often not refer back to the original research document.

Thinker in Residence Program

The Thinker in Residence programme was established by the Commissioner to achieve two aims, namely to:

- 'raise[ing] awareness on important public policy issues that affect the wellbeing of children and young people'; and
- 'enhance the access Western Australian's policy and decision makers have to leading international researchers and practitioners'.⁵⁰⁴

In her Foreword to the *Report of the 2011 Thinker in Residence Unlocking Creativity*, the Commissioner stated that the Thinker in Residence programme helped her fulfil her 'statutory responsibility to promote public awareness and understanding of important

501 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p19. See also: Commissioner for Children and Young People, 'Reducing alcohol-related harm. About this project', Events and Projects. Available at: <http://www.ccyp.wa.gov.au/content/Reducing-alcohol-related-harm-.aspx>. Accessed on 10 October 2012.

502 Commissioner for Children and Young People, *Speaking Out about Reducing Alcohol-related Harm on Children and Young People*, Perth, nd, p5.

503 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p27.

504 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p6.

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matters which affect the wellbeing of children and young people in Western Australia'.⁵⁰⁵

While the Thinker in Residence programme clearly relates to the Commissioner's promotion function, it is discussed here due to the types of events involved in the programme and the reports produced by the Thinkers in Residence, which are indicated to be evidence-based and include findings based on the residency.

The Commissioner reports that the Thinker in Residence programme is the first of its type in Australia to focus solely on children and young people.⁵⁰⁶ The Commissioner's *Annual Report 2011–2012* states that each year the Commissioner will 'invite an internationally renowned expert to Western Australia for a short residency to explore and discuss a specific aspect of children and young people's wellbeing'.⁵⁰⁷

The Committee was interested to learn how the particular Thinkers in Residence topics and the 'thinkers' chosen.

The Commissioner advised as follows:

*It is a little bit different each time and it is evolving but basically we consult key stakeholders about what they think is a critical issue and then, when we identify a shortlist, what would have the most resonance. It also depends on who is available. With Stuart Shanker, I can say that a number of people, including some members here, had seen him when he visited Perth before and there was quite a bit of interest in him. I then went to a group of stakeholders and asked, "If I was to invite him to Perth, would you be interested and do you think this would be of benefit?" Since we have had the second thinker in residence I have written to a whole range of stakeholders asking who they would identify as the next potential thinker in residence.*⁵⁰⁸

There are several key partners involved in each Thinker in Residence, including agencies from the government, private and tertiary education sectors.⁵⁰⁹

505 Ms Michelle Scott, Commissioner for Children and Young People, 'Commissioner's Foreword', *Report of the 2011 Thinker in Residence Unlocking Creativity*, prepared by Paul Collard for the Commissioner for Children and Young People, Perth, 2011, p3.

506 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p16.

507 *ibid.*

508 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p28.

509 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p4; Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p6, p17 and p18. The annual report lists the partners for each Thinker in Residence residency.

In discussing the impact that such partners have on the choice of the Thinker in Residence, the Commissioner advised that, before making a:

*final decision in relation to Stuart Shanker, I met with every director general, and staff of my office met with each of the potential partners and said, “This is the person. We also require some small financial contribution”, and everyone agreed with that. Following that initial verbal agreement, there was a formal agreement about it, in writing.*⁵¹⁰

To date, there have been two Thinkers in Residence, with each residency being for a two-week period. The Commissioner reported receiving ‘so much positive response’ and finding a ‘huge appetite’ for the programme. She is unable to commit to having a Thinker in Residence every year.⁵¹¹

The 2011 Thinker in Residence was education and creativity expert, Mr Paul Collard. The theme of the residence, which ran from 7th to 18th November 2011, was ‘Unlocking Creativity’.⁵¹² Mr Collard’s residency involved over 40 meetings and events to explore the use of culture and the arts, both in and out of the school environment, to improve children and young people’s education and wellbeing.⁵¹³

In response to a comment by the then Committee Chairman, Ms Andrea Mitchell, MLA, in relation to an event on the final day of the residency, the Commissioner stated that:

*we had a whole series of forums, conversations and meetings, including Paul Collard as our Thinker in Residence who met with a number of CEOs. He also met with Minister Day, and he and I also met with Sharyn O’Neill, the Director General for the Department of Education and a whole range of people in education. He also ran master classes for teachers and there were workshops for students. Friday was really for our stakeholders in terms of a broader range of community organisations and government agencies that had not had the opportunity yet to meet with Paul. So there was a whole multilayered approach to the residency.*⁵¹⁴

510 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p28.

511 *ibid*, p29.

512 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p16.

513 *ibid*. The report, at p6, notes that over 600 people participated in the residency.

514 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, pp2–3.

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In his report prepared for the Commissioner, Mr Collard states that the priority for Western Australia 'should be to build on the excellent practice which already exists, to develop a sustained, long-term intervention in schools'.⁵¹⁵

The Commissioner's *Annual Report 2011–2012* states that Mr Alec Cole, Chief Executive Officer of the Western Australian Museum, has indicated an interest in leading a pilot creativity program.⁵¹⁶

At a hearing the Commissioner confirmed that while Mr Cole was interested in leading the project, it could not be done in isolation from other agencies such as the Department of Education.⁵¹⁷

The theme for the second Thinker in Residence, which ran between 4th and 15th June 2012, was 'self-regulation'. The 2012 thinker in Residence was Dr Stuart Shanker, a child development specialist and expert in the field of self-regulation. The Commissioner's *Annual Report 2011–2012* notes that over '2,000 people participated in the 35 events and meetings of Dr Shanker's two-week residency'.⁵¹⁸ During his residency Dr Shanker met with parents, teachers, health professionals, directors general and senior management staff of government agencies, chief executive officers of non-government agencies, state government ministers, members of Parliament and Western Australian child health researchers. Dr Shanker's residency also involved meeting community members and service providers in Roebourne to learn about local support for Aboriginal children and young people.⁵¹⁹

The Commissioner advised that Dr Shanker's residency had 'stimulated considerable interest and thousands of people attended, and many of those were parents, teachers, and allied health professionals. There were professionals as well as parents, but I will just concentrate on the professionals, which relates to your question, who are desperately seeking more information about understanding children's behaviour'.⁵²⁰

A report entitled, *Report of the 2012 Thinker in Residence Self-regulation* was prepared by Dr Shanker following his residency.

In November 2011, the Commissioner advised that she was 'in the process of doing the final evaluation' of the first Thinker in Residence programme and that she would 'need to follow through in terms of our partner agencies' in relation to 'what might be the

515 Collard, Paul, *Report of the 2011 Thinker in Residence Unlocking Creativity*, prepared for the Commissioner for Children and Young People, Perth, 2011, p36.

516 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p17.

517 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p28.

518 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p17.

519 Ibid.

520 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 20 June 2012, p8.

way forward here in Western Australia'.⁵²¹ Further, the Commissioner advised that 'the outcomes in terms of the evaluations and feedback have been very, very positive. He [Mr Collard] really stimulated a lot of thinking about where to go next'.⁵²²

The Commissioner reports that evaluation of Dr Shanker's residency and its individual events has been 'very positive'.⁵²³ A summary of feedback from 821 respondents from the approximately 2000 attendees of Dr Shanker's key events is provided in the Commissioner's *Annual Report 2011–2012*.⁵²⁴ No evaluation or summary of feedback is provided for Mr Collard's residency. The Committee is also not aware of any feedback or follow-through with partner organisations for this programme.

Finding 13

The Commissioner has utilised sections 19(f) and 19(i) of the *Commissioner for Children and Young People Act 2006* to conduct research projects and undertake an inquiry.

Recommendation 13

Notwithstanding that the Commissioner's special inquiry function at section 19(j) has not been used to date, it should be retained.

521 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p4.

522 *ibid*, p1.

523 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p18.

524 *ibid*.

Chapter 7

Investigating and Dealing with Matters relating to a Particular Child or Young Person

Individual Cases and the Commissioner for Children and Young People Act 2006

Notwithstanding the Premier's statement about the Commissioner being the government's preferred one-stop shop for complaints about child abuse (see chapter 5), this chapter relates to the Commissioner's existing complaints functions as set out in s 23 of the CCYP.

Section 23(1) of the CCYP Act states that 'it is not a function of the Commissioner to investigate or otherwise deal with a complaint made by, or any other matter relating to, a particular child or young person'.

However, s 23(2)(c) states that the Commissioner is not precluded from:

*investigating or otherwise dealing with any matter affecting the wellbeing of children and young people generally which is raised through a matter relating to a particular child or young person.*⁵²⁵

The distinction being made in these two subsections of the CCYP Act is important. The Commissioner is not able to investigate or deal with complaints or other matters relating to particular children or young people, but is able to deal with issues raised through particular cases or matters.

In addition to this, the Premier recently announced that the Commissioner was the government's 'preferred body to perform the one-stop shop complaints role recommended by the [Blaxell] inquiry to prioritise the welfare of children in any government facilities'.⁵²⁶

⁵²⁵ Section 23(2)(c) *Commissioner for Children and Young People Act 2006* (WA).

⁵²⁶ Hon Colin Barnett, Premier, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 19 September 2012, p6139. The Blaxell Inquiry was a 'special inquiry undertaken by Hon Peter Blaxell into the response of government agencies and officials to allegations of sexual abuse at St Andrew's Hostel, Katanning'. In a letter dated 11 October 2012, the Premier clarified with the Committee that the additional role proposed for the Commissioner was as a one-stop shop for complaints concerning child abuse, rather than all complaints.

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Given the important distinction made in the CCYP Act, and while these sections are clearly interrelated, the balance of this chapter deals with each separately before considering the Commissioner's potential role as a one-stop shop for complaints relating to child abuse.

Investigating and Dealing with Individual Cases and Complaints

The barring of the Commissioner from investigating a complaint made by or relating to a particular child or young person was a contentious issue during the debate of the Commissioner for Children and Young People Bill 2005. For example, Hon John Day, MLA, noted the then Opposition's concern that 'no power is provided in the legislation for the commissioner to be able to investigate individual cases of child abuse or other matters of serious concern about an individual child'.⁵²⁷

Mr Day, MLA, argued that it should not be the Commissioner's usual or routine role to investigate individual cases, as 'the office would be completely overwhelmed if that were to occur'.⁵²⁸

Similarly, Mr John McGrath, MLA, stated:

*we do not want this commissioner to be investigating every case or every complaint that is laid on behalf of a child or young person. That would be an onerous task, and we have departments to handle those cases.*⁵²⁹

Hon Colin Barnett, MLA, reiterated this point:

*We do not want the commissioner inundated with thousands of inquiries. That is not the commissioner's role. It is the department's role to deal with individual cases of abuse of boys and girls or whatever else.*⁵³⁰

Rather, it was argued that the Commissioner should have the ability to 'investigate a special individual case, should the need arise'.⁵³¹ Mr McGrath stated that 'surely, ... in

527 Hon John Day, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p1 of pp2975b–4012a. See also: Hon Dr Elizabeth Constable, MLA, Mr John McGrath, MLA, and Hon Colin Barnett, MLA, during the same debate.

528 Hon John Day, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p1 and p4 of pp2975b–4012a.

529 Mr John McGrath, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p8 of pp2975b–4012a.

530 Hon Colin Barnett, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p11 of pp2975b–4012a.

531 Hon John Day, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p4 of pp2975b–4012a.

severe cases or in cases in which the department has let a young person down, the commissioner should be able to hold an inquiry into that individual case'.⁵³²

Citing the Cornelia Rau case, which revealed problems in the federal Department of Immigration and Multicultural and Indigenous Affairs, Hon Colin Barnett, MLA, stated that 'some cases will be extraordinary and exceptional' and that in those situations, 'the commissioner will get an inkling that a case is out of the ordinary. It may lead to something more serious, perhaps a systemic problem'.⁵³³

Nevertheless, s 23(1) of the CCYP Act states that 'it is not a function of the Commissioner to investigate or otherwise deal with' a child or young person's complaint or any matter relating to a particular child or young person. The Committee notes, though, that under s 23(2)(c), the Commissioner has the capacity to investigate matters affecting children and young people when raised through a matter relating to a particular child or young person. The issue of individual cases revealing systemic problems is addressed further below.

There are a number of agencies that handle complaints from or on behalf of children and young people, and about services provided to them. These include the Ombudsman, the Equal Opportunity Commission, the Office of Health Review, the Department for Child Protection, the Department of Commerce, the Telecommunications Industry Ombudsman and the Financial Ombudsman Service.

The Commissioner is required to monitor the ways in which agencies investigate and deal with complaints made by children and young people, and the outcomes of those complaints. The way in which the Commissioner fulfils this function is discussed in chapter 5.

As noted in chapter 5, while the Commissioner received 32 complaints during the 2011–2012 reporting period, four key complaints handling agencies received over 6,000 complaints from or in relation to children and young people – See table 5.1 in chapter 5. Clearly, were the Commissioner to handle all the complaints and other matters referred to these agencies by or on behalf of children and young people, her workload would be very significantly increased.

Mr Craig Comrie, Executive Officer, Youth Affairs Council of WA, agreed that it would be a challenge for the Commissioner to fulfil a complaints function:

considering that there could be a high volume of complaints. Young people often have bad experiences of services in the community. A lot

532 Mr John McGrath, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p8 of pp2975b–4012a.

533 Hon Colin Barnett, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p11 of pp2975b–4012a.

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*of the services that are offered that young people access are not designed for young people and so they can often have bad experiences. I would be worried about the commissioner's remit taking on individual complaint processes for the single reason that I would not want her to be overwhelmed by the number that were coming in.*⁵³⁴

Mr Comrie believed that, rather than adding another function to the Commissioner's role, it would be better to ensure that the existing processes are 'more accessible to young people, ... simpler for young people and young people need to know about them so that they can actually take on that complaint process'.⁵³⁵

The Commissioner voiced her concerns to the Committee, stating that she 'would be overwhelmed' if given a complaint function.⁵³⁶ In October 2011, the Commissioner advised that one of her 'concerns and dilemmas' was:

*the workload as it is now. If you had an investigative function, and if it was just about the child protection system, that is a very narrow, small focus, whereas I think Parliament intended this to be about all kids. I would not be able to pick up issues such as alcohol and the sexual exploitation of kids. I would not be able to pick up some of the positive things. It would be very much focused on child protection. That is a very narrow focus; it is only a small number of kids. What about the rest of the kids? That is my preliminary comment.*⁵³⁷

The Committee appreciates the dilemmas involved in prioritising areas of work and in resource allocation. Nevertheless, it is concerned that having a complaints and a related investigative function, either restricted to child protection matters or more broad areas, is seen necessarily to result in the Commissioner reducing her focus away from all children and young people. Children in care are part of the larger group that is all Western Australian children.

Furthermore, as the then Chairman of the Committee, Hon Barbara Scott, MLC, stated, Commissioners from other Australian jurisdictions had 'said that the ability to pursue an individual inquiry gave them the ability to be a person of last resort'.⁵³⁸ It is important that the Commissioner for Children and Young People, whose primary role

534 Mr Craig Comrie, Executive Officer, Youth Affairs Council of WA, *Transcript of Evidence*, 10 August 2011, p4.

535 *ibid.*

536 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p8.

537 *ibid.*

538 Hon Barbara Scott, MLC, Chairman, Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p5.

should be advocating for the wellbeing of all children and young people in the state, is able to provide at least a 'last resort' individual complaints function.

Evidence taken from other Australian jurisdictions suggests that other Commissioners see their individual complaints function as a very significant role. For example, in Queensland, despite the real power of the Commission's complaints function residing within the child protection system, the Commission can take complaints from any child under 18 years of age. The Queensland Commissioner is then able to lend weight through advocacy on behalf of a particular child or young person.⁵³⁹ One of the three core functions of the Children's Commissioner for the Northern Territory is to investigate and resolve complaints about services provided to protected children.⁵⁴⁰

Another concern raised by the Commissioner in relation to giving her a children and young people's complaints function is that it would duplicate the investigative work of others such as the Ombudsman and the Department for Child Protection.

At a hearing in March 2011 the Commissioner stated:

*We talked previously about my legislation, saying that I cannot duplicate the efforts of others. For example, one issue that I have talked to the Ombudsman about is the child protection complaints. The Ombudsman has jurisdiction to investigate not only individual matters but also systemic issues that might arise from that. So if I was of a mind that these were serious and there was not a remedy available, then I might go to the Ombudsman and discuss actually whether this is something he might consider.*⁵⁴¹

On 17 August 2011 the Commissioner advised that 'the other thing I would be very careful about is how would that investigative function overlap with the Ombudsman?'⁵⁴²

The Committee notes that Section 20(1)(g) of the CCYP Act states that the Commissioner must 'take reasonable steps to avoid the duplication of functions performed by other government agencies'.

The Commissioner advised the Committee of the provision in the CCYP Act that says she:

539 Ms Elizabeth Fraser, Commissioner for Children and Young People and Child Guardian, Queensland, *Committee Briefing*, 9 May 2011.

540 Dr Howard Bath, Children's Commissioner for the Northern Territory, *Committee Briefing*, 11 May 2011.

541 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p6.

542 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p6.

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*should not be duplicating the efforts of others—that the state Ombudsman already has a role in relation to individual complaints, and the state Ombudsman can drill down to that level, and the state Ombudsman also can on his own motion initiate a more systemic inquiry arising from those individual cases. From time to time, individual complaints are referred to me and I refer them to the Ombudsman. I have referred particular issues to the Ombudsman and I have asked him to consider not only the individual issues, but whether a more systemic issue arises.*⁵⁴³

Similarly, in October 2010, the Commissioner stated that:

*the Western Australian Ombudsman has the power to investigate all those matters [relating to child protection and juvenile justice], and he also has the power under his own motion to conduct an inquiry. For example, if he had a number of individual complaints, he could undertake what would be called a systemic inquiry into a broader issue that those complaints raise. Giving me those functions would be duplicating the Ombudsman's functions. At this stage I do not think it is warranted.*⁵⁴⁴

In discussing with the Committee the possibility of her office reviewing individual circumstances or complaints, the Commissioner said that if she was 'given a specific function to investigate individual matters, as in Queensland, there is no guarantee that systems will change'.⁵⁴⁵ Citing the Coroner as an example of an officer who has the function of, and power to, undertake investigations into individual cases, the Commissioner stated that the Coroner's investigations do not necessarily lead to change.

*It is very important that the coroner has that function and he goes about it diligently and with a great sense of purpose. It does not necessarily mean that things will change, so I just want the committee to understand that even if I am given that investigative function, it is not the panacea for reform.*⁵⁴⁶

The Commissioner did 'not have any objection in principle', but would 'want to be satisfied about what it is that I can do that is different to what the Ombudsman can do,

543 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p8.

544 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p13.

545 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p8.

546 *ibid.*

and what it is that Parliament is intending in giving me this function or power, as distinct from the Ombudsman'.⁵⁴⁷

While the Committee appreciates the need to improve agency efficiency by reducing the duplication of functions, a further consideration for the Committee was the potential gap in the existing complaint processes available to children and young people.

As noted above, there are a number of agencies that handle complaints, including those from children and young people. However, each of these agencies must operate within its remit, which may place limitations on its scope and capacity. For example, the jurisdiction of the Ombudsman's office is subject to some exclusions and restrictions. The Ombudsman is not able to examine complaints relating to, for example, the Governor, the Supreme Court, the District Court and members of Parliament. He is also restricted to investigating 'matters of public administration', which means being restricted to investigating complaints about government departments.⁵⁴⁸

The Ombudsman, Mr Chris Field, noted, though, that the phrase 'matters of public administration' is:

*incredibly widely interpreted. So the reality is pretty much every action of every government department, every local government, every university, every TAFE, every primary school, every high school, pretty much every service that any child in the state would use is in my jurisdiction, and we receive complaints about them and we investigate them and we resolve them and we provide remedies directly to children and their families, and we get administrative improvements for children and their families.*⁵⁴⁹

Nevertheless, this means that if someone has a complaint about a matter relating to a child or young person and it was not related to the public sector, or if it related to the Court or a member of Parliament, for example, the Ombudsman would not be able to investigate that complaint. The Ombudsman, Mr Chris Field, confirmed this gap in the Western Australian system. However, Mr Field qualified his confirmation by stating that he could 'incorporate the non-public sector into our investigations'.⁵⁵⁰

Children and young people, particularly those with serious complaints, may not know how to complain. An agency may have a best-practice complaints handling process but still not be accessed by children and young people. It may also be the case that

⁵⁴⁷ *ibid.*

⁵⁴⁸ Mr Chris Field, Ombudsman, *Transcript of Evidence*, 28 September 2011, p8.

⁵⁴⁹ *ibid.*, p7.

⁵⁵⁰ *ibid.*, p9.

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children and young people would feel more comfortable and less vulnerable in making a complaint to a Commissioner for Children and Young People. Consideration also needs to be given to the fact that children and young people may want to raise a matter or make a complaint about the very agency to which the Commissioner is required to refer them.

The Ombudsman confirmed that ‘the majority of complaints are made on behalf of children and young people by their parent(s) and carer(s)’.⁵⁵¹

The issue of complaints from or in relation to children and young people is a matter of great concern to the Committee, and was discussed at length with the Commissioner in a hearing on 5 November 2012. It is also raised in chapter 5.

The Commissioner agreed that ‘there are probably some areas where there are not avenues [for children and young people’s complaints]’. However, over the four years of her term of office, nothing had been brought to her attention.⁵⁵² The Commissioner stated:

*If you look at the way in which government works, I mean, there are government agencies and government also funds the not-for-profit sector and sometimes the for-profit sector. There are mechanisms through that for individual complaints to be raised too. For example, a child in care who is in the care of the not-for-profit agency, or a for-profit agency, would have remedy through existing government complaint mechanisms such as the Office of Health Review—I know it is not called that now, it has a new name. It is the same in terms of disability, so they are not limited to a child receiving services from a government agency, it also could be a not-for-profit or private sector. [...] What is not clear to me is the prevalence of those complaints that are not being picked up elsewhere, and certainly in the four years and now that 10 years with New South Wales, this has not been identified. There may be an issue, but it does not seem to me to be pressing.*⁵⁵³

In a November 2012 hearing, the Commissioner stated that ‘we need systems that do take complaints about children and young people seriously, whether they are made by the children and young people themselves or the adults who have their interests at heart’.⁵⁵⁴ The Commissioner also advised that, ‘in consultation with the Ombudsman, in

551 Ms Mary While, Principal Assistant Ombudsman, Ombudsman Western Australia, Electronic Mail, 9 November 2012.

552 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p14.

553 *ibid.*

554 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p15.

partnership with the Equal Opportunity Commission and the Office of Health Review, and with children and young people themselves', her office had developed guidelines, titled *Are You Listening?*.⁵⁵⁵

The guidelines acknowledge the significant role that agencies providing services such as education, transport, health, and sport and recreation play in the lives of children and young people.⁵⁵⁶ The guidelines recognise the 'more significant impact [...] experienced by children and young people in care, with a disability or in the youth justice system'.⁵⁵⁷

These guidelines explain how to 'make a system more accessible and more responsive'.⁵⁵⁸ The Commissioner advised that agencies had been offered training for the guidelines and that surveys had been undertaken 'to see whether they are developing particular complaints mechanisms that are accessible to children and young people'.⁵⁵⁹

The Committee acknowledges the work done by the Commissioner in producing these complaints guidelines and the work done with agencies to make their complaints handling systems more accessible and responsive.⁵⁶⁰ However, the Committee notes that the guidelines are for handling complaints made by children and young people, and not also in relation to or on behalf of children and young people.

The Committee also notes that making complaints handling processes more accessible to children will not necessarily result in more children raising their complaints or concerns. There is a need for an appropriate mechanism so that people, including children and young people, can make a complaint or raise an issue about the safety and wellbeing of a child or young person.

The Commissioner advised that she was not opposed to having an individual complaints or investigations function if she was 'adequately resourced and that is what the Parliament desires and required me to do'.⁵⁶¹

While 'not opposed to being given more functions', the Commissioner also stated that she 'would be concerned about the distortion in undertaking [...] her] other responsibilities'.⁵⁶²

555 *ibid.*

556 Commissioner for Children and Young People, *Are You Listening? Guidelines for Making Complaints Processes Accessible and Responsive to Children and Young People*, Perth, nd, p5.

557 *ibid.*

558 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p15.

559 *ibid.*

560 *ibid.*, p16.

561 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p6.

562 *ibid.*

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In November 2011, the Commissioner agreed that ‘it would be fair’ to say that at that stage she did not see a need for her functions to be expanded to have a capacity to take on individual complaints.⁵⁶³

While the Committee does not see the Commissioner as the agency responsible for receiving and investigating all complaints from or relating to children and young people in Western Australia, it considers that there may be occasions when the Commissioner should be able to receive such a complaint and investigate it. Rather than being a specific preclusion in the CCYP Act, this should be a discretionary function of the Commissioner.

In addition to this, the Commissioner, as an agent of last resort, should be able to investigate individual cases or circumstances—*not just complaints*—that come to her attention. It is important that the Commissioner’s functions do not preclude her from being able to scrutinise individual matters. This is related to issues discussed further below.

Investigating Matters Affecting the Wellbeing of Children and Young People Raised through a Particular Matter

As demonstrated above, s 23(1) does not prevent the Commissioner from investigating or dealing with any matter affecting the wellbeing of children and young people even when raised through a matter relating to a particular child or young person.⁵⁶⁴

This matter was raised during the debate of the Commissioner for Children and Young People Bill 2005. At that time, Mr Paul Andrews, MLA, stated that ‘the commissioner will be able to investigate a problem to which an individual case is related’.⁵⁶⁵ Mr Andrews, MLA, explained that a number of agencies could be involved in investigating an individual child or young person’s circumstances and the Commissioner, for example, would be able to inquire into the response by government agencies to those circumstances.⁵⁶⁶

The potential for individual circumstances to reveal systemic problems has been raised by the Committee on a number of occasions during hearings with the Commissioner.⁵⁶⁷

563 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p14.

564 Section 23(2)(c) *Commissioner for Children and Young People Act 2006* (WA).

565 Mr Paul Andrews, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 August 2005, p16 of pp3975b–4012a.

566 Mr Andrews, MLA, saw this as being in a similar manner to the inquiry prompted by the death of Susan Taylor, an inquiry that became known as the Gordon Inquiry.

567 See: Hearings with the Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p4; 23 June 2010, p8; 17 August 2011, p6; and 3 November 2011, p14.

In March 2009 the Committee noted the limitation on the Commissioner's ability to investigate individual circumstances, and asked the Commissioner whether she could envisage a situation whereby delving into the circumstances of an individual might reveal failures in the system. The Commissioner replied that:

*at this stage I do not think there are any limitations in the legislation. [...] I believe there is scope within the legislation to look at the individual circumstances in a number of cases, to determine whether there is a systemic issue. That is the relationship that I see.*⁵⁶⁸

The Commissioner explained that there were occasions when:

*an individual's circumstances come across my desk, or come to my attention, and I use that information about the individual's circumstances to go to a particular director general and say, "I am concerned because this raises these issues for me."*⁵⁶⁹

In June 2010, the Commissioner agreed that it was 'absolutely correct' to say that 'an individual case is sometimes a very powerful illustrator of a more systemic issue'.⁵⁷⁰ The Commissioner thought this would be an issue to be considered in the review of the CCYP Act and, at that time, did not 'have a final view about it'.⁵⁷¹

In October 2010, the Commissioner advised that the Ombudsman had:

*the power under his own motion to conduct an inquiry. For example, if he had a number of individual complaints, he could undertake what would be called a systemic inquiry into a broader issue that those complaints raise.*⁵⁷²

As noted above, it was the Commissioner's view that giving her Office this function would duplicate the work of the Ombudsman.

The Committee appreciates that the CCYP Act requires the Commissioner to avoid duplicating the work of others. However, as the Ombudsman himself explained, there is a way of fulfilling this requirement of the Act while still undertaking an individual complaints handling and investigation function. The Ombudsman acknowledged that 'the reality is you will always get a situation in which you have multiple agencies that

568 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p4.

569 *ibid.*

570 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 June 2010, p8.

571 *ibid.*

572 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p12.

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have an interest in issues having to ensure that that situation is as efficient as possible'.⁵⁷³ Citing the Integrity Coordinating Group as an example, the Ombudsman explained that 'good communication and ongoing good communications is the principal source of alleviating those sorts of issues you [the Committee] raised'.⁵⁷⁴

The Committee agrees with the Ombudsman in this regard. In fact, in corresponding with the Commissioner on the Parliamentary Commissioner Amendment Bill 2009, the Committee recognised that there could be some overlap in functions between the Ombudsman and the Commissioner. Given this potential, the Committee supported the Commissioner's recommendation that an amendment be made to the Bill to allow for a mechanism for information exchange between the Ombudsman and the Commissioner.⁵⁷⁵

In August 2011, the Committee returned to this matter with the Commissioner, asking about her capacity to review individual circumstances that she became aware of and to drill down into those circumstances as a way of getting to the truth of the matter.

The Commissioner stated that she did not believe she had that function, but had 'taken a broad interpretation' and had 'acted on individual matters'.⁵⁷⁶ The Commissioner advised that:

*individual concerns about mental health and wellbeing led to me conducting a major inquiry. Individual matters around the way in which Aboriginal young people were treated by the police, and complaints that were specifically raised with me, led me to refer several matters to the Ombudsman for further investigation.*⁵⁷⁷

The Committee considers that the Commissioner does have the capacity to use individual circumstances or matters to investigate matters affecting the wellbeing of children and young people. This is set down in s 23(2)(c) of the CCYP Act.

The Committee appreciates the apparent reluctance of the Commissioner to undertake this function in a more direct or involved way, and her concerns about duplicating the functions of other agencies such as the Ombudsman or the Department for Child Protection.

Nevertheless, the Committee notes that agencies such as the Ombudsman and the Equal Opportunity Commission primarily have a complaints resolution function,

573 Mr Chris Field, Ombudsman, Western Australia, *Transcript of Evidence*, 28 September 2011, p6.

574 *ibid.*

575 Hon Barbara Scott, MLC, Chairman, Joint Standing Committee on the Commissioner for Children and Young People, Letter to the Commissioner for Children and Young People, 20 May 2009.

576 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 17 August 2011, p8.

577 *ibid.*

whereas what is required of the Commissioner is to be alert to individual cases and circumstances, and the possibility that they may be symptomatic of a greater underlying systemic issue.

Finding 14

Adults rather than children are the main complainants in relation to the wellbeing of children and young people.

Finding 15

The Commissioner currently has the power to investigate individual cases and circumstances where the Commissioner considers it may reveal system failure.

Recommendation 14

The Commissioner should follow up with the agency and the complainant on the outcomes of complaints referred by her Office to other agencies.

Recommendation 15

The *Commissioner for Children and Young People Act 2006* be amended to clarify that the Commissioner has the power to investigate matters arising from children and young people's complaints or individual circumstances when such matters impact generally on the wellbeing of children and young people and to remove any perceived ambiguity in relation to section 23(2)(c).

Chapter 8

Advising and Making Recommendations

Section 19 of the *Commissioner for Children and Young People Act 2006* (WA) (the CCYP Act) contains functions that relate to the formal relationship between the Commissioner and both the Minister and this Committee. It is a function of the Commissioner to advise the Minister on matters relating to the wellbeing of children and young people. It is also a function of the Commissioner to consider and make recommendations in relation to matters referred to the Commissioner by the Minister or by this Committee.

The balance of this chapter discusses each of these functions in turn.

Providing Advice to the Minister

Section 19(k) states that ‘on the Commissioner’s own initiative or at the request of the Minister or the Standing committee, to advise the Minister on any matter relating to the wellbeing of children and young people’.⁵⁷⁸

The Committee has not requested the Commissioner to advise the Minister on any matter relating to the wellbeing of children and young people.

On her own initiative, the Commissioner has provided advice to the Attorney General on the following:

- Review of the Commissioner for Children and Young People Act 2006 (new Attorney General) – 15 August 2012
- Classification issues and R 18+ computer games – 17 August 2011
- Letter - Youth justice services in the Kimberley – 29 October 2009
- Working with children checks – 27 March 2009
- Working with children checks – 23 May 2008
- Establishment of the Joint Standing Committee on the Commissioner for Children and Young People – 22 May 2008.⁵⁷⁹

⁵⁷⁸ Note: In chapter 3 the Committee recommended that s19(k) be amended to remove the words ‘or at the request of the Minister or the Standing Committee’.

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At the request of the Attorney General, the Commissioner has provided advice in relation to the following:

- Review of the Commissioner for Children and Young People Act 2006 - 7 March 2012
- Establishment of Youth Justice Service in Pilbara and Kimberley- 15 December 2009
- Juvenile justice issues - 22 October 2008 (Green Paper)
- Submission- Prohibited Behaviour Orders Bill 2009 - 5 February 2010

The submission on the Prohibited Behaviour Orders Bill 2009 was in response to the Attorney General's Green Paper.⁵⁸⁰

As the above lists indicate, the Commissioner has provided advice to the Attorney General twice for the calendar years 2012; once each for 2011 and 2010; and three times each for 2008 and 2009.

Considering and Making Recommendations in Relation to Written and Draft Laws, Reports, Policies, Practices and Procedures

Under s 19(l) it is a function of the Commissioner to:

to consider, and make recommendations in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Standing Committee.

Advice to the Minister

The Commissioner advised that she has provided 'advice to the Minister on (sic) response to the Human Rights Commission report titled – *Sex Files: the legal recognition of sex in documents and government records* – 3 November 2009'.⁵⁸¹

The Commissioner has confirmed that this is the only written or draft law that the Attorney General has asked her to consider and make recommendations.⁵⁸²

579 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p7.

580 *ibid*; and Submission No. 2 from Commissioner for Children and Young People, 2 October 2012, 'Report against the Functions of the *Commissioner for Children and Young People Act 2006*', np.

581 Submission No. 2 from Commissioner for Children and Young People, 2 October 2012, 'Report against the Functions of the *Commissioner for Children and Young People Act 2006*', np.

582 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p8.

The Committee notes that the current wording of s 19(l) restricts referral to the minister responsible, currently the Attorney General, and this should not preclude other ministers seeking the advice of the Commissioner at least via the minister responsible.

Advice to the Committee

In April 2009, under s 19(l) the Committee referred to the Commissioner the Parliamentary Commissioner Amendment Bill 2009 for her consideration and comment. The Bill sought to enable the Ombudsman to review and investigate certain child deaths. In response to the Committee the Commissioner raised the matters of information exchange with the Ombudsman and exemption for the Commissioner for Children and Young People from the *Parliamentary Commissioner Act 1971* (WA). As the Bill was before the Legislative Council at the time, the Committee wrote to the Minister responsible for the Bill in the Upper House in support of the comments made by the Commissioner. Amendments were eventually made to the Bill in line with the Commissioner's recommendations.

In July 2009 the Committee referred to the Commissioner the Child Exploitation Material and Classification legislation Amendment Bill 2009. This Bill aimed to protect children and the broader community from child pornography, and would amend the Criminal Code and the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA). While the Commissioner supported the legislation, her response highlighted a need for several matters to be clarified, including 'the possible effect of the proposed amendments on the expression of young people, and the capacity for young people to be criminalised because of the wide scope of the definition of "child exploitation material"'.⁵⁸³

In August 2009, the Bill was referred back to the Standing Committee on Uniform Legislation and Statutes Review for consideration. The Commissioner advised that she had made a submission to the Standing Committee on Uniform Legislation and Statutes Review. Given these developments, the Committee took no further action on this matter.

A further matter referred to the Commissioner under s 19(l) of the CCYP Act was the Commonwealth Attorney-General's Department Discussion Paper, *Should the Australian National Classification Scheme include an R18+ Classification Category for Computer Games?* Following the Commissioner's response the Committee sought further clarification from the Commissioner as to whether there were further opportunities for input into the consultation process. The Commissioner advised that it

⁵⁸³ Ms Michelle Scott, Commissioner for Children and Young People, Letter, 29 July 2009.

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was her ‘understanding that the opportunity to make further submissions to this process is now closed’.⁵⁸⁴ The Committee did not pursue this matter.

The Committee has raised with the Commissioner at a number of hearings the issue of the sexualisation of children, most recently in September 2012.⁵⁸⁵ At a hearing in September 2012, the Commissioner advised that she could not categorically state whether or not she intended to undertake an inquiry into the issue, and that she was ‘concerned at a state level how [...] she] would influence the regulatory regime’.⁵⁸⁶ The Commissioner also noted that an inquiry is a ‘very resource intensive’ undertaking.⁵⁸⁷ Rather than an inquiry, to date the Commissioner had produced a literature review, a guide and resource to parents and an issues paper, had ‘stimulat[ed] discussion and interest about the issue’ and was ‘holding a forum in November this year’.⁵⁸⁸

Despite the Commissioner’s concerns about her ability to venture effectively into the federal area, she did not want to rule out completely an inquiry into the sexualisation of children.⁵⁸⁹ Nevertheless, the Commissioner at that time was ‘not persuaded that it would be the most appropriate area for me to focus on’, stating that there were ‘competing interests’.⁵⁹⁰

The Committee is mindful of the Commissioner’s concerns, but notes federal legislation can reflect the needs of all children and can often be the result of state influence. The sexualisation of children is an example of an issue that the state could influence and encourage the federal government to develop appropriate policies and legislation. The Committee also notes that four out of the five pieces of legislation reviewed by the Commissioner in 2010–2011 were in the federal jurisdiction.

Chapter 5 discusses the Commissioner’s reviewing legislation function and provides information on legislation reviewed by the Commissioner.

The Committee also notes that the Commissioner made 69 submissions during the 2011–2012 reporting period and that these included some that relate to the federal arena. For example, the Commissioner made submissions on:

- Paid Parental Leave: Dad and Partner Pay Policy Statement and expressing support for continued progress on the implementation of the Paid Parental Leave scheme.

584 Ms Michelle Scott, Commissioner for Children and Young People, Letter, 5 July 2010.

585 Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 16 March 2011, p7; 17 August 2011; 20 June 2012, p1; and 19 September 2012, pp3-4.

586 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p4.

587 *ibid*, p4.

588 *ibid*, p4.

589 *ibid*, p4.

590 *ibid*, p4.

- Implementation of the National Planning Agreement on Early Childhood Education which commits all governments to providing universal access to pre-school education by 2013.
- National Aboriginal and Torres Strait Islander Legal Service (NATSILS) Shadow Report to UN Committee on the Rights of the Child.⁵⁹¹

The Committee considers that the sexualisation of children is an important area of concern for the Commissioner and that her advocacy must extend to consideration of the impact of national legislation and policy that impact upon Western Australian children and young people. The Committee further understands that there are actions that could be taken at the state level to effect change for Western Australia's children and young people and that the Commissioner is well placed to provide advice.

Given the Committee's concerns and the Commissioner's interest in this important issue, on 24 October 2012 the Committee resolved to refer particular matters to the Commissioner for consideration and recommendations.⁵⁹²

The matters referred to the Commissioner include particular written laws, national and international reports, and certain practices and procedures insofar as they may be relevant to the sexualisation of children. The Committee requested the Commissioner consider and make recommendations as to any specific actions required to be taken by the Government of Western Australia in relation to these matters in order to better secure the wellbeing of children and young people in Western Australia.⁵⁹³

The Commissioner has been requested to provide her considerations and recommendations by Friday 11 January 2013. Following receipt of the Commissioner's response, the Committee will table its report in Parliament.

Finding 16

The Commissioner has fulfilled her obligations under sections 19(k) and 19(l) of the Commissioner for children and Young People Act 2006.

591 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p29 and p32.

592 Joint Standing Committee on the Commissioner for Children and Young People, Letter to the Commissioner for Children and Young People, 25 October 2012.

593 *ibid.* The laws, report, policies and procedures referred to the Commissioner can be found in: Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 25 October 2012.

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Advisory Committees

Legislation Establishing Advisory Committees

The *Commissioner for Children and Young People Act 2006* (WA) (the CCYP Act) provides for the establishment of advisory committees to assist the Commissioner in the performance of his or her functions. However, as the emphasis added to the quotations below demonstrates, the drafting of this section of the CCYP Act is potentially confusing.

Section 52(1) states:

*Subject to subsection (2), the Commissioner **may** establish advisory committees and reference groups to assist in the performance of the Commissioner's functions.*

Section 52(2) states:

*The Commissioner **must** establish advisory committees consisting of children and young people, who the Commissioner considers are from a broad range of socio-economic and cultural backgrounds and age groups, to assist in the performance of the Commissioner's functions.*

Section 52(3) states:

*The membership of advisory committees **should** include representatives of non-government agencies concerned with the rights, interests and wellbeing of children and young people.*

The use of the three different auxiliary verbs in these sections leaves the compulsory nature of committees and their membership open to several interpretations. However, debate during the passage of the Bill through the Houses explains the intent of these sections.

When the Bill was introduced in June 2005, the Hon Sheila McHale, MLA, stated that 'the commissioner has powers to establish his or her advisory committees so that he or

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she can gain leverage from other relevant experts in their field’.⁵⁹⁴ Minister McHale advised that, ‘for this purpose, one of the commissioner’s advisory committees may be a youth advisory committee of children and young people, and collaboration needs to occur with the Office for Children and Youth.’⁵⁹⁵ Under clause 50 of the original Bill prior to amendment, the Commissioner was to have ‘the discretion to establish a range of committees and the ability to decide who will be on those committees’.⁵⁹⁶

The nature and composition of the advisory committees was the subject of considerable debate in the Legislative Council, resulting in an amendment being passed. The intention of the amendment was that each clause would stand on its own. This would give the Commissioner discretion as to the establishment of general advisory committees and reference groups (as per s 52(1)), and not allow discretion as to the establishment of advisory committees consisting of children and young people (as per s 52(2)). All advisory committees were intended to have representatives from non-government agencies (as per s 52(3)).⁵⁹⁷

However, the Committee considers that the intention to have each clause stand alone and to provide for discretionary general advisory committees and compulsory advisory committees of children and young people is not clear in the Act as it currently stands.

Given the wording of s 52(3), which concerns non-government representatives on advisory committees, the Committee asked the Commissioner which non-government organisation representatives had been included in her advisory committees of children and young people to date.

The Commissioner responded that it was not her ‘understanding of section 52 of the Act, that children and young people advisory committees should include non-government representatives’.⁵⁹⁸

The Committee considers that this section of the CCYP Act needs to be redrafted to make the legislation’s intent and the Commissioner’s obligations clear.

Finding 17

The intention of section 52 of the Commissioner for Children and Young People Act 2006 and the obligations it places on the Commissioner are confusing and ambiguous.

594 Hon Sheila McHale, MLA, then Minister for Community Development, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 1 June 2005, p1 of pp2582b–2585a.

595 *ibid.*

596 Hon Kate Doust, MLC, Parliamentary Secretary to the Minister for Community Development, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 14 September 2006, p10 of pp5955b–5978a. See also: Clause 50 Commissioner for Children and Young People Bill 2005 053—1 (Western Australia).

597 Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 14 September 2006, pp8–10 of pp5955b–5978a.

598 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p6.

Finding 18

An amendment of section 52(2) from ‘must’ (mandatory) to ‘may’ (discretionary) could assist in unlocking creativity in the establishment of advisory committees that better reflect the intent of obtaining advice from a broad spectrum of children and young people.

Recommendation 16

Section 52 of the *Commissioner for Children and Young People Act 2006* be amended to make its meaning clear and unambiguous.

General Advisory Committees and Reference Groups

The Commissioner advised that typically the groups of people invited to provide expert advice are referred to as Reference Groups⁵⁹⁹. The Commissioner has established reference groups for a number of major projects:

- *Wellbeing research project*
- *Inquiry into the mental health and wellbeing of children and young people*
- *Wellbeing Monitoring Framework measures report*
- *Dr Clyde Hertzman seminar*
- *Thinker in residence 2011*
- *Thinker in residence 2012.*⁶⁰⁰

The Commissioner’s reference group for her inquiry into the mental health and wellbeing of Western Australia’s children and young people is discussed in chapter 6 on inquiries and research.

The Commissioner also advised that the group established to advise on the Building Blocks component of the Wellbeing Monitoring Framework was referred to as the Best Practise (sic) Advisory Group.⁶⁰¹

The Committee notes that there is very little, if any, difference in the functions or purpose of a reference group and an advisory committee as established by the Commissioner. The Committee also notes that the definition of the term ‘advisory

599 Ms Caron Irwin, Executive Director, Commissioner for Children and Young People, Electronic Mail, 30 October 2011, p1.

600 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p4.

601 *ibid.*

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committee' in s 5 of the CCYP Act is 'an advisory committee or reference group established under section 52(1) or (2)'.

Given this, it may be better to refer to groups of advisors established under s 52(1) to provide advice on research projects as reference groups, and groups of children and young people established under s 52(2) of the CCYP Act as advisory committees.

Advisory Committees of Children and Young People

Despite the lack of clarity in s 52 overall, s 52(2) provides that the Commissioner must establish advisory committees consisting of children and young people from a broad range of backgrounds and age groups. Given the intention for s 52(3) to apply to all advisory committees, those formed under s 52(2) arguably should include representatives of non-government agencies involved in the area of children and young people.

In March 2009 the Commissioner acknowledged that she had been 'very concerned not to rush in and set up an advisory committee for its own sake', and had wanted to find out what similar committees existed at that time. The Commissioner advised that there were two broad options, namely to establish her own advisory committees of children and young people or to use existing committees.⁶⁰²

Prior to establishing advisory committees the Commissioner used 'existing mechanisms' to 'actively involve children and young people'.⁶⁰³ These included projects with the Western Australian Museum and the clinical health senate.

Establishing Advisory Committees

To establish her advisory committees of children and young people the Commissioner called for nominations from existing groups to be the Commissioner's advisory committee of children and young people for a year. The Committee questioned whether this approach would result in membership of children and young people from a broad range of backgrounds as required by the CCYP Act.

The Commissioner advised that:

one of the criteria for people for the group to nominate is that they have to show how they do reflect the broader community and how they will be able to engage more broadly, not just with their own group but with the community. One of the projects for each advisory committee is that they have to nominate a community project that

602 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p7.

603 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 14 October 2009, p10.

*they would be involved in. So I think with those requirements we hope that they will be more reflective of a broad range of kids issues in their community.*⁶⁰⁴

The Commissioner advised that her Expression of Interest form for nominating to be an Advisory Committee contains three selection criteria:

- *The extent to which membership of the group is broadly representative of all children and young people in their local community.*
- *The ability of the group to complete the 'Us in our community' project.*
- *The ability of the group to hear from and involve other children and/or young people under 18 years of age in their community.*⁶⁰⁵

Section 52(2) requires committees of children and young people to be established in regional and metropolitan areas. In December 2009, Beckenham Primary School Student Representative Council and Geraldton's Indigenous Youth Council were named as the Commissioner's first advisory committees of children and young people. These groups were selected from a total of nine nominations.⁶⁰⁶

These advisory committees of children and young people were provided with funding of up to \$3,000 by the Commissioner to undertake an 'us-and-our-community' project', and a project officer liaised with these committees on a regular basis.⁶⁰⁷

The initial advisory committees of children and young people were to operate throughout the 2010 calendar year and be 'subject to review and evaluation after 12 months'⁶⁰⁸ to determine 'some of the strengths and weaknesses of this approach'.⁶⁰⁹

In October 2010 the Commissioner advised that these two advisory committees of children and young people took longer than expected to become active. This was largely because both committees involved school children, and 'January–February is a

604 *ibid.*

605 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p4. The Committee notes that there is a fourth criterion relating to the adult coordinator.

606 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 10 March 2010, p8; and Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p5.

607 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 10 March 2010, p8.

608 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 14 October 2009, p10.

609 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 10 March 2010, p8.

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really quiet period, particularly for the school, and mostly even the Indigenous Youth Council involves schoolkids, so it took them quite a while to actually get up and running and active'.⁶¹⁰

Based on this experience the Commissioner extended the term of the advisory committees to two years:

*so that if they do not get up and running and fully operational until March, they can go through for a longer period. The committees themselves have just taken a while to work out what they are doing, and we think that that takes a few months, so the two years will be good for that. So that is a major learning.*⁶¹¹

The Commissioner advised the Committee that the two-year time period for the advisory committees does not narrow the breadth of backgrounds, ages and areas from which the children and young people are drawn, as envisaged in the CCYP Act.⁶¹²

The Commissioner reported that one of the advisory committees did not receive funding for the 'us-and-our-community' project as they could not do this 'in a timely way'.⁶¹³

Another lesson the Commissioner learned from the first advisory committees is that 'their success partly depends on an adult support person'.⁶¹⁴ The Commissioner's 2013 *Advisory Committees Expression of Interest – Information Sheet* includes 'the group having an adult coordinator who will be able to provide support' as one of four selection criterion.⁶¹⁵ The nomination form also includes the questions: 'do you have an adult co-ordinator who will be able to support you? How will they support you?'⁶¹⁶

The Commissioner provided the following examples of the work undertaken by the advisory committees:

610 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, pp6–7.

611 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, pp6–7.

612 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p4.

613 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p7.

614 *ibid*, pp6–7.

615 Commissioner for Children and Young People, *2013 Advisory Committees Expression of Interest – Information Sheet*, Perth, 2012, p2. Available at: <http://www.cyp.wa.gov.au/files/Expression%20of%20Interest%20-%20Information%20sheet%20-%202013.pdf>. Accessed on 1 November 2012.

616 Commissioner for Children and Young People, *2013 Advisory Committees Expression of Interest Form*, Perth, 2012, p2. Available from: <http://www.cyp.wa.gov.au/content.aspx?cld=725>. Accessed on 1 November 2012.

- participating in the Senate's Joint Select Committee on Cyber Safety's Inquiry into Cyber Safety online consultation;
- holding a Kids Talk Fest, inviting school leaders from local schools to participate;
- holding a multicultural and multi-age lunch for family and community members;
- providing information to the Commissioner on mental health and wellbeing; and
- providing feedback to the Commissioner on her website.⁶¹⁷

The Commissioner's *Annual Report 2010–2011* states:

*an evaluation found the Advisory Committees were successful, enabling the Commissioner to hear from and gain insight into the views and lives of diverse groups of children and young people.*⁶¹⁸

In 2011 the Commissioner received four nominations, and selected two new advisory committees, the Wheatbelt Youth Leadership Development Team and the metropolitan Migrant Resource Centre. These committees will operate for a two-year period.⁶¹⁹

Evaluation of Advisory Committees

The Commissioner advised that in 2010–2011, her office contributed approximately \$24,931 in staffing costs and \$3,356 for travel costs for the 'Us and our community' project. In 2011 and 2012, the Commissioner provided approximately \$46,588 in staffing costs and \$6,000 for the 'Us and our community' projects.⁶²⁰

The Commissioner reported the following specific benefits from the first two advisory committees:

- *Feedback on the accessibility of my website to young people*

617 Commissioner for Children and Young People, *Commissioner's 2010 Advisory Committees*, 14 February 2010. Available at: <http://www.ccyp.wa.gov.au/print.aspx?cid=166>. Accessed on 6 September 2012. The Commissioner's 2009–2010 and 2010–2011 annual reports also contain information on the activities of the first two advisory committees.

618 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p23.

619 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p25; and Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p5.

620 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p5.

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- *Feedback on my Face to Face publications. This feedback has been used to inform future publications*
- *Consultation as part of the Inquiry into the mental health and wellbeing of children and young people*
- *Information that informed the built environment publication from the Beckenham Primary School 'Us and our community' project*
- *The groups informed the Commissioner's advocacy on bullying, built environment, importance of community and mental health.*⁶²¹

The Commissioner stated that the second two advisory committees had provided the following specific benefits:

- *Feedback on issues affecting migrant communities*
- *Feedback on issues affecting children and young people in regional areas*
- *Participation in the reducing alcohol related harm consultation*
- *Advice and feedback on the design and content of The State of Western*
- *Australia Children and Young People report to children and young people*
- *Feedback on design of the annual Face to Face report.*⁶²²

The Committee asked the Commissioner to provide specific examples of what was gained through the advisory committees of children and young people that would not be obtained from her everyday consultations and promotion work or from the consultations that occurred as part of her research and inquiry projects.

The Commissioner responded that:

the ability to talk with children and young people in a timely manner - an example of this is feedback on publications. The ability to build a relationship with a group of children and young people and their adult

621 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p4.

622 *ibid* p5.

*coordinator which means they also raise or initiate issues with my office – an example is the issue of bullying.*⁶²³

The Commissioner also pointed to the value of advisory committees to children and young people, and provided the following examples of feedback:

- *'I liked how the staff from the Commissioner really listened to our ideas'*
- *'Talking to other people gave me confidence'*
- *The 'us and our community project' was empowering for the Advisory Committee. The adult coordinator indicated that members were rewarded, motivated and empowered*
- *Adult coordinators considered the Advisory Committees provided an opportunity for members to develop their skills, including leadership and planning*
- *Adult coordinators reported that children and young people were enthusiastic about the Commissioner's visits, especially in the knowledge that their opinions were valued and would be shared with others on the Commissioner's website and in the public domain*
- *Adult coordinators reported that this project 'was a fantastic opportunity for our students to become more aware of their role in the community and the positive contribution they can make'.*⁶²⁴

As part of the advisory committee process, 'an evaluation form was distributed to the children and young people involved in the advisory group and a separate evaluation form was distributed to the adult coordinator'.⁶²⁵

The Commissioner's *Annual Report 2010–2011* states that 'an evaluation found the Advisory Committees were successful, enabling the Commissioner to hear from and gain insight into the views and lives of diverse groups of children and young people'.⁶²⁶

The Commissioner has advised that the second two advisory committees of children and young people will also be evaluated.

623 *ibid*, p6.

624 Submission No. 4 from Commissioner for Children and Young People, 29 October 2012, p4.

625 *ibid*, p6. A copy of the evaluation forms are provided at Appendix 1 and 2 of the Commissioner's Submission No. 4.

626 Commissioner for Children and Young People, *Annual Report 2010–2011*, Perth, 2011, p23.

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The Committee appreciates that s 52(5) of the CCYP Act states that the Commissioner can determine the membership of her advisory committees. Nevertheless, the Committee has a number of concerns in relation to the establishment of the advisory committees of children and young people.

First, appointing two existing groups at a time does not ensure that their membership will be drawn from a broad range of backgrounds, areas and ages as intended by the CCYP Act. This also means that only a very small number of children from discrete areas of the state participate on each committee.

Second, having two-year terms for the advisory committees of children and young people exacerbates the potential problem of not having a broad base of membership for the advisory committees of children and young people.

The combined effect of the use of existing groups for a two-year terms could be that particular groups of children and young people may have a greater voice and therefore influence on the Commissioner. Perhaps more importantly, it also risks not providing a voice to a wider population of children and young people.

Third, the Commissioner's experiences with the initial advisory committees of children and young people suggests that expectations for such committees may not be realistic.

The Committee's overall concern is that the process through which the Commissioner establishes her advisory committees of children and young people may result in two very selective groups acting in this capacity for a period of two years, to the exclusion of other potential groups of children and young people. The Committee considers that the Commissioner's system of establishing such advisory committees should better reflect s 52 of the CCYP Act.

The Committee acknowledges the challenges involved in establishing advisory committees of children and young people as prescribed in the CCYP Act.

Finding 19

The Commissioner's current system for establishing advisory committees of children and young people may result in small groups of children and young people acting in this capacity for a two-year period, to the exclusion of other potential groups of children and young people.

Recommendation 17

Section 52(2) of the *Commissioner for Children and Young People Act 2006*, which relates to the establishment of advisory committees of children and young people, be amended to delete the word 'must' and insert the word 'may'.

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Reporting

Under s 19(p) it is a function of the Commissioner to 'perform any other function conferred on the Commissioner by or under this Act or any other written law'. One of these other functions concerns reporting, which is covered in Part 6 of the CCYP Act.

Part 6 of the CCYP Act makes provisions for the Commissioner's annual reports, reports on special inquiries and reports on other matters, Ministerial comment on reports and the tabling of reports in Parliament.

Section 42 requires the Commissioner to prepare annual reports for each financial year reporting period.

Section 43 provides that the Commissioner must prepare a report on the findings of any special inquiry conducted under Part 5 of the CCYP Act.

Section 44 states that the Commissioner may prepare a report on any inquiry, review or research conducted, or on any other matter arising in the performance of her functions.

Section 48 relates to the requirements for the Commissioner to give a copy of a draft of each report to the Minister and for the treatment of any Ministerial comment.

Section 49 provides that the Commissioner must table a copy of a report in each House of Parliament within 21 days of its finalisation.

This chapter discusses these provisions as they relate to the Commissioner's annual reports, research and inquiry reports, and other reports.

Section 42(2) provides that the Commissioner's annual reports may be prepared and dealt with in conjunction with any report required under the *Financial Management Act 2006 (WA)*. This includes reporting of the Commissioner's performance measurement framework, and this is also discussed in this chapter.

The Commissioner's Reports

Over her five years in office, the Commissioner has produced a considerable number of reports, including annual reports, research and inquiry reports, reports on other matters and regional visit reports.

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Annual Reports

Section 42(1) provides that within three months after the end of June each year the Commissioner must prepare an annual report 'as to the Commissioner's general activities during the financial year'.

Since taking up office on 7 December 2007 the Commissioner has prepared and tabled annual reports for the following financial years:

2007–2008	Tabled on 11 November 2008
2008–2009	Tabled on 24 September 2009
2009–2010	Tabled on 23 September 2010
2010–2011	Tabled on 28 September 2011
2011–2012	Tabled on 27 September 2012

In preparing annual reports for each financial year of operation the Commissioner has fulfilled the requirements of s 42 of the CCYP Act.

Reports on Special Inquiries

Section 43 requires the Commissioner to prepare a report on the findings of any special inquiry undertaken. As the Commissioner to date has not conducted a special inquiry, there has been no reporting required under this section of the CCYP Act.

Reports on Other Matters

Section 44 of the CCYP Act states that the Commissioner may prepare reports on any inquiry, review or research conducted by her Office, or on any other matter arising from the performance of her functions. In accordance with s 44, the Commissioner has prepared inquiry reports, research reports and reports on other matters.

Inquiry Reports

The Commissioner has conducted one inquiry under s 19(f) of the CCYP Act. This inquiry resulted in a report entitled *Report of the Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*. This report presents the evidence gathered throughout the inquiry and makes '54 recommendations for future action'.⁶²⁷

Wellbeing Research Project

Nexus Strategic Solutions was contracted by the Commissioner to research and report on what children and young people identified as being important to their wellbeing. From this report, the Commissioner published a further report titled *Speaking Out*

⁶²⁷ Commissioner for Children and Young People, *Report of Inquiry into the Mental Health and Wellbeing of Children and Young People in Western Australia*, Perth, April 2011.

about Wellbeing—The views of Western Australian children and young people which summarises the views of children and young people obtained by the contract researchers.

Wellbeing Monitoring Framework

The Commissioner published three reports in relation to the Wellbeing Monitoring Framework:

- Profile of Children and Young People in Western Australia
- The State of Western Australia's Children and Young People
- Building Blocks - Best practice programs

Reducing Alcohol-Related Harm on Children and Young People

- Speaking Out About Reducing Alcohol-Related Harm on Children and Young People

Thinker in Residence Reports

- Report of the 2012 Thinker in Residence: Self-regulation in children
- Report of the 2011 Thinker in Residence: Unlocking Creativity

Regional Visit Reports

- | | |
|--|--|
| • Albany - March 2009 | • Geraldton - June 2009 |
| • Bunbury - March 2009 | • Geraldton - June 2010 |
| • Carnarvon - July 2010 | • Leonora and Leonora Alternative Place of Detention - December 2010 |
| • Derby and Mowanjum - August 2008 | • Margaret River - March 2012 |
| • Esperance - March 2011 | • Narrogin - September 2012 |
| • Fitzroy Crossing - December 2009 | • Newman and Jigalong - July 2009 |
| • Halls Creek - June 2008 | • Northam and Merredin - March 2010 |
| • Kalgoorlie - July 2008 | • Wiluna - June 2010 |
| • Katanning and Kojonup - September 2011 | • Wyndham and Kununurra - August 2009 |

Other Reports

- Built environment - Building spaces and places for children and young people
- Metropolitan Migrant Resource Centre's Us and Our Community report
- Wheatbelt Youth Leadership Development (WYLD) Us and Our Community report

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Finding 20

The Commissioner has prepared and published reports in accordance with sections 42, 43 and 44 of the *Commissioner for Children and Young People Act 2006*.

Reports may contain Recommendations

Section 46 of the CCYP Act states that the Commissioner's report may include recommendations for changes to laws, policies, practices or procedures that the Commissioner considers would safeguard and promote the wellbeing of children and young people.

The Committee notes that the Commissioner's Mental Health Inquiry report and the Wellbeing Monitoring Project report, *The State of Western Australia's Children and Young People*, contain recommendations as provided for under s 46.

Reports to be Provided to the Minister for Comment

Section 48 requires the Commissioner to provide 'a draft of each report' to the Minister (the Attorney General). The Minister may then issue written comments to the Commissioner of these draft reports.

The Commissioner acknowledged this provision of the CCYP Act, stating that 'as you are aware, under the legislation I have to provide a copy of all reports to the minister'.⁶²⁸

The Commissioner confirmed that 'a draft of each [of the five annual] report[s] was provided to the Minister prior to tabling'.⁶²⁹

The Commissioner advised that a copy of the report had been provided to the Attorney General as the relevant minister and that the Attorney General 'did not provide any comments on the report'.⁶³⁰

The Committee asked the Commissioner to clarify whether she had provided a draft copy of all reports produced to the Attorney General. The Commissioner advised that due to the special meaning of the term 'report' not all draft reports had been provided to the Attorney General. This issue also impacts upon the provision in the CCYP Act for all reports to be tabled in the Parliament and will be discussed in detail below.

628 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p2.

629 Submission No. 2 from Commissioner for Children and Young People, 2 October 2012, 'Report against the Functions of the Commissioner for Children and Young People', np. Note: The Commissioner's *Annual Report 2007–2008* necessarily covered a seven-month period. Refer to Legislative Assembly Tabled Paper numbers 98, 1369, 2651, 3988 and 5357.

630 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 19 September 2012, p2.

Under s 48(4) the Commissioner is not required to make any changes suggested by the Minister. Section 48(5), though, provides that the Commissioner must include a copy of any comments made by the Minister on draft reports.

The Committee understands that the Attorney General, on one occasion and in relation to the Commissioner's *Annual Report 2009-2010*, has provided some written comments. The Attorney General's comments were included in the annual report in accordance with s 48(5) of the CCYP.⁶³¹

Finding 21

The Commissioner has not provided to the Minister a draft of each of her reports as required under section 48(1) of the *Commissioner for Children and Young People Act 2006*.

Under the current legislation it appears that all of the Commissioner's reports should have gone to the Minister in draft form. The Committee expects that providing the Minister with all of these types of documents was not what was intended by the legislation.

Reports for Children and Young People

Section 50 of the CCYP Act requires the Commissioner to publish a version of her reports 'in a form suitable for children and young people, unless the Commissioner considers that it is not appropriate to do so'.

At a hearing the Commissioner was asked how she determined which of her reports would have a version suitable for children and young people, or whether all reports had had such a version published.

The Commissioner responded that her recollection was:

*that just about every report has had a children and young people's version because we have wanted to communicate with children and young people about the issues. The wellbeing monitoring report, the mental health inquiry, the alcohol, the wellbeing research. I cannot recollect any that did not.*⁶³²

However, as the reports listed above demonstrate, there have been many reports not published in a form suitable for children and young people. The Committee notes, though, that the publication of reports in such a form is at the discretion of the

631 Commissioner for Children and Young People, *Annual Report 2009-2010*, Perth, 2010, p81.

632 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p7.

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Commissioner and would depend on a number of factors, including her definition of the term ‘report’, which is discussed below.

Reports to be Laid before Parliament

The Commissioner has tabled her five annual reports in Parliament.

In relation to the Wellbeing Monitoring Framework, the Building Blocks component was tabled on 28 February 2012 and *The State of Western Australia’s Children and Young People* was tabled on 29 February 2012.⁶³³

The profile component of this framework was not tabled.

The Commissioner’s Mental Health Inquiry report was tabled on 5 May 2011.⁶³⁴

Parliamentary Records of Tabled Papers show that these were the only reports tabled by the Commissioner.

At a hearing in November 2012, the Commissioner advised that:

early on I took legal advice about the meaning of “report”. It would be of such a nature that the report may make some recommendations—that is, generally or broadly. If it is a report that is making recommendations, then I would go through the process of advising the Attorney General and I also would invite him to comment, as the relevant minister.

The Commissioner was not able to provide the Committee with a copy of that advice as it had been provided verbally.⁶³⁵

Section 49(1) of the CCYP Act clearly states that the Commissioner must table a report in each House of the Parliament. Section 45 defines the term ‘report’ as ‘a report prepared under Division 1’. Division 1 contains ss 42, 43, and 44, which relate to the types of reports the Commissioner may prepare, including obligatory reports such as annual reports and special inquiry reports. The Act does not make any distinction between reports with or without recommendations.

From this, it is clear to the Committee that under the CCYP Act the Commissioner is required to table all of her reports.

The fact that not all of the Commissioner’s reports have been tabled is of great concern to the Committee.

633 See: Legislative Assembly Tabled Paper numbers 4531 and 4543.

634 Refer to Legislative Assembly Tabled Paper number 3309.

635 Submission No. 7 from Commissioner for Children and Young People, 7 November 2012, p1.

The Committee appreciates that in appearing before the Committee at hearings the Commissioner is informing Parliament of her activities. However, in addition to complying with the provisions in the CCYP Act, tabling reports provides the Commissioner with a significant opportunity to engage members of Parliament in her work. It is also an opportunity to highlight her reports to the media.

The Committee considers tabling all the Commissioner's reports would enhance her role and keeps members of Parliament informed of the important issues that the Commissioner is looking at.

Finding 22

The Commissioner for Children and Young People has not tabled all of her reports in Parliament as required under section 49 of the *Commissioner for Children and Young People Act 2006*.

Recommendation 18

The Commissioner should table all reports, including those that have not been previously tabled, in each House of the Parliament.

Performance Reporting

The Commissioner is subject to the *Financial Management Act 2006* (WA) (the FM Act) and s 42(2) of the CCYP states that the Commissioner's annual reports 'may be prepared and dealt with in conjunction with any report required under *the Financial Management Act 2006*'.

Under s 61 of the FM Act, the Commissioner's annual report must include, among other things, the Commissioner's financial statements and key performance indicators (KPIs) for the financial year.

The Committee notes that the Auditor General issued an unqualified Independent Auditor's Report for the Commissioner's financial statements for each of the five annual reporting periods to date.⁶³⁶

The following discusses the Commissioner's government approved outcome-based management structure and the performance reporting information provided by the Commissioner in her annual reports.

636 See: Commissioner for Children and Young People, *Annual Report 2007–2008*, Perth, 2008, p43; *Annual Report 2008–2009*, p49; *Annual Report 2009–2010*, p46; *Annual Report 2010–2011*, p40; and *Annual Report 2011–2012*, p40.

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The Regulatory Framework for Performance Reporting

Section 63 of the FM Act requires the Commissioner to submit her financial statements and KPIs to the Auditor General. Under the *Auditor General Act 2006* (WA) the Auditor General has the responsibility of auditing and expressing an opinion on the financial statements and KPIs.

As well as assisting strategic planning and resource management internally, KPI information should help parliament, the Commissioner's clients and stakeholders, the government and the general community understand and assess the Commissioner's performance in achieving 'government desired outcomes and obtaining value for public funds from services delivered'.⁶³⁷

Treasurer's Instructions 903 and 904 detail agency compliance requirements for performance information, including the process for formal KPI approval and for reporting and presentation of information.⁶³⁸ TI 904 requires agencies to submit all changes in outcomes, services and KPIs to the Under Treasurer for approval.⁶³⁹

The Public Sector Commission provides information on the overarching government goals to which agencies must align their outcomes and services.⁶⁴⁰ Currently, agencies must report agency level desired outcomes and services, as well as key effectiveness and key efficiency indicators. Agencies must also align their agency level desired outcomes to at least one of five government goals.⁶⁴¹

Key effectiveness indicators must be provided for each agency level outcome. These indicators report on achievement of or progress toward achieving agency level desired outcomes through delivering services.⁶⁴² Key efficiency indicators must be provided for

637 Department of Treasury, 'Treasurer's Instruction 904', *The Financial Administration Bookcase*, Government of Western Australia, Perth, Update 66, 27 June 2012, p1.

638 Department of Treasury, 'Treasurer's Instruction 903' and 'Treasurer's Instruction 904', in *The Financial Administration Bookcase*, Government of Western Australia, Perth, Update 66, 27 June 2012; Auditor General of Western Australia, *Beyond Compliance: Reporting and Managing KPIs in the Public Sector 2011-2012 Reporting Year*, Auditor General of Western Australia, Perth, April 2012, p13.

639 Auditor General of Western Australia, *Beyond Compliance: Reporting and Managing KPIs in the Public Sector 2011-2012 Reporting Year*, Auditor General of Western Australia, Perth, April 2012, p13. Between 2003 and 2009, the Outcome Structure Review Group (OSRG) was the interagency committee charged with reviewing and approving all new and amended KPIs, outcomes and services.

640 Public Sector Commission, *Western Australia Public Sector Annual Reporting Framework*, Government of Western Australia, Perth, 2012, p12.

641 The five government goals are: Financial and Economic Responsibility; Outcomes Based Service Delivery; Social and Environmental Responsibility; State Building – Major Projects; Stronger Focus on the Regions.

642 Department of Treasury, 'Treasurer's Instruction 904', *The Financial Administration Bookcase*, Government of Western Australia, Perth, Update 66, 27 June 2012, p1.

each service. Efficiency KPIs report the level of resources required to deliver a service.⁶⁴³

The Western Australian Auditor General has reported on the characteristics of well-designed KPIs and performance reporting. According to the Auditor General, KPIs should be 'measurable and under reasonable control of the agency'.⁶⁴⁴ This means that each KPI should be 'specific to the function and activities of the agency' and measurable.⁶⁴⁵ It also means that the agency 'has reasonable control or influence over the characteristics measured by the KPIs'.⁶⁴⁶ A set of KPIs should be comprehensive, meaning they should cover all major areas of agency activity.⁶⁴⁷

The Commissioner's Key Performance Indicators

As Table 10.1 shows, the Commissioner has nominated 'Outcome based service delivery' as the government goal toward which agency outcomes and services will be directed.⁶⁴⁸ The Commissioner's desired outcome is 'the views and issues of children and young people are heard and acted upon'.⁶⁴⁹ The Commissioner's nominated service is 'consultation, research and promotion of the wellbeing of children and young people'.⁶⁵⁰

The Commissioner's *Annual Report 2011–2012* states that her KPIs 'were approved by the Government's Outcome Structure Review Group [OSRG] on 7 April 2009'.⁶⁵¹ The OSRG, which was comprised of senior representatives from the then Department of Treasury and Finance, the Department of Premier and Cabinet and a line agency representative, was responsible for approving government agencies' Outcome Based Management structure, including KPIs. The Auditor General was a member of the OSRG on an advisory basis only.⁶⁵²

643 *ibid.*

644 Auditor General of Western Australia, *Beyond Compliance: Reporting and Managing KPIs in the Public Sector 2011-2012 Reporting Year*, Auditor General of Western Australia, Perth, April 2012, p28.

645 *ibid.*

646 *ibid.*

647 *ibid.*

648 Commissioner for Children and Young People, *Commissioner for Children and Young People Annual Report 2010-2011*, Perth, 2011, p80.

649 *ibid.*

650 *ibid.*

651 Commissioner for Children and Young People, *Commissioner for Children and Young People Annual Report 2011-2012*, Perth, 2012, p77.

652 Department of Treasury and Finance, *Outcome Based Management. Guidelines for Use in the Western Australian Public Sector*, Government of Western Australia, Perth, November 2004, p7. Noted that since the winding up of the OSRG in 2009, agencies must obtain the Under Treasurer's approval for changes to their outcome based management structures, including KPIs. Refer to: Auditor General of Western Australia, *Beyond Compliance: Reporting and Managing*

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Table 10.1 also shows the Commissioner's approved outcome and service, together with their respective effectiveness and efficiency KPIs.

Table 10.1: Commissioner for Children and Young People's Outcome Based Management Structure⁶⁵³

Government Goal: Outcome based service delivery. Greater focus on achieving results in key service delivery areas for the benefit of all Western Australians	
Agency Level Desired Outcome(s)	Key Effectiveness Indicators
The views and issues of children and young people are heard and acted upon	<p>The extent to which children and young people in various regions of the state are consulted</p> <p>The extent to which issues impacting upon children and young people are identified through consultation and research</p>
Service(s)	Key Efficiency Indicators
Consultation, research and promotion of the wellbeing of children and young people	<p>Average cost per consultation exercise with children and young people</p> <p>Average cost of conducting research and consultation</p>

Table 10.1 must be read in conjunction with the Commissioner's functions as set out in s 19 of the *Commissioner for Children and Young People Act 2006* (WA), as listed in Table 10.2.

Table 10.2: Function of the Commissioner for Children and Young People

Function
(a) to advocate for children and young people
(b) to promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity
(c) to promote and monitor the wellbeing of children and young people generally
(d) to monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint
(e) to monitor the trends in complaints made by children and young people to government agencies
(f) to initiate and conduct inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people
(g) to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people
(h) to promote public awareness and understanding of matters relating to the wellbeing of children and young people

KPIs in the Public Sector 2011-2012 Reporting Year, Auditor General of Western Australia, Perth, April 2012.

653 Sourced from: Commissioner for Children and Young People, *Commissioner for Children and Young People Annual Report 2010-2011*, Perth, 2011, p80.

(i) to conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing of children and young people
(j) to conduct special inquiries under Part 5
(k) on the Commissioner's own initiative or at the request of the Minister or the Standing Committee, to advise the Minister on any matter relating to the wellbeing of children and young people
(l) to consider, and make recommendations in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Standing Committee
[(m) deleted]
(n) to consult with children and young people from a broad range of socio-economic backgrounds and age groups throughout Western Australia each year
(o) to do anything which the Commissioner considers is necessary or convenient to further the principle in section 3 or any of the guiding principles in section 4
(p) to perform any other function conferred on the Commissioner by or under this Act or any other written law

Relationship of KPIs to Outcomes and Services

The Commissioner's agency level desired outcome is 'The views and issues of children and young people are heard and acted upon'.

As a measure of progress toward achieving this outcome, the Commissioner has two effectiveness KPIs (see Table 10.1 above). These two effectiveness KPIs relate to, first, consultation with children and young people and, second, identifying issues impacting upon children and young people through consultation and research.

As 'The views and issues of children and young people are heard and acted upon' is an agency level desired outcome, the Committee assumes that the hearing and acting upon is being done by the Commissioner. This assumption is supported by the descriptions of the KPIs:

- Effectiveness KPI 1: consultation will comprise a number of discrete projects, involving the Commissioner ... seeking the considered views of children and young people on a range of issues in various locations across the State of Western Australia.⁶⁵⁴
- Effectiveness KPI 2: the Commissioner's role includes analysis and interpretation of information collected through consultation and research processes to identify issues and trends affecting children and young people. The Commissioner is responsible for making representations and developing

⁶⁵⁴ Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p21.

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submissions that explore the impact of these issues and make recommendations to address them.⁶⁵⁵

Given the descriptions affirm the assumption that it is the Commissioner's consultation and research, and her subsequent related activities, that are being measured, the Committee is satisfied that these KPIs are relevant Commissioner's agency level outcome.

However, the Committee would like to see the wording of the agency level outcome amended to clearly demonstrate that it is the Commissioner's activities that are being referred to. The agency level outcome would be better described as *The views and issues of children and young people are heard and acted upon by the Commissioner for Children and Young People*.

The Commissioner's efficiency KPIs are clearly related to the service provided by the Commissioner's office, namely 'consultation, research and promotion of the wellbeing of children and young people'.

Comprehensiveness of KPIs

As previously noted, Table 10.1 shows the Commissioner's effectiveness KPIs cover consultation with children and young people, and identifying issues impacting upon children and young people through consultation and research.

The Commissioner's *Annual Report 2011–2012* states that this is the third year of reporting the approved KPIs and that:

*in the first three years of reporting, and while the scope and range of the Commissioner's work was being established, CCYP Corporate Executive annually reviewed the KPI definitions to ensure that the KPI is a transparent measure of the entire work of the office.*⁶⁵⁶

While a number of the Commissioner's functions, such as 19(f), 19(i) and 19(n) are clearly directly related to this KPI, there are a number that are not. Some of these have not been major areas of the Commissioner's activities, and it is reasonable that there are no KPIs associated with them. For example, 19(k) and 19(l), while important functions, are not major areas of activity.

However, the Commissioner's functions relating to monitoring children and young people's complaints handling by government agencies (ss 19(d) and 19(e)) are major and important areas of activity, and KPIs measuring the effectiveness of these functions is a notable omission.

⁶⁵⁵ *ibid*, p28.

⁶⁵⁶ Commissioner for Children and Young People, *Commissioner for Children and Young People Annual Report 2011-2012*, Perth, 2012, p79 and p80.

Similarly, functions 19 (b), which relates to promoting the participation of children and young people in decision-making, and 19 (h), which relates to promoting public awareness of matters relating to children and young people's wellbeing, are significant areas of the Commissioner's activities.

In November 2011, the Commissioner advised that:

with all key performance indicators, no matter what the agency, I do not think it tells the complete picture of what an agency does, and that is probably true in the case of—in my case I have three key performance indicators: the first is consultations, and this measures effectiveness; the second is representation; and the third goes to efficiency—what is the cost of doing both those activities. I think that that is a reasonable approach but it is not as comprehensive, and I do not think you could ever have key performance indicators that capture everything I am required to do under section 19 of the Act. However, I do think it gives a good indication of what the priorities are for us coming from the legislation.

Clearly the Commissioner agrees with the Committee's assessment that her KPIs do not provide a measure of the entire work of the Commissioner's office. Furthermore, the Committee agrees that a suite of KPIs could not reasonably capture all of the s 19 functions of the CCYP Act.

On the other hand, the Committee considers that the Commissioner's current KPIs do not provide a comprehensive representation of the major activities of the Commissioner. A more comprehensive set of KPIs would give her an enhanced opportunity to demonstrate progress in the key areas of her activities.

Measuring Outcomes or Outputs

Effectiveness KPI 1 is 'the extent to which children and young people in various regions of the state are consulted'. The description of this KPI is that 'consultation will comprise a number of discrete projects, involving the Commissioner ... seeking the considered views of children and young people on a range of issues in various locations across the State of Western Australia'.⁶⁵⁷

During the 2011–2012 reporting period, the Commissioner conducted a total of 43 consultations with a total of 708 children under the age of 18 years.⁶⁵⁸ The Committee notes that according to the 2011 Census of Population and Housing, there were

⁶⁵⁷ Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p21.

⁶⁵⁸ Ibid.

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529, 487 people who were 17 and under last birthday at the time of the census.⁶⁵⁹ Consulting a total of 708 children equates to 0.13 per cent of the state's children and young people.

It would help if information such as this was included in the annual report to make KPIs more meaningful to readers.

Measuring the number of consultations or even the number of children and young people consulted does not provide a measure of an outcome. Rather, it is an output measure.

Effectiveness KPI 2 is the 'the extent to which issues impacting upon children and young people are identified through consultation and research'. The description of this KPI in the Annual Report 2011–2012 is as follows:

*The Commissioner's role includes analysis and interpretation of information collected through consultation and research processes to identify issues and trends affecting children and young people. The Commissioner is responsible for making representations and developing submissions that explore the impact of these issues and make recommendations to address them.*⁶⁶⁰

This description is clearly making the link between the Commissioner's consultation and research activities, and the representations and submissions she makes as a result, with these representations and submissions being the actions she has taken.

However, the Committee considers that measuring the number of submissions and representations made is measuring the Commissioner's output rather than outcomes achieved. A measure of the Commissioner's effectiveness would involve a measure of, for example, changes made to government legislation, policies and procedures that are a direct result of her efforts.

In March 2009 the Commissioner agreed that her role was 'about influencing others and the key is how to measure that'.⁶⁶¹ This statement supports the Committee's view that there needs to be a measure of the Commissioner's effectiveness in influencing government and others in relation to matters impacting upon the wellbeing of children and young people.

659 Australian Bureau of Statistics, 2011 Census of Population and Housing, Western Australia, Basic Community Profile, Table B04 Age by Sex. Available at: http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/5?opendocument&navpos=230. Accessed on 29 October 2012. There were 558,777 who were 18 years last birthday at the time of the census.

660 Commissioner for Children and Young People, *Annual Report 2011–2012*, Perth, 2012, p28.

661 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 18 March 2009, p15.

Measuring Outcomes is not always Easy

In March 2009 the Committee asked the Commissioner how she intended to measure her work and the impact it was having on children and young people in Western Australia, and how she would do that so that Western Australians could say that this is the work of the Commissioner and this is how it is measured.⁶⁶²

The Commissioner responded that it:

*is a challenge to create something whereby we can claim responsibility for having achieved a change in policy or legislation, but I think we can do that. We are working on doing that and on measuring our capacity to influence others to do their job better for children and young people. My position is about influencing others and the key is how to measure that.*⁶⁶³

The Commissioner further advised that:

*I could recount to the committee the many things that we have done over the past 12 months that have played a very significant role in leading the debate on particular issues and have contributed significantly to those issues being in the public domain among the relevant stakeholders, the government and the community generally. ... The challenge for me is how I will measure that. ... I have turned my mind to it over the past few months. I do not have the perfect tool for doing that yet, but I intend to come up with one.*⁶⁶⁴

The Committee notes that at the time of this report the Commissioner's performance reporting was using the same KPIs as originally developed.

In October 2010 the Committee raised the issue of performance measurement with the Commissioner. The Committee expressed concern that one of the measures being used was the number of downloads of a guideline from the Commissioner's website. The number of downloads is just that, the number of times someone has downloaded a guideline from the internet. An outcome would be that the guideline has actually been used by agencies and made a difference to their practices and procedures.⁶⁶⁵

At that time the Committee also noted that a survey was planned for 2010–2011 to evaluate the use and effectiveness of the participation guidelines. The Committee expressed concern that a survey may not find out whether and to what extent the

662 *ibid.*

663 *ibid.*

664 *ibid.*

665 Joint Standing Committee on the Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p10.

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guidelines are being used, and suggested that a more direct evaluation of that effectiveness may need to occur.

The Commissioner stated that she ‘absolutely agree[d]’ that the number of downloads of a guideline ‘is not a measure of total effectiveness’.⁶⁶⁶ However, the Commissioner was able to provide anecdotal evidence that the participation guidelines were being used. The Commissioner also stated that the Ombudsman was surveying agencies in relation to the complaints guidelines.⁶⁶⁷

While the Committee accepts that the Commissioner has received positive feedback either directly from agencies or via the Ombudsman, this is not sufficient as a measure of the effectiveness of the Commissioner’s advocacy activities.

In November 2011, the Commissioner advised that she was amending the KPIs to include forums that had previously not been captured by the measures.⁶⁶⁸ At that time the Commissioner stated that:

*it has been a learning process for us over the four years. Obviously, when we first developed these with the Auditor General we were not fully aware of the range of activities that we might be doing. So that is why the notes in the annual report are getting longer in relation to the KPIs, because we are varying it each year.*⁶⁶⁹

When asked whether the KPIs had been helpful and changed the way that her office operates, the Commissioner stated that she thought that:

*the key performance indicators obviously were set with the Auditor General and the relevant government agencies. They are satisfied that the performance indicators that we have are an effective measure.*⁶⁷⁰

While the Auditor General does not approve KPIs, under the FM Act and the *Auditor General Act 2006* (WA), the Auditor General must provide an annual audit opinion on each agency’s KPIs. According to the Auditor General:

this opinion is based on whether the KPIs:

- *are relevant and appropriate to assist users to assess the agency’s performance*

666 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 13 October 2010, p11.

667 *ibid.*

668 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 23 November 2011, p6.

669 *ibid.*, p2.

670 *ibid.*

- *fairly represent indicated performance for the audit period.*⁶⁷¹

The Auditor General's report *Beyond Compliance: Reporting and Managing KPIs in the Public Sector 2011-2012 Reporting Year* also states that the opinion on the KPIs:

*is similar to the opinion provided on financial statements. It gives assurance on how KPI material has been constructed and reported. It is not a proof that all material used to create the KPIs is accurate. Nor does it show that KPIs are the best that can be selected, or that they give the best possible view of agency performance.*⁶⁷²

The Committee acknowledges and agrees with the Auditor General's statement that some agencies face difficulties due to the government's 'one-size-fits-all' framework and the compulsory nature of outcomes-based KPIs.

For some agencies, and this would include the Commissioner, developing clear, measurable outcomes that are directly related to core business can be difficult.⁶⁷³ The Commissioner advised that her KPIs 'were developed with the predecessors to the Office of the Auditor General, and they had great difficulty assisting us to come up with KPIs'.⁶⁷⁴ As mentioned above, the predecessor referred to is the OSRG.

The difficulty in developing a more appropriate and comprehensive suite of KPIs impacts on the usefulness of KPIs for the agency's internal management. It also impacts upon the readers of reports who rely on annual report information for their understanding of an agency's activities and progress.

The Committee notes the Commissioner's efforts to lessen this effect:

*I think what we have tried to do in the annual report—perhaps that is why we try to include so much—is give people in the community and the Parliament an understanding of the work that is actually involved that is not reflected in the KPIs. I think the KPIs are just very small and narrow, and it is probably true in many government agencies that they do not accurately reflect the extent of the work of the office.*⁶⁷⁵

671 Auditor General of Western Australia, *Beyond Compliance: Reporting and Managing KPIs in the Public Sector 2011-2012 Reporting Year*, Auditor General of Western Australia, Perth, April 2012, p14. The Auditor General does not approve KPIs and was a member of the OSRG in an advisory capacity only.

672 Auditor General of Western Australia, *Beyond Compliance: Reporting and Managing KPIs in the Public Sector 2011-2012 Reporting Year*, Auditor General of Western Australia, Perth, April 2012, p14.

673 *ibid*, p6.

674 Ms Michelle Scott, Commissioner for Children and Young People, *Transcript of Evidence*, 5 November 2012, p14.

675 *ibid*.

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The Committee also acknowledges that the Commissioner's Outcome Based Management structure, including KPIs, was developed quite early in the Commissioner's term of office.

Now that the Office of the Commissioner for Children and Young People has now been established for five years, the Committee considers that a review of the Commissioner's Outcome Based Management structure would be timely. Such a review should be in consultation with the Under Treasurer, as the person responsible for approving the structure and its supporting KPIs, and the Office of the Auditor General.⁶⁷⁶

Finding 23

Now that the Office of the Commissioner for Children and Young People has been established for five years, a review of the Commissioner's Outcome Based Management structure would be timely.

Recommendation 19

The Commissioner, in consultation with the Under Treasurer, review the current Outcome Based Management Structure, including key performance indicators, to ensure they are appropriate and comprehensive.



HON DR ELIZABETH CONSTABLE
CHAIRMAN

⁶⁷⁶ Auditor General of Western Australia, *Beyond Compliance: Reporting and Managing KPIs in the Public Sector 2011-2012 Reporting Year*, Auditor General of Western Australia, Perth, April 2012, p28.

Appendix One

Joint Standing Committee on the Commissioner for Children and Young People—Terms of Reference

Pursuant to section 51 of the *Commissioner for Children and Young People Act 2006*, a Joint Standing Committee on the Commissioner for Children and Young People was appointed by the Legislative Assembly and the Legislative Council.

It is the function of the Joint Standing Committee to:

- (i) monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People;
- (ii) to examine Annual and other Reports of the Commissioner; and
- (iii) to consult regularly with the Commissioner.

A report of the Joint Standing Committee will be presented to the Legislative Assembly and the Legislative Council by members of the Joint Standing Committee nominated by it for that purpose.

Otherwise, the Standing Orders of the Legislative Assembly relating to Standing and Select Committees are also to be followed as far as they can be applied.

Appendix Two

Activities of Children's Commissioners in Australian Jurisdictions⁶⁷⁷

Jurisdiction	Commissioner/guardian role
ACT	The commissioner's role is to consult and encourage the participation of children in decision making; consider complaints; ensure service standards in children's services are met; and encourage and assist service users and providers to make improvements to services.
NSW	The commissioner's role is to promote the participation of children and young people in decision making; provide input into laws and policies that affect children and young people; undertake research awareness and understanding of issues affecting children and young people; promote child-safe and child-friendly organisational policy and practice; implement and monitor the Working With Children Check; and produce publications and resources about children and young people's issues. The guardian's role is to promote the best interests of children in out-of-home care; ensure the rights of all children and young persons in out-of-home care are safeguarded and promoted; and accredit agencies and monitor their responsibilities.
NT	The commissioner's role is to act as an advocate for and to ensure the wellbeing of vulnerable children, particularly Indigenous children, and to represent their interests at all levels of government and in the community. Specifically the role of the commission is to investigate, resolve, and report on complaints about services provided to "protected" children; review and monitor the child protection and out-of-home care system in the NT; host and convene the Child Deaths Prevention and Review Committee covering all child deaths in the NT; and provide advice to government and respond to Ministerial requests pertaining to child protection matters.
Qld	The commissioner's role is to monitor and review laws, policies and practices impacting on services provided to children and young people and on the safety and wellbeing of vulnerable children and young people; administer a state-wide Community Visitor Program for children and young people in alternative care—including foster care; receive and investigate complaints; maintain the Child Death Register; administer the Child Death Case Review Committee; administer the working with children check screening program; educate the community to comply with the commission's Act; conduct research; and promote laws, policies and practices that uphold the rights, interests and wellbeing of children and young people, particularly those at risk.
SA	The guardian's role is to advocate for the best interests of children and young people under the guardianship, or custody, of the Minister; provide independent monitoring of the circumstances of children and young people in out-of-home care; monitor the quality of out-of-home care; investigate and report to the Minister on matters referred to the guardian; and advise the Minister on whether the needs of children in care and guardianship are being met. The Council for the Care of Children's role is to promote and advocate the rights and interest of all children in South Australia; report to the South Australian Government on how children are faring; and inform the South Australian community about the best care and support for children.
Tas.	The commissioner's role is to ensure that legislation, policy and practices that affect the health, welfare, care, protection and development of all children operate in the best interests of the child; identify and act on issues affecting children and young people; conduct research on issues related to children; consult with Ministers, government agencies and non-government organisations and the community; and seek the views of children about issues affecting them.
Vic.	The commissioner's role is to promote child-safe environments; monitor Victoria's out-of-home care system; conduct inquiries into the deaths of children known to the child protection service system, and into other matters referred by the Minister for Children; and administration of the Working With Children Act 2005 including educating and informing the community about the Act.
WA	The commissioner's role is to advocate on behalf of children and young people; promote strategies and outcomes that enhance their wellbeing; monitor, and inquire into, children's wellbeing in the community; monitor government agency investigations of complaints made by children and young people; promote children's participation in decision making; promote community awareness about the wellbeing of children and young people; and consider and make recommendations on laws, policies, programs and services affecting children and young people.

⁶⁷⁷ Sourced from: Australian Institute of Family Studies, Child Family community Australia, *Children's Commissioners and Guardians Resource Sheet*, 2011. Available at: <http://www.aifs.gov.au/nch/pubs/sheets/rs15/index.html>. Accessed on 31 August 2012.

Appendix Three

The Commissioner's Report against the Functions of the *Commissioner for Children and Young People Act 2006*

Commissioner for Children and Young People Report against the Functions of the *Commissioner for Children and Young People Act 2006*

Function	Initiatives
Section 19 (a) <i>To advocate for children and young people</i>	<p>Broadly all of the work of my office fulfils this function</p> <ul style="list-style-type: none"> • Wellbeing Monitoring Framework • Inquiry into the mental health and wellbeing of children and young people • Participation and consultation work • Meet regularly with ministers, directors general and non-government sector • Bringing expert speakers to Perth to focus attention on particular issues • Over 480 representations made in five years
Section 19(b) <i>To promote the participation of children and young people in the making of decisions that affect their lives and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their age and maturity</i>	<ul style="list-style-type: none"> • Produced, promoted the Participation Guidelines and provided training to agencies • Published case studies showcasing promising examples of participation • Wellbeing research • Reducing alcohol related harm consultation with young people • Inquiry – consultation with eight different groups of vulnerable or disadvantaged young people • Presentation by young people at the sector forum on the findings of the consultation on reducing alcohol related harm • Commissioner for a day 2010, 2011 and 2012 • Advisory Committees 2010, 2011 and 2012 • i-build - built environment consultation with Curtin University architecture students • Regional visits • Conducted 121 consultations with children and young people
Section 19(c) <i>To promote and monitor the</i>	<ul style="list-style-type: none"> • Wellbeing Monitoring Framework • Wellbeing research

<i>wellbeing of children and young people generally</i>	<ul style="list-style-type: none"> • Regular meetings Telethon Institute for Child Health Research • Ongoing review and monitoring of research • Attendance at seminars and research events • Liaison and participation in ARACY seminars • Evidence to parliamentary inquiries • Submissions on a range of topics - 187 submissions over the five years
<p>Section 19(d)</p> <p><i>To monitor the way in which a government agency investigates or otherwise deals with a complaint made by a child or young person and the outcome of the complaint</i></p>	<ul style="list-style-type: none"> • Produced and promoted the Complaints Guidelines in conjunction with the Equal Opportunity Commission and the Office of Health Review and with contributions from the WA Ombudsman • Conducted training on making complaints systems accessible to children and young people • Surveyed agencies working with children and young people regarding the responsiveness and accessibility of their complaints systems • Collaborated with the Ombudsman on research regarding complaints systems for children and young people • Regular meetings with the Ombudsman and staff of his office • Regular briefings on the Ombudsman's child deaths review function • Regular briefings from the Ombudsman and Auditor General on tabled reports • MOU with Ombudsman and Department of Child Protection
<p>Section 19(e)</p> <p><i>To monitor the trends in complaints made by children and young people to government agencies</i></p>	<ul style="list-style-type: none"> • Produced and promoted the Complaints Guidelines in conjunction with the Equal Opportunity Commission and the Office of Health Review • Conducted training on making complaints systems accessible to children and young people • Regular meetings with the Ombudsman and staff of his office • Regular briefings on the Ombudsman's child deaths review function • MOU with Ombudsman and Department of Child Protection • In addition my office records and monitors all complaints we receive regarding other agencies in this way I can monitor systemic issues and trends in complaints

<p>Section 19 (f) To initiate and conduct inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people</p>	<ul style="list-style-type: none"> • Inquiry into the mental health and wellbeing of children and young people
<p>Section 19(g) To monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people</p>	<p>My office has worked on many policy areas over the past five years and the approach has included the same strategies: extensive research, establishing the views of children and young people (if appropriate), discussions with stakeholders, exploring options and evidence – often reviewing national and international comparisons, and representing the policy position to key decision makers through formal submissions, correspondence and meetings.</p> <ul style="list-style-type: none"> • Early years • Youth justice • Child protection • Middle years • Sexualisation of children • Reducing alcohol related harm • Built environment • Creativity, arts and culture <p>Representations</p> <ul style="list-style-type: none"> • Prepared 187 submissions • Commented on 34 pieces of legislation • Made over 480 representations
<p>Section 19(h) To promote public awareness and understanding of matters relating to the wellbeing of</p>	<p>I have undertaken a series of events to fulfil this function. These events have been well received and have provided opportunities for interesting and creative partnerships.</p> <ul style="list-style-type: none"> • Thinker in residence 2011 and 2012 • Lifetime Achievement Award

<i>children and young people</i>	<ul style="list-style-type: none"> • Middle years forum • Early years seminar with Dr Clyde Hertzmann • Engaging with young people in the prevention of alcohol related harm (with McCusker Centre for Action on Alcohol and Youth). • Professor Michael Chandler seminar (with Mental Health Commission, TICHR and UWA) • Children's week Forums • Seminars on Commissioner for Children and Young People Guidelines • Speeches to conferences and seminars
<p>Section 19(l) To conduct, coordinate, sponsor, participate in and promote research into matters relating to the wellbeing of children and young people</p>	<ul style="list-style-type: none"> • Wellbeing research • Contracted the Australian Institute of Family studies to research and write <i>Building Blocks: Best practice programs that improve the wellbeing of children and young people</i> • Alcohol consumption by young people monitoring project – Joint project with National Drug Research Institute (NDRI) and the National Drug and Alcohol Research Centre (NDARC) – funding application to Australian National Preventative Health Agency (ANPHA) – successful • Supported the Child development and parental alcohol and drug use – Joint project with NDRI /NDARC/KEMH/ Westmead Hospital (NSW) – funding application to National Health and Medical Research Council (NHMRC) – pending
<p>Section 19(j) To conduct special inquiries under Part 5</p>	<ul style="list-style-type: none"> • No action
<p>Section 19(k) On the Commissioner's own initiative or at the request of the Minister or the Standing</p>	<p>I have provided the Minister with copies of reports as per Part 6 of the Act, in addition I have provided the Minister with copies of research when relevant and specifically advised the Minister on a number of issues including the following:</p> <ul style="list-style-type: none"> • Review of the <i>Commissioner for Children and Young People Act 2006</i> – 7 March 2012

<p><i>Committee, to advise the Minister on any matter relating to the wellbeing of children and young people</i></p>	<p>and 15 August 2012</p> <ul style="list-style-type: none"> • Letter – Prohibition on publication of names of children in criminal proceedings – 15 July 2010 • Submission - Prohibited Behaviour Orders Bill 2009 – 5 February 2010 • Letter - Youth justice services in the Kimberley –29 October 2009 • Establishment of the Joint Standing Committee on the Commissioner for Children and Young People – 19 May 2008 • Working with children checks – 23 May 2008 • Classification issues and R 18+ computer games - 12 July and 19 September 2011
<p><i>Section 19 (l) To consider and make recommendations in relation to any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Standing Committee</i></p>	<ul style="list-style-type: none"> • Provision of advice to the Joint Standing Committee on the Commissioner for Children and Young People on Australian government consultation on an R18+ classification for computer games - 4 June 2010 • Provision of advice to the Joint Standing Committee on the Commissioner for Children and Young People on the Child exploitation material and classification legislation amendment Bill 2009 - 29 July 2009 • Provision of advice to the Minister on response to the Human Rights Commission report titled - <i>Sex Files: the legal recognition of sex in documents and government records</i> - 3 November 2009
<p><i>Section 19(n) To consult with children and young people from a broad range of socio economic backgrounds and age groups throughout Western Australia each year</i></p>	<ul style="list-style-type: none"> • I have consulted with 4089 children and young people over the five years • Wellbeing research - 1000 children and young people • Developed and promoted the Complaints Guidelines • Reducing alcohol related harm consultation with young people • Inquiry – consultation with eight different groups of vulnerable or disadvantaged young people • Commissioner for a day consultations with children • i-build - built environment consultation with children and Curtin University architecture students

	<ul style="list-style-type: none"> • Visits to schools, services and regional centres • Youth friendly website • Advisory Committees
Section 20 <i>Give priority to, and have special regard to, the interests and needs of Aboriginal children and young people</i>	<p>The disadvantage that Aboriginal children and young people continue to face is of great concern and has been a primary focus for me.</p> <p>The views and needs of Aboriginal children and young people, permeates all of the work of my office. Through this work, and through inquiries into matters affecting the wellbeing of young people generally, I have acted to promote awareness and understanding in the community about the wellbeing of Aboriginal children and young people.</p> <p>My priority areas of early years, youth justice, mental health and reducing alcohol-related harm are particularly relevant to improving outcomes for Aboriginal children and young people. I have also maintained a strong focus on developing and building relationships with Aboriginal communities and non-government agencies responsible for services to these communities. Wherever possible I have consulted with Aboriginal children and young people on matters affecting them and I have disseminated these views widely through publications and other representations.</p>
Section 42 (1)(2) Annual reports	I have tabled five Annual Reports in the Parliament, a draft of each report was provided to the Minister prior to tabling (section 28)
Part 6 Section 44 Reports on other matters <i>The Commissioner may from time to time prepare a report on</i> <i>(a) Any inquiry, review or research conducted in the performance of the</i>	<p>Under Part 6 of the Act I have tabled three reports in the Parliament, all three reports were first provided to relevant government departments for comment and feedback (section 47) and then a draft of the report was provided to the minister (section 28):</p> <ul style="list-style-type: none"> • Report of the Inquiry into the mental health and wellbeing of children and young people • Building Blocks: Best practice programs that improve the wellbeing of children and young people

<p><i>commissioner's functions: or</i></p> <p><i>(b) Any other matter arising in the performance of those functions.</i></p>	<ul style="list-style-type: none"> • The State of Western Australia's Children and Young People – Edition One
<p>Section 52 (Part 8)</p> <p><i>The Commissioner may establish advisory committees and reference groups to assist in the performance of the Commissioner's functions</i></p>	<p>I have established advisory committees or expert reference groups for a number of my major projects</p> <ul style="list-style-type: none"> • Wellbeing research project • Inquiry into the mental health and wellbeing of children and young people • Wellbeing Monitoring Framework • Dr Clyde Hertzman seminar • Thinker in residence 2011 and 2012 projects • External representation on all recruitment panels
<p>Section 52 (2)</p> <p><i>The Commissioner must establish advisory committees consisting of children and young people, who the Commissioner considers are from a broad range of socio-economic and cultural backgrounds and age groups, to assist in the performance of the commissioner's functions. These committees should be established in regional areas as well as the metropolitan area</i></p>	<p>Advisory Committees are just one of the ways that my office consults with children and young people.</p> <p>2011 and 2012</p> <ul style="list-style-type: none"> • Metropolitan - the Metropolitan Migrant Resource Centre (MMRC) in Mirrabooka. • Regional - the Wheatbelt Youth Leadership Development (WYLD) Team <p>2010</p> <ul style="list-style-type: none"> • Beekenhams Primary School Student Representative Council (metropolitan) • Geraldton's Indigenous Youth Council (regional).

12/7/195

Appendix Four

Submissions Received

Submission Number and date	Name	Position	Organisation
1 2 Oct 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
2 2 Oct 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
3 15 Oct 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
4 29 Oct 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
5 2 Nov 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
6 2 Nov 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
7 7 Nov 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People

Appendix Five

Hearings

Date	Name	Position	Organisation
18 Mar 2009	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Amy Tait	Principal Policy Officer	Commissioner for Children and Young People
14 Oct 2009	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Robin Ho	Manager, Policy, Legal and Research	Commissioner for Children and Young People
10 Mar 2010	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Robin Ho	Manager, Policy, Legal and Research	Commissioner for Children and Young People
23 June 2010	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People
13 Oct 2010	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People
16 Mar 2011	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People
10 Aug 2011	Ms Jenni Perkins	Director General	Department for Communities
	Ms Margaret Dawkins	Executive Director, Policy and Planning	Department for Communities

Date	Name	Position	Organisation
10 Aug 2011	Mr Craig Comrie	Executive Officer	Youth Affairs Council of WA
	Mr Brian Wooller	Chairman	Youth Affairs Council of WA
17 Aug 2011	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People
28 Sept 2011	Mr Chris Field	Ombudsman	Ombudsman Western Australia
	Ms Gwyneth While	Principal Assistant Ombudsman	Ombudsman Western Australia
19 Oct 2011	Mr Terry Murphy	Director General	Department for Child Protection
9 Nov 2011	Mrs Shar Double	State Coordinator	Create Foundation WA
	Ms Josephine McRandal	Community Facilitator	Create Foundation WA
23 Nov 2011	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People
20 June 2011	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People
19 Sept 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People
21 Sept 2012	Dr Caroline Goossens	Prior Chair of Faculty of Child Psychiatry(WA), Royal Australian and New Zealand College of Psychiatry	Mental Health Inquiry Expert Reference Group Member

Date	Name	Position	Organisation
21 Sept 2012	Prof Helen Milroy	Director, Centre for Aboriginal Medical and Dental Health, University of Western Australia	Mental Health Inquiry Expert Reference Group Member
21 Sept 2012	Ms Tricia Murray	Chief Executive Officer, Wanslea Family Services	Mental Health Inquiry Expert Reference Group Member
21 Sept 2012	Prof Stephen Zubrick	Psychologist, University of Western Australia	Mental Health Inquiry Expert Reference Group Member
21 Sept 2012	Mr Aram Hosie	Director, Research and Public Affairs, Inspire Foundation	Mental Health Inquiry Expert Reference Group Member
26 Sept 2012	Mr Edward Bartnik	Mental Health Commissioner	Mental Health Inquiry Expert Reference Group Member
26 Sept 2012	Mr Julian Gardner	Independent Reviewer	
17 Oct 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People
5 Nov 2012	Ms Michelle Scott	Commissioner for Children and Young People	Commissioner for Children and Young People
	Ms Caron Irwin	Executive Director	Commissioner for Children and Young People

Note: At the time of publication this report quotes from uncorrected transcripts of evidence for hearings on the 17 October 2012 and 5 November, which at that time had yet to be finalised.

Appendix Six

Glossary

ABS	Australian Bureau of Statistics
AEDI	Australian Early Development Index
ARACY	Australian Research Alliance for Children and Youth
the CCYP Act	Commissioner for Children and Young People Act 2006 (WA)
the Commissioner	Commissioner for Children and Young People, Western Australia
DCS	Department of Corrective Services
HWSS	Western Australian Health and Wellbeing Surveillance System
KPI	Key Performance Indicator
NAPLAN	National Assessment Program - Literacy and Numeracy
NATSILS	National Aboriginal and Torres Strait Islander Legal Service
the Office	Office of the Commissioner for Children and Young People
OSRG	Outcome Structure Review Group

Minority Report

Report on the Review of the Exercise of the Functions of the Commissioner for
Children and Young People
(the Committee's Report)

Hon Linda Savage MLC

*This report has been prepared by the Hon Linda Savage MLC as a Member of the
Joint Standing Committee on the Commissioner for Children and Young People.*

Introduction

My Minority Report principally concerns issues raised in the Committee's Report about the Commissioner for Children and Young People's (the Commissioner) Report of the Inquiry into the mental health and wellbeing of children and young people in WA (the MHI Report) tabled in the Western Australian Parliament in May 2011. The MHI Report was ground breaking, being the first of its kind in Australia. It was well received. Evidence provided to the Committee from the Commissioner included correspondence received by her following the tabling of the MHI Report. It included letters from:

The Minister for Mental Health, the Hon Helen Morton who wrote on 13 July 2011:

'I congratulate you and your staff on the quality of the report with important recommendations to improve mental health and wellbeing of the children and young people of Western Australia.'

The Minister for Energy, the Hon Peter Collier who wrote on 1 June 2011:

'The report will make a significant contribution to the State Government's efforts in addressing the mental health needs of children and young people and I commend you and your staff for the work you have undertaken in this important.'

The then Minister for Education the Hon Elizabeth Constable who wrote on 27 May 2011:

'I congratulate you and your team on your achievement in successfully undertaking the Inquiry and producing such a comprehensive report.'

The Director General of the Disability Services Commission who wrote on 27 May 2011:

'The report provides a welcome review of the current situation for children and young people in Western Australia and sets comprehensive directions to improve service delivery'.

I have inserted paragraphs in bold from the Committee's Report that are relevant to my comments.

Chapter 6 – Inquiries and Research

Mental Health Inquiry Terms of Reference

While some concerns the Committee had in relation to the breadth of the terms of reference were allayed by the comments from the Expert Reference Group members, one consequence of the broad terms of reference for the Mental Health Inquiry is that they resulted in a report that is broad in nature and included broad recommendations. This, in turn, appears to have resulted in a government response to the Commissioner's recommendations that was also quite broad and high-level.

I do not agree with this statement.

The Commissioner provided the Committee with a copy of a letter sent to all members of the Expert Reference Group (ERG) which included the draft terms of reference and asked for their comments. The Committee asked members of the ERG about their recollections about their input into the terms of reference. They were not provided with notice of the questions about this, and were asked to recall events from over 2 years ago. Their recollections varied. The ERG did not have a copy of the letter to refresh their memory when giving evidence. The ERG expressed their overall satisfaction with the terms of reference.

The above statement indicates that there are remaining concerns. I am not aware of those remaining concerns. I have no concerns about the breadth of the terms of reference.

I do not agree that there is a causal link, as suggested by the statement, between 'the broad terms of reference' and the government's response to the Inquiry's recommendations, or that the 'quite broad and high level' government response can be attributed to the Inquiry's terms of reference or recommendations. In any event, the MHI Report includes at least 18 specific recommendations.

I am also concerned that the impression may be given that some members of the ERG failed to contribute, or understand what they were being asked to do in relation to the terms of reference. That is not my view.

The Role of the Independent Reviewer

Finding 11

That the title of the role ‘Independent Reviewer’ for the Mental Health Inquiry was misleading and, given, the wide audience intended for the report, needed to be more clearly explained in the report.

I do not agree with this finding in so far as it describes the title as misleading.

A copy of the procurement document (Request for Quote) was provided to the Committee. The Title of the Request for Quote is for a ‘Reviewer’ (pages 1 and 9), and Schedule 2 on page 14 confirms the proposal to engage an ‘independent reviewer’. The Statement of Requirements on page 14 confirms the review and independence functions (being independent from existing service providers/experts in the field in WA) of the person to be engaged. Similarly, Schedule 3 (pages 16 and 17) refers to a number of tasks the person will undertake, which include the review of draft terms of reference, review of draft of background report, review of submissions, review of data collected and review of draft report.

The opinions of members of the ERG in regard to the title and role of the Independent Reviewer were sought. In my opinion they attempted to provide considered responses although it appeared to me that none had previously turned their mind to the issue of the title. At no time were the witnesses, including the members of the ERG, the Commissioner or the Independent Reviewer asked whether they considered the title to be misleading.

Whilst it is correct to say that the title could be open to a range of interpretations I do not agree that it leads to a finding that the title was misleading. There is no evidence that I am aware of that any one has been misled because of the title.

This section of the Committee’s Report also states:

The question arises as to how a person so intimately involved with the inquiry process could also be an independent reviewer of the process, as the title suggests.

I did not and do not have any concerns of this nature. There is no evidence that the Independent Reviewer did not conduct the Inquiry appropriately.

Finding 12

The statement that the Mental Health Inquiry Report provides ‘a “road map” for the broad community, governments and the non – government sector to guide action immediately and over the next decade’ is an overly ambitious claim.

I do not agree with this finding.

The MHI Report says at page 3 in the Commissioner’s Foreword that:

‘It is intended to be a ‘road map’ for the broad community, governments and the non- government sector to guide action immediately and over the next decade.’

The word ‘road map’ is again used at page 14 in the Executive Summary:

‘This report has taken the first steps in the process and is intended as a ‘road map’ for short term, medium and long term action. It is hoped it will inform a statewide plan, assisting to guide priorities for children and young people’s mental health over the next 10 years.’

When the Committee raised this issue no definition of a ‘road map’ was provided or agreed upon. When asked if the MHI Report provided a road map, some witnesses agreed it did and others did not. In my opinion this reflected the fact that the term ‘road map’ means different things to different people.

A ‘road map’, like its literal definition, shows where you are, where you want to arrive, and ways to get there. It can show different routes, where there are choices and where there are not. I do not think the use of the term is overly ambitious. In addition I see no value in taking issue with or making a finding about the use of this term in consideration of the MHI Report.

This section of the Committee’s Report also states that:

There was also concern amongst the Committee Members in relation to the strength of the evidence base of the report, particularly in an evidence based report intended to be read by a wide audience. The Committee’s concern was, in large part, due to the general nature of some of the statements in the report and the limited referencing in some areas.

...

Improved referencing would have been of benefit to many of these people who may not have a detailed knowledge of the literature, just as it would have been to the Committee in its reading of the report.

I do not share the Committee's concern about the evidence base, the general nature of any statements or limited referencing in some areas.

The seven examples provided are in my opinion either non-contentious and/or adequately referenced. In some cases other references throughout the MHI Report supports those references. In regard to the Wraparound Milwaukee and the People with Exceptionally Complex Needs model which the MHI Report suggests should be considered in the context of a collaborative service to address the needs of children and young people, the website is an appropriate starting point for the reader if this suggestion is taken up.

The examples provided to illustrate that the 'evidence base' of the MHI Report is 'insufficiently referenced' must be viewed in the context of the total number of references that included 849 footnotes and 229 references (see Appendix 8 – MHI Report).

The Expert Reference Group gave evidence that the report was based on the best research available leading the Committee's Report to note that:

Nevertheless, members of the Expert Reference Group did not hesitate to agree with the statement that the report reflected the best national and international research as accepted by experts in the field of mental health of children and young people.

Whilst some members of the Expert Reference Group, when questioned, indicated there was always room for some improvement, and there could have been more references, no-one stated there should have been more references. There has to be a balance between the number of references provided in a report and the length of the report.

In my view the MHI Report is adequately referenced, is based on the best available evidence and could be described as a 'road map'. I do not have concerns with the terms of reference, research methodology, project management and processes, strength of the evidence base, any conflict of interest or the evaluation procedure.

Chapter 7 – Investigating and Dealing with Matters relating to a Particular Child or Young Person

Finding 15

The Commissioner currently has the power to investigate individual cases and circumstances where the Commissioner considers it may reveal systemic failure.

I do not believe that ss 23(1) and 23(2) (c) of the *Commissioner for Children and Young People Act 2006* (the Act) give the Commissioner the power to investigate individual cases in the sense that the WA Police or the Department for Child Protection are empowered to do so. In this context I do not concur with this Finding. If it is intended for the Commissioner to have comparable investigatory powers I agree with Recommendation 15 that the Act would require amendment.

Chapter 10 – Reporting

Finding 20

The Commissioner has not provided to the Minister a draft of each of her reports as required under section 48(1) of the *Commissioner for Children and Young People Act 2006*.

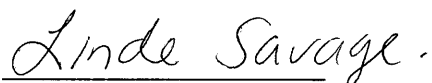
I do not agree with Finding 20. The Commissioner's evidence was that she obtained legal advice on the meaning of 'report'. Based on this advice the Commissioner indicated she had not provided a copy of all reports to the Minister.

What constitutes a 'report' for the purposes of section 44 of the Act is I believe open to interpretation. A definitive definition of 'report' for the purpose of section 44 should be obtained before a finding of non-compliance with the Act is made.

Finding 21

The Commissioner for Children and Young People has not tabled all of her reports in Parliament as required under section 49 of the *Commissioner for Children and Young People Act 2006*.

My comments in regard to Finding 20 apply similarly to Finding 21.



Hon Linda Savage MLC
Date: 14 November 2012