



***JOINT STANDING COMMITTEE ON
THE COMMISSIONER FOR CHILDREN
AND YOUNG PEOPLE***

**FUNCTIONS AND POWERS OF THE
JOINT STANDING COMMITTEE ON THE
COMMISSIONER FOR CHILDREN AND
YOUNG PEOPLE**

**Report No. 5
in the 38th Parliament**

2010

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Joint Standing Committee on the Commissioner for Children and Young People

Functions and Powers of the Joint Standing Committee on the Commissioner for Children and Young People

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Report No. 5

Presented by:

Ms A.R. Mitchell, MLA and Hon H.H. Bullock, MLC

Laid on the Table of the Legislative Assembly and Legislative Council
on 25 November 2010

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COMMITTEE'S FUNCTIONS AND POWERS

On 26 June 2008, the Joint Standing Committee on the Commissioner for Children and Young People ('the Committee') was established pursuant to Section 51 of the *Commissioner for Children and Young People Act 2006* ('the Act'). The Committee was re-formed in the 38th Parliament on 26 November 2008. In accordance with the Act, the Committee's functions and powers were agreed to between the Houses.

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.

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.

The Joint Standing Committee comprises two members of the Legislative Assembly and two members of the Legislative Council.

CHAIRMAN'S FOREWORD

Since re-establishment in the 38th Parliament, this Committee has undertaken regular monitoring and review of the exercise of the functions of the Children's Commissioner. Given that the Committee's terms of reference have not changed since its initial establishment at the end of the 37th Parliament and the Committee has now been operating for two years, it is timely for the functions and powers of the Committee to be reviewed.

The need for Parliamentary oversight of the Children's Commissioner to help preserve that position's independence underpinned the establishment of the Committee. There is no doubt that first and foremost the Committee should retain its oversight focus, however scope also exists for expanding the Committee's terms of reference to incorporate some investigatory powers.

It would not be appropriate for the Committee to inquire into any matter relating to children and young people as this would duplicate the functions of the Commissioner. Given that other committees of the WA Parliament and investigatory bodies such as the Auditor General also have the capacity to undertake investigations relevant to children and young people, a broad inquiry function in this regard would create significant overlap.

Based on the functions and powers of oversight committees which conduct inquiries in specific circumstances, this Committee could similarly add value to, rather than duplicate the work of, the Commissioner. A new power to examine trends and changes in services affecting children and young people in the context of reviewing the scope of the Commissioner's functions would enable the Committee to ensure the Commissioner's role remains relevant over time, and represents a logical extension of the Committee's existing monitoring and review activities.

I thank the other Members of the Committee for their input in relation to this important matter: the Deputy Chairman, Mr Martin Whitely, MLA (Member for Bassendean); Hon Helen Bullock, MLC (Member for Mining and Pastoral) and Hon Nick Goiran, MLC (Member for South Metropolitan). I also acknowledge the assistance provided by Ms Dawn Dickinson (Principal Research Officer) and Ms Renée Gould (Research Officer).



MS A.R. MITCHELL, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

“CDJSC”	Community Development and Justice Standing Committee
“EHSC”	Education and Health Standing Committee
“NSW”	New South Wales
“OAG”	Office of the Auditor General
“the Act”	<i>Commissioner for Children and Young People Act 2006</i>
“the Commissioner”	Commissioner for Children and Young People
“the Committee”	Joint Standing Committee on the Commissioner for Children and Young People
“WA”	Western Australia

EXECUTIVE SUMMARY

The Joint Standing Committee on the Commissioner for Children and Young People ('the Committee') is tasked with overseeing the exercise of the functions of the Children's Commissioner. Although established under Section 51 of the *Commissioner for Children and Young People Act 2006*, the functions and powers of the Committee are determined by agreement between the Houses. The Committee was established in the final weeks of the 37th Parliament and when it was re-formed in the 38th Parliament in November 2008, the functions and powers agreed to in the previous Parliament were carried over without review. In light of the time that has elapsed since the Committee commenced operations, this report reviews the Committee's functions and powers and evaluates the scope for its role to be expanded.

In the 38th Parliament the Committee's core functions have included: a yearly review of the Annual Report of the Commissioner for Children and Young People; quarterly hearings to review the exercise of the Commissioner's functions; annual consideration of the Commissioner's budget and recommendation to the Treasurer in this regard; and referral of draft laws and policies to the Commissioner for comment. The Committee will likely increase its monitoring activities as the Commissioner's role is further consolidated over time and in this regard anticipates, for example, reporting on the outcomes of the Commissioner's mental health inquiry in the coming financial year. Sufficient latitude also exists within the Committee's terms of reference to accommodate the current examination into the appropriateness of the Commissioner's functions. However, the Committee's existing functions and powers preclude inquiries and clearly limit examination and reporting to the exercise of the Commissioner's functions.

Parliamentary committees in New South Wales and Queensland that are similarly tasked with overseeing the functions of a Children's Commissioner also have the ability to inquire and report to Parliament on matters relating more broadly to the wellbeing of children and young people. However, the report examines the functions of other investigatory bodies in Western Australia and finds that in order to avoid duplication the Committee should not have a broad inquiry function.

The Commissioner already has extensive inquiry powers under the Act and may initiate and conduct inquiries into any matter affecting the wellbeing of children and young people. Significant powers are also provided in relation to special inquiries which allow the Commissioner to compel the attendance and production of documents by any person. Some standing committees of the Legislative Assembly have conducted inquiries relevant to children and young people in the 38th Parliament and portfolio responsibilities mean that these committees have the capacity to undertake further inquiries in this regard. From time to time, Legislative Council committees have also conducted inquiries with a dedicated focus on children and young people. Further, other investigatory bodies such as the Auditor General and the Ombudsman have the capacity to undertake investigations into matters affecting children and young people as part of the overall remit of their functions.

Although the report finds that a broad inquiry function is not warranted, the Committee's functions and powers would be enhanced by incorporating a limited investigative function to complement its existing role. The report examines the functions and powers of other

parliamentary committees of oversight, including the WA Joint Standing Committee on the Corruption and Crime Commission, which have clearly defined inquiry functions and are able to add value to, rather than duplicate the work of, the bodies they oversee. A number of oversight committees examine trends and changes in services to ensure that the functions of the authorities they oversee remain relevant over time. The report finds that the Committee would benefit from a similar term of reference and recommends that the terms of reference should be amended to enable the Committee to examine trends and changes in services affecting children and young people in the context of reviewing the scope of the role of the Commissioner. Given that the primary intent underpinning the Committee's establishment was for it to monitor and review the performance and functions of the Commissioner, this would be in keeping with the Committee's existing monitoring role and represents an appropriate extension of functions and powers.

Any expansion of the Committee's powers cannot occur without due consideration being given to the resourcing of the Committee. In this respect, the report identifies that an expanded role will require dedicated staffing by a Principal Research Officer and assistance from a Research Officer. To take advantage of this re-examination of the Committee's terms of reference, the report also recommends that the functions and powers of the Committee be incorporated into the Standing Orders of the Legislative Assembly, effectively establishing the Committee at the commencement of every Parliament.

FINDINGS

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Finding 1

The Joint Standing Committee on the Commissioner for Children and Young People should not have a broad inquiry function into matters affecting children and young people in Western Australia however scope exists for a limited investigative function to complement its existing role.

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Finding 2

An explicit term of reference enabling the Joint Standing Committee on the Commissioner for Children and Young People to examine trends and changes in services affecting children and young people in the context of reviewing the scope of the role of the Children's Commissioner represents an appropriate extension of the Committee's functions and powers.

RECOMMENDATIONS

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Recommendation 1

That the terms of reference of the Joint Standing Committee on the Commissioner for Children and Young People be amended to read as follows:

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;*
- iii. to consult regularly with the Commissioner; and*
- iv. to examine trends and changes in services affecting children and young people in the context of reviewing the scope of the role of the Commissioner.*

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Recommendation 2

That the functions and powers of the Joint Standing Committee on the Commissioner for Children and Young People be incorporated into the Standing Orders of the Legislative Assembly.

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 reports to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

CHAPTER 1 INTRODUCTION

1.1 Background

Section 51 of the *Commissioner for Children and Young People Act 2006* ('the Act') requires Parliament to establish a Joint Standing Committee with the functions and powers of the Standing Committee to be 'determined by agreement between the Houses'. The Joint Standing Committee on the Commissioner for Children and Young People ('the Committee') was established in the 37th Parliament on 26 June 2008 and re-formed in the 38th Parliament on 26 November 2008.

The functions and powers of the Committee (as detailed on page v) were agreed between the Houses of the 37th Parliament and were not amended when the Committee was re-formed in the 38th Parliament. At establishment, the Houses agreed that the Standing Orders of the Legislative Assembly relating to Standing and Select Committees would be followed and that the Committee would be administered and funded by the Legislative Assembly. This arrangement has continued into the 38th Parliament.

1.2 Reason for examining functions and powers

It is clear from the parliamentary debate that the primary intent behind the Committee's establishment was for it to monitor and review the performance and functions, and ensure the independence of the Commissioner for Children and Young People.¹ Another major theme raised during debate involved the extent of the Committee's role. The original motion to establish the Committee suggested a broad suite of functions including the ability for the Committee (as well as exercising its monitoring role) to review and report to Parliament on other agencies and initiate or suggest inquiries in relation to matters to do with children in Western Australia.²

The establishment motion was ultimately amended and passed reflecting the functions and powers of the Committee in its current form. The main arguments put forward at the time for restricting the Committee's role to one of strictly monitoring revolved around avoiding duplication of: the Commissioner's legislated investigative functions; issues that existing parliamentary committees may deal with; and issues which other investigative bodies like the Ombudsman may deal with.³

The Committee of the 37th Parliament had only been established a few weeks when the Legislative Assembly was dissolved and the Legislative Council was prorogued in August 2008.⁴ The Committee's functions and powers were not assessed when the Committee was re-formed at the

¹ Hon. Barbara Scott, MLC, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 4 June 2008, pp3435-3436.

² *Ibid.*, pp3432-3436.

³ Hon. Sue Ellery, MLC, Minister for Child Protection, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 4 June 2008, pp3438-3439.

⁴ Joint Standing Committee on the Commissioner for Children and Young People, *Annual Report 2008-2009*, Parliament of Western Australia, Perth, September 2009, p1.

commencement of the 38th Parliament. An opportunity now exists for this to occur given that the Committee has been in operation for two years and can provide informed comment in this regard. The purpose of this report is to review and refine the Committee's functions and powers in light of the time that has elapsed since the Committee was established. This report presents an overview of the Committee's activities and evaluates the scope for the Committee's role to be expanded.

CHAPTER 2 FUNCTIONS AND POWERS OF THE JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

2.1 Committee's current functions and powers

The Committee has a number of functions defined in the Act in addition to those defined in its terms of reference, in particular:

- The Standing Committee may request the Commissioner to advise the Minister on 'any matter relating to the wellbeing of children and young people' (Section 19(k));
- The Standing Committee may refer 'any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people' to the Commissioner for consideration and for the Commissioner to make recommendations (Section 19(l));
- 'If a government agency, or an employee or officer of a government agency, answers a question or produces a document which is claimed to be subject to legal professional privilege the Commissioner may not include the answer or document or the substance of the answer or document, in any report to Parliament but may report the answer or document confidentially to the Committee' (Section 36(3));
- Further to the above, if the Commissioner reports an answer or document confidentially to the Standing Committee, it must consider in private session whether the information should be reported to Parliament (Section 36(4)); and
- The Standing Committee may make recommendations to the Treasurer in relation to the budget for the Commissioner for a financial year (Section 57).

The Committee's activities are detailed in its latest Annual Report⁵ however the core activities which the Committee has conducted on a regular basis since establishment (reflecting both its terms of reference and legislated functions) can be summarised as follows:

- Comprehensive yearly review of the Commissioner's Annual Report comprising at least one public hearing with the Commissioner and a report to Parliament;
- Quarterly hearings with the Commissioner to review the exercise of the Commissioner's functions;
- Annual briefing to discuss the Commissioner's proposed budget and written recommendation to the Treasurer in this regard;
- Referral of draft laws and policies to the Commissioner for comment.

⁵ Joint Standing Committee on the Commissioner for Children and Young People, *Annual Report 2009-2010*, Parliament of Western Australia, Perth, September 2010, pp1-9.

The Commissioner has grown her role within the extensive functions provided in the Act since her appointment in late 2007. This has likewise been reflected in the development of the Committee's activities since its establishment. For example, in addition to reporting to Parliament on the Commissioner's Annual Report it is anticipated that in the coming financial year the Committee will also report on the outcomes of the Commissioner's mental health inquiry and the Committee's own study into the Commissioner's functions. The latter will involve a more detailed look at the Commissioner's legislated functions in the context of their appropriateness.⁶

2.2 Scope for expansion of functions and powers

The Committee's existing functions and powers provide means to investigate and report to the Parliament on various issues. The Committee believes it has sufficient latitude within its functions to enable it to undertake examinations such as its current study into the appropriateness of the Commissioner's functions. That said, compared to the scope of the Commissioner's functions the Committee has a comparatively narrow function.

Although scope exists for the Committee to refer matters relating to the wellbeing of children and young people to the Commissioner, the Committee's existing functions and powers preclude it from inquiring into such matters itself as its terms of reference clearly limit examination and reporting to the exercise of the Commissioner's functions. The question of whether the Committee's powers should include a broader inquiry function is discussed below in the context of similar committees in other Australian jurisdictions and the powers and functions of other investigatory bodies in Western Australia.

(a) Committee inquiry powers in other jurisdictions

All jurisdictions in Australia (with the exception of the Commonwealth) have a Children's Commissioner and/or Child Guardian.⁷ Only two other states have parliamentary committees which oversee the exercise of functions of Children's Commissioners, specifically New South Wales (NSW) and Queensland. The NSW Joint Committee on Children and Young People and the Queensland Social Development Committee share a number of functions in common with the Western Australian Committee including monitoring and reviewing the exercise of the Commissioner's functions, and examining and reporting to Parliament on annual and other reports of the Commissioner, but also have powers to report to Parliament on matters that relate more broadly to the wellbeing of children and young people. The complete functions and powers of both committees are reproduced at Appendix One.

While the primary responsibility of the NSW Committee is to monitor and review the work of that state's Commissioner, the Committee has 'a broader responsibility to examine trends and changes in services and issues affecting children and young people, and to make recommendations as to the need for changes to the functions and procedures of the Commission for Children and Young

⁶ Ibid., pp5-6.

⁷ Australian Government, Australian Institute of Family Studies, 'Children's Commissioners and Guardians', July 2010. Available at: www.aifs.gov.au/nch/pubs/sheets/rs15/rs15.html Accessed on 28 October 2010.

People’.⁸ The Committee applied the latter power in its comprehensive Inquiry into 9-14 year olds in New South Wales, which made recommendations relating to the functions of the NSW Commissioner as well as to various state government agencies albeit linked back to the Commissioner’s activities.⁹

Oversight of the Children’s Commissioner is not the primary responsibility of the Queensland Committee. Rather it has an inquiry focus which includes but is not exclusive to matters relating to children and young people, and is also responsible for overseeing the exercise of functions of other Commissioners.

(b) Inquiry powers in Western Australia

During parliamentary debate on the functions of the Committee, possible duplication of the functions of other investigatory bodies was raised as an issue.

(i) Commissioner for Children and Young People

Under Section 19(f) of the Act, the Commissioner may:

...initiate and conduct any inquiries into any matter, including any written law or any practice, procedure or service, affecting the wellbeing of children and young people.

The Commissioner is currently conducting such an inquiry into the mental health and wellbeing of children and young people that intends to examine how children and young people’s mental health may be strengthened from prevention through to the appropriate treatment of problems and disorders.¹⁰

In addition, Part 5 of the Act provides significant powers to the Commissioner to initiate and conduct special inquiries into matters affecting the wellbeing of children and young people, including the ability to compel the attendance and production of documents by any person,¹¹ and the power of entry.¹² To date the Commissioner has not conducted any special inquiries.

⁸ Parliament of New South Wales, ‘Committee on Children and Young People’, nd. Available at: www.parliament.nsw.gov.au/children Accessed on 29 October 2010.

⁹ Parliament of New South Wales, Committee on Children and Young People, ‘Final Report Children and Young People 9-14 Years in NSW’, September 2009. Available at: www.parliament.nsw.gov.au/Prod/parlament/committee.nsf/0/854A280C28BE00A8CA25762600226DAE Accessed on 29 October 2010.

¹⁰ Commissioner for Children and Young People, ‘Inquiry into the mental health and wellbeing of children and young people - Background paper’, 3 August 2010. Available at: www.ccyw.wa.gov.au/content/MH.aspx?CID=308 Accessed on 29 October 2010.

¹¹ Section 33 *Commissioner for Children and Young People Act 2006*.

¹² Section 37 *Commissioner for Children and Young People Act 2006*.

(ii) Western Australian Parliamentary Committees

The Legislative Assembly operates three portfolio based standing committees of which two are particularly relevant since their portfolio responsibilities cover matters affecting children and young people (refer to Appendix Two). In the 38th Parliament both committees have conducted inquiries into matters relating to children and young people, specifically the:

- Education and Health Standing Committee (EHSC) inquiry into general health screening of children at pre-primary and primary school level;¹³
- EHSC inquiry into community child health services;¹⁴ and
- Community Development and Justice Standing Committee (CDJSC) inquiry into the adequacy of services to meet the developmental needs of children.¹⁵

Although both committees have recently conducted inquiries relevant to children and young people,¹⁶ the breadth of portfolio responsibilities makes it unlikely that these committees will sustain their inquiry focus in this regard. That said, the House may also refer inquiries so further inquiries relevant to children and young people by these standing committees cannot be precluded.

Since 2001¹⁷ two Legislative Council committees have conducted inquiries into matters specifically relating to children and young people, namely the:

- Select Committee on the Adequacy of Foster Care Assessment Procedures by the Department for Community Development;¹⁸ and the
- Report of the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children).¹⁹

Significantly, the latter inquiry related to the establishment of the Children's Commissioner in Western Australia.

¹³ Education and Health Standing Committee, *Healthy Child - Healthy State: Improving Western Australia's Child Health Screening Programs*, Parliament of Western Australia, Perth, 21 May 2009.

¹⁴ Education and Health Standing Committee, *Invest Now or Pay Later: Securing the Future of Western Australia's Children*, Parliament of Western Australia, Perth, 11 March 2010.

¹⁵ Community Development and Justice Standing Committee, *Inquiry into the Adequacy of Services to meet the Developmental Needs of Western Australia's Children*, Parliament of Western Australia, Perth, 13 August 2009.

¹⁶ It should be noted that other than the abovementioned inquiries in the 38th Parliament, since the portfolio related standing committees were established in 2001, inquiries relating specifically to children and young people are limited to the EHSC report on *Attention Deficit and Hyperactivity Disorder in Western Australia* in September 2004.

¹⁷ It should be noted that the Committee limited its search to information that was readily available dating from 2001.

¹⁸ Select Committee on the Adequacy of Foster Care Assessment Procedures by the Department for Community Development, *Report*, Parliament of Western Australia, August 2006.

¹⁹ Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), *Final Report of the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children)*, Parliament of Western Australia, 2 July 2004.

(iii) Other investigatory bodies in Western Australia

The Office of the Auditor General (OAG) undertakes performance audits of public sector agencies.²⁰ The OAG can receive suggestions from either House of Parliament, the Treasurer, Parliamentary committees, Members of Parliament, the public sector and the community about potential performance audit topics. While the OAG has no specific function in regard to matters relevant to children and young people, it notes that, 'particular regard is given to requests from Parliament'.²¹ Potential exists therefore for this Committee (or indeed any committee) to suggest matters to the OAG for investigation that relate to children and young people. The OAG has conducted three performance audits on topics that concern children and young people, namely:

- The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994 (Report 4, 2008);
- Progress with implementing the response to the Gordon Inquiry²² (Report 11, 2005); and
- Life Matters: Management of Deliberate Self Harm in Young People (Report 11, 2001).

Further, the Auditor General is currently undertaking a performance examination into Child Health Screening, which is to be tabled in Parliament in the fourth quarter of 2010.

One of the main functions of the Ombudsman of Western Australia is to review and investigate sudden or unexpected deaths of children in Western Australia. This function has recently been prescribed by the *Parliamentary Commissioner Amendment Act 2009* and confers the following new powers on the Ombudsman:

- Monitor and review investigable deaths of children;
- Exercise existing powers to investigate administrative actions that relate to investigable deaths; and
- Make recommendations to the Department for Child Protection and other public authorities within the Ombudsman's jurisdiction, relating to policies, practices and systems for the prevention or reduction of deaths of children and to advance good decision-making practice.

The Ombudsman Western Australia asserts that the child death review function will significantly enhance the review process because the Ombudsman has wide powers of investigation that will enable the examination of the many government departments which may have had an involvement with the child. These investigatory functions will also allow: cross-agency solutions for the

²⁰ A performance audit evaluates whether an agency is effectively meeting its objectives and using its resources efficiently to deliver the desired outcomes for that agency. See: OAG 'Audit Practice Statement', available at: www.audit.wa.gov.au for further information on how and why the OAG conducts audits on public sector agencies. Refer below for the full publication reference.

²¹ Office of the Auditor General, 'Office of the Auditor General Western Australia Audit Practice Statement', August 2010, p9. Available at: www.audit.wa.gov.au Accessed on 11 November 2010.

²² The Gordon Inquiry examined the issues of family violence and child abuse in Aboriginal communities.

prevention of child deaths; and greater cooperation of services provided in relation to child safety to be considered.²³

(c) Analysis

The main points considered in evaluating the scope for expanding the Committee's powers and functions include:

- Similar committees in other jurisdictions have broader mandates to examine and report to Parliament on matters relevant to children and young people;
- Some standing committees of the Legislative Assembly have portfolio responsibilities relevant to children and young people and have the capacity to undertake inquiries into matters affecting the wellbeing of children and young people;
- Other investigative bodies in Western Australia such as the Ombudsman and Auditor General have the capacity to undertake investigations into matters affecting children and young people as part of the overall remit of their functions; and
- The Commissioner for Children and Young People has significant powers to conduct inquiries into matters affecting the wellbeing of children and young people and is presently inquiring into mental health and wellbeing.

It is evident that there is substantial scope for existing investigatory bodies in Western Australia to conduct inquiries into matters affecting children and young people. Expanding the powers of the Committee to include an all-encompassing inquiry function into any matter relating to children and young people would represent significant duplication not least to the legislated functions of the Children's Commissioner.

As such the Committee believes a broad inquiry function is not warranted but that its functions and powers would be enhanced by incorporating a limited investigative function to complement its existing functions. The Committee recognises the primacy of its oversight role as this point was reinforced during the debate on the establishment of both the Commissioner and the Committee.²⁴

²³ Ombudsman Western Australia, 'Child Death Reviews', Available at: www.ombudsman.wa.gov.au/Improving_Admin/CDR.htm. Accessed on 11 November 2010.

²⁴ Direct accountability of the Children's Commissioner to Parliament and not to a Minister in order to ensure independence from government was a core principle underpinning the establishment of the Commissioner and the Committee - as recommended by the Legislative Committee Select Committee on the Advocacy of Children (Appointment for a Commissioner for Children), *Final Report*, July 2004, p67; and as exemplified in Parliamentary debates on the Commissioner for Children and Young People Bill 2005 and on establishment of the Committee (e.g. comments of Hon. Barbara Scott, MLC, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 4 June 2008, p3434).

Finding 1

The Joint Standing Committee on the Commissioner for Children and Young People should not have a broad inquiry function into matters affecting children and young people in Western Australia however scope exists for a limited investigative function to complement its existing role.

Although the Committee has the power to refer matters to the Commissioner, it cannot compel investigation of any matter. The Committee is also limited by its existing terms of reference which preclude it from inquiring into any matter not directly related to the exercise of the Commissioner's functions. Some Parliamentary committees of oversight with a clearly defined function to conduct inquiries in set circumstances are able to add value to, rather than duplicate the work of, the bodies they oversee, for example:

- The NSW Joint Committee on Children and Young People may examine trends and changes in services and issues affecting children, and report to Parliament any changes it considers necessary to the functions and procedures of the Commission;²⁵
- The WA Joint Standing Committee on the Corruption and Crime Commission may 'inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector';²⁶ and
- The Commonwealth Parliamentary Joint Committee on the Australian Crime Commission is tasked with monitoring and reviewing the performance of functions of the Australian Crime Commission however is also required to examine trends and changes in criminal activities, practices and methods and report to Parliament any change it considers desirable to the functions, structure, powers and procedures of the Australian Crime Commission;²⁷ and
- The Commonwealth Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity similarly has a function to examine trends and changes in law enforcement in addition to its monitoring functions.²⁸

The full terms of reference of these Committees are reproduced at Appendix Three.

It is evident that a number of oversight committees examine trends and changes in services to ensure that the functions of the authorities they oversee remain relevant over time. A similar term

²⁵ Section 28(1)(d) *Commission for Children and Young People Act 1998* (NSW).

²⁶ Standing Order 289(b) of the Legislative Assembly of the Parliament of Western Australia.

²⁷ Parliament of Australia, 'Parliamentary Joint Committee on the Australian Crime Commission - Role of the Committee', October 2009. Available at: www.aph.gov.au/Senate/committee/acc_ctte/ctte_info/role.htm Accessed on 2 November 2010.

²⁸ Parliament of Australia, 'Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity', November 2007. Available at: www.aph.gov.au/Senate/committee/aclei_ctte/ctte_info/roles.htm Accessed on 2 November 2010.

of reference to examine trends and changes in services affecting children and young people would allow this Committee to alert Parliament to any necessary changes to the functions of the Commissioner and would help to ensure that the position remains relevant and effective.

It should be noted that the study now being undertaken by the Committee into the Commissioner's functions is being conducted in its existing capacity to monitor, review and report to Parliament on the exercise of the functions of the Children's Commissioner. While the study will examine the appropriateness of the Commissioner's legislated functions compared to other jurisdictions, the Committee's terms of reference do not currently permit the Commissioner's functions to be examined in the context of any pressing issues that may arise from time to time.

It is the Committee's view that ensuring that the Commissioner's functions respond to trends and changes in services affecting children and young people would be in keeping with the Committee's existing monitoring role, and represents an appropriate extension of the Committee's functions and powers.

Finding 2

An explicit term of reference enabling the Joint Standing Committee on the Commissioner for Children and Young People to examine trends and changes in services affecting children and young people in the context of reviewing the scope of the role of the Children's Commissioner represents an appropriate extension of the Committee's functions and powers.

Recommendation 1

That the terms of reference of the Joint Standing Committee on the Commissioner for Children and Young People be amended to read as follows:

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;*
- iii. to consult regularly with the Commissioner; and*
- iv. to examine trends and changes in services affecting children and young people in the context of reviewing the scope of the role of the Commissioner.*

(d) Other factors for consideration

An expansion of the Committee's powers to include a limited inquiry function cannot occur without due consideration being given to resourcing of the Committee. Presently the Committee secretariat comprises one Principal Research Officer who, for the twelve months to October 2010, was shared with another Joint Standing Committee. It is recognised that any expansion of the Committee's role will require dedicated staffing by a Principal Research Officer and assistance from a Research Officer.

A re-examination of the Committee's terms of reference presents an opportunity for the Committee's functions and powers to be incorporated into the Legislative Assembly Standing Orders, in a similar fashion to that of the Joint Standing Committee on the Corruption and Crime Commission, effectively establishing the Committee at the commencement of every Parliament.

Recommendation 2

That the functions and powers of the Joint Standing Committee on the Commissioner for Children and Young People be incorporated into the Standing Orders of the Legislative Assembly.



MS A.R. MITCHELL, MLA
CHAIRMAN

APPENDIX ONE

PARLIAMENTARY COMMITTEES IN OTHER STATES WITH OVERSIGHT OF A CHILDREN'S COMMISSIONER

The table below summarises the functions and powers of Parliamentary Committees in other states which oversee the activities of a Children's Commissioner.

Committee	Functions and Powers
Joint Committee on Children and Young People (NSW) ²⁹	<p>Extract from Section 28(1) of the <i>Commission for Children and Young People Act 1998</i> (NSW):</p> <p>The Parliamentary Joint Committee has the following functions under this Act:</p> <ul style="list-style-type: none"> (a) to monitor and review the exercise by the Commission of its functions; (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed; (c) to examine each annual or other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report; (d) to examine trends and changes in services and issues affecting children, and report to both Houses of Parliament any changes that the Joint Committee thinks desirable to the functions and procedures of the Commission; (e) to inquire into any question in connection with the Committee's functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

²⁹ Functions and powers of the Committee drawn from Parliament of New South Wales, 'Committee on Children and Young People', nd. Available at: www.parliament.nsw.gov.au/children Accessed on 29 October 2010.

Committee	Functions and Powers
<p>Social Development Committee (Queensland)³⁰</p>	<p>Select committee established by resolution of the House on 23 April 2009 to monitor and report on issues in the policy areas of: health; education and training; social welfare services; community development; housing; child safety; and Aboriginal and Torres Strait Islander Policy.</p> <p>The committee will also monitor and report on the following commissions:</p> <ul style="list-style-type: none"> • Family Responsibilities Commission; • Commission for Children and Young People and Child Guardian; and • Health Quality and Complaints Commission <p>With respect to each commission the following functions apply:</p> <p>(a) to monitor and review the performance by the commissioner of the commissioner's functions;</p> <p>(b) to report to the Legislative Assembly on any matter concerning the commissioner, the commissioner's functions or the performance of the commissioner's functions that the committee considers should be drawn to the Legislative Assembly's attention;</p> <p>(c) to examine the annual report tabled in the Legislative Assembly and, if appropriate, to comment on any aspect of the report; and</p> <p>(d) to report to the Legislative Assembly any changes to the functions, structures and procedures of the commission that the committee considers desirable for the more effective operation of the commission or the Act which establishes it.</p>

³⁰ Functions and powers of the Committee drawn from Queensland Parliament, 'Social Development Committee', nd. Available at: www.parliament.qld.gov.au/view/committees/SDC.asp Accessed on 29 October 2010.

APPENDIX TWO

PARLIAMENTARY COMMITTEES WITH FUNCTIONS RELEVANT TO CHILDREN AND YOUNG PEOPLE (WA)

The table below summarises the functions and powers of Parliamentary Committees in Western Australia with a bearing on issues relevant to the wellbeing of children and young people.

Committee	Functions and Powers
Education and Health Standing Committee (EHSC) ³¹	<p>The EHSC and CDJSC are standing committees of the Legislative Assembly and both are portfolio based standing committees as defined by Standing Order 287:</p> <p><i>The functions of each committee are to review and report to the Assembly on —</i></p> <p>(a) <i>the outcomes and administration of the departments within the committee's portfolio responsibilities;</i></p> <p>(b) <i>annual reports of government departments laid on the Table of the House;</i></p> <p>(c) <i>the adequacy of legislation and regulations within its jurisdiction; and</i></p> <p>(d) <i>any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.</i></p> <p>Portfolio responsibilities of the EHSC which have a bearing on children and young people are:</p> <ul style="list-style-type: none"> • Education • Training • Health • Mental Health

³¹ Parliament of Western Australia, 'Education and Health Committee', 2010. Available at: www.parliament.wa.gov.au/ehsc Accessed on 29 October 2010.

Committee	Functions and Powers
Community Development and Justice Standing Committee (CDJSC) ³²	Portfolio responsibilities of the CDJSC (with those which have a particular bearing on children and young people in bold): <ul style="list-style-type: none"> • Indigenous Affairs • Disability Services • Sport and Recreation • Culture and the Arts • Corrective Services • Child Protection • Community Services • Environment • Youth • Electoral Affairs • Women's Interests • Police • Emergency Services • Road Safety • Attorney General • Seniors and Volunteering • Local Government • Citizenship and Multicultural Interests

³² Parliament of Western Australia, 'Community Development and Justice Committee', 2010 Available at: www.parliament.wa.gov.au/cdjsc Accessed on 29 October 2010.

APPENDIX THREE

TERMS OF REFERENCE OF COMPARABLE PARLIAMENTARY OVERSIGHT COMMITTEES

The table below summarises terms of reference of some Parliamentary Committees of oversight demonstrating ways in which inquiry powers have been limited to specific circumstances (emphasis added).

Committee	Functions and Powers
Joint Committee on Children and Young People (NSW) ³³	<p>Extract from Section 28(1) of the <i>Commission for Children and Young People Act 1998</i> (NSW):</p> <p>The Parliamentary Joint Committee has the following functions under this Act:</p> <ul style="list-style-type: none"> (a) to monitor and review the exercise by the Commission of its functions; (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed; (c) to examine each annual or other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report; (d) to examine trends and changes in services and issues affecting children, and report to both Houses of Parliament any changes that the Joint Committee thinks desirable to the functions and procedures of the Commission; (e) to inquire into any question in connection with the Committee's functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

³³ Functions and powers of the Committee drawn from Parliament of New South Wales, 'Committee on Children and Young People', nd. Available at: www.parliament.nsw.gov.au/children Accessed on 29 October 2010.

Committee	Functions and Powers
Joint Standing Committee on the Corruption and Crime Commission (WA) ³⁴	It is the function of the Joint Standing Committee to - (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission; (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and (c) carry out any other functions conferred on the Committee under the <i>Corruption and Crime Commission Act 2003</i> .
Parliamentary Joint Committee on the Australian Crime Commission (Commonwealth) ³⁵	Extract from Section 55 of the <i>Australian Crime Commission Act 2002</i> (Cth) (1) The duties of the Committee are: (a) to monitor and to review the performance by the ACC of its functions; (b) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the ACC or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed; (c) to examine each annual report on the ACC and report to the Parliament on any matter appearing in, or arising out of, any such annual report; (d) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the ACC; and (e) to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House upon that question. (2) Nothing in this Part authorizes the Committee: (a) to undertake an intelligence operation or to investigate a matter relating to a relevant criminal activity; or (b) to reconsider the findings of the ACC in relation to a particular ACC operation/investigation. (3) To avoid doubt, the Committee may examine, and report to both Houses of the Parliament on, information given to it under section 59.

³⁴ Standing Order 289 of the Legislative Assembly of the Parliament of Western Australia.

Committee	Functions and Powers
<p>Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity³⁶</p>	<p>Extract from Section 215 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> (Cth)</p> <p>(1) The Committee has the following duties:</p> <p>(a) to monitor and review the Integrity Commissioner’s performance of his or her functions;</p> <p>(b) to report to both Houses of the Parliament, with such comments as it thinks fit, on any matter:</p> <p>(i) connected with the performance of the Integrity Commissioner’s functions; or</p> <p>(ii) relating to ACLEI;</p> <p>that the Committee considers should be directed to the attention of Parliament;</p> <p>(c) to examine:</p> <p>(i) each annual report prepared by the Integrity Commissioner under section 201; and</p> <p>(ii) any special report prepared by the Integrity Commissioner under section 204;</p> <p>and report to the Parliament on any matter appearing in, or arising out of, any such annual report or special report;</p> <p>(d) to examine trends and changes in:</p> <p>(i) law enforcement in so far as they relate to corruption; and</p> <p>(ii) corruption generally in, or the integrity of staff members of, Commonwealth government agencies with a law enforcement function;</p> <p>and report to both Houses of the Parliament on any change that the Committee thinks desirable:</p> <p>(iii) to the Integrity Commissioner’s functions or powers; or</p> <p>(iv) to the procedures followed by the Integrity Commissioner; or</p> <p>(v) to ACLEI’s structure;</p> <p>(e) to inquire into any question in connection with the Committee’s duties that is referred to it by either House of the Parliament, and to report to that House upon that question.</p>

³⁵ Parliament of Australia, ‘Parliamentary Joint Committee on the Australian Crime Commission’, October 2009. Available at: www.aph.gov.au/Senate/committee/acc_ctte/ctte_info/role.htm Accessed on 2 November 2010.

³⁶ Parliament of Australia, ‘Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity’, November 2007. Available at: www.aph.gov.au/Senate/committee/aclei_ctte/ctte_info/roles.htm Accessed on 2 November 2010.

Committee	Functions and Powers
	<p>(2) Subsection (1) does not authorise the Committee:</p> <ul style="list-style-type: none">(a) to investigate a corruption issue or an ACLEI corruption issue; or(b) to reconsider the Integrity Commissioner's decisions or recommendations in relation to a particular corruption issue or ACLEI corruption issue; or(c) to reconsider a special investigator's decisions or recommendations in relation to an ACLEI corruption issue.