

# **NSW Statutory Review of the *Advocate for Children and Young People Act 2014***

**Submission to the NSW Department of Communities and Justice**

**CREATE Foundation**

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## Introduction

According to Article 12 of the United Nation's *Conventions of the Rights of the Child* (1989), children and young people have a right to participate in decisions about their lives. Despite this being a universal human right, children and young people often have less direct political influence if they are under 18 years and unable to vote. They may also have less control over life decisions, particularly for those who are in out-of-home care. As the national peak body representing children and young people with a care experience, CREATE seeks to provide opportunities where children and young people in care are seen and heard. CREATE Foundation appreciates the opportunity to respond to the Statutory Review of the *Advocate for Children and Young People Act 2014*.

At 30 June 2019, there were 16,884 young people in care in New South Wales (Australian Institute of Health and Welfare, 2020). Given the importance of the role the Advocate for Children and Young People (ACYP) plays in supporting children and young people by listening to the challenges and opportunities they face at a systemic level, it is vital that those in care are aware of the Advocate's role and how they can engage with this office.

CREATE New South Wales has spoken to 19 young people at two separate Youth Advisory meetings that have discussed the role and functioning of the Advocate. One of these sessions had a guest appearance by the Acting Advocate, Zoe Robinson. This submission draws on the information discussed at these meetings and is supported by additional research.

## Online Survey Question Responses

### 1. What is working well about the Advocate for Children and Young People?

CREATE believes listening and responding to the views of children and young people in out-of-home care systems is a cornerstone of best practice (CREATE, 2020). Having an independent body such as The Advocate for Children and Young People provides the opportunity for additional oversight that can contribute to a better child protection system; one that positively benefits the safety and wellbeing of children and young people in care and ensures their voices are heard and acted on (CREATE, 2015; CREATE, 2020).


When discussing the role of The Advocate at the two CREATE Youth Advisory meetings, several young people supported the need for having an Independent Advocate and the important but challenging role this support can play in championing their voices to broader audiences.

*Must be difficult to convince people to make decisions that they don't believe in. You are helping people to get the word out there. (Young Person, 13)*

*Things were difficult for me and [The] Advocate's office would have been great in my days. (Young Person, 24)*

CREATE supports the principles and main responsibilities that govern the work of the Advocate as outlined in the ACYP Act discussion paper (Department of Communities and Justice, 2020). However, CREATE would like to note that differences in practice and the approach taken by the person appointed in the Advocate's role is influential in how the voices of vulnerable children in NSW are represented.

For example, young people mentioned that the previous Advocate, Andrew Johnson, approached the role from a more business-minded perspective, whereas the current Acting Advocate, Zoe Robinson, has provided a more personable approach that aligns better with the interests of children and young people. Unfortunately, the latter approach does not seem to be achieving any tangible outcomes on behalf of children in care. The best interests for care-experienced children would require an Advocate



who offers a more well-rounded approach, and should be a key element within the recruitment criteria when selecting the Advocate for the role.

### **Participation of Children and Young People in Decision-Making**

CREATE applauds the ACYP Act in recognising the valuable contribution children and young people can make in helping authorities understand their own lived experiences. An effective Youth Advisory Council (YAC) could assist in this regard. If appropriately constituted, it could function to cooperate with the Advocate, consult with other children, young people, and community groups, and advise Ministers and the Advocate when formulating government policy, legislation, and service programs. However, CREATE believes there are several shortcomings in regarding the functioning of the YAC, based on the views of the young people who have been involved with the Council. This is further discussed in Question 2.

## **2. What is not working well about the Advocate for Children and Young People?**

### **Awareness of the Advocate**

Sadly, a majority of the children and young people who had attended CREATE's Youth Advisory Group meetings were unaware of who the Advocate was and what role they play. If the Advocate is supposed to represent children and young people of all backgrounds in NSW, CREATE believes that greater promotion to raise awareness is needed so young people can easily seek out the Advocate's support in times of need, or at least have opportunities to discuss their concerns with the YAC.

It is important to highlight that children and young people living in rural and regional areas have told CREATE that they do not have access to, or seek support from the Advocate. Instead, they expressed that their concerns would be better addressed by the recently established Regional Youth Taskforce coordinated by Regional MP, Taylor Browne, simply due to accessibility challenges (NSW Government, 2021).

### **Advocacy Work**

A fundamental element of the Advocate's role is to consult with children and young people in decision-making processes so that their voices can contribute to research reports, provide advice to government and NGOs, and help prepare submissions to Government on matters that affect children and young people in NSW (Department of Communities and Justice, 2020). A review of the ACYP website (2021) and recent ACYP annual reports (2018; 2019; 2020) show that submissions to government and legislation in relation to improving outcomes for children and young people in out-of-home care are lacking. CREATE acknowledges the efforts by the Advocate to engage and consult with those who have a care experience; however, these efforts must not be tokenistic. CREATE believes that in order for the voices of 16,884 children and young people in care (Australian Institute of Health and Welfare, 2020) to be taken seriously and heard, the Advocate must be more active in responding to research, and more involved in influencing government policies and legislation that aim to improve the existing child protection system and achieve better life outcomes for those in care. Consideration should include providing summary reports that are young person friendly and use simple and easy to understand language so that children and young people can access this information and remain informed about the work the Advocate does.

Another concern that young people raised in terms of the Advocate's ability to influence change was that the Advocate should be given powers to play more of a regulatory role to ensure Ministers with child welfare responsibilities are focusing on the needs of children and young people, particularly when multiple portfolios are involved, for example, not providing a sole focus on the disability sector at the expense of the out-of-home care system in NSW.



## Leaving Care and the Need to Provide Support to 21

Young people who attended the two CREATE Youth Advisory Group meetings to discuss the role of the Advocate also raised a prominent key priority issue that children and young people in care eventually encounter, that is, the process of leaving care.

Research in both international and local contexts have shown that care leavers are more likely to experience poorer life outcomes on leaving the care system. This includes experiencing homelessness and mental health issues, having greater interaction with the youth justice system, and having greater difficulties completing their education and gaining employment (Deloitte Access Economics, 2016; McDowall, 2020). Currently, the Victorian government has committed to supporting children to remain with their carer or be supported with alternative living arrangements until the age of 21 years (Premier of Victoria, 2020). Policies also exist in Tasmania, the Australian Capital Territory and South Australia (Tasmanian Government, 2019; ACT Government, 2021; Government of South Australia, 2021). The Labor government in Western Australia has recently committed to investing in the much-needed extension of supported placements until 21 if they win their 2021 state election (WA Labor, 2021). However, the NSW government remains adamant that the post-care services that they offer until 25 years are sufficient enough (2GB Radio, 2021), despite strong criticism from those in care and organisations that work in the out-of-home care sector.


The young people at the CREATE Youth Advisory Group meetings further insisted that the Advocate should be helping to raise this priority to Government and in Parliament so that young people who leave care are better supported to thrive just like their non-care peers.

*Make it 21. There are too many disadvantaged kids out there. They just need some support. This could reduce youth homelessness. (Young Person, 20)*

## Youth Advisory Council

The Youth Advisory Council has 12 membership positions for young people to fill for up to two years. The ACYP Act states that YAC members decide how Council meetings are organised, how often they occur, and how they are structured. It also states that membership must reflect the diversity of young people in NSW but does not mention any requirements for identified positions for particular disadvantaged groups (e.g., those in out-of-home care, who live with a disability, or who come from diverse cultural backgrounds) to have representation. CREATE believes that the ACYP Act must specify these requirements because, without this representation, the voices and experiences of children and young people in these disadvantaged groups may be missed at YAC meetings, and issues that they experience are less likely to be set as agenda items. Within the YAC Terms of Reference, selection criteria for the YAC membership that ensure positions for representatives of different interest groups (e.g., out-of-home care) should be made available to ensure a robust and diverse committee is developed.

If challenges exist to ensure appropriate representation amongst the 12 YAC members for a particular period of time, young people have suggested that YAC members should engage with other community groups (e.g., a group from out-of-home care) and be provided with consultation feedback. CREATE urges that the YAC needs to collaborate with other agencies who have their own groups and/or committees to allow YAC members to liaise with these groups and acquire a wider understanding of the challenges and issues that NSW's children and young people face. This will ensure that the diversity of shared interests of children and young people in care are given a stronger voice within the YAC. It would also lead to a more well-informed discussion of topical issues at YAC meetings with key political players. CREATE would welcome the opportunity to be involved in such a process to ensure that this is implemented. This could provide opportunities for YAC members to participate in CREATE Youth



Advisory Groups and the Regional Youth Taskforce so that YAC members also represent children and young people outside of the metro Sydney area.

### **3. Do you have any other comments or feedback about the Statutory Review of the Advocate for Children and Young People Act?**

Given the high proportion of children and young people in care in New South Wales, CREATE believes greater collaboration and partnership between the Advocate, the Youth Advisory Council and the CREATE Foundation is needed to ensure that the voices of some of society's most vulnerable children and young people are heard. Doing so ensures an extra layer of protection and safety that will enhance the wellbeing and life outcomes of those with a care experience.

When asked about additional feedback regarding the review of the Advocate for Children and Young People's Act, young people provided the following suggestions:

- Greater efforts by the Department of Communities and Justice and relevant NGOs to promote the Advocate to children and young people in the care system.
- The Advocate having greater interactions with federal and state government to influence change.
- Increase funding for the Advocate's office to ensure adequate staffing to perform advocacy work.

Thank you again for the opportunity to respond to the *Statutory Review of the Advocate for Children and Young People Act 2014*. Please contact Mohita Kapoor, NSW State Coordinator on 02 9267 0977 if you require any additional information.

Yours sincerely,

Mohita Kapoor  
NSW State Coordinator  
CREATE Foundation

## **References**


2GB Radio. (2021). NSW Families Minister Addresses National Push to Increase Foster Care Age. Retrieved from <https://www.2gb.com/nsw-families-minister-addresses-national-push-to-increase-foster-care-age/>

ACT Government. (2021). *Transitioning from Care*. Retrieved from Community Services: <https://www.communityservices.act.gov.au/ocyfs/children/child-and-youth-protection-services/a-step-up-for-our-kids/out-of-home-care-strategy-2015-2020/children-and-young-people/transitioning-from-care>

Australian Institute of Health and Welfare. (2020). *Child protection Australia 2018-19*. AIHW. Retrieved from <https://www.aihw.gov.au/getmedia/3a25c195-e30a-4f10-a052-adbfd56d6d45/aihw-cws-74.pdf.aspx?inline=true>

CREATE. (2015). *Complaints Mechanisms in Out-of-Home Care. [Position Paper]*. CREATE Foundation. Retrieved from <https://create.org.au/wp-content/uploads/2015/02/CREATE-Position-Paper-Complaints-CREATE-Foundation-2015.pdf>

CREATE. (2020). *Children and Young People as Decision-makers: Encouraging Participation in Out-of-Home Care*. CREATE Foundation. Retrieved from [https://create.org.au/wp-content/uploads/2020/12/CRE4299\\_CREATE\\_BestPracticeResource\\_A4\\_2020web.pdf](https://create.org.au/wp-content/uploads/2020/12/CRE4299_CREATE_BestPracticeResource_A4_2020web.pdf)

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- Deloitte Access Economics. (2016). *Extending out of home care to 21 years: Summary of the Australian socioeconomic cost benefit analysis*. Retrieved from [http://thehomestretch.org.au/site/wp-content/uploads/2017/05/National-Summary\\_CBA-Extending-Support-for-OOHC-to-21-New-Cover.pdf](http://thehomestretch.org.au/site/wp-content/uploads/2017/05/National-Summary_CBA-Extending-Support-for-OOHC-to-21-New-Cover.pdf)
- Department of Communities and Justice. (2020). *Statutory Review of the Advocate for Children and Young People Act 2014: Discussion Paper November 2020*. NSW Government. Retrieved from [https://www.dcj.nsw.gov.au/\\_\\_data/assets/file/0007/796147/ACYP-Discussion-Paper-Final-Attachment-17.11.20.pdf](https://www.dcj.nsw.gov.au/__data/assets/file/0007/796147/ACYP-Discussion-Paper-Final-Attachment-17.11.20.pdf)
- Government of South Australia. (2021). *Carer support payments*. Retrieved from Department for Child Protection: <https://www.childprotection.sa.gov.au/carers/how-dcp-works/carers-support-payments>
- McDowall, J. J. (2020). *Transitioning to adulthood from out-of-home care: Independence or interdependence?* CREATE Foundation.
- NSW Government. (2021). *Regional Youth Taskforce*. Retrieved from NSW Government: <https://www.nsw.gov.au/regional-nsw/regional-youth-taskforce>
- Office of the Advocate for Children and Young People. (2018). *ACYP Annual Report 2017/18*. Office of the Advocate for Children and Young People. Retrieved from <https://www.acyp.nsw.gov.au/hubfs/documents/annual-reports/ACYP-Annual-Report-2018-web.pdf>
- Office of the Advocate for Children and Young People. (2019). *Annual Report: 2018-2019*. Office of the Advocate for Children and Young People. Retrieved from <https://www.acyp.nsw.gov.au/hubfs/documents/annual-reports/ACYP-Annual-Report-2019-web.pdf>
- Office of the Advocate for Children and Young People. (2020). *Annual Report: 1 July 2019 - 30 June 2020*. Office of the Advocate for Children and Young People. Retrieved from <https://f.hubspotusercontent20.net/hubfs/522228/docs/ACYP-Annual-Report-2020.pdf>
- Office of the Advocate for Children and Young People. (2021). *Publications*. Retrieved from Office of the Advocate for Children and Young People: <https://www.acyp.nsw.gov.au/info/publications>
- Premier of Victoria. (2020). *Supporting Young Victorians – And Their Future*. Retrieved from Premier of Victoria: <https://www.premier.vic.gov.au/supporting-young-victorians-and-their-future>
- Tasmanian Government. (2019). *After Care Support Program*. Retrieved from Department of Communities Tasmania: [https://www.communities.tas.gov.au/children/adoption/support\\_for\\_care\\_leavers/after\\_care\\_support\\_program](https://www.communities.tas.gov.au/children/adoption/support_for_care_leavers/after_care_support_program)
- United Nations. (1989). *Convention on the Rights of the Child*. Retrieved from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
- WA Labor. (2021). *New \$58.6 million package to support at-risk youth*. Retrieved from Premier of Western Australia: <https://markmcgowan.com.au/2021/01/06/new-58-6-million-package-to-support-at-risk-youth/>



## About CREATE

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and those who have transitioned from care up to the age of 25. Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care.

To do this CREATE:

- **CONNECTS** children and young people to each other, CREATE, and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

CREATE's mission is achieved by providing a variety of activities and programs for children and young people in care, and conducting research and developing policy to help advocate for a better care system.