



Communities  
& Justice

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

Final Report – February 2023

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## 1. Executive summary

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- 1.1 The independent statutory office of the Advocate for Children and Young People (**the Advocate**) is established under the *Advocate for Children and Young People Act 2014 (the Act)* to represent the needs and interests of children and young people in NSW. The Act commenced in 2014. It replaced the *Commission for Children and Young People Act 1998* and the *Youth Advisory Council Act 1989*.
- 1.2 The main objectives of the Act are to strengthen the advocacy model for children and young people and to ensure their voices are being heard and addressed by the NSW Government. These objectives are embodied in provisions outlining the principles governing the Advocate's work and the Advocate's functions and responsibilities which include advocating for the safety, welfare and wellbeing of children and young people (ages 0 – 24 years), conducting special inquiries into issues affecting children and young people, and to make recommendations to government on matters affecting children and young people.
- 1.3 The Act was assented to on 24 June 2014. Section 43 requires the Ministers with joint responsibility for the Act – the Minister for Regional Youth and the Minister for Families and Communities – to review the Act as soon as possible after the period of five years since its assent, and table a report on the review in both Houses of Parliament. The review is to consider whether the objects of the Act remain valid, and whether the terms remain appropriate for securing those objectives.
- 1.4 The review has been undertaken by the Department of Communities and Justice (**the Department**). In conducting the review, the Department prepared and published a discussion paper in November 2020, received a number of written submissions, conducted an online survey and consulted face-to-face with key stakeholders, including with children and young people themselves. The information gathered from this process revealed the Act is generally well-supported and is operating effectively.
- 1.5 The review has found the objectives of the Act remain valid and the terms of the Act are generally appropriate to secure its objectives.

## 2. Introduction

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- 2.1 The Act creates an independent statutory office of the Advocate. The Advocate's job is to stand up for the rights of children and young people and to ensure their voices are heard by government and the community.
- 2.2 The Act also establishes the Youth Advisory Council (**YAC**) to represent the needs and interests of children and young people in New South Wales, and a joint Parliamentary Committee, known as the Committee on Children and Young People (**the Parliamentary Joint Committee**), which provides oversight of the activities of the Advocate and certain functions of the Children's Guardian.

### Background of the Act

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- 2.3 Previously, the Commission for Children and Young People, which was set up under the *Commission for Children and Young People Act 1998*, was responsible for promoting the participation of children and young people, and making recommendations to Government about services affecting children and young people. Under new administrative arrangements, these functions of the Commission were transferred to the newly created office of the Advocate of Children and Young People in 2014. The aim was to strengthen the advocacy model for children and young people in NSW, and ensure the voices of children and young people were heard and addressed by the NSW Government.
- 2.4 The Act also brought together the Advocate and the YAC to enhance effective advocacy for children and young people, by clarifying responsibility within Government for work on matters concerning young people. The Act also extended the Advocate's remit from people aged 0-18 years to people aged up to 24 years.
- 2.5 Certain functions of the former Commission for Children and Young People, such as the regulation of the Working With Children Check scheme, were transferred to the NSW Children's Guardian.

### Overview and operation of the Act

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- 2.6 The overarching function of the Advocate is to advocate for children and young people. This advocacy function is supported by clear requirements to consult with a wide range of children and young people, and to work collaboratively with agencies inside and outside government who are also committed to improving the lives of children and young people.
- 2.7 The Advocate does not deal directly with individual complaints or concerns of particular children or young people. However, it can provide information and make referrals to other organisations as appropriate, such as to the NSW Police or the Secretary of the Department.
- 2.8 The key elements of the Act are:
  - Principles governing the work of the Advocate, with the paramount consideration being the safety, welfare and wellbeing of children and young people.
  - Functions of the Advocate, including promoting the participation of children and young people in decision-making and making recommendations to government.

These functions must be carried out in line with certain responsibilities, including to consider systemic issues affecting children and young people.

- Provisions for a YAC. The YAC's functions include advising the Minister and the Advocate on the planning, development, integration and implementation of government policies and programs concerning young people.
- Provisions for special inquiries. The Minister can require the Advocate to conduct a special inquiry into a particular issue affecting children or young people.
- Provisions for making reports. The Advocate must prepare annual reports, may make special reports to the Minister, and may also make a report to Parliament on any particular issue or general matter relating to its functions.
- Provisions for a Parliamentary Joint Committee. The Committee's functions include monitoring and reviewing the exercise of the Advocate's functions and examining each annual or other report of the Advocate.

## Conduct of the review

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- 2.9 A discussion paper was publicly released in November 2020, on the NSW Government and 'Have your Say' websites. It was also sent directly to key government and non-government stakeholders, inviting written submissions to the review.
- 2.10 A short, three question survey was also released, asking the following questions:
- What is working well about the Advocate for Children and Young People?
  - What is not working well about the Advocate for Children and Young People?
  - Do you have any other comments or feedback about the Statutory Review of the *Advocate for Children and Young People Act 2014*?
- 2.11 Consultation sessions were held with children and young people via email and video, including previous and current members of the YAC, high schools across NSW, and the Upper Hunter Youth Council.
- 2.12 Face-to-face consultation sessions were conducted with the following government stakeholders:
- Aboriginal Affairs
  - Department of Communities and Justice
  - Department of Education
  - Greater Sydney Commission
  - Mental Health Commission NSW
  - Ministry of Health
  - Office for Regional Youth
  - Police NSW
  - Regional NSW

- Service NSW
- Mental Health Commission NSW.

2.13 Consultation sessions were also held with non-government stakeholders, including:

- Association of Independent Schools NSW
- Barnardos
- FAMS
- Kidsafe NSW
- Headspace
- School Services
- Local Government NSW
- YMCA NSW
- Youth Action.

2.14 The Department received seven written submissions, 37 survey responses, and direct emails from former members of the YAC.

### 3. Do the policy objectives of the Act remain valid?

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- 3.1 Submissions to the review were supportive of the work of the Advocate and generally agreed that the policy objectives of the Act remain valid.

#### About the objectives

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- 3.2 While the Act does not specifically set out the objectives of the Act, these are reflected in certain provisions of the Act and are noted in the second reading speech. The Act's second reading speech emphasised that the object of the Act is to strengthen the advocacy model for children and young people and ensure their voices are being heard and addressed by the NSW Government.

- 3.3 Part 3 of the Act, which outlines the principles governing the Advocate's work, the Advocate's functions, and the responsibilities in exercising those functions, expresses the underlying policy objectives of the Act. Under section 14, the principles governing the Advocate's work are:

- the safety, welfare and wellbeing of children and young people are the most important considerations
- the views and opinions of children and young people must be seriously considered, and
- a co-operative relationship between children and young people and their families and communities is important for their safety and well-being.

- 3.4 Under section 15, the functions of the Advocate are:

- advocating for and promoting the safety, welfare and well-being of children and young people
- promoting children and young people's participation in activities and decision-making about issues that affect their lives
- conducting special inquiries into issues affecting children and young people
- making recommendations to government and non-government agencies on issues, legislation, policies, practices and services affecting children and young people
- conducting research into issues affecting children and young people
- providing information to help children and young people, and
- preparing a three-year strategic plan for children and young people in NSW.

- 3.5 In exercising these functions, the Advocate is required to:

- focus on systemic issues affecting larger groups of children and young people
- give priority to the interests and needs of vulnerable and disadvantaged children and young people
- consult with children and young people from a broad range of backgrounds and age groups

- work with other organisations that help children and young people, and
- work with the YAC.

## Conclusion: the objectives remain valid

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3.6 The review has concluded that the objectives of the Act remain valid. Submissions to the review that referred to the principles, functions and responsibilities outlined in the Act agreed they remain appropriate. For example:

- the Jumbunna Institute of Indigenous Education and Research said they are important public policy settings and should continue
- Adopt Change noted that the principles, functions and responsibilities reflect the need to support children and young people in NSW across diverse areas of need, and
- the Children and Care Collective said the focus on systemic issues and giving priority to the interests and needs of vulnerable and disadvantaged children and young people is particularly important.

3.7 The advocacy model under the Act has continuing importance and ensures the voices of children and young people in NSW are heard. Since the Act was introduced, the Advocate has engaged children and young people about a number of issues that have a particular impact on them, including the drought, bushfires and floods in NSW,<sup>1</sup> and the COVID-19 pandemic.<sup>2</sup> It is not considered necessary to amend the Act to specify the objectives which underpin it. Equivalent legislation in most other states and territories has taken a similar approach.<sup>3</sup>

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<sup>1</sup> See <https://www.acyp.nsw.gov.au/disaster-report-2020>.

<sup>2</sup> See Advocate for Children and Young People, Annual Report 2020-2021, available at <https://www.acyp.nsw.gov.au/info/publications/annual-reports>.

<sup>3</sup> Equivalent legislation exists in the ACT in the *Human Rights Commission Act 2005* (ACT), Tasmania in the *Commissioner for Children and Young People Act 2016* (Tas), South Australia in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* and Western Australia in the *Commissioner for Children and Young People Act 2006*.



## 4. Are the terms of the Act appropriate for securing its objectives?

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- 4.1 This section explores the extent to which the current provisions of the Act align with its overall objectives. There was general agreement among stakeholders that the terms of the Act remain appropriate for securing its objectives.

### Role of the Advocate for Children and Young People

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#### Provisions outlining the Advocate's employment

- 4.2 Part 2 of the Act sets out the terms of the Advocate's employment, including that:
- the Advocate can remain in the role for a maximum of two five-year terms
  - the Advocate works independently of the NSW Government
  - the Government can remove the Advocate from the role before the end of their term, but only for incompetence, incapacity or misbehaviour, and
  - the Government can employ staff to help the Advocate in their role.
- 4.3 Stakeholders were generally satisfied with the provisions of the Act relating to the employment and office of the Advocate. YAC members said a five-year term acts as a "good base" for the role of the Advocate. It allows an Advocate to start a project and see it through to completion. YAC members also suggested that a longer term would give the Advocate a chance to get to know the children and young people who interact with them, and build trust and understanding.

#### Conclusion: the Advocate's term of appointment is appropriate

- 4.4 The term of the Advocate's appointment should not change. Stakeholders' views were mixed, with no firm preference for shortening or extending the term.
- 4.5 The review has considered the terms of appointment of similar statutory office holders in other jurisdictions,<sup>4</sup> and other similar bodies in NSW.<sup>5</sup> The review finds that the current term of appointment is appropriate. It is consistent with those of equivalent bodies in several other Australian states and territories, and with those of other types of Commissioners in NSW. It also allows the Advocate sufficient time to initiate and complete projects and reinforces the Advocate's independence from government.

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<sup>4</sup> E.g. In Victoria, the Principal Commissioner or a Commissioner of the Commission for Children and Young People have a five-year term (see *Commission for Children and Young People Act 2012* (Vic) section 14); in the ACT, the Children and Young People Commissioner has a five-year term (see *Human Rights Commission Act 2005* (ACT) section 18D); and in Western Australia, the Commissioner for Children and Young People has a five-year term and can be reappointed once (see *Commissioner for Children and Young People Act 2006* (WA) section 9).

<sup>5</sup> E.g. The Mental Health Commissioner has a maximum of two successive five-year terms (see *Mental Health Commission Act 2012* section 6); and the Children's Guardian has a maximum of two five-year terms (see *Children's Guardian Act 2019* section 116).

## Principles, functions and responsibilities of the Advocate

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- 4.6 Part 3 of the Act outlines the principles governing the Advocate's work, functions, and responsibilities in exercising these functions. In general, submissions and consultations with stakeholders indicated support for the principles, functions and responsibilities.

### Principles governing the Advocate's work

#### *Children and young people's safety, welfare and wellbeing*

- 4.7 Section 14 of the Act provides that the safety, welfare and wellbeing of children and young people are the most important considerations for the Advocate's work. Young people consulted in schools agreed that these are the most important considerations. They observed that children and young people can communicate more honestly if they are in a safe environment.

#### *Children and young people's views must be seriously considered*

- 4.8 Under section 14 of the Act, the views and opinions of children and young people must be given serious consideration and taken into account by the Advocate. YAC members said this allows children and young people to have a meaningful voice.
- 4.9 Young people consulted in schools suggested that consideration be given to the environment in which these views and opinions are expressed. They said children and young people could be influenced by people around them and they often feel pressure from adults. In consultations, non-government agencies and YAC members said there is uncertainty about what it means for children and young people's views to be "seriously considered". One submission suggested amending the second principle, to provide that "the views and opinions of children and young people must be actively sought and seriously considered".

#### *Importance of co-operative relationships*

- 4.10 Section 14 of the Act recognises that a cooperative relationship between children and young people and their families and communities is important for their safety and well-being. One submission supported the "collaborative" aspect of the third principle. Similarly, an email from a previous YAC member said:

I especially like the third principle. The ACYP shouldn't swoop in from above and introduce 'solutions' without actually knowing the community.

### Conclusion: the principles are generally appropriate

- 4.11 The review finds that the principles in section 14 are an effective expression of the policy objectives behind the Act, which are to advocate for children and young people and ensure their voices are heard and addressed. The current requirement for children and young people's views to be given "serious consideration" and to be "taken into account" is sufficient to reflect the weight that should be given to these views. It also aligns with the wording used in equivalent legislation in some other states and territories.

## Functions of the Advocate

- 4.12 The Advocate's functions are set out in section 15(1) of the Act. Stakeholders generally supported these, while some raised issues with, or suggested changes to, certain functions.

### *Advocating for and promoting the safety, welfare and wellbeing of children and young people*

- 4.13 One of the Advocate's functions is to advocate for and promote the safety, welfare and well-being of children and young people. Young people consulted in schools highlighted the importance of this function and said it provides them with a voice.

### *Promoting participation of children and young people in decision-making*

- 4.14 Another function of the Advocate is to promote the involvement of children and young people in decisions that affect their lives, and to encourage government and non-government agencies to seek out their participation.
- 4.15 The CREATE Foundation pointed out that this principle is consistent with article 12 of the United Nations Convention on the Rights of the Child, which says children and young people have a right to participate in decisions about their lives. Another submission suggested that instead of just ensuring children and young people are involved in decisions that affect their lives, the Advocate could also ensure they have self-determination and agency.

### *Conducting special inquiries*

- 4.16 A third function of the Advocate is to conduct special inquiries into issues affecting children and young people. Special inquiries are discussed further below.
- 4.17 Adopt Change supported this function as it enables investigation of key issues. Government agencies consulted said that the independent voice provided by special inquiries is important. Similarly, a former YAC member said inquiries allow the Advocate to be "an independent reviewer which can present unbiased facts".

### *Making recommendations about children and young people*

- 4.18 A fourth function of the Advocate is to make recommendations to government and non-government agencies about legislation, reports, policies, practices, procedures and services affecting children and young people. Under Part 6 of the Act, annual reports must set out any recommendations for changes to law or policies that the Advocate thinks should be made. Annual reports are available to view on the Advocate's website.<sup>6</sup>
- 4.19 The non-government agencies consulted considered this to be an important function, and noted that the reports published by the Advocate have been helpful resources. One survey respondent said they would like to see follow up about the recommendations the Advocate makes. This is already required under Part 6 of the Act. Annual reports must evaluate the responses to recommendations that the Advocate has made to relevant authorities (such as organisations who work with children and young people).
- 4.20 The Office of the Children's Guardian submitted that the Advocate's role could include ensuring the voices of children and young people are considered in the development

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<sup>6</sup> See <https://www.acyp.nsw.gov.au/info/publications/annual-reports>.

of Child Safe Action Plans, which are required to be prepared by NSW Government agencies, to detail strategies relating to the Child Safe Standards in the *Children's Guardian Act 2019*.<sup>7</sup>

### **Researching issues affecting children and young people**

4.21 A fifth function of the Advocate is to conduct, promote and monitor research into issues affecting children and young people. Annual reports outline the Advocate's involvement in research initiatives and projects, and its own research projects.

4.22 Non-government organisations supported this research function. One survey respondent said:

There is good research and awareness of current issues faced by children and young people at the office. Awareness allows social issues to be rectified effectively.

4.23 Another survey respondent said:

[The Advocate's] initiatives respond effectively to issue[s] affecting children and young people as their research methods provide insight into the problems faced by young people. They respect the opinions and ideas for solutions from young people which both allows them to come up with effective solutions and gain truthful opinions from young people.

### **Making sure children and young people get information and advice**

4.24 Another function of the Advocate is to promote the provision of information and advice to help children and young people.

4.25 Some stakeholders, including previous YAC members, queried how children and young people receive information from the Advocate. Young people consulted in schools said the Advocate should engage with young people online. YAC members, and one survey response, suggested that there needs to be greater engagement with young people on social media. Non-government organisations said information and advice provided by the Advocate is not always accessible to different groups of children and young people, and that all communication needs should be included. One survey respondent similarly said that the Advocate should consider the inclusion of access to digital materials for young people whose preferred mode of communication is Auslan.

4.26 Some stakeholders suggested the Advocate should have a specific educative function as exists for equivalent roles in other jurisdictions, including the National Children's Commissioner.<sup>8</sup>

4.27 The 2021-2022 Annual Report<sup>9</sup> highlights the ways in which the Advocate has provided information and advice to children and young people. For example, following the success of the Advocate's "Digital Lunchbreak" website as a means of providing information to children and young people about COVID-19 in 2020-2021, the Advocate continued to update and maintain the website with activities and resources.

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<sup>7</sup> The Children's Guardian Amendment (Child Safe Scheme) Bill 2021 was passed by NSW Parliament in November 2021. The Bill amends the *Children's Guardian Act 2019* to embed the Child Safe Standards as the primary framework that guides child safe practice in organisations in New South Wales. The amendments will commence by proclamation.

<sup>8</sup> *Australian Human Rights Commission Act 1986* (Cth) section 46MB. See also *Family and Child Commission Act 2014* (Qld) section 9 and *Children's Commissioner Act 2013* (NT) section 10.

<sup>9</sup> Available to view on the Advocate's website: <https://www.acyp.nsw.gov.au/info/publications/annual-reports>.

Its Child Protection Campaign was promoted on social media, and videos produced were viewed by more than 748,500 people in NSW.<sup>10</sup>

- 4.28 The Advocate's website is regularly updated to inform children, young people and government and non-government stakeholders about their projects, campaigns and initiatives. In the reporting period this included consultation reports on *Experiences of Children and Young People in the out-of-home care system*, *The continued impacts of COVID-19* and *The Impact of Bullying*.

### **Preparing a three-year strategic plan**

- 4.29 An additional function of the Advocate is to prepare a three-year strategic plan for children and young people in the State, in consultation with the Minister.
- 4.30 In consultations, young people in schools suggested that the strategic plan should focus on certain issues, including children and young people with disabilities, bullying, racism, education, moving out of home and independence. YAC members suggested that strategic plans could be co-designed with young people. One submission said it would be beneficial for the Advocate to report on the outcomes of the three-year strategic plan.
- 4.31 In May 2021, a review of the 2016-2019 Strategic Plan was released which indicated that progress had been made across all areas of the Plan. The review process allowed the Advocate to consider where positive changes had occurred and areas that could be improved for the future. Findings from the review process shaped the development of an updated strategic plan.
- 4.32 In April 2022, the 2022-2024 strategic plan was released.<sup>11</sup> To ensure the direction and themes of the Strategic Plan were set by children and young people, the Advocate engaged with over 5,000 children and young people in developing the plan.

### **Conclusion: the Advocate's functions are generally appropriate**

- 4.33 The functions outlined in section 15 are generally supported by stakeholders and are an effective expression of the policy objectives behind the Act. The review finds that these are sufficiently broad to capture the matters raised by stakeholders.

### **Responsibilities when the Advocate is exercising its functions**

- 4.34 Under section 15(2) of the Act, when exercising her functions, the Advocate is required to:
- focus on systemic issues affecting children and young people
  - give priority to the interests and needs of vulnerable and disadvantaged children and young people
  - consult with children and young people from a broad range of backgrounds and age groups, and
  - work cooperatively with other organisations that help children and young people and the YAC.

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<sup>10</sup> See Advocate for Children and Young People, Annual Report 2019–2020, available at <https://www.acyp.nsw.gov.au/info/publications/annual-reports>.

<sup>11</sup> The Strategic Plan can be viewed at <https://www.acyp.nsw.gov.au/strategic-plan-2022-2024>.

### **Stakeholder feedback**

- 4.35 Stakeholders supported these provisions and agreed that these responsibilities reflect the policy objectives behind the Act. Stakeholders commented that it was important for the Advocate to consult with children and young people in regional and rural areas, Aboriginal and Torres Strait Islander children and young people and younger children under school age.
- 4.36 The Advocate's 2021-2022 Annual Report notes that consultations with children and young people are held across metropolitan and regional NSW to ensure a wide reach of voices are heard. The Advocate consults extensively with children and young people through face-to-face consultations, programs, initiatives, training, competitions, events and attitudinal polling.
- 4.37 Some stakeholders suggested the Advocate should give specific consideration to certain groups of children and young people, including LGBTQIA+ people in NSW, children and young people in out-of-home care, and children and young people with a disability.
- 4.38 The review notes that the Office of the Advocate has conducted consultations with children and young people in out-of-home care to find out about their experience in out-of-home care, what services and supports they think are helpful, and any suggestions they have to improve the system. The Advocate has also completed its first piece of work dedicated exclusively to the unique lived experiences of children and young people with disability: *Voices of Children and Young People with Disability Report (2020)*.<sup>12</sup> In 2022, the Advocate also completed consultations with over 200 LGBTQIA+ identifying young people to inform its report *The Voices of LGBTQIA+ Young People in NSW (2022)*.<sup>13</sup>
- 4.39 The Jumbunna Institute of Indigenous Education and Research suggested establishing a separate Advocate for Aboriginal Children and Young People, appointed in partnership with Aboriginal communities, with responsibility for safeguarding and promoting the interests of Aboriginal and Torres Strait Islander children and young people. The Advocate also noted that the creation of an Advocate for Aboriginal Children and Young People role had previously been discussed with the sector. Similar roles exist in Victoria<sup>14</sup> and South Australia.<sup>15</sup>
- 4.40 The review notes that a Deputy Children's Guardian for Aboriginal Children and Young People was appointed in January 2021, as part of the NSW Government's response to a report by Professor Megan Davis, *Family is Culture: Independent Review of Aboriginal children and young people in out-of-home care (OOHC)*. The purpose of the appointment was to strengthen the Office of the Children's Guardian's oversight and enforcement powers in accrediting out of home care providers and to ensure a high standard of practice is met for Aboriginal children and young people in care. The role and functions of the Deputy Children's Guardian will be considered as part of the upcoming review of the *Children's Guardian Act 2019*.

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<sup>12</sup> See <https://www.acyp.nsw.gov.au/disability-report-2020>.

<sup>13</sup> See <https://www.acyp.nsw.gov.au/lgbtqiareport>.

<sup>14</sup> The Commission for Children and Young People includes a Commissioner for Aboriginal Children and Young People. Additional Commissioners, other than the Principal Commissioner, can be appointed under section 12 of the *Commission for Children and Young People Act 2012* (Vic).

<sup>15</sup> The role of a Commissioner for Aboriginal Children and Young people was created in 2018 and is currently established under the *Constitution Act 1934* (SA).

## **Conclusion: the Advocate's responsibilities are generally appropriate**

- 4.41 Stakeholders generally supported for the Advocate's responsibilities, set out in section 15 of the Act. These responsibilities generally reflect the policy objectives behind the Act.
- 4.42 Amendments requiring the Advocate to specifically focus on the needs and interests of particular groups of children and young people, as discussed above, who are LGBTQIA+, have a disability, who are Aboriginal or Torres Strait Islander, or who are in out-of-home care, are not necessary or recommended. Issues affecting these groups can be, and already are being, considered, in line with the Advocate's responsibilities to prioritise the needs of all children and young people including those who are vulnerable and disadvantaged and from a broad range of backgrounds.

## **Work of the Advocate**

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### **Current position**

- 4.43 The Office of the Advocate of Children and Young People conducts a range of activities. These include:
- Organising consultation opportunities, including face-to-face consultations with children and young people.
  - Participating in conferences and events, where the Advocate engages and consults with children and young people.
  - Contributing to research reports, providing advice to government and non-government agencies, and preparing submissions to Government on matters affecting children and young people in NSW.
  - Conducting training for government and non-government organisations to better assist them with engaging with children and young people.
  - Creating resources developed for government and non-government agencies on how to effectively engage children and young people in decision-making.
  - Developing online resources for children and young people across NSW.
  - Producing reports informed by consultations with children and young people.
- 4.44 In a consultation with government agencies, we heard that the Advocate's input into reports, and participation in consultations and events has been received positively. The Advocate's independent reports to key inquiries were considered especially valuable.
- 4.45 Some stakeholders suggested including the Advocate's work in more detail in the Act, for example listing the matters the Advocate should report on or the type of events the Advocate should be involved in.

### **Conclusion: the Advocate's work should not be set out in the Act**

- 4.46 Legislating the specific types of work the Advocate carries out is not, in our view, the best way to provide more visibility to the Advocate's work, and nor would it be practical to list such work. Additionally, it would likely limit the Advocate's ability to do work that is needed to report on new and emerging issues, and may dilute its independence.

Therefore, no change to the Act is proposed to set out the work of the Advocate in more detail.

## Youth Advisory Council (YAC)

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- 4.47 Part 4 of the Act sets up the YAC. The YAC was established to provide direct advice to the Minister and Advocate on matters of concern to young people.
- 4.48 Stakeholders generally valued the YAC's role and thought it was important to have a body of this nature.

### Membership and procedure of the YAC

- 4.49 Under section 21 of the Act, the maximum membership of the YAC is 12 part-time members, at least six of whom must be under 25 years old at the time of their appointment and at least three members are to be under the age of 15 years. Part-time members can be appointed for up to two year terms, and may be reappointed.
- 4.50 Part-time members of the YAC must have the necessary experience, skills and qualifications to contribute to the work of the council. The Advocate's website provides information on how to apply to be a council member.<sup>16</sup> The Minister is to consider any recommendations made by the Advocate in relation to the appointment of members.<sup>17</sup>
- 4.51 Schedule 1 of the Act provides that the Minister is to appoint a Chair and a Deputy Chair of Council from among the members. These roles may be voted for by the YAC members and are recommended by the Advocate.<sup>18</sup>
- 4.52 The Advocate, or a nominee, is an ex-officio member of the YAC. One survey respondent said the Advocate:

was there to supplement and help inform our ideas, rather than come up with ideas for us, and I think that is a great thing. There was a perfect balance between the leadership and the youth on the panel, and at all events [I] attended.
- 4.53 Schedule 1 provides that the procedure for meetings and for conducting business at those meetings is determined by the YAC, subject to the Act and regulations. The Chair is to be the presiding member at meetings, and in their absence, the Deputy Chair, or if both are unavailable, YAC has broad discretion to decide how Council meetings are organised, how often they occur and how they are structured. There are currently no regulations relating to the YAC.
- 4.54 There was a general consensus that these provisions are working well. Some feedback was received that more information could be provided to raise awareness in the community about how to become involved in the YAC.
- 4.55 There was broad support for requiring a certain number of members to be under the age of 25 years as this ensures the Council is representative of young people and gives people under 25 years old the opportunity to gain new skills. One survey respondent said the "youth voice" is "something that is very well done" in the YAC.

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<sup>16</sup> See <https://www.acyp.nsw.gov.au/yac>.

<sup>17</sup> *Advocate for Children and Young People Act 2014* section 21(5).

<sup>18</sup> Information on the 2020-2021 YAC can be found at <https://www.acyp.nsw.gov.au/nsw-youth-advisory-council-2020-21>.



Another respondent considered that “the age range of the people in the committee is good as there are more voices and opinions”.

- 4.56 Some stakeholders suggested the YAC should have more members to ensure wider representation of young people and better reflect the diversity of young people across the state. Others thought that more than 12 members would be unworkable.
- 4.57 One stakeholder submitted that LGBTQIA+ young people should be represented on the YAC and that there should be at least one member who has a lived experience of mental health issues. Young people consulted in schools said there should be at least one member who is Aboriginal or Torres Strait Islander. Adopt Change said the YAC should include representation from young people with lived experience of out of home care. Government and non-government agencies said there is diverse representation on the YAC.

### **Conclusion: the setup of the YAC is appropriate**

- 4.58 The Review finds that the current legislative provisions regarding the membership, appointment and procedure of the YAC are appropriate and operating effectively.
- 4.59 The provisions provide enough flexibility for the appointment of members from diverse backgrounds and aged under 25 years, for terms of up to two years which may be renewed.
- 4.60 The review does not recommend that membership be increased.

### **Functions of the YAC**

- 4.61 Under Part 4 of the Act, the YAC has the following functions:
- advising the Minister and the Advocate about the planning, development, integration and implementation of government policies and programs concerning young people
  - consulting with young people, community groups and government agencies about issues and policies concerning young people
  - monitoring and evaluating legislation and government policies and programs relating to young people, and recommending any required changes
  - conducting forums, approved by the Minister, about issues concerning young people, and
  - collecting, analysing and providing the Minister and Advocate with information about issues and policies relating to young people.
- 4.62 The YAC can give advice to the Minister either at the Minister’s request, or on its own initiative. The YAC must work cooperatively with the Advocate in exercising its functions.
- 4.63 There was general support for the YAC’s functions among stakeholders. Adopt Change said it welcomes any activities that provide a forum for the voice of young people to inform decision-making and policy. The Children in Care Collective said the YAC has an important role not only in advising the Advocate and government, but also in providing young people with opportunities to develop advocacy skills.

- 4.64 YAC members consulted said forums provide scope to talk about issues, hear the voices of other children and young people and provide that feedback to the Advocate. A former YAC member said they did not know what powers they had, and it would be helpful for the YAC to receive more guidance about how they can affect change. Similarly, one survey respondent said it is essential for the YAC to understand the power they have, in order to act.
- 4.65 Government agencies consulted suggested that it would be useful for people to find out about the YAC's work and successes. One survey respondent said they would "like to see more transparency in the yearly report about what the YAC do". The review notes that the Advocate's annual reports contain information about the YAC.
- 4.66 More detailed information outlining the work of the YAC, including a summary of meetings and advice provided, is contained in the YAC's own individual reports.<sup>19</sup> The review notes that the YAC is not legislatively required to prepare such reports, but it has done so in practice.

### **Conclusion: the YAC's functions are appropriate**

- 4.67 The YAC plays a valuable role in advising the Advocate and Minister and representing the voice of young people. Stakeholder submissions and consultations indicate the Council's functions are appropriate. The review considers that including more detail or guidance about the YAC's functions in the Act would be overly prescriptive.

### **Special inquiries by the Advocate**

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- 4.68 Part 5 of the Act sets out the special inquiry function. Submissions generally supported the special inquiry function, but some raised concerns about how inquiries are initiated and noted that no inquiries have taken place.

#### **Current position**

- 4.69 Under Part 5 of the Act, the Minister for Families and Communities and the Minister for Regional Youth can require the Advocate to conduct a special inquiry into a specific issue affecting children and young people. The Advocate must make a report to Parliament on the results of a special inquiry.
- 4.70 Special inquiries are meant to be as informal as possible, however they may involve the exercise of special powers by the Advocate. The Advocate can receive evidence in different ways, including holding hearings, seminars and workshops, and by asking for written submissions. Hearings must be held in public, but can be private if the evidence is confidential or it concerns a child or young person who requests a private hearing. The Advocate can direct that any evidence given at a private hearing must not be published. The Advocate can also require people to provide information, send documents or attend a hearing.
- 4.71 No special inquiries have taken place, as no Minister has requested one.

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<sup>19</sup> See e.g. NSW Youth Advisory Council Annual Report 2020-21 <https://www.acyp.nsw.gov.au/nsw-youth-advisory-council-2020-21>

## Issues

- 4.72 One submission suggested hearings could be in private in all cases where a child or young person is involved, and not only at the request of that child. Young people consulted in schools supported the ability for inquiries to be kept private or confidential, if this is what the child or young person wants.
- 4.73 Some stakeholders pointed out that it was difficult to comment on special inquiries as they have not yet occurred. Young people consulted in schools supported the Minister's power to request special inquiries, and said it should be retained.
- 4.74 One submission queried whether an inquiry function is necessary under the Act and suggested that priority should be given to other bodies that have powers to investigate specific issues affecting children and young people.
- 4.75 Several stakeholders considered the Advocate should be able to conduct an inquiry without the request or approval of the Ministers. It was observed that the need for Ministers to request an inquiry may limit the Advocate's independence.
- 4.76 Young people consulted in schools said the Advocate would be best placed to initiate a special inquiry and some non-government organisations supported the Advocate having such a power. Young people in schools, the Upper Hunter Youth Council and the YAC suggested that children and young people could make requests for inquiries to the Advocate.
- 4.77 Equivalent roles in some other states and territories can initiate similar inquiries.<sup>20</sup> However, the position in Tasmania is the same as in NSW, with the Commissioner for Children and Young People only able to undertake investigations or reviews at the request of the Minister.<sup>21</sup>
- 4.78 Some non-government organisations queried whether the Advocate would have the resources to conduct a special inquiry. They suggested the Parliamentary Joint Committee could undertake special inquiries instead. As well as monitoring the Advocate, the Parliamentary Joint Committee also examines trends and changes in services and issues affecting children and young people. The Parliamentary Joint Committee has conducted inquiries into matters including the prevention of youth suicide in NSW and the sexualisation of children and young people. The Parliamentary Joint Committee's reports are available on the NSW Parliament website.<sup>22</sup>
- 4.79 Some stakeholders supported a transparent process for when requests to initiate special inquiries are refused. Part 6 of the Act requires the Advocate's annual report to include a description of any request made by the Advocate to conduct a special inquiry that was not approved by the Minister, and a statement of the Minister's reasons for not approving the request.

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<sup>20</sup> E.g. In Western Australia, the Commissioner for Children and Young People may, on its own initiative or at the request of a Minister, conduct a special inquiry into a matter affecting the wellbeing of children and young people (see Part 5 of the *Commissioner for Children and Young People Act 2006* (WA)).

<sup>21</sup> See the *Commissioner for Children and Young People Act 2016* (Tas) section 9.

<sup>22</sup> See <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=170>.

## Conclusion: the special inquiry function should be retained

- 4.80 The special inquiry function under Part 5 of the Act should be retained, so that it is available to be used where other functions or powers under the Act are insufficient or unable to be used.
- 4.81 The requirement for the Minister to request or approve a request for a special inquiry should also be retained. This allows the Minister to exercise oversight as to whether it is necessary to engage this function, or whether other powers or functions could be used instead. This also enables the Minister to evaluate whether the Advocate has sufficient resources to conduct such an inquiry or additional resources are needed.
- 4.82 In addition, the Parliamentary Joint Committee has the power to examine issues concerning children and young people and has conducted inquiries into a range of different issues.
- 4.83 The recommendation for hearings to be held in private whenever a child or young person is involved is not supported. Children or young people should be able to choose whether or not a hearing should be private.

## Reports by the Advocate

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- 4.84 Part 6 of the Act covers reports by the Advocate. Stakeholders expressed general support for the annual and other reports that the Advocate produces. Some concerns were raised, including in relation to their accessibility.

## Current position

- 4.85 The Advocate must prepare an annual report to Parliament each year, including:
- a description of what the Advocate has done in the reporting year
  - an evaluation of responses to recommendations that the Advocate has made to relevant authorities, and
  - any recommendations for changes to laws or policies.
- 4.86 The Advocate must make a special report to the Minister for Families and Communities and the Minister for Regional Youth on a particular issue if the Minister requests it. The Advocate can also submit their own special report to Parliament on any issue relating to the Advocate's role.
- 4.87 The Advocate has prepared several reports since the role was established in 2014, on topics such as mental health, juvenile justice, Aboriginal consultations, social exclusion and homelessness. Reports released have been informed by consultations with children and young people. The feedback and solutions provided by children and young people are reported directly to Parliament and provided to decision-makers. These reports also raise awareness about the issues that children and young people are experiencing and what changes they would like to see made.
- 4.88 Stakeholders generally supported the Advocate's reporting function. One former YAC member said that reporting is a positive system that creates accountability. Similarly, Adopt Change said the Advocate's annual reports fulfil a vital function as a record to the public of the Advocate's work and recommendations. Young people consulted in schools said annual reports give Parliament an idea of what children and young people want and what needs to change.

## Issues to be addressed in reports

### Content of reports

- 4.89 Stakeholders suggested that the Advocate report on particular topics, such as:
- education attainment impacts on children and young people,
  - programs focused on Aboriginal and Torres Strait Islander people, jobs and workplace skills for young people, youth-run businesses and mentorship programs,
  - issues relating to children and young people from refugee and migrant backgrounds,<sup>23</sup> and
  - LGBTQIA+ issues.
- 4.90 Young people consulted in schools, and the Upper Hunter Youth Council, said the children and young people should be more involved in the preparation of annual reports. One suggestion was to include a specific section from children and young people.

### Accessibility

- 4.91 Some stakeholders suggested the Advocate's reports could be made more accessible to children and young people. In a consultation, non-government organisations said they should be written in a way that is "child friendly".
- 4.92 Another suggestion was for the Advocate to release video versions of reports. To some extent, this is already occurring in practice. On the Advocate's website, there is a video outlining the 2022-2024 Strategic Plan.<sup>24</sup>
- 4.93 Some recent reports by the Advocate are produced in an accessible format. For example, summary and accessible versions of the 2020 *Children and Young People's Experience of Disaster Report* are available on the Advocate's website. There is also a video summarising the consultations conducted with children and young people.<sup>25</sup>
- 4.94 In relation to the 2020 *Voices of Children and Young People with Disability Report*, an executive summary, key findings and report summary (in "easy read" format) are available on the Advocate's website. There is also a video summarising the consultations conducted with children and young people and of the Challenging Issues in Education for Young People with Disabilities webinar.<sup>26</sup>

### Consultation and engagement

- 4.95 Some stakeholders support greater transparency about the consultations and collaboration undertaken by the Advocate. The Advocate's annual reports outline the methodology of consultations and the children and young people that were consulted.

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<sup>23</sup> The Advocate released a report around issues affecting refugee and asylum seeker children and young people in 2019. Further information can be found at: <https://www.acyp.nsw.gov.au/dod/refugee>.

<sup>24</sup> <https://www.acyp.nsw.gov.au/strategic-plan-2022-2024>.

<sup>25</sup> <https://www.acyp.nsw.gov.au/disaster-report-2020>.

<sup>26</sup> <https://www.acyp.nsw.gov.au/disability-report-2020>.

### **Follow up of reports**

- 4.96 Several stakeholders queried what happens to reports after they are released. The Upper Hunter Youth Council said there should be a way to measure the impact of reports.
- 4.97 Under Part 6 of the Act, the Advocate's annual reports must evaluate the response of relevant authorities to the Advocate's recommendations.
- 4.98 The Children in Care Collective said there is limited information published about the responses of government and non-government agencies to the Advocate's insights and recommendations. In a consultation, non-government agencies suggested that ministers should be required to respond to or acknowledge reports.
- 4.99 Under Part 7 of the Act, the Parliamentary Joint Committee must examine the Advocate's annual and other reports and report back to Parliament about them. The Parliamentary Rules then require a Government response to a Committee report to be made within six months of a report being tabled.<sup>27</sup> The Parliamentary Joint Committee's reports, and government responses to them, are available on the NSW Parliament's website.<sup>28</sup>
- 4.100 Some stakeholders highlighted a need for better communication about the Advocate's reports to children and young people. The Upper Hunter Youth Council suggested that reports could be sent out to youth councils.

### **Conclusion: reports should continue to be accessible**

- 4.101 Stakeholder submissions and consultations highlight the importance of the Advocate's annual and other reports.
- 4.102 As noted above, the value of the Advocate's reports could also be enhanced by producing them in accessible formats for children and young people with learning or physical disabilities or visual or hearing impairments, such as including audio and Auslan, or by using inclusive design tools.
- 4.103 In practice, the Advocate already produces information in different formats as referenced above. In addition, the views of children are reflected in the Advocate's reports, which detail the consultations undertaken and the issues raised.

### **Parliamentary Joint Committee**

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- 4.104 Part 7 of the Act sets up the Parliamentary Joint Committee. Stakeholders generally supported the Parliamentary Joint Committee and its role in monitoring the Advocate's work.

### **Current position**

- 4.105 The Parliamentary Joint Committee, which is made up of seven members of Parliament, was set up to allow the Advocate to have greater independence from Government.

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<sup>27</sup> Standing Rules and Orders of the Legislative Council (233) and Standing Orders of the NSW Legislative Assembly (order 303A).

<sup>28</sup> <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=170#tab-reportsandgovernmentresponses>.

4.106 Under Part 7 of the Act, the Parliamentary Joint Committee's functions are to:

- monitor and review the Advocate's exercise of its functions
- monitor and review the Children's Guardian's oversight of the Working with Children Check function
- report to Parliament about any matter relating to the Advocate or their functions, or on any matter relating to the Children's Guardian's administration of the Working With Children Check, that should be brought to Parliament's attention
- examine the Advocate's annual or other reports, and report to Parliament on any matter appearing in, or arising out of, any such report
- look at trends and changes in services and issues affecting children
- report back to Parliament about any changes that should be made to the Advocate's functions and procedures, and
- inquire into any question raised by Parliament relating to the Advocate's functions.

4.107 Stakeholders generally supported the Parliamentary Joint Committee. Submissions from Adopt Change and the Children and Care Collective observed that the Parliamentary Joint Committee is essential for maintaining the Advocate's independence from government.

4.108 Other stakeholders emphasised the importance of the Parliamentary Joint Committee in monitoring the Advocate's activities, and holding the Advocate accountable for action. Young people consulted in schools observed that the Parliamentary Joint Committee can monitor the progress of the Advocate's programs. One survey respondent said:

Parliament should continue to monitor the work of the Advocate. This is because the government are paying for the role of the Advocate so it is essential that Parliament are aware of the tasks completed by the Advocate.

4.109 Some stakeholders said it is unclear what happens to the Parliamentary Joint Committee's reports once they are tabled in Parliament and whether there are government responses to them.

4.110 Some stakeholders also said there could be better communication between the Parliamentary Joint Committee and children and young people.

### **Conclusion: no changes needed to the Parliamentary Joint Committee**

4.111 Stakeholders were generally supportive of the role and functions of the Parliamentary Joint Committee and its independence from Government.

4.112 Some stakeholders said there should be more transparency about how the Advocate's recommendations are considered by the Parliamentary Joint Committee and then consequently actioned by Government.

4.113 Section 37(1)(d) of the Act requires the Parliamentary Joint Committee to "examine each annual or other report of the Advocate and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report". The Parliamentary Rules then require a Government response to be made to a Committee report within six months of a report being tabled.