

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

Discussion Paper

November 2020

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Introduction

- 1.1 The *Advocate for Children and Young People Act 2014 (the Act)* started on 24 June 2014. It replaced the *Commission for Children and Young People Act 1998*, the *Commission for Children and Young People Regulation 2009*, and the *Youth Advisory Council Act 1989*.
- 1.2 We (the NSW Department of Communities and Justice) are reviewing the Act on behalf of the Minister for Families, Communities and Disability Services, the Hon. Gareth Ward MP, and the Minister for Mental Health, Regional Youth and Women, the Hon. Bronwyn Taylor MLC. Both Ministers are responsible for the Act.
- 1.3 We are reviewing the Act five years after it was made to make sure it is still suitable to achieve what it was set out to do, as required by legislation. The review will also look at what needs to be changed to make sure it is operating effectively.

About this Discussion Paper

- 1.4 This discussion paper is the first part of the review process. It provides information about what each part of the Act does.
- 1.5 We have included questions so you can tell us what you think about how the Act is working. You can also ask any other questions or make comments about the Act if you wish.
- 1.6 There are lots a lot of different ways that children and young people can get involved in decision-making and stand up for their rights and interests. This discussion paper asks about the operation of the Advocate for Children and Young People Act, and in particular:
 - If the purposes of the Act are still valid, or should be changed
 - How the Advocate can best represent the interests of children and young people in NSW
 - Whether the Act needs to be changed to help the Advocate do its job; and
 - Is the set-up and operation of the Youth Advisory Council appropriate .

How you can have your say

- 1.7 We want to hear from you.
- 1.8 It is important that we hear from all different people to make sure the Act reflects what is needed to support children and young people in NSW. We encourage everyone to have their say, especially:
 - Aboriginal or Torres Strait Islander children and young people
 - Children and young people with a cultural and linguistically diverse background
 - Children and young people from rural communities; and

- Children and young people with a disability.
- 1.9 You can tell us what you think by:
- Responding to the online survey: <https://www.surveymonkey.com/r/KKYK63Y>
 - Sending feedback through written submission (you do not need to answer every question! You can also raise any other questions or comments you would like) – please email your feedback to policy@justice.nsw.gov.au or post to Policy, Reform and Legislation, Department of Communities and Justice, Locked Bag 4028, Ashfield, NSW 1800, and
 - Attending workshops and discussions in February and March 2021.
- 1.10 **The closing date for all survey responses and written submissions is 12 March 2021.**
- 1.11 Your feedback will be considered and will inform a report on the review. The report will be tabled in NSW Parliament as required under section 43 of the Act.
- 1.12 We will put any written feedback you give on our public website, unless you ask us not to. You can let us know if you do not want your personal details or any part of your submission published. The feedback and submissions will be published at the Have Your Say page at www.nsw.gov.au/have-your-say.
- 1.13 For more information about the review and how you can participate, please email policy@justice.nsw.gov.au or phone 02 8753 8421.

Background

- 1.14 The role of an advocate is to support people who feel they are not being heard, and to ensure they are taken seriously and that their rights are respected and upheld. Children and young people may have less direct political influence, particularly where they are under 18 years and not able to vote. They may also have less control in decisions affecting their lives, where a responsible adult has the final say. The Advocate is able to listen to the challenges and opportunities facing children and young people at a systemic level and ensure these are communicated to decision-makers, and considered in the decision-making processes on issues affecting children and young people.
- 1.15 NSW previously had a Commission for Children and Young People, and the *Commission for Children and Young People Act 1998* set out the principles and functions of the Commission. The Commission was responsible for many of the principles and functions now overseen by the Advocate – such as promoting the participation of children and young people and making recommendations to Government on services affecting children and young people.
- 1.16 In 2014, we consulted with more than 900 children and young people and 40 non-government agencies to review the *Commission for Children and Young People Act* and suggest changes. This led to the introduction of the *Advocate for Children and Young People Act 2014*.
- 1.17 The Advocate for Children and Young People Act replaced the old legislation and set up the office of the Advocate of Children and Young People in place of the Commission. The Act created an independent office of the Advocate for Children and Young People to support and stand up for the needs and interests of children and

young people, and make sure that the voices of children and young people are heard by the NSW Government and by the community.

1.18 The Act ensures that the challenges and opportunities facing children and young people at a systemic level are addressed effectively through consultation with communities and strong advocacy.

1.19 The main changes between the Commissioner for Children and Young People and the current Advocate for Children and Young People are:

Now	Previously
The Advocate works with people aged from 0 – 24 years.	The Commissioner previously worked with people aged 0 – 18 years.
The Advocate no longer looks at what kind of complaints are made by or on behalf of children. The Ombudsman now looks at these complaints.	Previously, the Commissioner looked at trends in complaints.
The Advocate no longer oversees the Working With Children Check program, which helps determine whether people are suitable to work with children and young people. This program is now overseen by the Office of the Children’s Guardian.	The Commissioner previously oversaw the Working With Children Check program.

1.20 All States and Territories have some version of the Advocate, each with different roles and responsibilities. For example, the Advocate in the ACT and the Children’s Commissioner in the Northern Territory handle complaints from individual children and young people. The Commissioner in Victoria oversees the child protection system. The Commissioners in South Australia and Tasmania look after international obligations for children and young people. In NSW these issues are dealt with by different bodies.

1.21 For a full jurisdictional comparison, please see the table available at **Attachment A**.

2. What does the Advocate for Children and Young People in NSW do?

2.1 Part 2 and Part 3 of the Act set out the role of the Advocate for Children and Young People, including the terms of employment, such as:

- The Advocate can remain in the role for a maximum of two five-year terms
- The Advocate works independently from the NSW Government
- The Government can remove the Advocate from the role before the end of their term but only if the Advocate is unable to fulfil their responsibilities or behaves badly in the role; and
- The Government can employ staff to help the Advocate in their role.

2.2 The **principles** governing the work of the Advocate 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.

2.3 The **main responsibilities** of the Advocate are to:

- Stand up for and promote the safety, welfare and well-being of children and young people
- Make sure children and young people are involved in decisions that affect their lives
- Conduct special inquiries into issues affecting children and young people
- Make recommendations to government and non-government agencies on issues affecting children and young people
- Research issues affecting children and young people
- Make sure children and young people are getting important information and advice; and
- To prepare a three year strategic plan for children and young people in NSW.

2.4 In performing the responsibilities of the Advocate, the Advocate must:

- Focus on systemic issues affecting larger groups of children and young people
- Give priority to the interests and needs of 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 Youth Advisory Council.

2.5 The Advocate does not deal with individual complaints or concerns of specific children or young people but can provide information and referrals to other organisations that can help.

So - What does the work of the Advocate look like in real life?

2.6 The Office of the Advocate for Children and Young People (**ACYP**) organises a range of consultation opportunities, including face-to-face consultations with children and young people across NSW, allowing children and young people to provide their views and recommendations on many issues that affect them – such as education, mental health, life skills, homelessness, employment, diversity, discrimination and violence.

- 2.7 These consultations happen in schools, at Youth Justice Centres, at forums and events, and through the Youth Advisory Council. The ACYP also creates questionnaires and conducts online polls, surveys and competitions to engage and consult with children and young people.
- 2.8 Consultations often ask what is working well about a certain topic, what is not working well, and what improvements could be made to better help children and young people.
- 2.9 The results of these consultations and polls are often shared with Government departments to show them what children and young people are thinking, which helps inform new policies and practices.
- 2.10 The ACYP is also involved in several conferences and events throughout the year where the Advocate engages and consults with children and young people, for example at Children's Week, Youth Week, National Child Protection Week, NAIDOC week, and the Schools Spectacular. Findings from these consultations are made into reports that help to inform the ACYP's feedback and recommendations.
- 2.11 Other tasks the ACYP performs to include children and young people in decision-making processes include:
- Contributing to research reports, providing advice to a number of government and non-government agencies, and preparing submissions to Government on matters that affect 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. The training is designed to show organisations how to respectfully engage with children and young people and involve them in decision making processes.
 - Creating resources developed for government and non-government agencies on how to effectively engage children and young people in decision making.
 - Developing a directory website for children and young people across NSW which they can use to find things to do and support when they need it – www.ourlocal.nsw.gov.au. The website provides a single place online to find local and state-wide opportunities, activities, services and events. The ACYP has also developed the Digital Lunch Break – www.digitallunchbreak.nsw.gov.au – to assist children and young people with finding online activities and resources to do at home.
- 2.12 The ACYP has also released a number of reports which 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.
- 2.13 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. These reports can be found on the ACYP website, at www.acyp.nsw.gov.au.
- 2.14 The ACYP also released its three year, whole-of-government Strategic Plan for Children and Young People in July 2016. More than four thousand children and young people from across NSW were involved in the process of developing the Plan. Consultations occurred in schools across NSW where children and young people

were able to talk about their life experiences and discuss what is important to them. These experiences informed the focus of the Strategic Plan. You can view the plan at www.acyp.nsw.gov.au/plan.

Question 1

What do you think about the principles of the Advocate?

(see paragraph 2.2 above)

Question 2

What do you think about the responsibilities of the Advocate?

(see paragraph 2.3 above)

Question 3

Are there other things the Advocate should consider when performing its responsibilities?

3. What does the Youth Advisory Council do?

- 3.1 Part 4 of the Act sets up the Youth Advisory Council (**YAC**), to work cooperatively with the Advocate. The YAC was established to advise government ministers and the Advocate on the planning and development of government policies and programs affecting young people, and to consult with young people, community groups and government agencies on issues and policies concerning young people.
- 3.2 The YAC plays an important role in guiding NSW Government youth affairs and raising the views of young people. The YAC meets regularly throughout the year to discuss a range of topics, as well as monitoring and evaluating youth-related policies and legislation which affects young people. The YAC provides direct advice to government ministers and the Advocate about issues affecting young people.
- 3.3 The YAC must have 12 members with at least six of these members who are under 25 years old. The members should reflect the diversity of young people across NSW.
- 3.4 People can be members of the YAC for a period of a maximum of two years but they may be appointed for an additional period of two years. The YAC must have a Chair and a Deputy Chair of Council. These roles are voted for by the YAC members and/or suggested by the Advocate from a pool of previous members. The Advocate, or a nominee, is also a member of the YAC, and can oversee and provide administrative support to the YAC.
- 3.5 The YAC is responsible for:
 - Speaking to government ministers and the Advocate about government policies and programs affecting young people

- Discussing issues affecting children and young people with community groups and government agencies, and other children and young people outside the YAC
 - Commenting on laws and policies affecting children and young people and recommend changes if required
 - Organising forums on issues that children and young people are interested in; and
 - Collecting and analysing information about issues concerning children and young people, and providing that information to the Minister for Families, Communities and Disability Services, the Minister for Mental Health, Regional Youth and Women, and the Advocate.
- 3.6 The YAC will decide themselves how Council meetings are organised, how often they occur and how they are structured.
- 3.7 The Advocate can also set up other committees to provide advice or help for the Advocate or the YAC.
- 3.8 There are currently 12 YAC members, aged between 12 and 24 years, who come from all over NSW and meet regularly throughout the year. The members change every year and the ACYP recruits annually for new members.
- 3.9 The YAC has assisted with concepts, ideas and planning for several ACYP events and consultation processes. YAC members also attend conferences and take part in panels to discuss their experiences, facilitate discussion with other children and young people and provide MC duties to select events. Events have included mental health forums, conferences on reducing violence against children and young people and events and workshops with sector leaders on developing children's participation in policy development.

Question 4

What do you think about the set-up of the YAC, e.g. number of members, age limits, etc?

Question 5

What do you think about the functions and responsibilities of the YAC? Should they be doing more / less?

Question 6

Do you have any other comments about the YAC?

4. What is a special inquiry?

- 4.1 Part 5 of the Act sets out the special inquiry function. The Minister for Families, Communities and Disability Services and the Minister for Mental Health, Regional

Youth and Women 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.

- 4.2 Unlike the other functions in the legislation, this special inquiry function is only exercised when a Minister has identified or agreed upon an issue affecting children and young people that requires investigation. The Government will request that the Advocate begin an inquiry. The Advocate, as an independent body, will perform an investigative function for the Government.
- 4.3 These inquiries should be as informal as possible. The Advocate can receive evidence in a number of 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 and the child or young person requests a private hearing.
- 4.4 The Advocate can direct that any evidence given at a private hearing must not be published.
- 4.5 The Advocate can require people to provide information, send documents or attend a hearing. People must comply with a request, and can face fines or imprisonment if they provide false or misleading information to the Advocate.
- 4.6 As of September 2020, no Minister has asked the Advocate to conduct a special inquiry.

Question 7

What do you think about the special inquiry function?

Do you think it is necessary to retain the ability for the responsible Ministers to require a special inquiry?

Question 8

Should there be any changes to the way in which the Advocate is able to run a special inquiry?

5. Reports by the Advocate

- 5.1 Part 6 of the Act covers reports by the Advocate. The Advocate must prepare an annual report to Parliament each year, including information on the following:
- A description of what the Advocate has done the reporting year
 - An evaluation of responses to recommendations that the Advocate has made to relevant authorities (such as organisations who work with children and young people); and

- Any recommendations for changes to laws or policies that the Advocate thinks should be made.
- 5.2 The annual reports are available to view on the ACYP website, at <https://www.acyp.nsw.gov.au/info/publications/annual-reports>.
- 5.3 The Advocate must make a special report to the Minister for Families, Communities and Disability Services and the Minister for Mental Health, Regional Youth and Women on a particular issue if the Minister requests it. The Advocate can also submit their own special report to Parliament on any particular issue relating to the Advocate's role.

Question 9

What do you think about the annual reports the ACYP has developed? Do you think there are any other issues of importance to children and young people that should be reported on?

6. What is the Parliamentary Joint Committee?

- 6.1 Part 7 of the Act sets up the Parliamentary Joint Committee known as the Committee on Children and Young People (the Committee).
- 6.2 The Committee was set up to allow the Advocate to have greater independence from Government, so that it can freely advocate for children and young people. The Committee is made up of seven members of Parliament, who monitor and review the work of the Advocate and report to Parliament on any matter the Committee thinks Parliament should know about.
- 6.3 The Committee also looks at trends and changes in issues affecting children and young people and can recommend any changes to Parliament that the Committee thinks would be useful to the role and responsibilities of the Advocate.
- 6.4 The Committee also monitors and reviews the Children's Guardian's oversight of the Working with Children Check function (which involves checking whether someone should be cleared to work with children).

Question 10

Do you think it is a good idea that Parliament monitors the work of the Advocate? Why or why not?

7. Miscellaneous Provisions

- 7.1 Part 8 of the Act contains some additional provisions, including the powers to:

- Protect people from personal liability for anything done in good faith in carrying out the Act; and
- Make regulations under the Act.

Question 11

Do you have any comments about the Act that you would like to raise?