

Committee on Children and Young People



PARLIAMENT OF
NEW SOUTH WALES

2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Chair's foreword

As the Chair of the Committee on Children and Young People, I am honoured to present our report reviewing the work of the Advocate for Children and Young People and the Office of the Children's Guardian in the 2021-22 and 2022-23 reporting periods.

The Committee takes its oversight responsibilities seriously. We held two public hearings and many meetings to carefully consider the issues and develop the recommendations in this report.

Advocating for greater oversight of the Children's Guardian

During this inquiry, concerns were raised about whether the current oversight mechanisms for the Children's Guardian are adequate. The Children's Guardian is an independent statutory office, that is not subject to Ministerial control or direction. It has vital statutory functions, including administering the Working with Children Check, the Reportable Conduct Scheme, overseeing statutory out-of-home care, and the new Child Safe Scheme. The Guardian also has significant investigative powers. Crucially, it plays an integral role in safeguarding some of the state's most vulnerable children.

In this report, we recommend that parliamentary oversight of the Children's Guardian should be enhanced to match the level of oversight over the Advocate for Children and Young People.

Currently, our jurisdiction concerning the Children's Guardian is limited and tied to specific functions, contrasting with the broader oversight we hold over the Advocate for Children and Young People. This discrepancy is not seen in the parliamentary oversight of other bodies, such as the Health Care Complaints Commission or the state's integrity agencies and lacks a clear rationale. It poses a risk of inadequate scrutiny of the Children's Guardian.

We have also made other recommendations relating to strengthened oversight of the Children's Guardian. For example, we have recommended that the NSW Government consider establishing an inspector of the Children's Guardian or subjecting the Children's Guardian to a level of Ministerial control or direction, with important exceptions. We have suggested these exceptions in recognition that there are good reasons why some of the Guardian's functions should remain independent. Any changes to the existing oversight model will require further consideration of the risks and benefits as well as consultation with the Guardian and other relevant stakeholders.

Strengthening the functions of the Children's Guardian and the Advocate for Children and Young People

Additionally, the report contains various recommendations relating to the oversighted functions of both the Advocate for Children and Young People and the Children's Guardian, which were informed by the public hearings and the agencies' annual reports.

In Chapter 2, we propose recommendations aimed at clarifying statutory definitions and frameworks underpinning the work of the Children's Guardian. For example, the Committee recommended that the NSW Government provide an update on discussions with other states and territories regarding facilitating better information sharing relating to the Working with

Children Check and the Reportable Conduct Scheme. The Committee also made other findings and recommendations relating to the Reportable Conduct Scheme, the Working with Children Check, and the Child Safe Scheme.

Chapter 3 addresses the work of the Advocate for Children and Young People, with some recommendations suggesting improvements to annual reporting. We believe that incorporating more precise reporting measures will foster a clearer understanding of the Advocate's work with children and young people, which will greatly benefit the Committee and other stakeholders.

Notably, both the Guardian and the Advocate have recently tabled a report on issues around children in out-of-home care settings. In light of the recent government announcement to ban Alternative Care Arrangements for vulnerable children, we recognise the valuable work of both offices in this area.

I wish to thank my fellow Committee members for their dedication to the work of this Committee and their commitment to robust parliamentary oversight. I also thank the Committee secretariat for their invaluable support.

Most importantly, I would like to acknowledge the staff and leadership of the Children's Guardian and Advocate for Children and Young People for their continuing work – often unseen – in protecting and empowering the children and young people of NSW, especially our most vulnerable.

Helen Dalton MP
Chair

Findings and recommendations

Recommendation 1	1
That for the Committee to properly exercise its oversight role, the NSW Government should urgently introduce legislation to clarify that the Committee's scrutiny role over the Children's Guardian should be in the same terms as that exercised over the Advocate for Children and Young People.	
Recommendation 2	1
That the NSW Government amend the <i>Children's Guardian Act 2019</i> to provide the Committee with the power to veto proposed appointments of the Children's Guardian.	
Recommendation 3	1
That the NSW Government introduce legislation to:	
<ul style="list-style-type: none"> consolidate the Committee on Children and Young People's oversight functions relating to the Children's Guardian into the <i>Children's Guardian Act 2019</i>, and omit these sections from the <i>Advocate for Children and Young People Act 2014</i>. 	
Recommendation 4	6
That the NSW Government:	
<ul style="list-style-type: none"> consider amending the <i>Children's Guardian Act 2019</i> to establish an inspector of the Children's Guardian and to provide the Committee with oversight of the inspector, including the power to veto proposed appointments, or consider other options for strengthening the oversight over this office such as to make the Children's Guardian partly subject to the control and direction of the relevant Minister with important exceptions. 	
Recommendation 5	14
That the NSW Government update the Committee on its discussions with other states and territories regarding facilitating better information sharing around Australia, particularly in relation to Working with Children Checks and the Reportable Conduct Scheme.	
Finding 1	16
The National Reference System may be improved by sharing information amongst states and territories about offences that may not disqualify someone from working with children in one area but might in another jurisdiction.	
Recommendation 6	17
That the Children's Guardian work with the NSW Government to identify Working with Children Check application trends and whether these align with community and employer expectations.	
Recommendation 7	19

That the Children's Guardian work with the NSW Government and the community to identify whether the current definition of reportable conduct is too narrow. This should include an assessment of the potential workload and resourcing impacts of an expanded definition.

Finding 2 _____ 20

The definition of 'child safe organisation' may not capture entities contracted and funded by the Department of Communities and Justice to provide services to children where the contract requires the entity to comply with Child Safe Standards.

Recommendation 8 _____ 29

That, in future annual reports, the Advocate for Children and Young People provides more detail on its sources of funding, including from state and federal governments, and how that funding is spent.

Recommendation 9 _____ 31

That the Advocate for Children and Young People include data about diversity in its reporting, including in annual reports, that includes cultural diversity and the percentage of children and young people from regional, rural and remote areas, and other marginalised and underrepresented groups.

Recommendation 10 _____ 32

That, in future annual reports, the Advocate for Children and Young People consider including data from its new tracking mechanism monitoring the implementation of recommendations to stakeholders.

Finding 3 _____ 33

The Committee is pleased that the Advocate for Children and Young People used its power under Part 5 of the *Advocate for Children and Young People Act 2014* to conduct a special inquiry into alternative care arrangements during this reporting period. This is the first use of the special inquiry power since the Advocate's establishment.

Recommendation 11 _____ 37

That the NSW Government consider amending section 21(3) of the *Advocate for Children and Young People Act 2014* so that all 12 members of the Youth Advisory Council are persons under the age of 25 years.

Chapter One – Oversight of the Children's Guardian

Strengthening parliamentary oversight of the Children's Guardian

Recommendation 1

That for the Committee to properly exercise its oversight role, the NSW Government should urgently introduce legislation to clarify that the Committee's scrutiny role over the Children's Guardian should be in the same terms as that exercised over the Advocate for Children and Young People.

Recommendation 2

That the NSW Government amend the *Children's Guardian Act 2019* to provide the Committee with the power to veto proposed appointments of the Children's Guardian.

Recommendation 3

That the NSW Government introduce legislation to:

- consolidate the Committee on Children and Young People's oversight functions relating to the Children's Guardian into the *Children's Guardian Act 2019*, and
- omit these sections from the *Advocate for Children and Young People Act 2014*.

- 1.1 The Committee is proposing several recommendations to strengthen its oversight over the Children's Guardian (the **Guardian**). The Committee's jurisdiction has developed over several years following various reviews of the Guardian and the Committee's oversight functions are currently found across two statutes. This situation does not support a unified and consistent approach when compared with other parliamentary oversight mechanisms for independent statutory officers exercising similar powers and regulatory functions.
- 1.2 Currently, the Committee does not have full oversight of all the Guardian's functions, unlike its broad oversight of the Advocate for Children and Young People (the **Advocate**). The Committee also does not have the power to veto a proposed candidate for the Children's Guardian position. Additionally, the oversight responsibilities are divided between the *Advocate for Children and Young People Act 2014* (the **ACYP Act**) and the *Children's Guardian Act 2019* (the **CG Act**).¹

¹ See [Advocate for Children and Young People Act 2014](#) pt 7 and [Children's Guardian Act 2019](#) s 8AC.

Streamlining and expanding the Committee's oversight of the Children's Guardian

- 1.3 It is the view of the Committee that robust parliamentary oversight is crucial given the sensitive child protection work of the Guardian and the profound impact of their decisions on vulnerable children and families. In particular, the Committee considers that there should be a consistent framework across child protection and advocacy bodies in NSW.
- 1.4 The Committee currently monitors and reviews the functions of the Guardian:
- under the *Child Protection (Working with Children) Act 2012*,
 - under the CG Act in relation to the Reportable Conduct Scheme and working with relevant entities to prevent, identify and respond to reportable conduct and promote compliance with the scheme,
 - under the CG Act in relation to out-of-home care,²
 - in overseeing the implementation of the Child Safe Standards by child safe organisations,
 - in the enforcement of the Child Safe Standards within child safe organisations,
 - in establishing child safe action plans with prescribed agencies.³
- 1.5 The Committee also reviews:
- the activities of the Guardian, and
 - Ministerial guidelines
- for consistency with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.⁴
- 1.6 However, given the very specific nature of the Committee's current functions in relation to the Guardian, there is a lack of clarity around the extent to which the Committee can examine matters concerning the broader management and operations of the office of the Guardian. For instance, the structure, strategic planning initiatives, resources and funding available to the Guardian are all internal management matters that impact the effective performance of the office as a whole and, therefore, the current functions oversights by the Committee.
- 1.7 The extent to which such matters are relevant to the Committee's jurisdiction should be put beyond doubt by amendments to broaden and align the Committee's oversight of the Guardian with its oversight of the Advocate. The current differences in the legal framework for the Committee's oversight of each

² [Advocate for Children and Young People Act 2014](#) sub-s 37(1).

³ [Children's Guardian Act 2019](#) sub-s 8AC(1).

⁴ [Children's Guardian Act 2019](#) sub-s 8AC(1).

body creates artificial distinctions that undermine effective scrutiny in respect of the Guardian.

1.8 This problem is exacerbated by the Committee's functions being contained within two statutes instead of being streamlined and consolidated within the principal statute governing the Guardian. Consequently, the Committee also recommends that its oversight functions relating to the Guardian be incorporated into the CG Act, which is most relevant, and that they be removed from the ACYP Act.

1.9 In summary, the Committee recommends that its oversight role in relation to the Guardian is clarified to mirror its jurisdiction over the Advocate. That is, under the Act, the Committee should have the following functions in addition to its functions relating to the Advocate:

- to monitor and review the exercise by the Children's Guardian of its functions,
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the Children's Guardian or connected with the exercise of the Children's Guardian's functions, to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
- to examine each annual or other report of the Children's Guardian and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
- to examine trends and changes in services and issues affecting children and young people, and report to both Houses of Parliament any changes that the Joint Committee thinks desirable to the functions and procedures of the Children's Guardian, and
- to inquire into any question in connection with the Children's Guardian's functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

Effective oversight of the Children's Guardian

1.10 The Committee is the only body with specific oversight of the Guardian. The Guardian operates as an independent statutory office and is not subject to the direction or control of the Minister.⁵

1.11 By way of comparison, we note that the Health Care Complaints Commission – which is also oversighted by a parliamentary committee – is subject to the control and direction of the Minister, except in relation to the following:

- the assessment of a complaint,
- the investigation of a complaint,

⁵ See New South Wales, [Parliamentary Debates](#), Legislative Assembly, 22 May 2013, 23 (Pru Goward, Minister for Family and Community Services and Minister for Women); [Children's Guardian Act 2019](#) sub-s 128(3).

- the prosecution of disciplinary proceedings against a person,
- the terms of any recommendation of the Commission, and
- the contents of a report of the Commission, including the annual report.⁶

1.12 The Committee's role in overseeing the Guardian is crucial, especially in the absence of a similar provision subjecting the Guardian to Ministerial control and direction.

1.13 Notably, some of the Guardian's responsibilities were previously managed by the NSW Ombudsman (the **Ombudsman**) and therefore oversights by the Committee on the Ombudsman, Law Enforcement Conduct Commission and Crime Commission.⁷ That committee has broad powers to monitor and review the Ombudsman's exercise of its functions under the *Ombudsman Act 1974* or any Act.⁸ It is the view of the Committee that the transfer of the Reportable Conduct Scheme from the Ombudsman to the Guardian, without clearly conferring the same legislative terms for parliamentary oversight by this Committee, does not fully support effective accountability.

1.14 In addition, the Committee has broader functions in overseeing the Advocate than the Guardian. Among other things, the Committee has the function of monitoring and reviewing 'the exercise by the Advocate of the Advocate's functions'.⁹ It is unclear why the Advocate should be subject to greater oversight by the Committee compared to the Guardian, especially in circumstances where the Guardian is not subject to the control or direction of the Minister, where it possesses significant investigative powers and performs several critical statutory functions.

Expansion of the Children's Guardian's responsibilities

1.15 The Guardian's responsibilities have expanded significantly in recent years to include important regulatory roles in child protection. Such expansion arose from broader regulatory reforms in the child protection space and often reflected recommendations from the Special Commission of Inquiry into Child Protection Services in NSW (2008), the Royal Commission into Institutional Responses to Child Sexual Abuse (2018) (the **Royal Commission**), as well as the more recent Family is Culture Review (2023).¹⁰

1.16 In 2020, following a suggestion from the Royal Commission, the Reportable Conduct Scheme was transferred from the Ombudsman to the Guardian so that

⁶ [Health Care Complaints Act 1993](#) s 81.

⁷ The [Children's Guardian Bill 2019](#) transferred the Reportable Conduct Scheme from the NSW Ombudsman to the Children's Guardian. Schedule 1 of the [Ombudsman Act 1974](#) also explicitly excludes these transferred functions from being reviewable by the Ombudsman's office.

⁸ [Ombudsman Act 1974](#) s 31B.

⁹ [Advocate for Children and Young People Act 2014](#) sub-s 37(1)(a).

¹⁰ Office of the Children's Guardian (OCG), [Statutory Review of the Children's Guardian Act 2019](#), July 2022, pp 5-6, 42-43, viewed 9 October 2024.

the scheme sat with the agency responsible for the Working with Children Check and monitoring and enforcing Child Safe Standards.¹¹

- 1.17 Given the Guardian's increased statutory powers and the regulatory nature of its functions, the Committee believes comprehensive parliamentary oversight is necessary and justifiable. This oversight should be consistent with the level of parliamentary oversight applied to other statutory officers with similar investigative and regulatory roles.¹²
- 1.18 Although the Committee's oversight has evolved as the Guardian has taken on new roles, the Committee's new oversight functions are tied to the specific functions of the Guardian. This is different to the approach taken to other statutory office holders, including the Advocate.
- 1.19 The Committee considers that the legislation that sets out its jurisdiction in relation to the Guardian has been framed around the various incremental changes to the Guardian's role and functions over time. The Committee recommends it be framed around the full range of matters that the Committee needs to consider in order to properly and effectively scrutinise the Guardian.
- 1.20 During this inquiry the Committee has also become aware of some alleged issues relating to the workplace culture of the Guardian. This has been of considerable concern to the Committee. The Guardian and its staff perform a vital role in safeguarding children and the quality of its workplace culture influences the organisation's ability to fulfil its important statutory functions. The Committee will keep a watching brief on this issue.

Giving the Committee the power to veto Children's Guardian appointments

- 1.21 Recommendation 2 calls for the amendment of the CG Act to give the Committee power to veto proposed appointments of the Guardian. It is appropriate that the Committee is given the same veto powers as other committees which oversight important statutory offices including the:
- Committee on the Health Care Complaints Commission that has veto powers over the Commissioner of the Health Care Complaints Commission,¹³
 - Committee on the Independent Commission Against Corruption that has veto powers over the Commissioner of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption,¹⁴
 - Public Accounts Committee that has veto powers over the Auditor-General,¹⁵

¹¹ See OCG, [Reportable Conduct Scheme transfer](#), 1 March 2020, viewed 7 November 2024.

¹² See, eg, part 4A of the [Ombudsman Act 1974](#) for provisions relating to the NSW Ombudsman, as well as part 4 of the [Health Care Complaints Act 1993](#) for provisions relating to the Health Care Complaints Commission.

¹³ [Health Care Complaints Act 1993](#) s 66.

¹⁴ [Independent Commission Against Corruption Act 1988](#) s 64A.

¹⁵ [Government Sector Audit Act 1983](#) s 28A.

- Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission that has veto powers over the:
 - NSW Ombudsman,
 - Director of Public Prosecutions,
 - Information Commissioner,
 - Privacy Commissioner,
 - Chief Commissioner and Commissioner of the Law Enforcement Conduct Commission,
 - Inspector of the Law Enforcement Conduct Commission,
 - Commissioner for the NSW Crime Commission,¹⁶ and
 - Inspector of Custodial Services.¹⁷

1.22 The absence of a similar role for this Committee in relation to the appointment of the Guardian is a serious anomaly which should be rectified.

Consolidating the Committee's oversight functions of the Children's Guardian

1.23 Finally, the Committee recommends consolidating its oversight over the Guardian within the CG Act. The Committee's statutory functions are currently contained in both the ACYP Act and CG Act.

1.24 Integrating the relevant provisions into a single Act will clarify and streamline the statutory basis for the Committee's role and also enhance public understanding. This approach also aligns with the practices of other parliamentary oversight committees, such as the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, whose oversight functions relating to multiple agencies are outlined in their respective establishing legislation.¹⁸

1.25 Consolidating the provisions will allow for any inconsistencies to be more easily identified and addressed. It also will create legislative efficiency by immediately capturing any future changes to the functions of the Guardian. As noted above, the Committee believes that this will provide a more cohesive and streamlined legal framework for its oversight responsibilities.

Providing additional oversight of the Children's Guardian

Recommendation 4

That the NSW Government:

¹⁶ [Ombudsman Act 1974](#) s 31BA.

¹⁷ [Inspector of Custodial Services Act 2012](#) s 18.

¹⁸ See, eg, [Ombudsman Act 1974](#) sub-s 31A(2) and [Law Enforcement Conduct Commission Act 2016](#) pt 10. The drafting of these two sections provides an example of how such can be done.

- **consider amending the *Children's Guardian Act 2019* to establish an inspector of the Children's Guardian and to provide the Committee with oversight of the inspector, including the power to veto proposed appointments, or**
- **consider other options for strengthening the oversight over this office such as to make the Children's Guardian partly subject to the control and direction of the relevant Minister with important exceptions.**

Introducing an inspector of the Children's Guardian

- 1.26 The Committee recommends that the NSW Government consider amending the CG Act to establish an inspector of the Children's Guardian and give this Committee parliamentary oversight of that inspector. This is a model which has been successfully implemented in relation to other independent bodies with parliamentary committee oversight, such as the Inspector of the Law Enforcement Conduct Commission (the **LECC Inspector**) and the Inspector of the Independent Commission Against Corruption (the **ICAC Inspector**).
- 1.27 The Committee is recommending that consideration be given to appoint an inspector of the Children's Guardian due to concerns that the Guardian is subject to a lesser degree of oversight than should apply to an independent statutory body with such significant powers. However, the Committee's view is that it is appropriate to maintain the independence of the Guardian from the relevant Minister, particularly with regard to investigative and operational decision-making.
- 1.28 The Committee recognises that the government will need to undertake further consideration of this proposal, should it decide to introduce an inspector or otherwise strengthen the oversight of the Guardian. This will include exploring the risks and benefits of the new oversight model, as well as appropriate consultation with affected parties including the Guardian.

History of the independence of the Children's Guardian

- 1.29 The Children's Guardian was initially established under the *Children and Young Persons (Care and Protection) Act 1998* to promote the interests and rights of children and young people living in out-of-home care. In 2013, the role of the office was expanded through legislative amendments 'to be an independent government agency that works to protect children by promoting and regulating quality child-safe organisations and services'.¹⁹
- 1.30 In March 2020, its 'level of independence' was 'further enhanced' through the introduction of the CG Act.²⁰ Since its creation, the CG Act has provided that 'the Guardian is not subject to the control or direction of the Minister'.²¹

¹⁹ New South Wales, [Parliamentary Debates](#), Legislative Assembly, 18 September 2019, 1499 (Jodie Harrison, Shadow Minister for Early Childhood Learning).

²⁰ New South Wales, [Parliamentary Debates](#), Legislative Council, 13 November 2019, 100 (Damien Tudehope, Minister for Finance and Small Business).

²¹ [Children's Guardian Act 2019](#) sub-s 128(3).

- 1.31 In his second reading speech on the Children's Guardian Bill 2019 introducing the CG Act, the then Minister for Families, Communities and Disability Service, Mr Gareth Ward MP commented that:

This scheme provides for independent oversight of the handling of child abuse and neglect allegations against employees of certain government and non-government entities ... This provides independent oversight of institutional responses to complaints of child abuse and neglect across multiple sectors.²²

- 1.32 The Hon Mick Veitch, in speaking for the Opposition, stated that 'for all [the] critical functions in child protection, the office needs to be independent and properly resourced'.²³

- 1.33 As noted above, the Children's Guardian Bill 2019 also transferred the Reportable Conduct Scheme from the Ombudsman to the Guardian to reflect the Royal Commission suggestion 'that a single oversight body should be responsible for implementing Child Safe Standards, the Working with Children Check and the reportable conduct scheme'.²⁴ The Ombudsman at the time, Michael Barnes, raised concern at the level of independence of the Guardian, particularly in light of the reportable conduct scheme being transferred to the Guardian. The former Ombudsman noted that:

The independence of the Children's Guardian needs to be strengthened to ensure that office has the independence that was essential to the scheme working so well in this office.²⁵

- 1.34 Former Shadow Minister for Family and Community Services, Ms Tania Mihailuk commented that the Bill addressed those concerns raised by the former Ombudsman as well as the recommendations of the Royal Commission by bringing 'the reportable conduct scheme under one independent statutory body that is not reportable to the Minister'.²⁶

- 1.35 On balance, the Committee considers it appropriate for the Guardian to maintain its independence given its important work in overseeing certain government agencies to prevent harm to children and young people. However, there appears to the Committee to be a significant potential gap in the oversight framework, that should be addressed.

Proposed functions and powers of the inspector

- 1.36 The inspector position could exercise a parallel jurisdiction to that of the LECC Inspector and the ICAC Inspector. In doing so, it could complement the proposed

²² New South Wales, [Parliamentary Debates](#), Legislative Assembly, 20 August 2019, 1913 (Gareth Ward, Minister for Families, Communities and Disability Service).

²³ New South Wales, [Parliamentary Debates](#), Legislative Council, 13 November 2019, 95 (Mick Veitch, Shadow Minister for Industry and Trade and Rural Roads).

²⁴ See Sharminie Niles, [Children's Guardian Act 2019: an historic step to an integrated child safe scheme in NSW](#), LSJ online, 1 March 2020, viewed 7 November 2024.

²⁵ New South Wales, [Parliamentary Debates](#), Legislative Assembly, 18 September 2019, 1506 (Tania Mihailuk, Member of the Legislative Assembly).

²⁶ New South Wales, [Parliamentary Debates](#), Legislative Assembly, 18 September 2019, 1507 (Tania Mihailuk, Member of the Legislative Assembly).

role of this committee and provide a complete oversight regime consistent with that currently in place for other independent statutory bodies which are oversighted by an inspector as well as a joint parliamentary committee. For example, the Law Enforcement Conduct Commission (the **LECC**) and the Independent Commission Against Corruption (the **ICAC**).

Functions of the LECC Inspector

- 1.37 Specifically, the LECC is oversighted by both the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission and the LECC Inspector.
- 1.38 The LECC Inspector's functions are to:
- audit the operations of the LECC for the purpose of monitoring compliance with the law of the State,
 - deal with (by reports and recommendations) conduct amounting to agency maladministration on the part of the LECC and conduct amounting to officer misconduct or officer maladministration on the part of officers of the LECC, whether or not the subject of a complaint, and
 - assess the effectiveness and appropriateness of the policies and procedures of the LECC relating to the legality or propriety of its activities.²⁷
- 1.39 The LECC Inspector has the following powers:
- investigate any aspect of the LECC's operations or any conduct of officers of the LECC,
 - require officers of the LECC to supply information or produce documents or other things about any matter, or any kind of matter, relating to the LECC's operations or any conduct of officers of the LECC,
 - require officers of the LECC to attend before the Inspector to answer questions or produce documents or other things relating to the LECC's operations or any conduct of officers of the LECC,
 - investigate and assess LECC misconduct matters,
 - refer matters relating to the LECC or officers of the LECC to other agencies for consideration or action, and
 - recommend disciplinary action or criminal prosecution against officers of the LECC.²⁸

²⁷ [Law Enforcement Conduct Commission Act 2016](#) sub-s 122(2).

²⁸ [Law Enforcement Conduct Commission Act 2016](#) sub-s 124(1)(f).

1.40 Additionally, the LECC Inspector may, at any time, make a special report to parliament on any matters affecting the LECC, including its operational effectiveness or needs.²⁹

1.41 The ICAC is similarly oversighted by a parliamentary committee and the ICAC Inspector vested with almost identical functions and powers as the LECC Inspector.³⁰

1.42 The Committee notes that the current LECC Inspector and the ICAC Inspector are separately appointed as Inspectors to other agencies in different jurisdictions. Mr Bruce McClintock SC performs both the role of the LECC Inspector and Inspector of the Northern Territory Independent Commission Against Corruption.³¹ Ms Gail Furness SC is the ICAC Inspector and the Inspector of the National Anti-Corruption Commission.³²

1.43 Historically, the LECC Inspector and the ICAC Inspector share a small staff of around two people.³³

1.44 In light of this, the Committee suggests that the independent statutory officer appointed as an inspector for the Children's Guardian could effectively be a part-time position or an existing inspector who oversees an agency in a jurisdiction outside of NSW. They could also share or borrow staff on a part-time basis from another agency.

Parliamentary oversight of the inspector

1.45 The LECC Inspector and the ICAC Inspector are still subject to oversight by parliamentary committees: respectively, the Committee on the Ombudsman, Law Enforcement Conduct Commission and Crime Commission and the Committee on the Independent Commission Against Corruption.³⁴

1.46 The relevant Inspectors may also examine matters referred by the relevant parliamentary oversight committee.³⁵

²⁹ [Law Enforcement Conduct Commission Act 2016](#) sub-s 140(a). Under this section, the Inspector can also make a special report on: any administrative or general policy matter relating to the functions of the Inspector, and any other matter relating to the exercise of a function to audit, deal with or assess any matter under its functions under the Act that the Inspector considers warrants the making of a special report.

³⁰ See [Independent Commission Against Corruption Act 1988](#) ss 57B, 57C and 77A.

³¹ Communities and Justice, [New anti-corruption and police oversight inspectors](#), media release, NSW Government, 27 June 2022, viewed 7 November 2024.

³² Communities and Justice, [New anti-corruption and police oversight inspectors](#), media release, NSW Government, 27 June 2022, viewed 7 November 2024; Inspector of the National-Anti Corruption Commission, [Biography – Ms Gail Furness SC](#), viewed 7 November 2024.

³³ Committee on the Independent Commission Against Corruption, [Review of the 2021-2022 and 2022-2023 Annual Reports of the ICAC and the Inspector of the ICAC](#), report 1/58, Parliament of NSW, August 2024, p 27.

³⁴ [Independent Commission Against Corruption Act 1988](#) s 64; [Law Enforcement Conduct Commission Act 2016](#) s 131.

³⁵ [Law Enforcement Conduct Commission Act 2016](#) sub-s 123(1)(d); [Independent Commission Against Corruption Act 1988](#) sub-s 57B(2).

- 1.47 These committees also have the power to veto proposed appointments of the relevant Inspectors.³⁶ Accordingly, the Committee is recommending that the CG Act be amended to provide the Committee with oversight of any inspector of the Children's Guardian, including the power to veto proposed appointments.

Alternatively, making the Children's Guardian partly subject to the control and direction of the Minister

- 1.48 Although it is not oversighted by an inspector, the Health Care Complaints Commission (the **HCCC**) is oversighted by a parliamentary committee while also being subject to the control and direction of the Minister, except in relation to the following:
- the assessment of a complaint,
 - the investigation of a complaint,
 - the prosecution of disciplinary proceedings against a person,
 - the terms of any recommendation of the Commission, and
 - the contents of a report of the Commission, including the annual report.³⁷
- 1.49 Failing the creation of an inspector of the Children's Guardian, the Committee considers that there may be scope to introduce a degree of Ministerial control and direction in respect of the Guardian. However, this would need to be carefully considered, particularly given the emphasis that has already been placed upon the Guardian's independence from government as detailed at [1.29] to [1.35] above.
- 1.50 Absent the creation of an inspector of the Children's Guardian, the Committee considers that the Guardian could still retain its independence, while being subject to the control and direction of the Minister through the inclusion of exceptions, similar to those provided in the *Health Care Complaints Act 1993* (the **HCCC Act**).
- 1.51 For example, the CG Act could be amended to afford the Minister control and direction over the Guardian – with some important exceptions. Specifically, the Minister could be exempt from having control and direction over the Guardian's investigations into a child safe organisation's implementation of the Child Safe Standards and the Reportable Conduct Scheme and other matters that allow the Guardian to retain its independence in overseeing bodies and protecting children and young people.

³⁶ [Law Enforcement Conduct Commission Act 2016](#) pt 15 sch 2 s 12; [Independent Commission Against Corruption Act 1988](#) pt 11 sch 1A s 10.

³⁷ [Health Care Complaints Act 1993](#) s 81 provides that the Commission is subject to the control and direction of the Minister, except in relation to the assessment of a complaint, the investigation of a complaint, the prosecution of disciplinary action against a person, the terms of any recommendation of the Commission and the contents of a report of the Commission, including the annual report.

Chapter Two – Office of the Children's Guardian

An era of change at the Children's Guardian

2.1 The last two years have been a time of change for the Office of the Children's Guardian. In January 2023, Steve Kinmond OAM commenced a five-year term as the Children's Guardian (the **Guardian**). Mr Kinmond replaced Richard Weston, who acted in the role after the former Guardian, Janet Schorer PSM, concluded her five-year term in October 2022.³⁸

Implementation of the new Child Safe Scheme

2.2 As noted in the previous Committee's 2022 review, the Guardian has significant new responsibilities in relation to development and implementation of the Child Safe Scheme.³⁹ The Committee has also acquired oversight functions in relation to the Guardian's new responsibilities.⁴⁰

2.3 The Children's Guardian Amendment (Child Safe Scheme) Bill 2021 conferred on the Guardian the responsibilities of adopting and implementing the 10 Child Safe Standards recommended by the *Royal Commission into Institutional Responses to Child Sexual Abuse*.⁴¹

2.4 In February 2023, the Guardian commenced enforcement of the Child Safe Scheme established under part 3A of the *Children's Guardian Act 2019* (the **CG Act**), requiring certain child-related organisations to implement the Child Safe Standards under the CG Act.⁴²

2.5 The Committee learned that the Guardian has recruited five new 'Strategic Directors in the Child Safe area' on a temporary 12-month basis to assist in administering and enforcing the new scheme.⁴³

2.6 This report further comments on the operations of the Child Safe Scheme in sections below, at [2.44] to [2.60].

³⁸ Office of the Children's Guardian (OCG), [Accreditation and monitoring newsletter – October 2022](#), NSW Government, 28 June 2024, viewed 7 November 2024; OCG, [New Children's Guardian appointed](#), 12 December 2022, viewed 13 November 2024.

³⁹ Committee on Children and Young People, [2022 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian](#), Report 5/57, October 2022, p 26.

⁴⁰ The Committee's functions in relation to the Guardian are found at Appendix 1.

⁴¹ [Children's Guardian Amendment \(Child Safe Scheme\) Bill 2021](#) sch 1[1].

⁴² OCG, [Child Safe Scheme and accredited agencies](#), 16 October 2023, viewed 7 November 2024; OCG, [Annual Report 2022-23](#), June 2023, p 7.

⁴³ [Answers to questions on notice](#), OCG, 19 April 2024, p 1; [Answers to supplementary questions](#), OCG, 4 April 2024, p 2.

Reviews of the *Children's Guardian Act 2019* and the *Child Protection (Working with Children Check) Act 2012*

- 2.7 There are two reviews underway which may impact the exercise of the Guardian's oversight functions. This includes a statutory review of the CG Act. The Guardian released a discussion paper in July 2022 and engaged Mr Mark Tedeschi AM KC to review Part 4 of the CG Act relating to the Reportable Conduct Scheme as part of the overall review of the Act being conducted by the Guardian's office.⁴⁴
- 2.8 At the 2 July 2024 public hearing (the **second hearing**)⁴⁵, we heard that the CG Act is still under review.⁴⁶ The Guardian told the Committee that his office has provided their final comments, and the Department of Communities and Justice are continuing consultations.⁴⁷
- 2.9 The Committee understands that the Guardian will also release an issues paper for a review of the *Child Protection (Working with Children) Act 2012*.⁴⁸ The issues paper will 'consider matters of broad public interest relating to the Working with Children Check scheme'. The Guardian would then advise government on potential enhancements to the scheme, informed by its consultations.⁴⁹
- 2.10 The Committee will monitor the progress of these reviews to ascertain what impact, if any, it will have on the Guardian's exercise of its oversight functions.

Recruiting an Aboriginal Assistant Guardian

- 2.11 In January 2021, Mr Richard Weston became the first Deputy Children's Guardian for Aboriginal Children and Young People in NSW. The role was created in response to the *Family is Culture, Independent Review of Aboriginal Children and Young People in out-of-home care in NSW* report (the **Family is Culture report**).⁵⁰
- 2.12 The Committee was concerned to learn that the new Deputy Children's Guardian role had not been filled since Mr Weston left his position in February 2023.⁵¹
- 2.13 At the second hearing, we heard that the Guardian was working with Aboriginal leaders on recruiting for an 'Assistant Guardian' position which 'has more powers than the Deputy Guardian' position.⁵²

⁴⁴ OCG, [Statutory review of the Children's Guardian Act 2019](#), July 2022, p 3.

⁴⁵ The Committee held two public hearings in the course of this inquiry, on 18 March 2024 (the first hearing) and on 2 July 2024 (the second hearing).

⁴⁶ Steve Kinmond, Children's Guardian, Office of the Children's Guardian, [Transcript of Evidence](#), 2 July 2024, p 3.

⁴⁷ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, pp 3-4.

⁴⁸ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 2; Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 2.

⁴⁹ OCG, [Annual Report 2022-23](#), June 2023, p 75.

⁵⁰ OCG, [Deputy Guardian begins new role](#), NSW Government, 25 February 2021, viewed 19 July 2024; NSW Government, [Family is Culture, Independent Review of Aboriginal Children and Young People in out-of-home care in NSW](#), October 2019, viewed 5 September 2024.

⁵¹ OCG, [Accreditation and monitoring newsletter – May 2023](#), NSW Government, 28 June 2024, viewed 19 July 2024; OCG, [Annual Report 2022-23](#), June 2023, p 73; Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 3.

⁵² Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 3.

- 2.14 We were pleased to see that the Guardian had announced that the recruitment process for the Aboriginal Assistant Guardian began in August 2024.⁵³ We look forward to meeting the Aboriginal Assistant Guardian upon their commencement and will continue to monitor this issue.

Facilitating better information sharing between states and territories

Relevance of cross-jurisdictional information sharing to the work of the Guardian

To best protect children, it is important that the Guardian can share and receive critical risk information related to child protection with other states and territories. Each state and territory have their own child protection legislation and therefore may have different systems and practices.⁵⁴

Although every state and territory operate a scheme like the Working with Children Check scheme, not all states and territories have a Reportable Conduct Scheme.⁵⁵

Recommendation 5

That the NSW Government update the Committee on its discussions with other states and territories regarding facilitating better information sharing around Australia, particularly in relation to Working with Children Checks and the Reportable Conduct Scheme.

- 2.15 The Committee is aware that the Guardian had been advocating for stronger information sharing protocols between states and territories, particularly in relation to the Working with Children Check (the **WWCC**) scheme and the Reportable Conduct Scheme.⁵⁶ We recognise that facilitating better information sharing across states and territories is critical to the operation of the WWCC and Reportable Conduct Scheme and their ability to protect children in NSW and across Australia.
- 2.16 We are keen to hear of further progress in these areas as a matter of priority.

History of discussions around national information exchange

- 2.17 The *Royal Commission into Institutional Responses to Child Sexual Abuse* (the **Royal Commission**) published its final report in December 2017 and recommended an 'information exchange scheme to operate in and across Australian jurisdictions'. The aim of the scheme would be 'to share information related to the safety and wellbeing of children, including information relevant to child sexual abuse in institutional contexts.'⁵⁷

⁵³ OCG, [Children's Guardian announces new Aboriginal leadership role](#), 8 August 2024, viewed 7 November 2024.

⁵⁴ OCG, [Annual Report 2022-23](#), June 2023, p 21; OCG, [Annual Report 2021-22](#), June 2022, p 25.

⁵⁵ OCG, [Annual Report 2022-23](#), June 2023, p 21. See also Australian Criminal Intelligence Commission, [Working with Children Checks](#), viewed 8 November 2024.

⁵⁶ OCG, [Annual Report 2022-23](#), June 2023, p 21; Steve Kinmond, Children's Guardian, Office of the Children's Guardian, [Transcript of Evidence](#), 18 March 2024, pp 2, 19-20.

⁵⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report](#), viewed 23 July 2024; Royal Commission into Institutional Response to Child Sexual Abuse, [Final Report Recommendations](#), Commonwealth of Australia, p 24, viewed 23 July 2024.

- 2.18 Within NSW, chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* provides for direct information sharing between certain agencies, known as prescribed bodies. These include NSW government agencies, schools, public health agencies, as well as certain Commonwealth bodies. The scheme enables prescribed bodies to work collaboratively and share information relating to a child or young person's safety, welfare and wellbeing.⁵⁸ Chapter 16A was inserted into the Act in 2009 following the Special Commission of Inquiry into Child Protection Services in NSW.⁵⁹
- 2.19 Under the NSW scheme, the Guardian receives information relating to child safety shared by prescribed bodies, known as Chapter 16A notifications, as well as information about workplace records from the Reportable Conduct Scheme.⁶⁰
- 2.20 The Committee understands that currently, there is no equivalent information sharing scheme between interstate bodies.⁶¹
- 2.21 At the 18 March 2024 public hearing (the **first hearing**)⁶² the Guardian spoke of the work underway to address this gap, which will enhance child safety across jurisdictions, consistent with the Royal Commission recommendations:
- ... So information exchange itself—it has been some while since the Royal Commission pulled up stumps with its recommendation that, in relation to information exchange, the principles of chapter 16A, which operate in New South Wales, which is information relating to the safety, welfare and wellbeing of a child or a class of children can be exchanged between prescribed bodies—that that apply across borders. It doesn't yet and it should and it must. That's one area that came to light, of course, in terms of a particular case that gained significant media attention. In Queensland they called it Operation Tenterfield. It concerned a childcare centre, and Operation Boorong was the description in New South Wales. We've used that as an example of the need for national information exchange changes so that we can move information across borders.⁶³
- 2.22 We heard that the Guardian has been advocating for information exchange to 'apply across borders' by having discussions with the Minister for Families and Communities who 'has had discussions at a national level'.⁶⁴

Operation of the WWCC national continuous checking across borders

- 2.23 In November 2023, the Ministerial Forum for Child Safety chaired by the Attorney-General, the Hon Mark Dreyfus KC MP received unanimous support that all jurisdictions re-commit to adopt the recommendation of the Royal

⁵⁸ [Children and Young Persons \(Care and Protection\) Act 1998](#) ch 16A.

⁵⁹ [Children Legislation Amendment \(Wood Inquiry Recommendations\) Bill 2009](#).

⁶⁰ [Children and Young Persons \(Care and Protection\) Regulation 2022](#), sch 5.

⁶¹ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 20.

⁶² The Committee held two public hearings in the course of this inquiry, on 18 March 2024 (the first hearing) and on 2 July 2024 (the second hearing).

⁶³ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 20.

⁶⁴ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, pp 20-21.

Commission relating to national information sharing. All Ministers agreed to progress 'national continuous checking'.⁶⁵

- 2.24 We also learned that the Commonwealth has hosted several co-design workshops with all WWCC Screen Units to collaborate on building a National Continuous Checking Capability (NCCC) system.⁶⁶
- 2.25 The Guardian emphasised that the system should have the capacity to 'continually monitor all WWCC applicants nationally', with automatic national information sharing in real time.⁶⁷ The Committee understands that this will complement the continuous monitoring system which operates in NSW.

The National Reference System and the WWCC

What is the National Reference System?

The **National Reference System** is a database established by the Australian Government that records any adverse WWCC decision made by another participating Australian state or territory about applicants.

Finding 1

The National Reference System may be improved by sharing information amongst states and territories about offences that may not disqualify someone from working with children in one area but might in another jurisdiction.

- 2.26 In September 2022, the NSW WWCC connected to the National Reference System (the **NRS**). The NRS was established in 2019 by the Australian Government and is operated federally by the Australian Criminal Intelligence Commission.⁶⁸
- 2.27 The NRS notifies the Guardian when a person holding a WWCC clearance in NSW has been barred from working with children in any other state or territory in Australia.⁶⁹ In 2022-23, the Guardian received 275 notifications from the NRS.⁷⁰
- 2.28 We understand that the Guardian has been advocating for a stronger NRS that 'shares information about offences that may not reach the threshold of a bar in another state or territory' as well as 'serious employment-related reportable conduct findings'.⁷¹

⁶⁵ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 3; Attorney-General's Department, [Outcomes of the Ministerial Forum on Child Safety](#), media release, 24 November 2023, viewed 14 September 2024.

⁶⁶ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 3.

⁶⁷ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 3.

⁶⁸ OCG, [Annual Report 2022-23](#), June 2023, p 20; Colin Biggers & Paisley Lawyers, [New Working with Children Check laws offer greater protection for children in NSW](#), Lexology, 31 October 2022, viewed 21 November 2024.

⁶⁹ OCG, [Annual Report 2022-23](#), June 2023, pp 19-20; Australian Criminal Intelligence Commission, [Protection Services](#), viewed 4 September 2024.

⁷⁰ OCG, [Annual Report 2022-23](#), June 2023, p 19.

⁷¹ OCG, [Annual Report 2022-23](#), June 2023, p 20.

Working with Children Checks

What is the Working with Children Check (WWCC) scheme?

People who work or volunteer to provide certain services to children and young people in NSW are required to have a WWCC clearance. It is an offence for a person to engage in child-related work without a current WWCC application or clearance.

The Guardian administers the WWCC and 'continuously monitors' these, which last for 5 years and do not expire even if the holders move jobs. This is referred to as the **continuous monitoring** system. A WWCC application or renewal is free for volunteers and costs \$105 for paid workers.⁷²

The WWCC scheme is governed by the *Child Protection (Working with Children) Act 2012*. The Guardian has functions under Part 6 of the Act, which includes monitoring compliance with the Act, and maintaining a database of relevant applications and clearances.⁷³

Recommendation 6

That the Children's Guardian work with the NSW Government to identify Working with Children Check application trends and whether these align with community and employer expectations.

- 2.29 As discussed at [2.9] above, the Guardian will soon be releasing an issues paper for a review of the *Child Protection (Working with Children) Act 2012* (the **WWC Act**).⁷⁴ At the two public hearings, the Guardian flagged several potential issues with the current WWCC system. The Committee expects that some or all of these issues, including those identified below, will be considered in detail during the WWC Act review. However, the Committee will continue to monitor progress in this area.

Resourcing implications of WWCC applications from individuals not in child-related employment

- 2.30 At the first hearing, the Guardian gave evidence that his office receives some WWCC applications where the applicant 'is not involved in child-related employment' and the employer is using a WWCC clearance 'as a risk assessment process'.⁷⁵
- 2.31 We heard that 'significant resources' are used on applicants who appeal the Guardian's decision to refuse their WWCC due to not working in child-related employment.⁷⁶ The Guardian noted that their office may seek an amendment to the WWC Act giving them the discretion to 'not proceed' with these applications.⁷⁷

⁷² OCG, [Working with Children Check](#), viewed 8 November 2024.

⁷³ See also [Children's Guardian Act 2019](#) sub-ss 128(1)(a3), (j).

⁷⁴ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 2.

⁷⁵ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 24.

⁷⁶ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 24.

⁷⁷ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 24.

Opportunities to streamline the WWCC

- 2.32 The Guardian also gave evidence about his office providing a 'one stop shop probity check' where WWCC results show '...that the applicant does not have a relevant criminal record'. This would result in approximately 90 per cent of applicants' employers not needing to pay for a national criminal or police check in addition to the WWCC.⁷⁸
- 2.33 The Committee heard that the Guardian is discussing this issue with the Australian Criminal Intelligence Commission and looks forward to an update on progress in this area.⁷⁹

Addressing low levels of verification

How are workers who apply for the WWCC verified?

Under section 37 of the WWC Act, the Guardian maintains a register of employers and other persons who verify information about the WWCC.

Verification is a process whereby the employer or other responsible agencies ensure that information received from their prospective employees including the details of the WWCC matches what is recorded on the register maintained by the Guardian.⁸⁰

- 2.34 The Guardian also gave evidence about the low level of employers verifying workers' WWCCs.⁸¹ Where individuals are not verified, the Guardian cannot contact the employer upon making any risk assessment finding against a relevant WWCC holder.⁸² We heard that the Guardian is examining possible solutions.⁸³

Reportable Conduct Scheme

What is the Reportable Conduct Scheme?

The **Reportable Conduct Scheme** oversees how certain organisations respond to serious allegations of criminal and other improper conduct relating to the treatment of children by their employees, and actions they take to prevent future harm to children in their organisation.

Where risks to children are identified, reportable conduct information may be shared with the WWCC and other areas of the Guardian to inform decision-making. The Guardian may also share this information with external parties.⁸⁴

⁷⁸ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 3. The National Police Checking Service is administered by the Australian Criminal Intelligence Commission.

⁷⁹ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 3.

⁸⁰ [Child Protection \(Working with Children\) Act 2012](#) ss 9A, 11B.

⁸¹ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 2.

⁸² Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 2; OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 3.

⁸³ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 8.

⁸⁴ OCG, [Annual Report 2022-23](#), June 2023, p 7; [Children's Guardian Act 2019](#) s 56.

Part 4 of the CG Act provides for the operation of the Reportable Conduct Scheme. Reportable conduct examples are set out in section 20, and include sexual offences or misconduct, neglect of a child, and an assault against a child.⁸⁵

Recommendation 7

That the Children's Guardian work with the NSW Government and the community to identify whether the current definition of reportable conduct is too narrow. This should include an assessment of the potential workload and resourcing impacts of an expanded definition.

- 2.35 Under the Reportable Conduct Scheme, approximately 15,000 government and private organisations across NSW are required to notify the Guardian of reportable allegations and convictions against their employees.⁸⁶
- 2.36 The definition of 'reportable conduct' under section 20 of the CG Act includes 'serious allegations of criminal and other improper... treatment of children by... employees, volunteers and other contractors'.⁸⁷
- 2.37 In the 2022-23 reporting period, notification rates were 34 per cent higher than the 2021-22 reporting period, which the Guardian described as 'a very significant increase in notifications'.⁸⁸ In March 2023, the Guardian had 2,446 'open matters in the Reportable Conduct Scheme' which they have been able to reduce to 1,981 as at July 2024.⁸⁹
- 2.38 Given the increasing number of notifications, the Committee was pleased to know that the Guardian were successful in obtaining additional resourcing for administering the Reportable Conduct Scheme in the 2022-23 period.⁹⁰
- 2.39 We heard that the Guardian had focused 'on reducing the number of delays'. Even with the increase in notifications, there was a decrease of 7 per cent in notifications taking longer than six months to investigate from 2021-22 to 2022-23.⁹¹ The Committee commends the Guardian's efforts to reduce delays.⁹²
- 2.40 Despite the increase in notifications, the Guardian reported that the definition of reportable conduct under the CG Act may be too narrow. Specifically, it may not capture certain behaviours that do not reach the threshold of a sexual offence or sexual misconduct.⁹³

⁸⁵ [Children's Guardian Act 2019](#) s 20.

⁸⁶ OCG, [Annual Report 2022-23](#), June 2023, p 35

⁸⁷ OCG, [Annual Report 2022-23](#), June 2023, p 8; [Children's Guardian Act 2019](#) s 20.

⁸⁸ OCG, [Annual Report 2022-23](#), June 2023, p 36; Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 2.

⁸⁹ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 2.

⁹⁰ OCG, [Annual Report 2022-23](#), June 2023, p 41.

⁹¹ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 18.

⁹² OCG, [Annual Report 2022-23](#), June 2023, p 41.

⁹³ OCG, [Annual Report 2022-23](#), June 2023, p 37.

- 2.41 The Guardian will consider whether the CG Act should be amended from 'alleged sexual misconduct' to 'inappropriate personal or intimate behaviour' to better protect children.⁹⁴
- 2.42 The Committee understands that the statutory review of the CG Act is nearing completion, and that the definition of reportable conduct was considered in the discussion paper released in July 2022.⁹⁵ We look forward to the outcome of that review.
- 2.43 In light of the increase in reportable conduct notifications, the Committee recommends that any proposal to expand the definition of reportable conduct arising from that review or otherwise should also consider potential workload and resourcing implications for the Guardian.

Child Safe Scheme

Who are the responsible agencies for implementation of the Child Safe Scheme in NSW?

The Guardian is responsible for managing the Child Safe Scheme, which is the primary framework for guiding child safe practice in NSW. The scheme requires certain child-related organisations (the **child safe organisations**) to implement the **Child Safe Standards**. The Child Safe Standards were recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.⁹⁶

Section 8G of the CG Act also lists certain NSW Government agencies who have additional responsibilities within the scheme. These **prescribed agencies** are required to prepare a Child Safe Action Plan – a document that includes strategies to build capability of child safe organisations to implement the Child Safe Standards.

The Child Safe Scheme is established under Part 3A of the CG Act, and the 10 Child Safe Standards are set out in section 8C of the CG Act (see below).

Defining 'child safe organisation' for the purposes of the Child Safe Scheme

Finding 2

The definition of 'child safe organisation' may not capture entities contracted and funded by the Department of Communities and Justice to provide services to children where the contract requires the entity to comply with Child Safe Standards.

- 2.44 The Child Safe Scheme and the Child Safe Standards were introduced into the CG Act through the passage of the Children's Guardian Amendment (Child Safe Scheme) Bill 2021.⁹⁷
- 2.45 The Guardian's enforcement of the Child Safe Scheme began on 1 February 2023, when Part 9A of the CG Act commenced. Under Part 9A, the Guardian can take

⁹⁴ OCG, [Annual Report 2022-23](#), June 2023, p 37. See also [Children's Guardian Act 2019](#) ss 20, 21, 22.

⁹⁵ OCG, [Statutory review of the Children's Guardian Act 2019](#), July 2022, pp 17-19.

⁹⁶ OCG, [Annual Report 2022-23](#), June 2023, p 7.

⁹⁷ [Children's Guardian Amendment \(Child Safe Scheme\) Bill 2021](#).

enforcement action against an organisation captured by the Scheme where they do not meet the Child Safe Standards.⁹⁸

- 2.46 These organisations captured by the Child Safe Scheme are referred to as 'child safe organisations' and are defined in Schedule 6 of the CG Act.⁹⁹

Child Safe Standards

Section 8C of the CG Act provides the following definition of Child Safe Standards:

1. Child safety is embedded in organisational leadership, governance and culture.
2. Children participate in decisions affecting them and are taken seriously.
3. Families and communities are informed and involved.
4. Equity is upheld, and diverse needs are taken into account.
5. People working with children are suitable and supported.
6. Processes to respond to complaints of child abuse are child focused.
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training.
8. Physical and online environments minimise the opportunity for abuse to occur.
9. Implementation of the Child Safe Standards is continuously reviewed and improved.
10. Policies and procedures document how the organisation is child safe.

- 2.47 The Guardian reported that the CG Act defines a 'broad range' of government and private organisations as 'child safe organisation[s]' that 'vary in their responsibility for' and therefore risk to children.¹⁰⁰

- 2.48 The Guardian noted that the Act's definition of 'child safe organisation' does not capture some Department of Communities and Justice 'funded and contracted organisations that provide services to children'. This includes 'short-term crises accommodation for children and NGO service providers' that assist families at risk of statutory child protection measures.¹⁰¹

⁹⁸ OCG, [Annual Report 2022-23](#), June 2023, p 12.

⁹⁹ [Children's Guardian Act 2019](#) sch 6.

¹⁰⁰ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 2.

¹⁰¹ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 2.

- 2.49 The Guardian suggested that the CG Act be amended so that entities that are contractually required 'to comply with the Child Safe Standards' are included as child safe organisations.¹⁰²
- 2.50 The Committee agrees that in principle these organisations should be subject to the Child Safe Scheme. However, the Committee recognises that the adequacy of the definition may be explored as part of a broader review of the Child Safe Scheme in future, as the scheme is still at its early stages.¹⁰³ The Committee will monitor this issue.

Challenges in implementing the Child Safe Scheme

- 2.51 We heard that the Child Safe Scheme captures tens of thousands of government and private organisations which creates a 'significant challenge' for the Guardian and his staff in overseeing the agencies' progress in implementing relevant policies and procedures.¹⁰⁴ The Guardian also provided that 'different sectors are at different stages of awareness and engagement with the Child Safe Scheme and Standards'.¹⁰⁵
- 2.52 At the first hearing, the Guardian shared his plan to seek government approval to provide some of his office's funding to the prescribed agencies (under section 8G), as they take on leadership roles related to the organisations they fund or regulate.¹⁰⁶
- 2.53 Under the proposed model, the Guardian's role of overseeing the implementation of the Child Safe Standards by child safe organisations would be shared with these prescribed agencies. The Guardian told us that this would 'accelerate the process' of ensuring the baseline Standards are in place across all relevant sectors.¹⁰⁷
- 2.54 Since the religious sector falls outside this model, given that none of the prescribed agencies listed in section 8G cover this sector, the Guardian suggested allocating funding to a consortium that acts on behalf of religious entities.¹⁰⁸
- 2.55 We then heard at the second hearing that the proposal for the Guardian to allocate some funding to prescribed agencies and the religious sector was not accepted by the NSW government.

¹⁰² OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 2.

¹⁰³ Note that the Child Safe Scheme sits outside the scope of the current statutory review of the Children's Guardian Act 2019. See OCG, [Statutory review of the Children's Guardian Act 2019](#), July 2022, p 2.

¹⁰⁴ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 20.; OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 2.

¹⁰⁵ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 1.

¹⁰⁶ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 19; [Answers to questions on notice](#), OCG, 19 April 2024, pp 1-2.

¹⁰⁷ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 19.

¹⁰⁸ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 9.

- 2.56 However, we understand that the Guardian is seeking to 'work with the faith-based community' and customise some basic policies that would apply to them.¹⁰⁹
- 2.57 As noted at [2.5] above, five new Child Safe Directors commenced in March 2024. Over their 12-month tenure, the directors will work to embed the Child Safe Scheme, drive compliance, establish governance arrangements and evaluate the implementation of the Child Safe Standards.¹¹⁰
- 2.58 The Committee commends the Guardian and his team for progressing the work in implementing the Child Safe Scheme and the Child Safe Standards across NSW and working with prescribed agencies and child safe organisations. The Committee will continue to monitor this work with interest and will revisit its progress in the next reporting period.

Ministerial guidelines relating to the Child Safe Scheme

- 2.59 As part of the Committee's new oversight functions relating to the Child Safe Scheme under section 8AC of the CG Act, the Committee may review guidelines issued by the Minister under section 8AB(1) for consistency with Royal Commission recommendations.
- 2.60 Under that section, the Minister has discretion to issue guidelines to the Guardian about the way it oversees implementation of and enforces the Child Safe Standards, and how it establishes child safe action plans with prescribed agencies. The Guardian must act consistently with any guidelines. At this stage, the Committee is unaware of any publicly available guidelines, but will continue to monitor this issue.

Statutory out-of-home care

What are the Guardian's responsibilities regulating out-of-home care in NSW?

Part 5 of the CG Act sets out the Guardian's responsibilities in accrediting and monitoring government and non-government agencies to provide statutory out-of-home care to children and young people across NSW. These are called **designated agencies**.

The Guardian also has functions of promoting the best interests of all children in out-of-home care and ensuring the rights of these children are safeguarded and promoted, under section 128(1).

Provisions relating to the operation of out-of-home care in NSW are found in *Children and Young Persons (Care and Protection) Act 1998*.

Committee's new oversight functions relating to out-of-home care

- 2.61 During the 2022-23 reporting period, the Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022 was passed. The Bill amended the ACYP Act to confer additional oversight responsibilities on the

¹⁰⁹ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 9.

¹¹⁰ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 1.

Committee related to the Guardian's out-of-home care functions under the CG Act.¹¹¹

- 2.62 The Bill implemented a recommendation of the Family is Culture report and aimed to increase transparency and accountability around provision of out-of-home care to Aboriginal children and young people.¹¹²
- 2.63 The Committee understands that of the 85 designated agencies in NSW, 21 are Aboriginal-run out-of-home care services. The Committee was pleased to hear that 'three additional Aboriginal out-of-home care agencies were accredited' in the 2022-23 reporting period contributing to the total.¹¹³

New Code of Practice for out-of-home care agencies

- 2.64 Currently, statutory out-of-home care are governed by the *NSW Child Safe Standards for Permanent Care*, which have been in place since 2015.¹¹⁴ These are separate to the Child Safe Standards discussed above.
- 2.65 At the first hearing, the Guardian told the Committee that his office is seeking to replace these standards with a new 'Code of Practice' that would include many 'of those practice issues under the 10 Child Safe [Standards]'.¹¹⁵
- 2.66 After publishing a discussion paper in November 2021, the Guardian received 32 submissions 'from designated [agencies] and adoption service providers, peak bodies and one authorised carer'. We understand that the new Code of Practice should commence on 1 July 2025, subject to approval from the Minister and Governor.¹¹⁶

Inquiry into out-of-home care arrangements

- 2.67 At the first hearing, we heard that the Guardian had commenced an inquiry into the out-of-home care system, specifically into 'alternative care arrangements', in September 2023. The Guardian noted that the inquiry highlights 'some important quality assurance issues that need to be addressed in that area' and the out-of-home care system generally.¹¹⁷
- 2.68 The *Strengthening out-of-home care and the broader child protection system* report on the Guardian's inquiry was then tabled in NSW Parliament on 29 August 2024.¹¹⁸ The Guardian noted the recent 'significant public commentary'

¹¹¹ [Children and Young Persons \(Care and Protection\) Amendment \(Family is Culture\) Bill 2022](#).

¹¹² NSW Government, [Family is Culture, Independent Review of Aboriginal Children and Young People in out-of-home care in NSW](#), October 2019, Recommendation 19, viewed 17 September 2024.

¹¹³ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 17.

¹¹⁴ See OCG, [NSW Child Safe Standards for Permanent Care](#), November 2015.

¹¹⁵ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 17.

¹¹⁶ [Answers to questions on notice and supplementary questions](#), OCG, 19 July 2024, p 9.

¹¹⁷ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 18; OCG, [Strengthening out-of-home care and the broader child protection system](#), August 2024, p 3.

¹¹⁸ OCG, [New report proposes better safeguards for out-of-home care](#), NSW Government, 29 August 2024, viewed 16 September 2024.

and considered it was 'very important' to publish the Guardian's 'observations about the out-of-home care system, and the system more broadly'.¹¹⁹

- 2.69 The report highlights 'five key issues impacting the quality of care' to '55 children and young people in alternative care arrangements':
- inadequate oversight and monitoring of the care provided,
 - inability to guarantee that children are provided with the integrated supports and critical services needed,
 - significant problems in attracting and retaining appropriately skilled staff,
 - the significant over-representation of Aboriginal children and young people in ACA placements, and
 - children remaining in alternative care arrangements due to a lack of suitable care options.¹²⁰
- 2.70 At the hearing, the Guardian also indicated that their submission in response to the Department of Community and Justice's System Review into out-of-home care was nearly finished. Some of the issues the Guardian has identified include 'the need to strengthen the quality, oversight and care for children' which is in line with the findings in their report.¹²¹
- 2.71 The Committee understands that the NSW Government recently announced an urgent reform to ban the use of unaccredited emergency accommodation for vulnerable children in the foster care system.¹²² The changes in the statutory landscape governing the out-of-home care system in NSW are also discussed at [3.36] below, in connection with the work of the Advocate for Children and Young People. The Committee will keenly monitor this space in the next reporting period.

Addressing a shortage of carers

What is the Carers Register?

An **authorised carer** refers to someone who has been approved by a designated agency to provide statutory or supported out-of-home care in NSW.

Under sections 85 and 128(1)(d) of the CG Act, the Guardian is responsible for establishing and maintaining a register for the purpose of authorisation of individuals as authorised carers, known as the **Carers Register**.

¹¹⁹ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 2. See also OCG, [Strengthening out-of-home care and the broader child protection system](#), August 2024.

¹²⁰ OCG, [New report proposes better safeguards for out-of-home care](#), NSW Government, 29 August 2024, viewed 16 September 2024.

¹²¹ OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 5.

¹²² NSW Government, [NSW Government to ban the use of Alternative Care Arrangements for vulnerable children](#), media release, 3 September 2024, viewed 16 September 2024.

- 2.72 The Committee sought to understand the Guardian's work around maintaining the Carers Register and asked questions around the work that the Guardian is doing to support and maintain authorised carers.
- 2.73 In their 2022-23 annual report, the Guardian reported on plans to establish an external Carer Engagement and Advisory Committee. We heard that this committee will focus on improving foster carer recruitment, support, retention and addressing placement issues, in response to a shortage of carers in NSW.¹²³
- 2.74 We heard that the Guardian has been advocating for the Advisory Committee with the Department of Communities of Justice, the Australian Community Workers Association and AbSec. At the second hearing, the Guardian commented that without 'a solid multi-agency mechanism with carer representatives at the table dealing with th[e]... issues, we're not going to move forward'.¹²⁴
- 2.75 The Committee also sought to understand why 1,843 of 3,057 carer applications were withdrawn with 'no concerns' in the 2022-23 reporting period.¹²⁵ In response, we heard this represents a carer 'making a decision that they no longer want to be involved or no longer want to continue down the process of recruitment'.¹²⁶
- 2.76 Larissa Johnson, Director, Out-of-home Care Regulation, Office of the Children's Guardian, commented that the Guardian does not collect data on why an application is withdrawn. However, Ms Johnson said that the office wants to better understand this issue through a working group they have set up with the non-government sector.¹²⁷
- 2.77 The Committee is concerned at the high number of carers withdrawing their applications in the 2022-23 period given an overall carer shortage. We are pleased to see the Guardian has plans to better understand and address the carer shortage. We will monitor the Guardian's progress in setting up an Advisory Committee and its other work supporting the recruitment and retention of carers.

Establishing a Youth Engagement and Youth Advisory Council

- 2.78 At the first hearing, the Guardian gave evidence around the possibility of having a 'nominated youth representative' on a 'council' or 'committee of experts' so 'the expertise of young people... [is] recognised'. The Guardian observed that this aligns with the Child Safe Standards, specifically that 'young people should be involved... [and] should be consulted concerning child-safe practice'.¹²⁸

¹²³ OCG, [Annual Report 2022-23](#), June 2023, p 54; Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 5; OCG, [Additional information for Parliamentary Joint Committee on Children and Young People](#), p 5.

¹²⁴ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 4-5.

¹²⁵ OCG, [Annual Report 2022-23](#), June 2023, pp 56-57.

¹²⁶ Larissa Johnson, Director, Out-of-home Care Regulation, Office of the Children's Guardian, [Transcript of Evidence](#), 2 July 2024 p 5.

¹²⁷ Ms Johnson, [Transcript of Evidence](#), 2 July 2024 p 10.

¹²⁸ Mr Kinmond, [Transcript of Evidence](#), 18 March 2024, p 23.

- 2.79 At the second hearing, the Guardian stated that his office had commenced 'early scoping work on the issue of a youth engagement and youth advisory council'.¹²⁹
- 2.80 The Committee looks forward to the outcome of this work, being another mechanism through which the voices of children and young people can be heard.

¹²⁹ Mr Kinmond, [Transcript of Evidence](#), 2 July 2024, p 3.

Chapter Three – Office of the Advocate for Children and Young People

Continuing advocacy for children and young people in NSW

- 3.1 The current Advocate for Children and Young People, Zoë Robinson, was appointed in January 2021 (the **Advocate**).¹³⁰ Under her leadership, the Office of the Advocate for Children and Young People has continued actively engaging with and advocating for children and young people across NSW.
- 3.2 During the reporting periods, the Advocate has published several important reports that include recommendations for both government and non-government organisations. These include the reports on how children and young people are impacted by the rising cost of living in NSW and on the experiences of LGBTIQIA+ children and young people.¹³¹
- 3.3 We also commend the Advocate for the publication of the "*Vaping can affect your whole life, not just your lungs*": *Young people's perspectives on vaping in 2023* report. The previous Committee recommended that the Advocate undertake such a consultation in the 2022 annual review.¹³²
- 3.4 Importantly, the Advocate has also recently released its final report on the *Special Inquiry into Children and Young People in Alternative Care Arrangements*. This marks the first time the Advocate has used its powers under Part 5 of the *Advocate for Children and Young People 2014* (the **ACYP Act**). The Advocate made a request to establish this special inquiry partly because of what emerged from previous consultations undertaken by her office.¹³³ The Minister approved the request to conduct this inquiry and the inquiry terms of reference were made public on 12 October 2023.¹³⁴
- 3.5 Additionally, the Advocate launched the *NSW Strategic Plan for Children and Young People 2022-2024* during the 2021-22 reporting year. This plan was developed after receiving input from more than 40,000 children and young people in NSW. The Committee discussed the Advocate's progress and plans for the next strategic plan during the public hearings, as discussed at [3.43] to [3.48] below.

¹³⁰ Office of the Advocate for Children and Young People (OACYP), [New advocate for children and young people](#), media release, 21 December 2020, viewed 13 November 2024.

¹³¹ See OACYP, [The Voices of LGBTIQIA+ Young People in NSW](#), 2022; OACYP, "[It should be easier to just exist](#)": *How children and young people are impacted by and responding to the rising cost of living in NSW*, December 2023.

¹³² See OACYP, "[Vaping can affect your whole life, not just your lungs](#)": *Young people's perspectives on vaping in 2023*, n.d.; Committee on Children and Young People, [2022 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian](#), Report 5/57, October 2022, p 4.

¹³³ See OACYP, [Voices of Children and Young People in Out-of-Home Care](#), 2021.

¹³⁴ See OACYP, [Moving cage to cage: Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements](#), August 2024, p 15; [Advocate for Children and Young People Act 2014](#) s 24.

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

- 3.6 The Department of Communities and Justice completed the statutory review of the ACYP Act, and the final report was tabled in NSW Parliament in February 2023.¹³⁵
- 3.7 The department published a discussion paper and engaged with key stakeholders, including the Advocate's office and children and young people themselves.¹³⁶
- 3.8 The review found that the objectives of the ACYP Act remain valid and the terms are generally appropriate to secure its objectives. No legislative changes were recommended or proposed.¹³⁷

Improving transparency around funding

Recommendation 8

That, in future annual reports, the Advocate for Children and Young People provides more detail on its sources of funding, including from state and federal governments, and how that funding is spent.

State and federal funding received by the Advocate

- 3.9 The Advocate is primarily funded through the NSW Department of Communities and Justice. The Committee learned that in 2022-23, the Advocate's office received \$2.7 million in employee related expenses to support approximately 19.4 full-time equivalent staff members along with an additional \$745,000 for operational expenses.¹³⁸
- 3.10 At the second hearing, the Advocate told us that this operational funding covers expenses such as office supplies, equipment, and travel costs for community engagement during Children's Week and Youth Week.¹³⁹ The funding is also used to pay for the costs associated with the Youth Advisory Council (the **YAC**) recruitment process, as well as remunerate the children and young people involved in the YAC.¹⁴⁰
- 3.11 In 2022-23, the Advocate also received \$500,000 from the Commonwealth Government and a further \$500,000 from the NSW Government, under the Disaster Recovery Funding Arrangements. This has enabled her office to

¹³⁵ See NSW Department of Communities and Justice, [Statutory Review of the Advocate for Children and Young People Act 2014](#), February 2023.

¹³⁶ NSW Department of Communities and Justice, [Statutory Review of the Advocate for Children and Young People Act 2014](#), February 2023, Executive summary.

¹³⁷ NSW Department of Communities and Justice, [Statutory Review of the Advocate for Children and Young People Act 2014](#), February 2023, Executive summary.

¹³⁸ [Answers to supplementary questions](#), Advocate for Children and Young People (ACYP), 9 April 2024, p 5.

¹³⁹ Ms Zoë Robinson, Advocate for Children and Young People, Office of the Advocate for Children and Young People, [Transcript of Evidence](#), 2 July 2024, p 13.

¹⁴⁰ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 13.

undertake work as a designated Recovery Support Service provider, helping flood-affected individuals in the Northern Rivers area.¹⁴¹

Adequacy of funding to respond to all cross-governmental requests

- 3.12 In this review, the Advocate told the Committee that the current funding and resourcing may at times limit the Advocate's ability to meet the diverse requests for assistance it receives from government and community stakeholders.¹⁴² Examples of some of these requests are at [3.41] below.
- 3.13 We heard that there have been times when the Advocate had to reduce the scope of work, delay assistance, or decline requests entirely. This has included being unable to facilitate some requested training sessions and consultations.¹⁴³
- 3.14 The Advocate has also been unable to provide funding support for certain youth initiatives run by the Minister for Youth, the YAC and Youth Justice due to budgetary constraints.¹⁴⁴
- 3.15 In light of this, the Committee recommends that the Advocate's future annual reports include more detailed information about its funding sources and how its budget is spent, so that the adequacy of funding and resourcing can be determined.
- 3.16 The Committee recognises that it is important that the Advocate receives adequate funding and will keep a watching brief on this issue.

Ensuring adequate funding and resourcing for special inquiries

- 3.17 The Committee also heard that the Advocate had to shift resources in order to manage the work associated with the Special Inquiry into Children and Young People in Alternative Care Arrangements.¹⁴⁵ The Advocate's work around the special inquiry is discussed at [3.34] to [3.37] below.
- 3.18 The Committee learned that the Advocate redistributed funding allocated for operational expenses in order to ensure the independence of the special inquiry. The Advocate's office used pro bono professional services, independent advisors, and reallocated internal staff from other areas as the office 'didn't have the capacity to hire new people in'.¹⁴⁶
- 3.19 The Committee commends the Advocate for the resourcefulness demonstrated in delivering this important special inquiry. However, depending on the nature and scale of the inquiry, consideration should be given to the Advocate receiving

¹⁴¹ This funding is provided by the NSW Reconstruction Authority to allow Advocate's support of the Program to 31 March 2025. See [Answers to further supplementary questions](#), ACYP, 18 July 2024, p 1; NSW Government, [Recovery Support Services](#), 8 November 2023, viewed 7 November 2024.

¹⁴² [Answers to supplementary questions](#), ACYP, 9 April 2024, p 5; Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 12.

¹⁴³ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, pp 12, 13; [Answers to supplementary questions](#), ACYP, 9 April 2024, p 5.

¹⁴⁴ [Answers to further supplementary questions](#), ACYP, 18 July 2024, pp 4-16.

¹⁴⁵ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 13.

¹⁴⁶ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 16.

additional funding to undertake any future special inquiries, to avoid the office having to '[shift] money to focus on' them.¹⁴⁷

Enhancing reporting on engagement with diverse groups

Advocate's engagement function under the Act

It is a key function of the Advocate to conduct, promote and monitor research into issues affecting children and young people.¹⁴⁸

In doing so, the ACYP Act requires the Advocate to consult with children and young people from a broad range of backgrounds and age groups throughout the state and give priority to the interests and needs of vulnerable and disadvantaged children and young people.¹⁴⁹

Consulting children and young people from diverse backgrounds

- 3.20 The Committee was pleased to hear that the Advocate ensures diversity in children and young people who participate in any polling activities run by the office to understand their views on a wide range of issues. We learned that this is how the Advocate determines its consultation topics and work programs.¹⁵⁰
- 3.21 The design of the Advocate's polling also aims to ensure that it is accessible and avoids selection bias by using a process that meets survey standards and includes culturally linguistically diverse participants. We heard that there are sometimes targeted approaches for particular cohorts like refugees and migrants. However, engaging with highly vulnerable groups who may be reluctant to participate remains a challenge.¹⁵¹

Improving reporting on diversity

Recommendation 9

That the Advocate for Children and Young People include data about diversity in its reporting, including in annual reports, that includes cultural diversity and the percentage of children and young people from regional, rural and remote areas, and other marginalised and underrepresented groups.

- 3.22 At the first hearing, the Committee asked about the extent to which the Advocate's reports capture the data about diversity of children and young people that the office engages with, including a detailed breakdown and percentages.¹⁵²
- 3.23 In response, we heard that the Advocate's office 'work[s] very hard to ensure that [they are] reflecting the diversity of children and young people across the state' and that all of the Advocate's reports include a methodology and a demographic. The Advocate also said that the reports identify when there are 'particular groups

¹⁴⁷ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 16.

¹⁴⁸ [Advocate for Children and Young People Act 2014](#) sub-s 15(1)(e).

¹⁴⁹ [Advocate for Children and Young People Act 2014](#) sub-s 15(2)(b), (c)

¹⁵⁰ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 17.

¹⁵¹ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 17.

¹⁵² Ms Robinson, [Transcript of Evidence](#), 18 March 2024, p 11.

or a particular area of young people who might have an over-representation' or are impacted greatly.¹⁵³

- 3.24 When asked about information relating to the cultural diversity of these children, the Advocate said that her office is in a position to provide such information 'at some stage'.¹⁵⁴
- 3.25 The Committee recognises that the Advocate and her staff aim to engage with diverse children and young people and their processes reflect this. However, the Committee is of the view that this may not be readily visible in their reporting. This lack of detailed demographic data on diversity makes it difficult to ascertain the extent to which views from diverse groups are captured.
- 3.26 We recommend that the Advocate's future reports reflect data on demographic diversity of children and young people involved in events and activities run by the Advocate's office. This should include the percentage of children and young people from regional or remote areas, and other marginalised and underrepresented groups. The Committee believes that this will strengthen the Advocate's important role in ensuring that the views of diverse groups are accurately represented and reflected in targeted and effective policymaking across government.

Tracking the implementation of recommendations to stakeholders

Making recommendations to stakeholders

The Advocate has a function of making recommendations to government and non-government agencies on legislation, reports, policies, practices, procedures and services affecting children and young people.¹⁵⁵

Recommendation 10

That, in future annual reports, the Advocate for Children and Young People consider including data from its new tracking mechanism monitoring the implementation of recommendations to stakeholders.

- 3.27 We heard that the Advocate's consultation reports are a formal way of presenting insights gained from engaging with children and young people. The Advocate told the Committee that while consultations may not be the preferred way of engaging with children and young people, the reports from these are 'a more appropriate product for the Advocate to use and present recommendations' to their stakeholders.¹⁵⁶
- 3.28 The Committee learned that the Advocate and her staff works with stakeholders regarding the recommendations in their reports to assist with their response and

¹⁵³ Ms Robinson, [Transcript of Evidence](#), 18 March 2024, p 11.

¹⁵⁴ Ms Robinson, [Transcript of Evidence](#), 18 March 2024, p 11.

¹⁵⁵ [Advocate for Children and Young People Act 2014](#) sub-s 15(1)(d).

¹⁵⁶ [Answers to supplementary questions](#), ACYP, 9 April 2024, p 3.

implementation.¹⁵⁷ However, the Committee notes that the office currently 'does not have significant mechanisms to enforce their recommendations'.¹⁵⁸

- 3.29 During the first public hearing, the Committee asked whether the Advocate tracks the implementation status of recommendations made in their consultation reports.
- 3.30 In response, the Advocate told the Committee that her office is 'in the process of collating all recommendations from the key reports' in order to 'understand where they are and how they are tracking'. The Advocate also said that 'there is work that needs to continue in terms of making sure that those recommendations continue to be worked with' relevant stakeholders.¹⁵⁹
- 3.31 The Advocate subsequently provided that there are 'a number of mechanisms' that her office has developed to track the implementation status of recommendations internally.¹⁶⁰ The Committee understands that 'consideration is currently underway about how best to utilise' some of these tracking mechanism in the Advocate's work planning.¹⁶¹
- 3.32 The Committee commends the Advocate for commencing this work. However, the Committee recognises that this information is currently not included in the Advocate's annual reports.
- 3.33 The Committee is therefore recommending that the Advocate considers including data regarding the implementation of its recommendations in future reports, in light of the importance of visibility around their implementation status.

Impacting the lives of children and young people in alternative care through the Advocate's special inquiry power

Power to conduct a special inquiry

The Advocate has the power to conduct a special inquiry into an issue affecting children and young people. A decision to conduct a special inquiry requires agreement from the Minister for Youth and can be at the request of the Advocate or the Minister's own initiative.¹⁶²

The Advocate makes a special report to the Minister on the results of a special inquiry, which may be tabled in Parliament unlike other consultation reports released by the Advocate.¹⁶³

Finding 3

The Committee is pleased that the Advocate for Children and Young People used its power under Part 5 of the *Advocate for Children and Young People Act*

¹⁵⁷ [Answers to supplementary questions](#), ACYP, 9 April 2024, p 2.

¹⁵⁸ [Answers to supplementary questions](#), ACYP, 9 April 2024, p 2.

¹⁵⁹ Ms Robinson, [Transcript of Evidence](#), 18 March 2024, p 2.

¹⁶⁰ [Answers to supplementary questions](#), ACYP, 9 April 2024, p 2.

¹⁶¹ [Answers to supplementary questions](#), ACYP, 9 April 2024, p 2.

¹⁶² [Advocate for Children and Young People Act 2014](#) pt 5.

¹⁶³ [Advocate for Children and Young People Act 2014](#) sub-s 33(1).

2014 to conduct a special inquiry into alternative care arrangements during this reporting period. This is the first use of the special inquiry power since the Advocate's establishment.

- 3.34 We were pleased to see that the Advocate used the special inquiry power under Part 5 of the ACYP Act to inquire into the alternative care arrangements for children in hotels, motels and other settings for emergency out-of-home care placements. This is the first time that the Advocate has used this power since the commencement of the ACYP Act on 9 January 2015.¹⁶⁴
- 3.35 The Advocate told the Committee that the inquiry was established to ensure that the perspectives of young people in alternative care settings were heard as past inquiries by other agencies did not sufficiently include their voices. She said the office's 'entire work centres on voice, and this voice was particularly absent'.¹⁶⁵
- 3.36 The Advocate's report *Moving cage to cage: Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements* was tabled in Parliament in August 2024. Since the report has been tabled, the NSW Government announced an urgent reform to ban the use of unaccredited emergency accommodation for vulnerable children in the foster care system, within six months.¹⁶⁶
- 3.37 The Committee will consider the Advocate's ongoing work relating to this special inquiry as part of the next annual review.¹⁶⁷

Collaborating with stakeholders to amplify the voices of children and young people

The need to collaborate with stakeholders

In fulfilling its functions under the ACYP Act, the Advocate must work co-operatively with other organisations that provide services to or represent the interests of children and young people.¹⁶⁸

The Advocate has a role in encouraging participation of children and young people in decision-making processes that relate to them.¹⁶⁹

¹⁶⁴ OACYP, [Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements](#), August 2024, Executive Summary, p 11. See [Advocate for Children and Young People Act 2014](#) s24(1).

¹⁶⁵ Ms Robinson, [Transcript of Evidence](#), 18 March 2024, p 5.

¹⁶⁶ NSW Government, [NSW Government to ban the use of Alternative Care Arrangements for vulnerable children](#), media release, 3 September 2024, viewed 16 September 2024.

¹⁶⁷ OACYP, [Moving cage to cage: Final Report of the Special Inquiry into Children and Young People in Alternative Care Arrangements](#), August 2024, viewed 1 September 2024.

¹⁶⁸ [Advocate for Children and Young People Act 2014](#) sub-s 15(2)(d), s 16.

¹⁶⁹ [Advocate for Children and Young People Act 2014](#) sub-s 15(1)(b).

Including voices of children and young people in decision-making processes

3.38 We heard that the Advocate and her staff regularly sit on advisory boards and committees to ensure the voices of young people are included in discussions that shape policies affecting them.¹⁷⁰

3.39 The Advocate discussed the benefit of also 'giving that space to young people' and 'hav[ing] young people at the table for those conversations' when designing policies, programs and infrastructure that impacts them. Ms Robinson emphasised the need for consistency in 'wanting to have [representation from young people] embedded' rather than seeking input from young people only after issues arise.¹⁷¹

3.40 The Committee also learned that the Advocate's office signed a Memorandum of Understanding with the NSW Department of Education, which serves as a structured method of such engagement. The Advocate stated that formalising the relationship provides:

...a streamlined way of getting [the] information so that we could understand what kind of particular pieces of work might be on the horizon for Education, where we could actually provide the most valuable input and engage with that process.¹⁷²

Assisting other agencies on youth related initiatives

3.41 We heard that the Advocate frequently receives requests from stakeholders to provide advice and facilitate engagement on particular topics. The Committee heard some of the recent requests include:

- providing subject matter expertise through summits and webinars to the Department of Customer Service, NSW Ministry of Health and the Deputy Premier,
- supporting the recruitment of young people to participate in activities and workshops ran by the Office of Regional Youth and the NSW Ministry of Health,
- running training sessions to inform youth-related initiatives by the Department of Education and local councils,
- distributing surveys to the Advocate's network for the Transforming Early Education Child Health Research Centre and the Office for Regional Youth, and
- participating in roundtables and advisory work for the Minister for Youth and Revenue NSW.¹⁷³

¹⁷⁰ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 15. See also OACYP, [Annual report 2022-23](#), June 2023, p 63; OACYP, [Annual report 2021-22](#), June 2022, p 67.

¹⁷¹ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 16.

¹⁷² OACYP, [Annual report 2022-23](#), June 2023, p 56; Ms Robinson, [Transcript of Evidence](#), 18 March 2024, p 8.

¹⁷³ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 12; [Answers to further supplementary questions](#), ACYP, 18 July 2024, pp 4-15.

- 3.42 The Committee is pleased that the Advocate is able to leverage its existing networks and capabilities to assist other agencies. However, as discussed at [3.12] – [3.16] above, we recognise that the Advocate has to carefully manage its capacity to respond to these requests based on available team resourcing. The Committee will continue to monitor this issue.

Progress on the NSW Strategic Plan for Children and Young People 2022–2024

The NSW Strategic Plan for Children and Young People

The Advocate prepares, in consultation with the Minister, a three-year strategic plan (the **Strategic Plan**) for children and young people in NSW.¹⁷⁴

- 3.43 During the second hearing, the Advocate told the Committee that the Strategic Plan reflects what children and young people say matters to them, differentiating it from the office's internal business plan. The Advocate added that the six pillars in the Strategic Plan determine her office's work plan and priorities.¹⁷⁵
- 3.44 The current iteration of the plan, *The NSW Strategic Plan for Children and Young People 2022-2024* (the **Current Plan**), was launched in April 2022. We recognise that the Advocate has released two tracking reports on the Current Plan as per the recommendation from the previous Committee in its 2022 review.¹⁷⁶
- 3.45 The Committee asked about the timing of the next tracking report and the next plan given that the Current Plan is approaching its end.
- 3.46 In response, the Advocate said that her office is following up with government agencies, businesses and community groups that committed to delivering on aspects of the Current Plan. In wrapping up the Current Plan, the Advocate is asking them to report on their progress in fulfilling those commitments and are in the course of providing the last tracking report in February 2025.¹⁷⁷
- 3.47 The Committee heard that with the Advocate's term ending in December 2025, there are no current plans for the next Strategic Plan cycle. The Advocate said that the next Advocate will need to undertake consultation and develop a new plan that reflects voices and priorities of children and young people at that time.¹⁷⁸
- 3.48 Given the Current Plan ends in 2024, it is important that developing a new Strategic Plan is an immediate priority of the next Advocate. This will help ensure

¹⁷⁴ [Advocate for Children and Young People Act 2014](#) sub-s 15(1)(g).

¹⁷⁵ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 17.

¹⁷⁶ Committee on Children and Young People, [2022 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian](#), Report 5/57, October 2022, p 6.

¹⁷⁷ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 14.

¹⁷⁸ Ms Robinson, [Transcript of Evidence](#), 2 July 2024, p 14.

continuity in overarching strategic goals and will build on the valuable work of the current Advocate. The Committee will continue to monitor this issue.

Youth Advisory Council

- 3.49 At the first hearing, the Committee heard from three representatives of the 2022-23 Youth Advisory Council (the **YAC**): Mr Billy Bofinger, Mr Dylan Farr and Mrs Sereena Zanuso.
- 3.50 We were pleased to engage with young representatives themselves to learn about the YAC's work and hear directly from them about issues facing children and young people across the state.

Reducing the age for Youth Advisory Council membership to under 25

Recommendation 11

That the NSW Government consider amending section 21(3) of the *Advocate for Children and Young People Act 2014* so that all 12 members of the Youth Advisory Council are persons under the age of 25 years.

- 3.51 Currently, only six out of 12 YAC members are required to be under 25. However, the representatives suggested that amending the ACYP Act to require all members to be under 25 would better align the membership with the YAC's target age group of 12 to 24 years old.¹⁷⁹
- 3.52 In response to the Committee's supplementary questions, the representatives stated that while 'this is the current practice of the Advocate when recruiting', the suggested amendment 'would ensure the practice continues indefinitely'.¹⁸⁰
- 3.53 The representatives also indicated that the number of elected representatives and the structure 'is adequate' for the YAC's duties. We understand that increasing the number of representatives may 'reduce the opportunity for the quieter members to be heard in YAC meetings'.¹⁸¹
- 3.54 We also recognise that former members of the YAC continue to engage with its work, and commend the Advocate and her staff for facilitating these opportunities as appropriate.¹⁸²

Recruiting diverse members to the YAC

- 3.55 We were pleased that the YAC recruitment process aims to ensure members represent young people across NSW by considering diverse backgrounds and locations.¹⁸³
- 3.56 The Committee learned that the Advocate's office uses data to inform its YAC recruitment and evaluates this process yearly to identify any underrepresented

¹⁷⁹ [Advocate for Children and Young People Act 2014](#) ss 21(3); [Answers to supplementary questions](#), Youth Advisory Council (YAC), 9 April 2024, p 2.

¹⁸⁰ [Answers to supplementary questions](#), YAC, 9 April 2024, p 2.

¹⁸¹ [Answers to supplementary questions](#), YAC, 9 April 2024, p 1.

¹⁸² [Answers to supplementary questions](#), YAC, 9 April 2024, p 3.

¹⁸³ [Answers to supplementary questions](#), YAC, 9 April 2024, p 1.

groups. The Advocate also gets feedback from elected representatives on improving their recruitment practice.¹⁸⁴

- 3.57 We commend the Advocate and her staff for taking a structured approach to YAC recruitment. We will continue to monitor this work to ensure that a diverse range of children and young people are represented in the YAC.

Advising on government policies and programs

- 3.58 We were pleased to hear the YAC provides valuable insights and recommendations on youth-related issues to guide government policies.
- 3.59 Some key inputs provided by the YAC during the 2022-23 reporting period include:
- recommending changes to the NSW school curriculum,
 - advising on the Department of Education's complaints system,
 - making changes to the 'School is for Everyone' video, and
 - providing input on the Department of Health's vaping and e-cigarettes factsheet.¹⁸⁵
- 3.60 We learned the YAC also consults regularly with the Advocate and provides feedback on engagement work, including the Advocate's three-year strategic plan for children and young people in the state.¹⁸⁶

Student Voice in School project

- 3.61 The Committee was especially pleased to hear about the positive changes made by the YAC's major project, *Student Voice in School*, which sought to elevate student opinions in schools. We understand that the YAC recently presented the research from this year-long project to the Secretary of the Department of Education which was then shared with principals across NSW.¹⁸⁷
- 3.62 As part of the research, the YAC undertook a survey with 1,561 students across NSW. Six per cent of these participants were Aboriginal and/or Torres Strait Islander, and 10 per cent lived with a disability, reflecting a diverse demographic.¹⁸⁸
- 3.63 The Committee also notes that 53 per cent of the survey participants were from regional NSW. Mr Farr, a regional representative from Walgett, said the findings

¹⁸⁴ [Answers to supplementary questions](#), ACYP, 18 July 2024, pp 1-2.

¹⁸⁵ [Answers to questions on notice](#), YAC, 24 April 2024, p 1; Ms Robinson, [Transcript of Evidence](#), 18 March 2024, p 14.

¹⁸⁶ [Answers to questions on notice](#), YAC, 24 April 2024, p 1.

¹⁸⁷ Mr Billy Bofinger, Youth Advisory Council, [Transcript of Evidence](#), 18 March 2024, p 13.

¹⁸⁸ Mr Bofinger, [Transcript of Evidence](#), 18 March 2024, p 13.

represented 'Walgett's community and just the rural New South Wales community in general'.¹⁸⁹

- 3.64 We understand the final report led to further YAC input opportunities regarding the Department of Education's *Tell Them From Me* student engagement and wellbeing surveys.¹⁹⁰
- 3.65 We commend the YAC for their contribution and look forward to hearing more about the YAC's work in the next annual review.

Concerns and issues faced by young people

- 3.66 The Committee was interested to understand the concerns and issues young people have shared with the YAC.
- 3.67 In response, all three representatives noted that young people are particularly worried about their 'fear for the future', which stems from various factors, including rising cost-of-living, uncertainty about future job prospects, and environmental issues.¹⁹¹
- 3.68 Mrs Zanuso expressed her concern that young people 'feel disempowered by the actions that the Government is taking' on certain issues like climate change.¹⁹²
- 3.69 The representatives stressed the value of youth participation in government processes and advocated for increased youth voices in decision-making, especially for those in regional and rural areas. Mrs Zanuso said:
- I feel a lot of city and metro young people and children have a lot more access to opportunities like this. I think it's really important to empower young people in their own communities because it strengthens the community, and it strengthens the young people in that community as well.¹⁹³
- 3.70 We thank the representatives from the YAC for sharing these concerns with the Committee. We encourage the NSW Government to continue to listen to these concerns and involve children and young people in policy decisions that shape their lives.

¹⁸⁹ Mr Dylan Farr, Youth Advisory Council, [Transcript of Evidence](#), 18 March 2024, p 14.

¹⁹⁰ Mr Bofinger, [Transcript of Evidence](#), 18 March 2024, p 13; NSW Department of Education, [Tell Them From Me](#), viewed 9 September 2024.

¹⁹¹ Mrs Sereena Zanuso, Youth Advisory Council, [Transcript of Evidence](#), 18 March 2024, p 16; Mr Farr, [Transcript of Evidence](#), 18 March 2024, p 16; Mr Bofinger, [Transcript of Evidence](#), 18 March 2024, p 16.

¹⁹² Mrs Zanuso, [Transcript of Evidence](#), 18 March 2024, p 16.

¹⁹³ Mrs Zanuso, [Transcript of Evidence](#), 18 March 2024, p 15.

Appendix One – Committee's functions

Part 7 of the *Advocate for Children and Young People Act 2014* sets out the Committee's functions as:

- to monitor and review the exercise by the Advocate of the Advocate's functions,
- to monitor and review the exercise by the Children's Guardian of functions under—
 - the *Child Protection (Working with Children) Act 2012*, or
 - the *Children's Guardian Act 2019* in relation to the reportable conduct scheme and working with relevant entities to prevent, identify and respond to reportable conduct and promote compliance with the scheme,
 - the *Children's Guardian Act 2019* in relation to out-of-home care,
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the Advocate or connected with the exercise of the Advocate's functions, or on any matter relating to the exercise of the Children's Guardian's functions specified in paragraph (b), to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
- 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,
- to examine trends and changes in services and issues affecting children and young people, and report to both Houses of Parliament any changes that the Joint Committee thinks desirable to the functions and procedures of the Advocate,
- to inquire into any question in connection with the Advocate's functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

Part 3A of the *Children's Guardian Act 2019* sets out additional functions of the Committee as:

- (a) to monitor and review the functions of the Children's Guardian in—
 - overseeing the implementation of the Child Safe Standards by child safe organisations,
 - the enforcement of the Child Safe Standards within child safe organisations,
 - establishing child safe action plans with prescribed agencies,
- (b) to review the activities of the Children's Guardian for consistency with the Royal Commission recommendations,
- (c) to review guidelines issued by the Minister under section 8AB(1) for consistency with the Royal Commission recommendations,

- (d) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter which the Committee considers should be brought to the attention of Parliament relating to the following—
- the exercise of the Children's Guardian's functions specified in paragraphs (a) and (b),
 - guidelines issued by the Minister under section 8AB(1).

Appendix Two – Witnesses

18 March 2024

Parliament House, Jubilee Room, Sydney, NSW

Witness	Position and Organisation
Ms Zoë Robinson	Advocate for Children and Young People, Office of the Advocate for Children and Young People
Ms Una O'Neill	Director, Office of the Advocate for Children and Young People
Ms Sereena Zanuso	Youth Advisory Council (YAC)
Mr Dylan Farr	Youth Advisory Council (YAC)
Mr Billy Bofinger	Youth Advisory Council (YAC)
Mr Steve Kinmond	Children's Guardian, Office of the Children's Guardian
Ms Sharminie Niles	General Counsel, Office of the Children's Guardian
Ms Larissa Johnson	Director, Out-of-home Care Regulation, Office of the Children's Guardian
Mr Steve Gholab	Director, Working with Children Check, Office of the Children's Guardian

02 July 2024

Parliament House, Macquarie Room, Sydney, NSW

Witness	Position and Organisation
Mr Steve Kinmond	Children's Guardian, Office of the Children's Guardian
Ms Larissa Johnson	Director, Out-of-home Care Regulation, Office of the Children's Guardian

Ms Sharminie Niles	General Counsel, Office of the Children's Guardian
Ms Vanessa Ford	Director, Strategic Projects Child Safe, Office of the Children's Guardian
Mr Peter Crimp	Director, Corporate Services, Office of the Children's Guardian
Mr Steve Gholab	Director, Working with Children Check, Office of the Children's Guardian
Ms Zoë Robinson	Advocate for Children and Young People, Office of the Advocate for Children and Young People
Ms Xanthe Foster	Acting Director, Office of the Advocate for Children and Young People

Appendix Three – Extracts from minutes

MINUTES OF MEETING No. 2

1.33pm, 13 September 2023
Room 1254

Members present

Mrs Dalton (Chair), Ms McKeown (Deputy Chair), Ms Davis, Ms Wilkinson, Dr Cohn, Mrs MacDonald and Ms Suvaal

Officers present

Rohan Tyler, Dora Oravecz, Ashley Kim and Mohini Mehta

1. Confirmation of minutes

Resolved on the motion of Ms Davis, seconded Ms McKeown: That the minutes of the meeting of 2 August 2023 be confirmed.

2. ***

3. ***

4. ***

5. ***

6. General business

The Committee discussed the timing and conduct of the review of the annual reports of the Advocate for Children and Young People and the Children's Guardian.

7. Next meeting

The meeting adjourned at 1.58pm until a time and date to be determined.

MINUTES OF MEETING No. 3

9.33am, 29 November 2023
Room 1254

Members present

Mrs Dalton (Chair), Ms McKeown (Deputy Chair), Ms Wilkinson, Dr Cohn and Ms Suvaal

Apologies

Mrs MacDonald and Ms Davis

Officers present

Rohan Tyler, Dora Oravecz, Alice Zwar and Mohini Mehta

1. Confirmation of minutes

Resolved, on the motion of Dr Cohn, seconded by Ms Wilkinson: That the minutes of the meeting of 13 September 2023 be confirmed.

2. ***

3. ***

4. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

Resolved, on the motion of Ms Suvaal, seconded by Ms Wilkinson: That the Committee conducts a review of the 2021-22 and 2022-23 annual reports of the Advocate for Children and Young People and the Office of the Children's Guardian and invites the Advocate and the Guardian to give evidence at a public hearing to be held on a date to be confirmed.

5. ***

6. Next meeting

The meeting adjourned at 9.42am until a date to be determined.

MINUTES OF MEETING No. 4

10:05am, 18 March 2024

Jubilee Room

Members present

Mrs Dalton (Chair), Ms McKeown (Deputy Chair), Dr Cohn, Ms Davis, Mrs MacDonald and Ms Wilkinson (by videoconference).

Apologies

Ms Suvaal.

Officers present

Rohan Tyler, Ashley Kim, Mengyuan Chen and Mohini Mehta.

1. Confirmation of minutes

Resolved on the motion of Dr Cohn: That the minutes of the meeting of 29 November 2023 be confirmed.

2. ***

3. **2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian**

Pre-hearing deliberative meeting

3.1. Media orders for public hearing

Resolved on the motion of Ms McKeown: That the Committee authorise the audio-visual recording photography and broadcasting of the public hearing on 18 March 2024, in accordance with the NSW Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the NSW Legislative Assembly.

3.2. Supplementary questions and questions taken on notice

Resolved on the motion of Mrs MacDonald:

- That the Committee adopt the following process in relation to supplementary questions:
 - Members to email any proposed supplementary questions for witnesses to the secretariat by 4pm, Tuesday 19 March 2024;
 - Secretariat to then circulate all proposed supplementary questions to the Committee, with Members to lodge any objections to the questions by 4pm, Wednesday 20 March 2024.
- That witnesses be requested to return answers to questions taken on notice and any supplementary questions within 14 days of the date on which the questions are forwarded to witnesses.

3.3. Public hearing

Witnesses and the public were admitted. The Chair opened the public hearing at 10.15am and made a short opening statement.

Ms Zoë Robinson, Advocate for Children and Young People and Ms Una O'Neill, Director of the Advocate for Children and Young People, Office of the Advocate for Children and Young People were affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Mr Billy Bofinger, Mr Dylan Farr and Ms Sereena Zanuso (via videoconference), Youth Advisory Council were affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Ms Sharminie Niles, General Counsel, and Mr Steve Gholab, Director, Working with Children Check, Operations, Office of the Children's Guardian were sworn and examined.

Mr Steve Kinmond, Children's Guardian, Ms Larissa Johnson, Director, Out-of-home Care Regulation, Office of the Children's Guardian were affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.55pm.

Post-hearing deliberative meeting

3.4. Publication orders

Resolved on the motion of Dr Cohn: That the corrected transcript of evidence be authorised for publication and uploaded to the Committee's webpage.

3.5. Acceptance and publication of tendered documents

The Committee did not receive any tendered documents.

4. ***

5. Next meeting

The meeting adjourned at 1.08pm until on a date and time to be confirmed.

MINUTES OF MEETING No. 5

9:03am, 7 June 2024

Room 1136 and Videoconference

Members present

In person: Mrs Dalton (Chair)

By videoconference: Ms McKeown (Deputy Chair), Dr Cohn, Ms Davis, Ms Kaliyanda and Mrs Suvaal.

Apologies

Mrs Maclaren-Jones

Officers present

Stephanie Mulvey, Ashley Kim, Alice Zwar and Mohini Mehta.

1. Confirmation of minutes

Resolved on the motion of Ms Davis: That the minutes of the meeting of 18 March 2024 be confirmed.

2. Membership changes

The Committee noted the following changes to membership:

- Mrs Natasha Maclaren-Jones appointed in place of Mrs Aileen MacDonald (effective from 5 June 2024)
- Ms Charisma Kaliyanda appointed in place of Ms Kylie Wilkinson (effective from 6 June 2024)

3. ***

4. **2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian**

4.1. Report planning workshop

The Committee considered the draft report plan.

4.2. Responses to questions on notice and supplementary questions (18 March 2024 public hearing)

The Committee noted the following answers to questions on notice and supplementary questions (previously circulated to members):

Children's Guardian:

- Answers to questions on notice from the Children's Guardian
- Answers to supplementary questions from the Children's Guardian

Advocate for Children and Young People:

- Answers to questions on notice from the Advocate for Children and Young People
- Answers to supplementary questions from the Advocate for Children and Young People

Youth Advisory Council:

- Answers to questions on notice from the Youth Advisory Council
- Answers to supplementary questions from the Youth Advisory Council

Resolved, on the motion of Ms Suvaal:

- That the Committee accept the listed answers to questions on notice and supplementary questions and publish these on its webpage with contact details redacted, and
- That the Committee write to the Advocate for Children and Young People and the Children's Guardian with further supplementary questions.
- That the secretariat circulate the draft letters to the Committee for approval.

4.3. Corrections to evidence given at public hearing

The Committee noted the following letters of clarification received regarding evidence given during the public hearing on 18 March 2024, from the following witnesses:

- Ms Zoe Robinson, Advocate for Children and Young People
- Mr Steve Kinmond, Children's Guardian (as part of the letter containing answers to questions on notice)
- Mr Steve Gholab, Director, Working with Children Check, Office of the Children's Guardian NSW

The Committee noted that in accordance with Legislative Assembly Standing Order 293, witnesses' corrections to the transcription of their evidence given at a hearing should be confined to verbal inaccuracies and should not be used to make stylistic or extensive changes.

Resolved, on the motion of Ms Suvaal:

- That the Committee publish the correspondence received from Zoe Robinson, Advocate for Children and Young People, Steve Kinmond, Children's Guardian and Steve Gholab, Director, Working with Children Check, Office of the Children's Guardian NSW on the Committee's webpage, and
- That the Committee provide links to the published documents at the relevant sections of the transcript.

Ms Kaliyanda left the meeting at 9.29am

Mr Davis left the meeting at 9.49am

4.4. Additional public hearing

Resolved, on the motion of Ms Suvaal: That the Committee invite the Advocate for Children and Young People and the Office of the Children's Guardian to give evidence at a further public hearing to be held on a date to be confirmed.

5. ***

6. ***

7. Next meeting

The meeting adjourned at 10.01AM until a date and time to be determined.

MINUTES OF MEETING No. 6

1:03pm, 2 July 2024

Macquarie room and Videoconference

Members present

In person: Mrs Dalton (Chair), Mrs Suvaal, Mrs Maclaren-Jones and Ms Lynda Voltz

By videoconference: Ms McKeown (Deputy Chair), Dr Cohn and Ms Davis

Officers present

Stephanie Mulvey, Ashley Kim, Alice Zwar and Elizabeth Hawken.

1. Confirmation of minutes

Resolved on the motion of Mrs Suvaal: That the minutes of the meeting of 7 June 2024 be confirmed.

2. Membership changes

The Committee noted the appointment of Ms Voltz to the Committee and the discharge of Ms Kaliyanda, in accordance with Votes and Proceedings No. 60 and Minutes of Proceedings No. 60 dated 20 June 2024.

3. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

Pre-hearing deliberative meeting

3.1. Media orders for public hearing

Resolved on the motion of Ms Voltz: That the Committee authorise the audio-visual recording photography and broadcasting of the public hearing on 2 July 2024, in accordance with the NSW Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the NSW Legislative Assembly.

3.2. Supplementary questions and questions taken on notice

Resolved on the motion of Ms Voltz:

- That the Committee adopt the following process in relation to supplementary questions:
 - Members to email any proposed supplementary questions for witnesses to the secretariat by 4pm, Wednesday 3 July 2024;
 - Secretariat to then circulate all proposed supplementary questions to the Committee, with Members to lodge any objections to the questions by 4pm, Thursday 4 July 2024.
- That witnesses be requested to return answers to questions taken on notice and any supplementary questions within 14 days of the date on which the questions are forwarded to witnesses.

Resolved, on the motion of Mrs Suvaal: That the Committee accept the Children's Guardian's response to supplementary questions received 1 July 2024 and publish this on its webpage with contact details redacted.

3.3. Public hearing

Witnesses and the public were admitted. The Chair opened the public hearing at 1.10pm and made a short opening statement.

- Mr Steve Kinmond, Children's Guardian;
- Ms Larissa Johnson, Director, Out of Home Care;
- Ms Vanessa Ford, Director, Strategic Projects Child Safe; and
- Mr Peter Crimp, Director, Interim Chief Financial Officer;

from the Office of the Children's Guardian were affirmed and examined.

- Ms Sharminie Niles, General Counsel; and
 - Mr Steve Gholab, Director Working with Children Check,
- from the Office of the Children's Guardian were sworn and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Ms Zoe Robinson, Advocate for Children and Young People and Ms Xanthe Foster, Acting Director from the Office of the Advocate and Children and Young People were affirmed and examined.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.45pm.

Post-hearing deliberative meeting

3.4. Publication orders

Resolved on the motion of Ms Voltz: That the corrected transcript of evidence be authorised for publication and uploaded to the Committee's webpage.

4. ***

5. Next meeting

The meeting adjourned at 3.51pm until on a date and time to be confirmed.

MINUTES OF MEETING No. 7

4:02pm, 9 August 2024

Room 1043 and Videoconference

Members present

In person: Mrs Dalton (Chair), Dr Cohn and Ms Davis

By videoconference: Ms McKeown (Deputy Chair), Mrs Maclaren-Jones and Ms Suvaal.

Apologies

Ms Voltz

Officers present

Helen Minnican (Clerk), Sam Griffith, Stephanie Mulvey, Ashley Kim, Alice Zwar and Mohini Mehta.

1. Confirmation of minutes

Resolved on the motion of Mrs Suvaal seconded by Dr Cohn: That the minutes of the meeting of 2 July 2024 be confirmed.

2. ***

3. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

At request of the Chair, the Clerk provided general advice on the provisions governing statutory committees.

The Committee considered the agencies' responses to questions on notice and supplementary questions from the 2 July 2024 public hearing, which were circulated at the meeting.

4. ***

5. Next meeting

The meeting adjourned at 4.36pm until on a date and time to be confirmed.

MINUTES OF MEETING No. 8

10:03am, 2 September 2024

Room 1043 and Videoconference

Members present

In person: Mrs Dalton (Chair), Mrs Maclaren-Jones and Ms Voltz

By videoconference: Dr Cohn, Ms Davis and Ms Suvaal

Apologies

Ms McKeown (Deputy Chair)

Officers present

Stephanie Mulvey, Ashley Kim, Alice Zwar and Nicolle Gill

1. Confirmation of minutes

Resolved on the motion of Mrs Maclaren-Jones: That the minutes of the meeting of 9 August 2024 be confirmed.

2. ***

3. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

The Committee considered the agencies' responses to questions on notice and supplementary questions from the 2 July 2024 public hearing, circulated at the 9 August 2024 meeting.

...

Resolved, on the motion of Ms Suvaal: That the Committee publish the Advocate for Children and Young People's responses to questions on notice and supplementary questions received 18 July 2024.

4. ***

...

Mrs Maclaren-Jones left the meeting at 10.32am.

...

Committee discussed the timing and content of its report in this inquiry.

Resolved, on the motion of Ms Voltz: That Committee publish its report on the 2024 review of the annual reports and other matters of the Advocate for Children and Young People and the Office of the Children's Guardian as an interim report.

5. General Business

6. Next meeting

The meeting adjourned at 11.01am until 9.00am on 19 September 2024.

MINUTES OF MEETING No. 9

9:02am, 19 September 2024

Room 1043

Members present

Mrs Dalton (Chair), Ms McKeown (Deputy Chair), Dr Cohn, Ms Davis, Mrs Suvaal and Ms Voltz

Apologies

Mrs Maclaren-Jones

Officers present

Helen Minnican (Clerk), Sam Griffith, Stephanie Mulvey, Ashley Kim, Alice Zwar and Mohini Mehta

1. Confirmation of minutes

Resolved on the motion of Mrs Suvaal: That the minutes of the meeting of 2 September 2024 be confirmed.

2. ***

3. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

3.1 Answers to questions on notice

...

Resolved, on the motion of Ms Voltz: That the Committee accept and publish the Children's Guardian's answers to questions on notice and supplementary questions dated 19 July 2024 and 22 July 2024, except for the document entitled *Workplace Review, Key Findings and Recommendations* report.

3.2 Procedural advice from the Clerk

The Clerk of the Legislative Assembly attended the meeting to provide advice on the matters requested by the Committee at its last meeting.

...

3.3 ***

4. ***

5. Next meeting

The meeting adjourned at 9.40am until 9.00am on 26 September 2024.

MINUTES OF MEETING No. 10

9:01am, 26 September 2024

Room 1043

Members present

Mrs Dalton (Chair), Ms McKeown (Deputy Chair), Ms Davis, Mrs Suvaal and Ms Voltz

Apologies

Mrs Maclaren-Jones and Dr Cohn

Officers present

Stephanie Mulvey, Ashley Kim, Alice Zwar and Mohini Mehta

1. Confirmation of minutes

Resolved on the motion of Ms McKeown: That the minutes of the meeting of 19 September 2024 be confirmed.

2. ***

3. Next meeting

MINUTES OF MEETING No. 11

1.02pm, 18 October 2024

Room 1136

Members present

In person: Mrs Dalton (**Chair**), Ms McKeown (**Deputy Chair**), Ms Davis and Ms Voltz

Via videoconference: Dr Cohn, Mrs Suvaal and Mr Barrett

Officers present

Helen Minnican (**Clerk**), Sam Griffith, Stephanie Mulvey, Alice Zwar and Mohini Mehta

1. Confirmation of minutes

Resolved, on the motion of Ms Voltz: That the minutes of the meeting of 26 September 2024 be confirmed.

2. Membership change

The Committee noted the appointment Mr Barrett to the Committee and the discharge of Mrs Maclaren-Jones. Extracts from Minutes of Proceedings No 73 and Votes and Proceedings No 75, dated 26 September 2024 are included in the meeting papers.

3. ***

4. ***

5. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian – Advice from Clerk

The Clerk of the Legislative Assembly provided advice on how the Committee should proceed with its annual review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian.

Ms Davis left the meeting at 1.12pm.

6. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian – Interim Report

The Committee considered the draft interim report.

Resolved, on the motion of Ms Voltz:

- That the Committee meet for a report deliberative meeting in the week commencing 21 October 2024 at a time to be determined, and
- That the Secretariat circulate an updated draft interim report prior to the report deliberative meeting.

7. ***

8. Next meeting

The meeting adjourned at 1.33pm until on a date and time to be determined.

MINUTES OF MEETING No. 12

9.32am, 24 October 2024

Room 1043

Members present

Mrs Dalton (**Chair**), Ms McKeown (**Deputy Chair**), Mr Barrett, Dr Cohn, Ms Davis, Mrs Suvaal and Ms Voltz

Officers present

Sam Griffith, Stephanie Mulvey, Ashley Kim, Alice Zwar and Mohini Mehta

1. Confirmation of minutes

Resolved, on the motion of Mrs Suvaal: That the minutes of the meeting of 18 October 2024 be confirmed.

2. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian – Interim Report

The Committee considered the draft interim report.

Resolved, on the motion of Ms Voltz:

- That any minor amendments to the draft report from members to be made and agreed to by email. If consensus cannot be reached by email, the report to be further considered at a Committee meeting.
- That the draft report, as amended, be the report of the Committee and that it be signed by the Chair and presented to the House, subject to members' agreement by email.
- That the Committee authorise the Chair and the Committee staff to make appropriate final editing and stylistic changes as required.
- That once tabled the report be published on the Committee's webpage.

3. Next meeting

The meeting adjourned at 9.59am until 21 November 2024.

UNCONFIRMED MINUTES OF MEETING No. 13

9.02am, 21 November 2024

Room 1043

Members present

Mrs Dalton (Chair), Ms McKeown (Deputy Chair), Mr Barrett, Ms Davis, Ms Voltz (by telephone), Dr Cohn and Mrs Suvaal

Officers present

Stephanie Mulvey, Ashley Kim, Alice Zwar and Mohini Mehta

1. Confirmation of minutes

Resolved, on the motion of Dr Cohn: That the minutes of the meeting of 24 October 2024 be confirmed.

2. 2024 review of the annual reports and other matters of the Office of the Advocate for Children and Young People and the Office of the Children's Guardian

2.1. Resolution permitting recording of video meeting

Resolved, on the motion of Ms McKeown: That the Committee agree to record the meeting for the purposes of committee staff preparing the minutes and report amendments, and that the recording be deleted when the report is tabled.

2.2. Publication of additional document

The Committee considered publishing the document provided by the Children's Guardian ahead of the 2 July 2024 public hearing.

Resolved, on the motion of Dr Cohn: That the Committee accept the attached document provided by the Children's Guardian ahead of the 2 July 2024 public hearing, and publish this on its website.

2.3. Consideration of Chair's draft report

The Committee considered the Chair's draft report and amendments table.

Resolved, on the motion of Mrs Suvaal: That the Committee accept Mrs Suvaal's proposed amendments to the report, previously circulated to the Committee, being:

- The words "that warrants an inspector to deal with matter such as allegations of abuse of power and misconduct, maladministration and questions about the legality of its operations" in paragraph 1.35 on page 8 be replaced with the words "that should be addressed".
- The words "would" in paragraph 1.36 on page 9 be replaced with "could".
- Paragraph 1.52 on page 12 be omitted.

- Paragraph 1.53 on page 12 be omitted.

Resolved, on the motion of Dr Cohn: That the Committee accept Dr Cohn's proposed amendment to the report, previously circulated to the Committee, being to insert the words "with important exceptions" after the words "the relevant Minister" in Recommendation 4 on page 7.

Resolved, on the motion of Mrs Suvaal:

- That the draft report as amended, including the cover page, be the report of the Committee and that it be signed by the Chair and presented to the House.
- That the Committee authorise the Chair and Committee staff to make appropriate final editing and stylistic changes as required.
- That once tabled the report be published on the Committee's webpage.

Resolved, on the motion of Ms Voltz: That the Chair write to the Children's Guardian, ahead of tabling the Committee's report, providing a copy of recommendations that relate to the oversight of the Children's Guardian.

3. ***

4. ***

5. ***

6. Next meeting

The meeting adjourned 9.18am until a date to be determined.