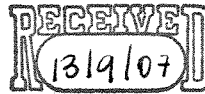


OCG/01058



NSW OFFICE FOR CHILDREN
**the Children's
Guardian.**

S29



Ms Angela D'Amore MP
Chair
Committee on the Office of the Ombudsman and Police Integrity Commission
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Ms D'Amore

**Submission to the Committee for its statutory review of the
*Community Services (Complaints, Reviews and Monitoring)
Act 1993***

Thank you for giving me the opportunity to make a submission to the Committee's review of the Act.

I regard the Act as an essential component of the regulatory framework for community services in New South Wales.

My submission focuses on the following two issues:

- the relationship between the jurisdiction of the Ombudsman/Official Community Visitors (OCVs) under the Act and the jurisdiction of the Children's Guardian; and
- information exchange arrangements between the Ombudsman/OCVs and the Children's Guardian.

Please do not hesitate to contact me if you or other members of the Committee have any queries about my submission.

Yours sincerely

Kerryn Boland
Children's Guardian
10 September 2007

STATUTORY REVIEW OF THE *COMMUNITY SERVICES (COMPLAINTS, REVIEWS AND MONITORING) ACT 1993* (“THE ACT”)

SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION

The Children’s Guardian is pleased to make a submission to the review of the Act.

The Children’s Guardian is a statutory office established under s178 of the *Children and Young Persons (Care and Protection) Act 1998* (“the 1998 Act”)¹. The Children’s Guardian’s proclaimed principal functions under the 1998 Act are to:

- promote the best interests of all children and young persons in out-of-home care² (OOHC) (s181(1)(b));
- ensure that the rights of all children and young persons in OOHC are safeguarded and promoted (s181(1)(c)); and
- accredit designated agencies (government and non-government agencies that arrange the provision of OOHC) and to monitor their responsibilities under the Act and regulations (s181(1)(e)).

The *Children and Young Persons (Care and Protection) Regulation 2000* (“the 2000 Regulation”) and *Children and Young Persons (Savings and Transitional) Regulation 2000* (“the Transitional Regulation”) provide the regulatory framework for the Children’s Guardian accreditation and monitoring functions.

The Children’s Guardian also exercises the delegated accreditation and monitoring functions of the Director-General of the Department of Community Services (DoCS) under the *Adoption Act 2000* and *Adoption Regulation 2003*³.

Both designated agencies and adoption service providers are “service providers” within the meaning of the 1998 Act. Residential care services for

¹ On 2 April 2006, the Commission for Children and Young People (CCYP) and the Office of the Children’s Guardian were merged to form the Office for Children. The merger was progressed to create administrative efficiencies and has not affected the statutory functions or accountabilities of the Children’s Guardian, CCYP, or CCYP Commissioner.

² The proclaimed provisions of the 1998 Act are currently confined to care that is ordered by a court or provided for under Commonwealth legislation, and that lasts for longer than 14 days. Over 5700 children and young people are estimated to be in statutory OOHC at any one time.

³ The Children’s Guardian exercises delegated functions under sections 12(1), 12(3), 13(1), 14-15, 17(1)(b), 17(2), 20, 21(1) and 21(3) of the *Adoption Act 2000*, and clause 5A and clause 12 of Schedule 1 of the *Adoption Regulation 2003*

children and young people in OOHC are also “visitable services” for the purposes of the Act.

This means that some service providers are subject to the jurisdictions of both the Ombudsman/Official Community Visitors (OCVs) under the Act and the Children’s Guardian under the 1998 Act and/or *Adoption Act* - the Children’s Guardian’s work is distinct from, but complementary to, the work performed by the Ombudsman and OCVs under the Act.

This submission focuses on the following two issues:

- the relationship between the jurisdiction of the Ombudsman/OCVs under the Act and the jurisdiction of the Children’s Guardian; and
- information exchange arrangements between the Ombudsman/OCVs and the Children’s Guardian.

The Children’s Guardian considers the Act establishes complaints handling, review and accountability systems that promote the best interests of children and young people in OOHC and recipients of adoption services.

The objects of the Act appear appropriate and, as far as the Act is relevant to the Children’s Guardian, the provisions of the Act appear generally appropriate for securing those objectives.

However, as outlined below, the Committee may wish to consider minor legislative amendments that would facilitate the Ombudsman and Children’s Guardian exchanging information relevant to their respective jurisdictions.

1. GENERAL COMMENTS ON JURISDICTIONAL ISSUES AND INFORMATION SHARING

The Final Report of the Wood Royal Commission into the NSW Police Service Paedophile Inquiry found the existence of multiple supervisory agencies in the child protection system could lead to confusion and overlap of responsibilities. For this reason, Justice Wood recommended a Children’s Commission be established to serve as a one stop shop for child protection matters⁴.

The Government’s Green Paper on the establishment of a Children’s Commission⁵ did not support this approach on the basis that complaints handling, investigative and review functions (previously exercised by the Community Services Commission (CSC), and now exercised by the

⁴ Royal Commission into the New South Wales Police Service, *Final report Volume V: The Paedophilia Inquiry*, August 1997, pp 1293-1294.

⁵ *A NSW Children’s Commission*, Office of Children and Young People, The Cabinet Office, December 1997.

Ombudsman) potentially conflict with an advocacy function (now exercised by the Children's Commission).

Similarly, the NSW Law Reform Commission (LRC) 1999 Review of the Act found that complaints bodies comparable to the CSC did not have a role in monitoring compliance with service standards or accrediting community service providers against those standards. The LRC recommended that the CSC's jurisdiction not be expanded to take on such a role⁶ (see section 5 of this submission).

The Children's Guardian is now responsible for accrediting OOHC designated agencies and non-government adoption service providers, and monitoring their compliance with standards-based accreditation criteria. In July 2003, the 2000 Regulation was amended to require the Children's Guardian to develop, for the approval of the Minister of Community Services, the standards used in the accreditation of OOHC service providers.

The Children's Guardian agrees with the policy position adopted in NSW following the Wood Royal Commission – that a single agency cannot appropriately exercise all oversight, supervisory and advocacy functions relevant to child protection/community services, given the tension between some of those functions.

As identified by the LRC, it is important that bodies that have jurisdiction over common community service providers/clients develop protocols to ensure there is no unnecessary overlap in their work. Agencies that have jurisdiction over common community service providers/clients need to be able to share information relevant to their respective functions to maximise their effectiveness.

In her second reading speech to the *Community Services Legislation Amendment Bill 2002*, the then Minister for Community Services, the Hon Carmel Tebbutt MLC, emphasised the Bill had been formulated on the basis that "*the potential to share information should be strengthened wherever possible*"⁷.

The Ombudsman has previously advised the Committee that it has entered into a Memorandum of Understanding ("the MOU") with the Children's Guardian, principally relating to the exchange of information⁸.

⁶ Law Reform Commission, Report 90 (1999) - Review of the *Community Services (Complaints, Appeals and Monitoring) Act 1993 NSW*, paras 3.102-104.

⁷ *Community Services Legislation Amendment Bill 2002*, Second Reading, the Hon. Carmel Tebbutt, NSW Legislative Council Hansard, 18 June 2002, p3199.

⁸ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Report No 14/53 Stakeholder Review of the Merger of the Community Services Commission into the Office of the Ombudsman*, October 2006, p17.

Senior staff of the Office for Children – the Children’s Guardian (OCCG) and the Community Services and Child Protection Divisions of the Ombudsman’s Office meet several times a year to discuss their respective work programs and issues of common interest.

In the Children’s Guardian’s view, these arrangements are generally effective in supporting the Ombudsman and Children’s Guardian exercising their respective functions and minimising any duplication in work.

The Ombudsman’s Office and OCCG have agreed to a process to review the current MOU, which has been in place September 2004. The MOU will be updated after the framework for facilitating Children’s Guardian and Ombudsman exchange of complaints information is clarified (see section 2 of this submission).

However, legislative amendment to the Act would facilitate the improved sharing of information relevant to the functions of the Children’s Guardian, Ombudsman and OCVs.

2. COMMUNITY SERVICE COMPLAINTS

2.1 Jurisdictions of the Ombudsman and Children’s Guardian

The Children’s Guardian recognises the importance of the Ombudsman’s complaints functions under Part 4 of the Act.

There is no potential for the Ombudsman and Children’s Guardian to have overlapping complaints functions, as s180(2) of the 1998 Act provides:

“Despite any provision of this or any other Act, the Children’s Guardian is not entitled to carry out any of the following functions:

.....

(b) the investigation or resolution of a dispute that is the subject of a community services complaint within the meaning of Part 4 of the Community Services (Complaints, Reviews and Monitoring) Act 1993.”

In the second reading speech to the *Children and Young Persons (Care and Protection) Bill 1998*, the then Minister for Community Services said:

“It is important that I emphasise at this point that the Children’s Guardian is not a watchdog and does not have investigatory, complaints handling or general advocacy functions.”⁹

⁹ *Children and Young Persons (Care and Protection) Bill 1998*, Second Reading, Faye Lo’ Po, Legislative Assembly Hansard, 11 November 1998, p9766.

Whilst the Children's Guardian does not have a complaints handling role, the OOHC accreditation criteria for which the Children's Guardian is responsible require designated agencies to demonstrate:

- they operate and promote a fair complaints system that is accessible to all and systematically informs clients of their external rights to complain or appeal (Standard 4.3);
- they actively facilitate, and inform children, young people and their families of their rights, including rights to complain if dissatisfied with the quality of care (Standard 4.1);
- successful applicants for authorised carer appointments are provided with a written agreement that sets out complaint procedures (Standard 2.1); and
- they ensure carers know how to make complaints (Standard 2.4).

Similarly, the Adoption Standards used for accreditation require non-government adoption service providers to demonstrate that they operate and promote a fair complaints system that is accessible and transparent to all and informs parties to adoption of their external rights to appeal (Standard 4.3).

The above Standards are consistent with, and reinforce, the objectives and principles of the Act. It is important that the Children's Guardian and other bodies with responsibilities in the community services sector assist in promoting awareness of community service complaints systems, particularly given the LRC's comment in its 1999 review of the Act:

"The primary limitation is the reliance on individuals to bring complaints. In this jurisdiction, such individuals tend to belong to one of the most disenfranchised groups in modern society and are unlikely to be aware of their rights let alone to be in a position to exercise them".

If the Ombudsman has concerns about the complaints handling systems of a designated agency or non-government adoption service provider, the Ombudsman may provide the Children's Guardian with any report containing recommendations regarding those systems under section 14(4)(b) of the Act.

2.2 Exchange of complaint information

Children's Guardian provision of information to the Ombudsman

The Children's Guardian, in exercising her accreditation and monitoring functions, may come across information that gives rise to concerns about a community services provider or the welfare and well being of a child or young person, or groups of children or young people.

People may also provide such information to the Children's Guardian in the mistaken belief that the Children's Guardian is the appropriate complaints handling body.

The MOU provides that the Children's Guardian may refer to the Ombudsman complaints about the delivery of community services to children and young people in OOHC under s22 of the Act or s12 of the *Ombudsman Act 1974*.

The Ombudsman and Children's Guardian have agreed that these provisions of the MOU should be extended to complaints concerning non-government adoption service providers. The Children's Guardian has authority under s22 of the Act to refer relevant material concerning adoption service providers to the Ombudsman, and will do so as is appropriate, notwithstanding such referrals not being specifically addressed in the MOU at this time.

The Ombudsman and Children's Guardian have discussed the appropriateness of recognising the Children's Guardian as a relevant agency under Schedule 1A of the *Ombudsman Act 1974* to enable the Ombudsman and Children's Guardian to enter into complaint referral and information sharing arrangements under Part 6 of that Act.

This would remove any uncertainty as to whether the 1998 Act or *Adoption Act 2000* may limit the Children's Guardian in passing on complaints information to the Ombudsman in certain circumstances.

Ombudsman provision of information arising from a complaint/investigation to the Children's Guardian

The Ombudsman may, through its complaints and investigative functions, become aware of information relevant to the compliance of a designated agency or non-government adoption service provider with accreditation criteria, conditions of accreditation, or obligations or restrictions imposed by the 1998 Act, *Adoption Act* or the regulations made under those Acts.

The Children's Guardian's functions include monitoring such compliance issues.

The Children's Guardian is interested in receiving complaints information that raises serious or systemic concerns about a designated agency or non-government adoption service provider, that is relevant to accreditation criteria, and that may impact on the health, welfare and wellbeing of children and young people in OOHC or the adoption system.

The Ombudsman can provide relevant information arising from a complaint/investigation to the Children's Guardian under s34(1)(b1) of the *Ombudsman Act*. Relevant information might also be disclosed to the Children's Guardian under sections 34(1)(b2) and 34(1)(d) of that Act. Section 34(1) of the *Ombudsman Act* applies to complaints under Part 4 of the Act by virtue of s24(1) of the Act.

Information arising from a complaint/investigation that is provided by the Ombudsman to the Children's Guardian may inform decisions to:

- accredit or not accredit an agency;
- defer an accreditation decision;
- attach conditions to an accreditation;
- suspend or cancel an accreditation.

It should be noted that whilst the Ombudsman has powers to make recommendations and report on matters arising from community service complaints and investigations, the Children's Guardian can impose conditions on the accreditation of designated agencies and non-government adoption service providers and suspend or cancel their accreditation, making it unlawful for them to provide services. All such decisions are reviewable by the Administrative Decisions Tribunal under section 28 of the Act.

After receiving information arising from a complaint or investigation from the Ombudsman, the Children's Guardian:

- will comply with the secrecy provisions of the *Ombudsman Act*;
- will not consider material that is the subject of a current investigation in making a decision to accredit or not accredit an agency, attach conditions to an accreditation, suspend or cancel an accreditation, or to take other enforcement action;
- following the Ombudsman's finalisation of a matter, will apply the "hearing rule" of procedural fairness in putting information before an agency and allowing it a reasonable time to respond, before making any of the above decisions.

3. REVIEW FUNCTIONS

3.1 Jurisdictions of the Ombudsman and Children's Guardian

The Ombudsman's ability to conduct reviews under s13 of the Act promotes the best interests of children and young people in OOHC.

The LRC's 1999 Review of the Act found there was a potential overlap between the Ombudsman's functions under s13 and the Children's Guardian's function of reviewing placements effected by order of the Children's Court under s150(6) of the 1998 Act¹⁰.

In 2001, the NSW Parliamentary Library Service supported this finding, stating:

*"Under the new regime both the Children's Guardian and the Community Services Commission have a statutory role relating to the review of the situation of children in care."*¹¹

¹⁰ Law Reform Commission, 1999, paras 3.112-117.

¹¹ Griffith, G, 2001, *Child Protection in NSW: A Review of Oversight and Supervisory Agencies*, NSW Parliamentary Library Research Service. Briefing paper No 16/2001, p47.

Both the LRC and NSW Parliamentary Library Service noted the Children's Guardian's review functions had not proclaimed and that the Ombudsman and Children's Guardian would need to develop protocols to delineate the respective roles of the Children's Guardian and the Ombudsman in the review of the situation of children in OOHC.

The review functions of the Ombudsman under s13 of the Act are broader than the Children's Guardian's review functions under s150 of the 1998 Act. They extend to all persons in care, whilst the Children's Guardian's review functions under s150 of the 1998 Act are confined to children and young people in court ordered OOHC.

Section 150(1) of the 1998 Act requires designated agencies having responsibility for the placement of a child or young person in OOHC to conduct reviews of placements for the purpose of determining whether the safety, welfare and well-being of a child or young person is being promoted by a placement. Section 150 reviews must be conducted at times specified in the Act and in accordance with guidelines prepared by the Children's Guardian.

It is appropriate that designated agencies have review responsibilities under s150 of the 1998 Act and there is no inconsistency with the Ombudsman's broader review powers under s13 of the Act.

Sections 150(5)-(6) of the 1998 Act require all reports on s150 reviews to be provided to the Children's Guardian, and authorise the Children's Guardian to conduct s150 reviews in its own right. These provisions are not yet proclaimed, nor are those that confer on the Children's Guardian the function of examining a copy of the case plan for each child or young person in OOHC and reports provided following the review of case plans (s181(1)(d)).

Instead of reviewing all case plans and review reports, the Children's Guardian has developed a Case File Audit Program to monitor case planning and review arrangements and provide feedback to designated agencies on performance in this area. This is a more efficient and cost-effective way for the Children's Guardian to promote improvement in case planning and review.

The non-proclamation of provisions relevant to Children's Guardian powers in respect to case planning and review, and the alternative approach of conducting Case File Audits, minimises the risk of any duplication in the review functions of the Ombudsman and the Children's Guardian.

If the above provisions of the 1998 Act are proclaimed, the Children's Guardian remains of the view that the review provisions of the Act and the

1998 Act can comfortably co-exist for the reasons identified by the LRC, being¹²:

- the Ombudsman has a broad review jurisdiction and the Children's Guardian a more focused jurisdiction;
- the Children's Guardian does not have investigative powers or a "watchdog" role, which are consistent with the Ombudsman's jurisdiction under s13 of the Act;
- inter-agency protocols can minimise duplication – the Children's Guardian agrees with the Ombudsman's previous advice to the Committee that the MOU addresses information exchange and collaboration in this area¹³.

3.2 Exchange of information

Children's Guardian provision of information to the Ombudsman

The Children's Guardian may refer a matter for the review of the Ombudsman under s13(1) of the Act, and may provide information about the matter referred. This is recognised in the MOU.

The Ombudsman may hear or receive submissions from the Children's Guardian under s13(3) of the Act, and may require the Children's Guardian to provide information required for a review (s15 of the Act applies s18 of the *Ombudsman Act*).

The Children's Guardian is of the view that these powers are sufficient and appropriate.

The 1998 Act also enables the Children's Guardian to provide information to the Ombudsman for the purposes of promoting the best interests of all children and young people in OOHC and for ensuring that the rights of all such children and young people are safeguarded and promoted.

Information about the accreditation status of designated agencies and accreditation conditions, and information in Children's Guardian Quality Improvement Program Annual Progress Reports and Case File Audit Reports, may assist the Ombudsman in making decisions about the exercise of review functions.

The Children's Guardian currently provides some of this information to the Ombudsman, and will hold further discussions with the Ombudsman about providing further information that may be of assistance to the Ombudsman in the exercise of its functions under s13 of the Act.

¹² Law Reform Commission, 1999, paras 3.116-117.

¹³ Committee on the Office of the Ombudsman and the Police Integrity Commission, 2006, p17.

Ombudsman provision of information arising from a review to the Children's Guardian

Information arising from a review may be of relevance to the exercise of the Children's Guardian's functions.

Section 13(5)(b) of the Act allows the Ombudsman to provide the Children's Guardian with its report on a review under s13. The MOU provides for the Children's Guardian being provided with reports of reviews arising from Children's Guardian referrals and recognises the Ombudsman may provide other relevant review reports to the Children's Guardian, where appropriate.

The Children's Guardian understands, following discussions between OCCG and the Ombudsman's Office, that the provisions of s34 of the *Ombudsman Act* apply to information obtained by the Ombudsman's Office under s13 of the Act.

This interpretation would allow the Ombudsman to provide the Children's Guardian with relevant information arising from a review before the review is finalised and a report prepared.

There may be occasions where it would be appropriate for the Ombudsman to provide the Children's Guardian with review information at an early stage of the review process. The review process may take time and the Ombudsman may hold information about the poor performance of a designated agency that, if known by the Children's Guardian, may result in the Children's Guardian deferring an assessment as to whether a designated agency has met a relevant standard.

If the Committee holds the view that s13(5)(b) is exhaustive of the circumstances in which review information may be disclosed, then the Children's Guardian would appreciate consideration being given to amending the Act to specifically provide for the Ombudsman being able to furnish the Children's Guardian with information obtained in the course of the exercise of the Ombudsman's review functions.

Such an amendment would be consistent with the *Community Services Legislation Amendment Bill* having been formulated on the basis that "the potential to share information should be strengthened wherever possible".

4. REVIEW OF DEATHS OF CHILDREN IN CARE

4.1 Jurisdictions of the Ombudsman and Children's Guardian

Part 6 of the Act provides for Ombudsman reviews of deaths of children in care, as well as the deaths of other specified vulnerable people.

Section 180(2)(a) of the 1998 Act provides the Children's Guardian is not entitled to carry out an investigation into the death of a child that is subject to investigation by the coroner under section 13A or 13AB of the *Coroners Act 1980* or review or investigation by the Ombudsman.

There is no potential for any overlap of the Children's Guardian's and Ombudsman's jurisdictions in this area.

4.2 Information exchange

Section 38(1)(d) requires the Children's Guardian and senior members of OCCG to provide the Ombudsman with access to records the Ombudsman reasonably requires for the purposes of exercising the Ombudsman's Part 6 functions. Section 42 of the Act applies the general information provision requirements of s18 of the *Ombudsman Act*.

Information obtained by the Ombudsman under Part 6 may be relevant to the exercise of the Children's Guardian's functions. This is recognised at s39 of the Act, which permits the Ombudsman to disclose Part 6 information to the Children's Guardian.

The Children's Guardian is of the view that these powers are sufficient and appropriate.

5. STANDARDS FOR THE DELIVERY OF COMMUNITY SERVICES

5.1 Jurisdictions of the Ombudsman and Children's Guardian

Sections 11(1)(a)-(b) of the Act provide that the Ombudsman has functions to:

- promote and assist the development of standards for the delivery of community services; and
- educate service providers, clients, carers and the community generally about those standards.

The Ombudsman promotes and assists in the development of standards by:

*"... inquiring into significant systemic issues about community services, researching current issues in the delivery of services, and reviewing the causes and patterns of complaints. [The Ombudsman] also provides advice to government policy makers, service providers and other stakeholders on ways in which services might be improved."*¹⁴

The Ombudsman's role is advisory and educational. The Ombudsman is not responsible for developing service standards, nor does it have responsibility

¹⁴ Information on the website of the NSW Ombudsman.

for monitoring compliance with such standards (although investigations and reviews may identify that particular service standards are not being met).

The LRC's 1999 Review of the Act recommended against sections 11(a)-(b) being extended to standards monitoring and accreditation. The LRC noted standards monitoring is qualitatively very different to the form of monitoring provided under the Act¹⁵.

The Children's Guardian considers that accreditation and complaints investigation functions cannot sit comfortably within a single agency. There may be a perceived conflict of interest in an organisation accrediting an agency against a particular service standard on the one hand, whilst on the other conducting an investigation that may give rise to questions as to the merits of the accreditation decision.

5.2 Information exchange

The Ombudsman is aware of the standards used by the Children's Guardian in its accreditation and monitoring of designated agencies and non-government adoption service providers.

The MOU provides for the Ombudsman making recommendations to the Children's Guardian and the exchange of information regarding trends and issues arising from their work, including service improvement and systemic issues.

These arrangements are considered sufficient and appropriate.

6. OFFICIAL COMMUNITY VISITORS

6.1 Jurisdictions of OCVs and the Children's Guardian

The Children's Guardian recognises the important role OCVs play in promoting service accountability. OCVs are able to examine service issues at a grass-roots level and resolve problems.

OCVs have jurisdiction in respect of visitable services, which include residential OOHC services, residential services for people with disabilities and licensed boarding houses. There are approximately 1,200 visitable services in NSW.

The Children's Guardian has been previously advised that OOHC for children and young people (both court ordered and voluntary) represents about 20% of OCV reporting.

¹⁵ Law Reform Commission, 1999- paras 3.102-104.

DoCS quarterly OOHC data for September 2006 provides that only 288 (approx 3%) of the 11,058 children and young people in court-ordered and voluntary OOHC were in residential care¹⁶. DoCS quarterly data does not separately identify the proportion of children and young people who are in court-ordered residential care, but the number of these children and young people who fall within the jurisdictions of both the Children's Guardian and OCVs is relatively small.

While less than 3% of children and young people in OOHC are in residential care, 25 of the 58 designated agencies are accredited to provide residential care only and a further 16 are accredited to provide both residential and foster care. The proportion of children and young people subject to the jurisdictions of both the Children's Guardian and OCVs may be low, but the proportion of designated agencies subject to both jurisdictions is high (71%)¹⁷.

Where the Children's Guardian and OCVs have jurisdiction over the same population of children and young people, their functions are distinct but complementary.

OCVs spend a relatively short time with each designated agency that is a visitable service. Whilst they can identify and look at particular issues in depth, the Children's Guardian conducts a broader assessment of designated agency services, having regard to policies, procedures and practice.

6.2 Information exchange

Provision of OCV information to the Children's Guardian

The Ombudsman provides the Children's Guardian with information on the OCV Program. For example, the Ombudsman arranged for the Children's Guardian to be consulted in the development of a pilot Data Classification and Reporting System for OCVs in their OOHC work. The Children's Guardian strongly supports the development of such a system and appreciates having been given the opportunity to have input into its development.

Where OCVs identify serious concerns, the Ombudsman takes up such matters as complaints. The Ombudsman can provide the Children's Guardian with complaints information, as outlined at section 2 of this submission.

The Ombudsman's functions under s11 of the Act allow the Ombudsman to provide the Children's Guardian with information about trends and patterns arising from the work of OCVs.

¹⁶ NSW Department of Community Services, Out-of-Home Care Quarterly Data, June 2005 – September 2006.

¹⁷ Not all these agencies that are accredited to provide residential care will necessarily have current residential care placements.

However, the Children's Guardian is concerned that there is no mechanism under the Act for OCV information about a specific service, which may be relevant to the Children's Guardian's accreditation and monitoring functions, to be provided to the Children's Guardian.

Section 8 of the Act and clause 4 of the *Community Services (Complaints, Reviews and Monitoring) Regulation 2004* require OCV advice and reports to be provided to the Ombudsman and relevant Minister, but there is no provision for information included in such advice or reports to be passed on to the Children's Guardian.

The Children's Guardian has recently surveyed designated agencies as to how the current OOHC Accreditation and Quality Improvement system might be improved. Two agencies suggested that the views of OCVs should be considered by the Children's Guardian in the accreditation and quality improvement process:

Youth Off The Streets Inc. advised:

"Irrespective of staff and client numbers in any given agency we believe that the Quality Improvement Program process must involve site inspections, observations of & discussions with key staff and other mechanisms for obtaining objective independent assessments of an agency's true compliance (eg: community visitor checklists/surveys)."

Another agency, that has requested not to be publicly named, suggested:

"The community visitors' reports could be used in a more productive way in accreditation."

There is no doubt that the insight of OCVs would be extremely useful in determining whether to accredit an agency and/or whether to attach particular conditions to an accreditation. OCV Reports are expected to be even more useful in this regard after the proposed Data Classification and Reporting System is operational.

While the Children's Guardian has powers under the 1998 Act that would enable it to require designated agencies to provide it with OCV Reports, it would be preferable if the Ombudsman were able to provide the Children's Guardian with appropriate information from OCV reports to place that information in proper context.

Dealing with the Ombudsman, rather than directly with individual OCVs, would provide for a consistent approach as to how OCV information should be interpreted and how it might appropriately be used in Children's Guardian decision making.

Consideration should be given to amending the Act to allow the Ombudsman, at the Ombudsman's discretion, to provide information obtained from OCVs to the Children's Guardian where that information is relevant to the Children's Guardian's functions.

Such an amendment would be consistent with the *Community Services Legislation Amendment Bill* having been formulated on the basis that "the potential to share information should be strengthened wherever possible".

Children's Guardian provision of information to OCVs

OCCG gives regular presentations to OCVs on the OOHC role and functions of the Children's Guardian.

The 1998 Act enables the Children's Guardian to provide information to OCVs for the purposes of promoting the best interests of all children and young people in OOHC and for ensuring that the rights of all such children and young people are safeguarded and promoted, consistent with the Children's Guardian's functions under s181 of that Act.

Information about the accreditation status of designated agencies and accreditation conditions, and information in Children's Guardian Quality Improvement Program Annual Progress Reports and Case File Audit Reports, may assist OCVs identify particular issues to focus on in their visits to OOHC services.

The Children's Guardian currently provides some of this information to the Ombudsman, and will hold further discussions with the Ombudsman about providing further information that may assist OCVs in exercising their functions and appropriate protections that would need to be put in place in passing on such information to OCVs.

7. REVIEWABLE DECISIONS UNDER PART 5 OF THE ACT

Section 28(1)(a) of the Act provides for Administrative Decisions Tribunal (ADT) review of decisions that are reviewable decisions under s245 of the 1998 Act and s193 of the *Adoption Act*, which includes a variety of decisions that may be made by the Children's Guardian.

It should be noted that not all reviewable decisions under the 1998 Act are made under s245. Sections 264(1A)(1)(i)-(j) of the 1998 Act provide for the making of regulations to provide for ADT review, including a decision of, or the failure or refusal to make a decision by, the Children's Guardian.

Clause 6B of the *Children and Young Persons (Care and Protection) Regulation 2000* ("the 2000 Regulation") extends the ADT's jurisdiction in respect of Children's Guardian decisions.