

A child is swinging on a tire swing in a park. The child is wearing a brown jacket and light-colored shorts. The background is a bright, hazy sunset with silhouettes of trees and hills. The overall mood is peaceful and nostalgic.

annual report

2011-2012

**Commissioner
~Children**



Online

This report can be viewed at
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Hobart TASMANIA 7000

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how to read this report

13 November 2012

The Hon Michelle O'Byrne
Minister for Children
8/10 Murray St
Hobart 7000



Dear Minister,

In accordance with the requirements of Section 83 (1) of the *Children, Young Persons and their Families Act 1997*, I have the pleasure of enclosing the Annual Report for the Commissioner for Children's office for the financial year ending 30 June 2012 for presentation to the Parliament of Tasmania.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Aileen Ashford". The signature is written in a cursive style with some loops and flourishes.

Aileen Ashford
Commissioner for Children

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message from the Commissioner

I am pleased to present my Annual Report for 2011-2012 which provides a succinct overview of the work undertaken over the past twelve months.

Fundamental to my work is listening to children and young people and seeking their views. These voices have been captured through my Children's Consultative Councils across the state and been incorporated into the submissions I have provided to advise government on a range of legislation and policies that impact on children and young people. They have also been conveyed through two key projects – “As Eye See It”- the views of children in out of home care and the “Facing Up to Facebook” forum.

Further, in my role as Advocate for young people detained at Ashley Youth Detention Centre I have been their conduit to management to ensure their voices are heard and their issues taken seriously and acted upon.

I have continued to promote the interests of vulnerable children and young people by listening to community sector agencies who work with them on a daily basis. I have advocated strongly for an alternative for young people under the age of 15 years being placed in crisis homelessness shelters, stronger legislation governing the strip searching of minors and alternatives to detention for young people. In partnership with the Anti-Discrimination Commissioner, I have continued to advocate for amendment of the law that allows parents or others acting in their place to use physical punishment against children.

Although I do not have power to investigate complaints in relation to an individual child, unless requested to do so by the Minister for Children, this does not stop members of the community contacting me to raise their serious concerns regarding vulnerable children and young people. This year I received 102 inquiries and requests for assistance. I provided these inquirers with information and referral advice about agencies that might be able to provide assistance. These calls and inquiries from members of the public are extremely important because they inform my systemic advocacy on the range of issues that affect the health, welfare, wellbeing and protection of children and young people in Tasmania.

Children and young people who, through varying circumstances, are removed from their families and placed in state care, are among our most vulnerable citizens. Access to an independent advocate is crucial to ensuring that their rights are being protected and promoted and their needs are being met. Tasmania does not have such a service specifically for children; this can only contribute to their feelings of stress and powerlessness, a situation that in some respects is no different to the one they

found themselves in as victims of abuse and neglect.

The Children's Visitors program was established as a pilot to, in part, meet this need and has operated since 2009 from my office. It was evaluated and a new comprehensive model developed in partnership with the Department of Health and Human Services (DHHS) and key government and community sector agencies and provided to the Minister for Children. However, this program has now ceased to operate from my office on advice from the Department of Health and Human Services (DHHS) that it is not within my functions and powers as Commissioner for Children to do so. The Program is now operated by DHHS. Similarly, although a Case File Audit of Child Protection files was conducted on four occasions by my predecessor, I have been advised that this is also outside my functions and powers as Commissioner for Children. This means there is no external oversight of the manner in which Child Protection workers and other staff comply with policies and practices designed to ensure that children and young people in State care receive the care and protection they are entitled to.

In May 2012 the government provided its response to the December 2011 Final Report of the Select Committee on Child Protection. A subcommittee of Cabinet has been established to oversee implementation of recommendations accepted for further action by government. This whole of government response is commended. It is also heartening to see that the voices of vulnerable children and young people are at the centre of the plan.

Over the coming year, I will continue to work on behalf of all

Fundamental to my work is listening to children and young people and seeking their views

Tasmanian children and young people and promote their well-being, particularly those who are vulnerable such as those in the youth justice system and those who struggle to keep engaged with community and education, training or employment.

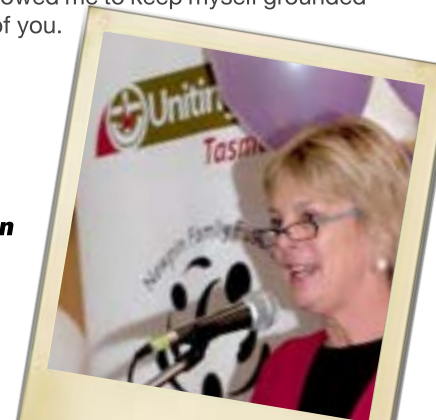
In my role I have had the pleasure of meeting with many professionals, organisations and parents who have demonstrated that we all need to work together, placing children at the centre,

to strengthen their resilience and improve their life opportunities. To all of them I extend my thanks for allowing me into their worlds and for working with me to make Tasmania a state that values the importance of the voices of children and young people.

In closing I would like to thank the staff who support me in my role and for their unflinching commitment to the children and young people of Tasmania. My sincere thanks go to all the children and young people who have been members of my Children's Advisory Council and to the young people at Ashley Youth Detention Centre. Your honesty, feedback and humour have been inspirational and have allowed me to keep myself grounded in my role of representing all of you.



Aileen Ashford
Commissioner for Children



about the Commissioner for Children



In May 1996 a Parliamentary Joint Select Committee was appointed by both Houses of Parliament to inquire into and report upon the adequacy or otherwise of existing draft “Children and their Families Legislation”. The Joint Select Committee tabled their report on the Children, Young Persons and Their Families Bill on 28th November 1996 in which they supported the appointment of a Commissioner for Children in Tasmania. In 1997 the Parliament of Tasmania passed the *Children, Young Persons and their Families Act 1997* and the *Youth Justice Act 1997*. Both Acts came into effect in 2000. The position of Commissioner for Children was established on July 1st 2000 and supported by all political parties. The Commissioner for Children is an independent statutory officer who reports to the Minister for Children and who is ultimately responsible to the Parliament of Tasmania through an annual report. The powers and functions of the Commissioner are in sections 79 and 80 of the *Children, Young Persons and their Families Act 1997*.

I was appointed as Tasmania’s fourth Commissioner for Children in November 2010 by the Tasmanian Governor for a term of 3 years.

I have a background in social work and education and have worked in the human services sector for over 30 years. I have held a range of direct practice, policy and senior management roles within the areas of disability, homelessness, family violence, community health and child and family services within both government and non-government services. Much of my work has been with families and community organisations which advocate for improved social services and programs for families and children.

What does the Commissioner do?

My functions and powers are in sections 79 and 80 of the *Children Young Persons and their Families Act 1997*. In summary, my role is to provide advice to the Minister on all matters relating to children and young people, promote the well-being of children and investigate matters as requested by the Minister.

Another function is to act as an advocate for detainees under the *Youth Justice Act 1997*. I meet regularly with residents at Ashley Youth Detention Centre to discuss issues and concerns with them and act on these.

This provides detainees with the opportunity to speak with an independent person about concerns they have about the conditions at Ashley. It also provides them with information and assistance to access formal complaint avenues available to them, such as the Ombudsman and the Secretary, Department of Health and Human Services.

I also meet regularly with the Australian Children's Commissioners and Guardians (ACCG) from each State and Territory on a bi annual basis to promote children's rights and participation and to ensure the best interests of children are considered in public policy and program development across Australia. The Australian Human Rights Commissioner and the New Zealand Children's Commissioner have standing invitations to attend ACCG meetings.

Vision and Strategic Directions

Supporting and strengthening the voices and well being of Tasmanian children and young people is the vision that guides the work I undertake in my role. This is accomplished by listening, advising and systems advocacy within the four key strategic priority areas that I have established which are:

- The wellbeing of children and young people.
- Vulnerable children and young people, including those who are in the child protection and youth justice systems.
- Communication and consultation with children and young people and key stakeholders.
- Partnerships and collaboration.



meeting the strategic directions

Hearing the Voices of Children & Young People

Children's Consultative Council

Under Section 81 and Schedule 2 of the *Children, Young Persons and their Families Act 1997* in my role as Commissioner a Children and Young Persons Consultative Council must be established. The Council is a group of children and young people under the age of 18 who share their views with me on a broad range of topics.

The Children and Young Persons Consultative Council members have been selected from six secondary and four primary schools in each of the four Department of Education areas. There are 200 children and young people who currently form the Council and they come from the following schools:

Secondary Schools - Huonville High School, Clarence High School, Launceston College, Kings Meadows High School, Penguin High School, Hellyer College

Primary Schools – East Ulverstone Primary, Mowbray Heights Primary, Bellerive Primary and Austins Ferry Primary

Some of the issues discussed with children and young people in the past year were :



Tattooing and Piercing

In the latter part of 2011 the then Minister for Children the Hon Lin Thorp requested that I seek the views of young people on what tattooing and piercing legislation should cover in Tasmania as there is currently no legislation that protects children and young people from inappropriate tattooing and piercing. The Secondary School Consultative Council members sought the views of their peers and the report of their views was presented to the Minister for Children. These views were included in my submission on recommendations for changes to the *Police Offences Act 1935*.

Social Media

As part of the *Facing Up to Facebook Forum* for organisations working with young people I consulted with the Children's Consultative Council about what young people thought about social media. The majority of views from young people was that they use social media as a positive way of communicating with friends and family and were aware of how to protect themselves from unwanted friends. As a result a DVD was made of some of the students from Huonville High talking about the message they wanted to give adults about Facebook and this was shown to the 120 participants at the forum.



Strip Searching of Children and Young People

In February 2012 a 12 year old girl was strip searched by Police in the course of their duty. I advocated for a comprehensive and urgent review of the Tasmanian legislation governing the strip searching of children and I sought the views of children and young people, through my Consultative Councils, on this issue.

One hundred and thirteen young people (45 boys and 68 girls) participated in the consultation across the state and the overall sense of the young people was that they had a good understanding of what strip searching meant but were unclear what legislation was in existence in Tasmania. They were not aware that a strip search could be conducted on children and young people of any age and that the process was similar to that for adults being strip searched.

The consultation provided an opportunity not only to gain the views of the young people but to provide them with information about the current strip searching laws. The views of these young people were incorporated into my advice to the Minister for Children and to the Minister for Police on this matter.

Ashley Detainees

One of the key functions I have is to provide advocacy to young people detained at Ashley Youth Detention Centre under the *Youth Justice Act 1997*. There are on average 25 young people detained at Ashley Youth Detention Centre on any one day; in 2010-11, 50% of these were on remand (or unsentenced).

Over the past twelve months I have visited Ashley on a monthly basis to ensure that policies and practices are not operating in a manner that amounts to an unjustified limitation on the rights these

young people are entitled to enjoy, notwithstanding their status as detainees.

I have spent time with the detainees discussing issues of concern they may have whilst in Ashley such as their health, education, family/friends visiting, and their care at Ashley. I regularly meet with the Manager of Ashley to raise issues of concern to detainees with a view to resolving them and then communicating outcomes to detainees.

Some of the key issues that have been raised and successfully resolved include:

- replacement of blankets with doonas
- digital clocks in all bedrooms so residents do not have to ask staff the time in the middle of the night
- ottoman cushions in bedrooms to allow residents to be able to sit and write at the built in desks
- new benches and artwork by residents in the family/friends visiting area
- a more private area for phone conversation, located in one of the units.

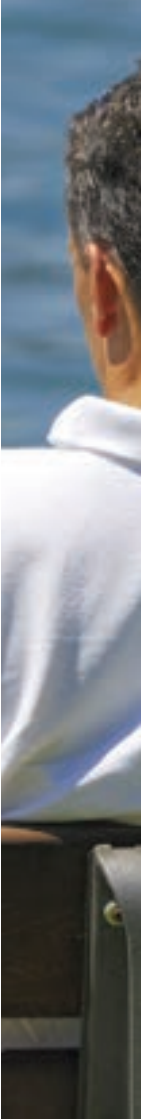
Also I have formally written to the Minister for Children on a number of occasions to convey my strong views and concerns around the practices in place when detainees are visited by family and friends. Of particular concern was the practice of detainees being strip searched as a matter of course after participating in visits. I was also concerned about the physical environment of the visiting area, which is a small room constantly monitored by both CCTV and a supervisory youth worker sitting

behind a glass partition. Furthermore, there is no access to refreshments for family members to buy and share with a young detainee. These practices are, in my opinion, not justified and amount to an unacceptable incursion on the privacy of detainees and of their family/friends. Although management have indicated a willingness to modify some of these procedures I will continue to monitor progress and advocate for change if it does not occur.

A new poster describing my role has been created by a detainee as part of a poster competition that I held in conjunction with the Ashley School. The poster describes my role as the Advocate in clear and succinct language and is distributed in each of the Units. I also recently introduced a 1300 number that residents can contact me on to raise and discuss issues and concerns. This phone line has been used on a weekly basis.

Children's Visitors Program

A pilot Children's Visitors Program for children in out of home care was introduced for a 12 month period from March 2010 to March 2011 and was based in the southern part of the state. The program was designed to provide children with a volunteer support person that was independent from the child protection system whom they could spend time with and discuss issues they may have.





An evaluation of the program was undertaken at six months and at 12 months of operation. The recommendation from the 12 month evaluation was that the current pilot be established as an ongoing program within the Commissioner for Children's office, subject to the development of an appropriate legislative framework and redevelopment of the model. It was also identified that the children valued that the Children's Visitors were volunteers and wanted to be there for them rather than paid to be there.

In 2011 /12 the model for the program was reviewed and a new model was developed with the outcomes to be achieved that children and young people who receive children visitors are better engaged in their care planning processes; better engaged in their learning and achievement and their health and wellbeing is improved. It was also important that the children and young people involved in the program had a better understanding of their level of family contact and that they benefited from having contact with children visitors.

The model was developed through a consultation process with all key stakeholders including the children and young people in out of home care, carers, volunteer children's visitors, the Department of Health and Human Services and community service organisations providing out of home care services.

In June 2012 the Department of Health and Human Services assumed responsibility for the continued operation of the program after advising me that my functions and powers as Commissioner did not extend to the operation of such a program.

Key Projects

Resource Kit for Carers

In 2005 the Tasmanian Departments of Education, Health and Human Services, Justice and Premier and Cabinet produced an information resource package for grandparents raising grandchildren.

That resource was comprised of 4 separate booklets describing the sorts of Government (Federal and State) services available to assist grandparents access support and information in the following areas:

- a) Education and Child Care
- b) Finance
- c) Health and Well-Being
- d) Legal Issues.

In early 2011 the then Minister for Children the Hon Lin Thorp MLC asked me to update the resource package and widen its relevance to all relative carers.

I established a Working Group of key stakeholders to assist with the preparation of an updated resource. The Working Group was comprised of representatives from Children and Youth Services, Department of Health and Human Services (Tasmania), Department of Education (Tasmania), Federal Department of Human Services, Mission Australia, Baptcare, Department of Families, Housing, Community Services and Indigenous Affairs, Legal Aid Commission of Tasmania, Hobart Community Legal

Service, the Ombudsman's Office, the Department of Justice and the Grandparents Advisory Council.

The Department of Employment, Education and Workplace Relations assisted with the information gathering process.

In October 2011 the Minister for Children, the Hon Michelle O'Byrne MP, launched the new resource for these relative carers. This resource aims to assist carers to find out about the services and supports that are available to them in the community or through Government agencies. It is comprised of 4 separate booklets describing relevant services in the same general areas as the 2005 resource, that is: Education and Child Care, Finance, Health and Well-Being and Legal Issues.

In each of the four booklets information is provided that is easily located, in plain English and generally relevant to the variety of circumstances and situations that could arise in the day-to day lives of carers and the children they care for.

Child Protection Case File Audit of Children in Out of Home Care

Since 2007 the Commissioner for Children has conducted, on an annual basis, a random audit of child protection files to ascertain compliance by Child Protection Practitioners with Departmental Policy.

The audit exercise was initially predicated on the Commissioner's membership of the Out-of-Home Care Complaints in Care Monitoring Group.

The last audit was conducted in 2010 and its results were reported in the 2010-2011 Annual Report. In early 2011 the then Minister for Children, the Hon Lin Thorp, requested that the next audit to be conducted focus on Leaving Care Plans and Personal Learning Plans. To ensure a high level of audit integrity I investigated the feasibility of adapting Case File Audit processes as utilised by the New South Wales Guardian for Children, who undertakes regular Case File Audits in relation to specific cohorts of children and young people in out-of-home care in that State. This process occurred over approximately 12 months, in consultation with the Department of Health and Human Services. A Memorandum of Understanding was drafted to outline roles, expectations, the audit process, the audit aims and related issues and extensive work was undertaken developing an audit tool for data gathering and a manual to guide those undertaking the audit. However, the proposed audit has not proceeded as a result of advice from the Department of Health and Human Services in May 2012 to the effect that conduct of such audits was outside the scope of my functions and powers as Commissioner for Children.



As Eye See It – Black and White Photographic Exhibition

In 2011 my office coordinated the Tasmanian As Eye See It Project, a photographic exhibition by children and young people in out-of-home care. This was part of a national project supported by Commissioners for Children and Child Guardians across Australia.

The project was governed by an advisory group with representatives from Anglicare Tasmania, CREATE Foundation, Department of Health and Human Services, Glenhaven, Kennerley Children's Homes, Life without Barriers, Foster Carers Association of Tasmania and the Salvation Army Tasmania.

Each of the community service organisations worked with 45 children and young people to support them to take photographs and tell their stories of what was important to them in their lives. The exhibition was launched by the Minister for Children at Parliament House during Child Protection Week and then travelled to other venues in the South and North West of the state.

As well as enabling young people's voices to be heard through the use of a powerful medium such as photography it allowed greater public understanding of children's experiences in care.



Facing Up To Facebook Forum

In November 2011 I held a technology forum called “*Facing Up to Facebook: the impact of technology on children, young people and their families*”. The forum aimed to bring to the attention of the broader community the unique challenges that social networking poses to the safety of children online and strategies on how to embrace such technology in professional settings.

The forum was a joint project between the Department of Health and Human Services, the Department of Premier and Cabinet and myself. It featured keynote presentations from Fiona Smart, Manager, of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) Safety Taskforce and Kate Hadwen, Senior Research Fellow with the Child Health Promotion Research Centre at Edith Cowan University in WA.

Over 120 participants attended the forum, many from within the education system, service organisations and government sector looking for means to use social media in a positive way.



Working for lasting change

Adult Advisory Councils

The *Children, Young Persons and their Families Act 1997* requires that I establish an Adult Advisory Council and other committees as I consider appropriate. In 2012 I established two Adult Advisory Councils. They are:

The Vulnerable Children and Young Persons Advisory Council.

This Advisory Council provides me with relevant information on the issues, needs and service gaps that are impacting on the health, welfare, care, protection and development of vulnerable children and young people. The Council is comprised of key people who work directly with children and young people.

The Childhood Injury Prevention Advisory Council. The Council's focus is on minimising the rate and impact of childhood injury through increasing public awareness and encouraging the development of policies and services within Government.

Membership is comprised of representatives from the Department of Health and Human Services, Kids Safe Tasmania, Delta Dog Safe, Department of Infrastructure, Energy and Resources, Royal Life Saving Society, The Early Years Foundation, and the Department of Education. Secretariat support is provided by Population Health.

Overview of Submissions by the Commissioner for Children

Submission and comment on the draft Mental Health Bill 2012

On 29 September 2011, a submission was made in response to an exposure draft of the Mental Health Bill 2011 (Tas). While welcoming the shift in policy emphasis from detention to treatment and the emphasis on a capacity based framework which acknowledges inherent rights, I noted that further work would be required to ensure the Bill achieves these aims. A number of recommendations designed to promote the best interests of children and young people were made, such as inclusion of child specific human rights principles. I also highlighted the desirability of stakeholders being given further opportunity to comment on this extremely important legislative reform and was subsequently invited to provide additional comment in May 2012.

Submission on amendments to the Police Offences Act

In October 2011 the Department of Police and Emergency Management sought public comment on a number of proposed amendments to the *Police Offences Act 1935* and related Regulations. In my December 2011 submission I recommended that:

- Arrest laws incorporate protective provisions for young people
- The tattooing and body piercing of children and young people should be regulated by legislation such that it should be illegal to tattoo or provide "intimate body piercing" to a young person under the age of 18 years in Tasmania. However, as for other types of body piercing (for example, ear lobe piercing) the

written consent of a parent or guardian of a child aged less than 16 years would be required.

My recommendations in relation to tattooing and piercing were informed by views expressed by young people at selected secondary schools and colleges. These views were described in detail in my submission.

Consultation Paper on the Sentencing Advisory Council Discussion Paper “Arson and Deliberately Lit Fires”

On 29 February 2012 a submission was provided in response to the Sentencing Advisory Council’s consultation paper regarding arson and deliberately lit fires. This submission emphasised four main points.

- That any intervention in a child or young person’s life through the administration of the youth justice system should be consistent with the principles set out in the United Nations *Convention on the Rights of the Child*;
- That the introduction of mandatory outcomes for children or young people who have admitted to fire-related offences would be inappropriate because this approach fails to take into account the individual circumstances of the offender and the offence, and may therefore be inconsistent with the general principles set out in youth justice legislation;
- Further research may be necessary to identify ‘robust predictors of recidivism risk’ specific to fire-related offending in order to appropriately direct resources to those children or young people with the greatest need; and
- That there are gaps in the existing service system as it affects children and young people in Tasmania - including those

engaged in fire-related crime. This is particularly the case in the areas of drug and alcohol services and mental health services.

Submission on the development of a Homelessness Charter in Tasmania

In July 2011 I provided a submission in response to a Discussion Paper on the development of a Homelessness Charter and Consumer Engagement Strategy for Tasmania. In this submission I focussed on the need to take pro-active action to ensure that the views of children and young people - particularly those at risk of becoming homeless or already homeless - were sought and taken into account.

Submission on draft Clinical Consent Policy for Tasmania

On 22 November 2011 and on 27 February 2012 submissions were made in response to the draft Clinical Consent Policy being prepared by the Department of Health and Human Services. The policy, which came into effect 1 June 2012, applies to the provision of clinical care in all contexts within the oversight of the Department of Health and Human Services. In my submissions I commended the incorporation of a rights-based framework in that part of the draft policy which deals with consent for, or by, children and young people and made a number of recommendations aimed at strengthening and clarifying aspects of the draft policy as it relates to children and young people.

Submission on the Surrogacy Bill 2011

In September 2011 I made a submission to the Legislative Council Sessional Committee (Government Administration) on

the Surrogacy Bill 2011. I also appeared before the Committee to give oral evidence. My recommendations focussed on promotion and protection of the best interests of a child born as a result of a surrogacy arrangement including:

- Supporting a child's right to know of her or his genetic parentage
- Realignment of the Bill's weighting of a best interests presumption in favour of intended parents to a 'best interests framework' not reliant on such a presumption.

Submission to the Support and Accommodation Assistance Review

In my February 2012 submission to the Support and Accommodation Assistance Review, which was undertaken to develop a new service system model for Support and Assistance services and programs in Tasmania, I focussed on the urgent need to review eligibility and other criteria which permit children aged less than 16 years of age to be placed in, or to access, crisis accommodation services. I also supported the review finding that it is not appropriate to have young people who are under 16 years old accommodated in homelessness shelters.

Comment on the proposed amendments to the Public Health Act 1997

In September 2011 I was asked to comment on proposed amendments to the "tobacco control" provisions of the *Public Act 1997* (Tas).

In these comments I supported increased restrictions on smoking in public places, given the potential for children to be exposed to tobacco smoke.

Overview of Joint Submissions by the Australian Children's Commissioners and Guardians (ACCG)

The Australian Children's Commissioners and Child Guardians (ACCG) brings together the Children's Commissioners and Guardians from each state and territory in Australia. The ACCG meets approximately every 6 months.

The ACCG aims to promote children's rights and participation and ensure the best interests of children are considered in public policy and program development across Australia. For a limited time, the Age Discrimination Commissioner attended on behalf of the Australian Human Rights Commissioner and the New Zealand Children's Commissioner linked in by teleconference. Both Commissioners have standing invitations to attend ACCG meetings.

As Commissioner for Children I was a co-signatory to the Joint ACCG submissions listed below. In some cases, submissions were only signed by those Commissioners for Children and Child Guardians mentioned in a specific submission, usually because the subject of the submission is outside the legislative scope of a particular Commissioner or Guardian. Unless there is a restriction on publication due to the nature of the submission, these submissions are generally available on the Commissioner for Children's website.

***Submission to the Australian Law Reform Commission
Reference National Classification Scheme Review***

Participating ACCG members commented on the ALRC Issues Paper in July 2011 and on the ALRC Discussion Paper in November 2011.

In both submissions participating ACCG members adopted a child rights approach, emphasising the right of participation, the importance of acting in the best interests of children, children's rights to access the media and their right to be protected from harm. ACCG also made recommendations designed to protect children and young people from media including computer games depicting high impact violence and recommended mechanisms be developed to ensure greater classification consistency.

Submission to the Standing Committee of Attorneys-General and the Attorney-General's Department on draft Commonwealth Guidelines for the Classification of Computer Games

In this July 2011 submission ACCG members reiterated their opposition to the introduction of an R18+ category of classification and made recommendations for stronger or additional guidelines in areas including depictions of sexual violence and of domestic and family violence across relevant classification categories and for inclusion of a guideline regarding depictions of domestic and family violence.



Submission to the Joint Select Committee on Australia's Immigration Detention Network

In this August 2011 submission participating ACCG members emphasised the inherent tension between the right of children (under the *Convention on the Rights of the Child*) not to be deprived of their liberty except in conformity with law and only then as a measure of last resort and for the shortest possible time, and the need to have fair and just processing of applications for humanitarian asylum. Participating ACCG members recommended that children be accommodated outside detention facilities while awaiting decisions on their immigration status.

Submission on the Charter on the Rights of Children and Young People in Healthcare Services in Australia

In this August 2011 submission ACCG members commended the development of the Charter and made additional recommendations aimed at strengthening and clarifying specific aspects of the Charter; ACCG also commended the development of a “child friendly version” of the Charter.

ACCG Submission to the Australian Privacy Commissioner in support of an application by Uniting Care Wesley (Adelaide) for a Public Interest Determination re the National Privacy Principles

In this November 2011 submission ACCG members expressed support for the application, the effect of which, if successful, would be to exempt some organisations from compliance with the “imminence” test contained in Federal privacy law applicable to certain disclosures of personal information. ACCG emphasised

the importance of ensuring that limits on disclosures of personal information to protect a child from serious harm do not go too far and set too high a test. The application by Uniting Care Wesley was successful.

Submission to the Federal Minister for Human Services – Compulsory participation plans and support for teenage parents

In this August 2011 submission ACCG members acknowledged and welcomed additional education and support for teenage parents who would be affected by a Federal Government trial of compulsory participation and engagement with education, training and employment by teenage parents. However ACCG members expressed concern about some aspects of the proposed trial – such as suspension of Centrelink payments and inadequate services –and offered assistance addressing relevant issues within their jurisdictions.

ACCG Response to FaHCSIA's National Children's Commissioner Discussion Paper

In their December 2011 submission participating ACCG members emphasised their support for the establishment of a National Commissioner for Children having a specific rights advocacy on Commonwealth policy and legislation and national children's rights promotion and protection. ACCG also expressed support for collaboration and consultation between the National Children's Commissioner and state and territory Children's Commissioners and Guardians.



Inquiry into the Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012

In this June 2012 submission to the Senate Standing Committee on Legal and Constitutional Affairs, ACCG made recommendations for strengthening and expanding the role and scope of functions of the proposed National Children's Commissioner.

ACCG submissions on Indonesian children held in adult prisons awaiting trial for crewing boats carrying asylum seekers to Australia

In January 2012 ACCG wrote to the Federal Attorney- General expressing concern over the possible detention in adult prisons of juveniles arrested for crewing boats with asylum seekers.

A submission was also made to the Senate Legal and Constitutional Affairs Legislation Committee providing comment on the Crimes Amendment (Fairness for Minors) Bill 2011 regarding techniques used to determine the ages of those suspected of committing offences under the *Migration Act 1958*.

In an extensive February 2012 submission to the Australian Human Rights Commission Inquiry into the treatment of individuals suspected of people smuggling offences who say they are children, ACCG focussed on concerns about age assessment methods and their limitations.

Joint Submission by the Australian Children's Commissioners and Guardians to the Standing Committee on Social Policy and Legal Affairs Inquiry into Foetal Alcohol Spectrum Disorder

In this submission ACCG members called for urgent action to invest in appropriate prevention, screening and treatment services to respond to foetal alcohol spectrum disorder at a national, State and local level to ensure Australia meets its international obligations to children and young people under the *Convention on the Rights of the Child* and made specific recommendations as to the sorts of actions that should be considered.

ACCG submission - 17 year olds in Adult Prisons in Queensland

In May 2012 ACCG wrote to the Attorney-General and Minister for Justice in Queensland to express their ongoing concern that Queensland is the only state or territory in Australia where 17 year olds are routinely sent to adult prisons and dealt with via the adult criminal justice system.

ACCG Submission – National Framework for Protecting Australia's Children

In June 2012 ACCG wrote to the Minister for Families, Community Services and Indigenous Affairs asking for consideration to be given to developing ways in which ACCG members could be involved in implementation of the National Framework for Protecting Australia's Children.



ADVOCACY AND RESPONDING TO PUBLIC INQUIRIES

Issues Papers

No 1 – Teen Parents – A New Reform (August 2011)

In May 2011 the Federal Government announced a pilot program across 10 locations Australia-wide – one of which is Burnie – aimed at helping teenage parents to remain engaged with education, training or employment through development of participation plans through Centrelink. In this Issues Paper a number of matters concerning this pilot were addressed, including: the development of individually crafted participation plans that take account of the individual circumstances of young parents and the need to ensure young parents have access to appropriate services and supports to enable participation and engagement with education, training and employment.

No 2 – Ashley Youth Detention Centre – The Last Resort

Children and young people in the youth justice system are a key priority for me as Commissioner for Children, especially as I fulfil an advocacy role for detainees at Ashley Youth Detention Centre (AYDC).

In December 2011 I released an issues paper concerning youth justice issues in Tasmania entitled *Ashley Youth Detention Centre – The Last Resort*.

While ‘tough on crime’ approaches to reduce youth offending may be politically palatable, evidence informs us that detaining young people does not act as a deterrent and that it leads to inferior long term outcomes both for the individuals concerned and for society in general.

Tasmanian youth justice legislation provides that young people should only be detained as a last resort and for the shortest appropriate time. On average 25 young people are detained at AYDC on any one day. While youth detention rates are presently exhibiting a downward trend, at any one time about half of the young people at AYDC are on remand (i.e. unsentenced).

The ‘last resort’ principle can only operate to reduce detention rates where there is an effective package of appropriately resourced alternatives available.

The issues paper considers innovative Tasmanian initiatives aimed at reducing reliance on detention together with the need for a comprehensive youth justice strategy to ensure AYDC is used only as a last resort.

“If a child is to keep alive his inborn sense of wonder he needs the companionship of at least one adult who can share it, rediscovering with him the joy, excitement and mystery of the world we live in.” Rachel Carson



Physical Punishment

It is still the case that children in Tasmania may be threatened or physically assaulted by their parents or someone acting as a parent by virtue of s50 of the *Criminal Code 1924* (Tasmania) which states that:

'It is lawful for a parent, or person in the place of a parent to use, by way of correction, any force towards a child in his or her care that is reasonable in the circumstances.'

The arguments for and against amendment of this law have been discussed comprehensively by the Tasmania Law Reform Institute in its October 2003 Report *Physical Punishment of Children*.

Because no action has been taken by government to progress the Institute's recommendations' the Anti-Discrimination Commissioner and I met with the Attorney-General and the Minister for Children to discuss the situation and to advocate for legislative change.

The current legal situation is problematic in that it sends a clear message that violence is an acceptable means of resolving issues and ensuring compliance with a particular course of action.

As has been made clear by the Committee on the Rights of the Child in its June 2012 Concluding Observations on Australia's 4th Periodic Report and in its General Comments on violence against children generally and in relation to corporal punishment specifically, continued acceptance of the legality of

the use of force against children for the purpose of correction is inconsistent with the United Nations *Convention on the Rights of the Child*.

To permit this situation to continue is also inconsistent with a key message underlying both the National Plan to Reduce Violence against Women and their Children and the National Framework for Protecting Children, i.e. children have a right to be safe from violence.

The focus should be on promoting awareness of positive, non-violent forms of discipline, consistent with a non-violent environment for children.

Strip Searching

As a consequence of a 12 year old girl being strip searched by Police in February 2012 I advocated for a comprehensive and urgent review of Tasmanian legislation governing the strip searching of children.

Strip searching by its very nature is invasive and humiliating, has clear potential to cause significant distress and trauma to a child and raises serious questions with regard to the protection of a child's fundamental human rights.

As a result of public concern about the incident, Tasmania Police conducted an internal review of their Protocols. Although the new protocols are an improvement on the previously unregulated situation, I am still of the opinion that there should be legislative change.

Furthermore, children under the age of 10 years should not be strip searched at all - and Court authorisation should be obtained before a child is strip searched by Police in Tasmania.

Children over 10 years should only be strip searched in extremely limited circumstances and as a matter of last resort.

Birth Registration

As a result of consultations I engaged in shortly after I was appointed, I was made aware of the fact that some children in Tasmania were not being registered at birth despite the clear legal obligation on their parent(s) to do so under the *Births, Deaths and Marriages Act 1999*.

After discussions with officers within the Department of Health and Human Services, a new Policy was finalised in late 2011. Under this Policy, which aims to increase awareness about relevant legal obligations and make the registration process easier for new parents, departmental staff within Tasmanian hospitals are now required to provide new parents with birth registration statements before discharge. I also understand that provision has now been made for hospitals to lodge birth notifications electronically.

Working with Children Checks

Tasmania is now the only State or Territory that does not have legislative and administrative capacity to conduct working with children checks – even though the issue was the subject of extensive consultations in the first half of 2010. I have made it very clear that I believe implementation of a working with

children screening process is essential to ensure that children and young people are protected from abuse and neglect.

Children with Disability

In June 2012, I invited the Hon Michelle O’Byrne, Minister for Children, and the Hon Cassy O’Connor, Minister for Human Services, to a briefing by Acting Commissioner Toohey of the Victorian Equal Opportunity and Human Rights Commission on the Commission’s May 2012 Report *Desperate Measures: the relinquishment of children with disability into state care in Victoria*. Although the Report focussed on the circumstances of families and children in Victoria, the Report’s major finding – that relinquishment is primarily driven by an unmet need for services - is also relevant to Tasmania. Further advocacy work is anticipated in this area.

Complaints in Care Policy

As Commissioner for Children I am a member of the Quality of Care Monitoring Group (formerly called the Complaints in Care Monitoring Group) which has a quality assurance function under the Department of Health and Human Services’ Complaints in Care Policy. This Group was established to monitor and recommend strategies to improve service provision and complaints management for children in care and their carers. Over the year there were several meetings, including a workshop to revise the Complaints in Care Policy. I took part in consultations about the revised policy which was not finalised by the end of the reporting period.

Children in Specialist Homelessness Shelters

In late 2011 I expressed concern about the number of children under 16 years of age- some below 13 years of age- being forced to rely on crisis homelessness shelters or being placed in them by Child Protection Services in Tasmania.

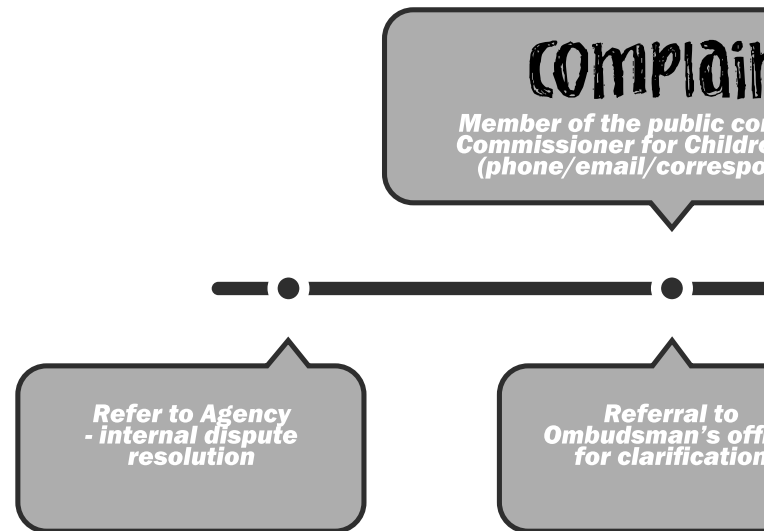
Consequently, a Steering Committee was established (consisting of the Commissioner for Children, Deputy Secretary for Children and Deputy Secretary of Disability, Housing and Community Services within the Department of Health and Human Services) to consider the issue. Work has progressed on mapping and analysing client data, service responses and options for accommodating children under 16 years who access these crisis homelessness shelters. Also child protection workers have been directed not to place children under 16 years in specialist homelessness services. It is envisaged that a new model of service response to this vulnerable group of children and young people will be finalised by the end of 2012.

Child Death and Serious Injury Council

Although an extensive consultative process was begun in 2009 on whether Tasmania should have a Child Death and Serious Injury Council and, if so, where such an Agency should be established and the scope and extent of its functions and powers, progress on this issue has stalled. I will continue to advocate for establishment of such a body in Tasmania.

PUBLIC INQUIRIES

The legislation establishing the position of Commissioner for Children does not allow me to pursue individual complaints or conduct investigations into the circumstances of a particular child or young person unless requested to do so by the Minister for Children.



However this does not stop members of the community contacting me with their concerns or issues. These assist me by informing my systemic advocacy on a range of issues and matters. In 2011-12, my office received approximately 102 inquiries from the public, a slight increase from the number of inquiries received in the previous financial year (91).

Issues / themes:

Inquirers often raise more than one concern. Of the 102 inquiries the majority of concerns related to Child Protection (39), followed by placements in Out Of Home Care (28), Other/general (Family Law, Working with children check, etc 21) or a complaint against Department of Health and Human Services/ Child Protection Agency (14).

How did people hear about the Commissioner for Children's office?

Most inquirers had heard about the Commissioner for Children's office through a friend, Family Support workers, Social Workers, Psychologists or non-government organisations (79), previous contact (10) or from hearing about the office via media (6), (TV News/Interviews or Newspaper articles), internet (2) or phone book (2). (Note 2 inquirers had no data recorded as to how they heard about the CfC office).

Referred to:

Often inquirers were referred to more than one organisation for assistance, internal clarification or review.

- 45 referrals to 'other' (Gateway Services, Working with Children referral to Tasmania Police, Anti-Discrimination Commission, Workplace Standards Authority,)
- 21 referrals to the Ombudsman's office
- 19 referrals to the Child Protection Advice and Referral Service
- 12 referrals to the Legal Aid Hotline number
- 11 referrals to the Child and Family Service Centres
- 11 referrals to Police
- 6 referrals to the Gateway Services
- 3 referrals to the Deputy Secretary Department of Health and Human Services

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**Referral to other
[Gateway Services,
Police, Legal Aid
Hotline]**

Partnerships and collaboration

I either am a member of or I am represented on different reference groups and committees such as:

- **Early Years Foundation**
 - This group operates under the *Tasmanian Early Years Foundation Act 2005* as a non-profit organisation to support and promote the wellbeing, development and learning of Tasmanian children up to the age of 6 years. It does this by providing grants and promoting awareness of the early years and research.
- **ARACY (Australian Research Alliance for Children and Youth)**
 - Is a national non-profit organisation of nearly 2000 members (organisations and individuals), working to create better futures for Australia's children and young people. The Commissioner sits on the following:
 - the NEST – National Action Plan for Young Australians Steering Committee and
 - CAARS – Common Approach to Assessment Referral and Support Taskforce.
- **State-wide Youth Collaborative (SYC) – co-chaired by Population Health & Youth Network of Tasmania (YNOT)**
 - This group aims to promote collaborative ways of working towards improving young people's access to health and wellbeing services in Tasmania.
- **Mental Health in School Reference Group – managed by Kids Matter & Mind Matter.**
 - The aim of this group is to share information and network to improve the mental health of children and young people in the education system.

- [Hobart City Council Children and Families Network](#)

- This group brings together government agencies, community sector organisations and interested stakeholders that care for children and young people within the Hobart City Council area.

- [Find and Connect – resource for Forgotten Australians and Former Child Migrants](#)

- The Find and Connect web resource is a means for people who have experienced out of home care access to information and resources that help make sense of the past, and to see where their story fits into the broader historical context.

- [Anglicare Research Project – Parents in the Child Protection System](#)

- The project explores the experiences of families in contact with the Tasmanian Child Protection System and the experiences of services who work with them to provide support.

- [Steering Committee and Working Group - Youth Justice Court](#)

- The Specialist Youth Justice Court pilot commenced in January 2011. A single magistrate sits in the Magistrates Court in Hobart together with a designated relief magistrate. The Court has introduced a specialist list involving a therapeutic, bail-

based approach to cases involving abuse of alcohol and drugs, mental health problems and any other particular problem where the court might appropriately intervene on a therapeutic jurisprudential basis.

- [Youth Network of Tasmania Youth Ethics Working Group](#)

- The working group was formed to produce a discussion paper to support consultation with the youth sector regarding a possible Youth Work Code of Ethics. This is based on the 'Fairbridge Code', which was developed in 2003 by the Youth Affairs Council of Western Australia (YACWA) and provides an updated ethical framework for Tasmanians working with or for youth workers, including young people.

- [Steering Committee Member Review of the Youth Justice Act 1997](#)

- A review of the *Youth Justice Act 1997* began in 2008 with the formation of a steering committee whose membership included my predecessor.

After an extensive consultation process was finalised, drafting of a Bill to amend the Act was approved in 2010. Due to funding pressures the steering committee was reformed in December 2011 to consider removal of some proposed amendments considered to have financial implications that were not sustainable in the then budget context. As a member of this steering committee I took part in these deliberations.

Promotion and communication

In August 2011 a new website, logo, strategic directions plan and e-News were launched to promote my role and functions and provide the community with regularly updated information on the work of the office. One of my key functions is to increase public awareness of matters relating to the health, wellbeing and protection of children this is achieved through a range of media releases, publications, articles and presentations which are briefly highlighted below:

Media Releases:

- Commissioner welcomes Agenda for Children and Young People (07-07-2011)
- Auditor – General’s Report into Child Protection (22-09-2011)
- Information for formal and informal carers (25-10-2011)

- Facing Up To Facebook Forum (25-11-2011)
- Ashley – The Last Resort – Issues Paper no 2 (06-12-2011)
- Commissioner for Children Media Release (12 yr old strip search) (30-01-2012)
- Commissioner for Children Media Release – Commissioner calls for Review of Strip Searching Law (01-02-2012)
- Gillard Government to establish a National Children’s Commissioner (29-04-12)
- Commissioner for Children Ashley Alternative : Commissioner for Children Parliamentary Inquiry Response (15-05-2012)
- Commissioner for Children Strip Search Concerns (13-06-2012)

Publications:

- Taylor, S & Ashford, A. (2011). “Commentary: Child Protection Inquiries: Where are the voices of children and young people” *Children Australia*, 36, 106-108
- Aileen Ashford, Letter to the Editor, *The Mercury* (Hobart), 25 June 2012
- Aileen Ashford, Article, *The Mercury* (Hobart), 26 October 2011

Speeches:

- Glastonbury Community Services, Board of Management Strategic Planning Meeting, Geelong, Victoria (27-04-2012)
- 2011 Baptist Care Australia Conference, Hobart (9-11 May 2011)
- Facing Up To Facebook Forum, Hobart (22-07-2011)
- National Foster Carers Association State Conference, Launceston (19-08-2011)
- National Council of Women Coalition Tasmania Incorporated, Annual General Meeting and Luncheon, Hobart (12-10-2011)
- Social Workers Conference, Hobart (21-10-2011)
- Children’s Expo, Launceston (22-10-2011)
- ZONTA Speech, Hobart (14-11-2011)
- Lady Gowrie Annual General Meeting, Hobart (17-11-2011)
- New Horizons Exhibition Launch, Hobart (21-11-2011)
- Northern Early Years, Ravenswood (23-11-2011)
- Facing Up To Facebook Forum, Hobart (25-11-2011)
- Police Youth Justice Course, Police Academy, Rokeby (21-05-2012)



future initiatives

In 2012-13, I will continue to focus on promoting the interests and voices of children and young people in any decision or actions affecting their health, care, protection, development and education, through projects and development of resources. Some areas of focus in the upcoming year include:

Children's Participation Toolkit

I am collaborating with the Early Years Foundation to produce a participation toolkit for children under the age of 12 years to ensure that best practices are in place when children are involved in decision making. This kit will contain information for service organisations and government agencies about how to get the best result for children and the organisations from involving children in decision making as well as practical ideas that organisations can apply to their services.

Listen Up

This is a research project, in partnership with the UTAS School of Sociology and Social Work seeking the views of children and young people about their lives. I will use the final report to gain an understanding of what children and young people consider to be important to them ; which will in turn assist me to set the agenda for the work to be discussed in the Children's Consultative Council and in the Vulnerable Children and Young Persons Advisory Council as well as to inform government.

As Eye See It

The As Eye See It Exhibition is a powerful medium which provides children and young people in care with another means to express themselves by taking black and white photographs and telling their story. In 2011 the first As Eye See It Exhibition was held in Tasmania and was a great success.

In 2013 the As Eye See It Exhibition will be conducted once again with children and young people who will each be provided with a camera (that they can keep) and an opportunity to put together photographs that mean something to them. The exhibition will coincide with the national project supported by Commissioners and Guardians across Australia with exhibitions being held in September 2013.



Bringing Baby Home

Another focus in the coming year will be on new and expectant teenage parents and the support that they receive to provide a safer home environment for their baby. The *Bringing Baby Home* info kit will contain comprehensive safety tips on nursery furniture and safe sleeping, kitchen safety, choking and suffocation, fire safety, preventing falls and car passenger safety. The kit will also enable parents to identify and reduce hazards. It is expected that the kit will be available as a booklet as well as online.

Requests by the Minister for Children to conduct Inquiries

Early in June 2012 the Minister for Children formally requested that I conduct two inquiries and to advise on another matter:

- a) Inquire into and report on the youth justice continuum of care in Tasmania, to include consideration of diversionary strategies, prevention of detention, Ashley Youth Detention Centre and transition from Ashley back into the community
- b) Inquire into and report on the practice of school expulsion and exclusion in Tasmania and the impact these practices have on the health, welfare, care and protection of children and young people in Tasmania, including those who are in statutory care
- c) To advise on children's views regarding a proposal for a "smoke-free generation".

Terms of Reference were not finalised by the end of this reporting period.

Resource for children and young people who are experiencing statutory intervention in their lives and who are entering out of home care

A resource for children and young people who are experiencing statutory intervention in their lives and who are entering out of home care is currently being developed. It is intended that it will include comprehensive, practical and age appropriate information about what is happening and why, the court process, the roles of people involved in the process, who to talk to and how to have a say. A Reference Group made up of members with relevant expertise from the non-government sector, CREATE Foundation, Crown Law, Department of Health and Human Services, Legal Aid and the Magistrates Court has been formed to help achieve the objectives of this project by informing and guiding the development of the resource. The resource will be developed in consultation with young people with experience of statutory intervention and out-of-home care.

Issues Paper No. 3 – An uncertain road ahead – young people leaving care in Tasmania


In conjunction with my Vulnerable Children and Young Persons Advisory Council it is proposed to produce one or more Issues

Paper(s) concerning vulnerable children and young people in Tasmania.

I hope that these Issues Papers will generate constructive policy discussion and debate within and between Government, NGOs and the wider community about the sorts of service system changes that are needed to address obstacles faced by vulnerable children and young people in Tasmania on a daily, short term or long term basis.

This Project will also assist with progressing the Government's Agenda for Children, which sets out a broad framework for improving outcomes for children and young people in Tasmania, aligns with priority areas for action in the National Framework for Protecting Australia's Children 2009-2020 and has the potential to address areas of concern identified in the context of the House of Assembly Committee on Child Protection which delivered its Report in December 2011.

The initial paper in this series focuses on the disadvantages experienced by young people leaving care, particularly in the transition process to independent living and would include, but not necessarily be limited to, discussion of leaving care plans, after care programmes and supports (including financial assistance) and comparison with other states and territories. Work on this Issues Paper began in May 2012 with a scoping of the issues to be covered in this paper concerning the transition

A close-up photograph of a person's hands holding a dandelion seed head. The background is a bright, golden, out-of-focus light, possibly sunlight filtering through trees, creating a bokeh effect. The person's hair is visible on the left side of the frame.

of young people from leaving care to independent living. As the Reference Group, which has been drawn largely from the Vulnerable Children and Young Persons Advisory Council, did not meet until July 2012 a full account on this project will be provided in the next Annual Report.

Fact Sheets

Over the next 12 months I will be releasing a number of Fact Sheets on topics of interest and relevance. The first Fact Sheets will contain data about children and young people in detention, or subject to community supervision under the *Youth Justice Act 1997*, children and young people in the child protection system and in out of home care, and “the early years”.



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