





COMMISSIONER FOR CHILDREN TASMANIA

# Annual report 2013-2014













The Hon Jacquie Petrusma Minister for Human Services Level 8/10 Murray St Hobart 7000

26 November 2014

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 for the financial year ending 30 June 2014 for presentation to the Parliament of Tasmania.

Yours sincerely,

Mark Morrissey

Commissioner for Children

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## Message from the commissioner

I am pleased to present the Commissioner for Children's Annual Report 2013/2014.

Over the past 18 months the work of the Commissioner's office has continued to be of high quality through a time of change.

I wish to thank Elizabeth Daly, the Acting Commissioner for Children from July to December 2013, for holding the reins and ensuring some outstanding projects and submissions were completed in that time. Elizabeth provided a steady hand to ensure that the work of advocating for children and young people through reviewing policies and undertaking projects continued. Her vast experience in working with children and young people in the community and being an advocate for improving services was an invaluable asset when consulting with children and young people through the Consultative Council.

I wish Elizabeth well with her continuing community work and with her future career.

As the new Commissioner it is my pleasure to present this Annual Report which highlights the quality work undertaken by this office over the last 12 months.

Some of the major achievements in this time were:

- the release of the 'Alternatives to Secure Youth Detention' Report
- development of the Bringing Baby Home resource for young mothers in November
- the publication of the Student Suspensions Research Review
- holding the As Eye See It black and white Photographic Exhibition for children and young people in out of home care
- consulting with children and young people across the state through the Children and Young Persons Consultative Council, and
- maintaining and developing relationships with key stakeholders.



Over the next year and beyond, it is my plan to further strengthen the work of this office and, in particular to undertake greater engagement with children and young people. Our vision is to work collaboratively and respectfully with the various cohorts of children and young people, as well as with communities, organisations and agencies who also share our commitment to improving the lives of all Tasmanian children.

Children and young people are now living in an increasingly complex world which not only offers many great opportunities but also challenges and risks, that generations before have never experienced.

The universal influence and impact of social media is one such example. Whilst offering potentially many great benefits and opportunities, there also exist significant risks such as cyber bullying, age inappropriate material, increased risks of unhealthy gender stereotyping, negative impact on children's mental health, junk food marketing, as well as vast amounts of information of varying degrees of accuracy that can be difficult for children to safely navigate.

Our shared responsibility is to protect, guide and advocate for our children in an increasingly fast paced and complex world.

Children in Tasmania live in many different situations and communities, and often have varying access to support and resources. Whilst those children most at risk must remain one of our priorities, the broad focus must remain on all children.

This office remains committed to actively seeking out children's views, experiences and aspirations. The views of children and young people can often be surprising, wise and at times very insightful. They have much to offer



discussions, considerations and advice from this Office will be the child. Our guiding questions will be - "What does this mean for the child, is the child at the centre of this discussion, will this decision be of benefit to the child?"

In closing, my experience has been that when I consciously take the extra time to actively listen to a child or young person, seek their viewpoints and offer my appreciation for their words and opinions, then I often gain insights into their experiences and views that are of great value and which can be acted upon.

During 2015 I will be seeking to work collaboratively with the Tasmanian community to advocate for all children and young people to ensure their voices are heard.

Yours sincerely,

Mark Morrissey

Commissioner for Children

## About the commissioner for children

#### What does the Commissioner do?

The Commissioner's powers and functions are in sections 79 and 80 of the *Children Young Persons and Their Families Act 1997*. In summary, the Commissioner provides advice to the Minister on all matters relating to children and young people, promotes the well-being of children and investigates matters as requested by the Minister.

The Commissioner also has the function to act as an advocate for detainees under the *Youth Justice Act* 1997. In performing this function, Commissioner's have had regular meetings with residents detained at Ashley Youth Detention Centre to discuss their issues and concerns and where possible, assist with resolution of

these concerns.

These meetings have provided young people at Ashley with access to the Commissioner, who, as an independent person, can advocate on their behalf about conditions at Ashley or other issues of concern. Additionally, young people have been provided with information and assistance to access formal complaint avenues available to them, such as the Ombudsman and the Secretary of the Department of Health and Human Services.

The Commissioner also meets with all the Australian Children's Commissioners and Guardians (ACCG) twice yearly 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 New Zealand Children's Commissioner has a standing invitation to attend ACCG meetings.

### Requests by the Minister for Children to conduct Inquiries

#### Student Suspensions: A Research Review

In June 2012, the then Minister for Children, the Hon Michelle O'Byrne, asked the Commissioner for Children to:

Inquire generally into, and report on the practice of school expulsion and/or exclusion in Tasmania and evidence of its impact on the health, welfare, care, protection and education of children and young people generally and for the population of children in care.

Acting Commissioner Daly decided to proceed with the project in two stages. She also envisaged consultation with key stakeholders, including the Department of Education, Catholic Education and the University of Tasmania.

'Suspension, exclusion and expulsion from school can have serious, unintended and often cumulative effects on children and young people.'

STUDENT SUSPENSIONS: A RESEARCH REVIEW

#### The Research Review Stage One

The main objective of Stage One was to provide the then Minister for Children with advice about the key characteristics or factors that contribute to suspensions, exclusions and expulsions in Tasmania and elsewhere; and to provide recommendations for future research and action to reduce the rates of suspensions, exclusions and expulsions in Tasmania. The review considered national and international research on student or school suspensions, with the focus on the key 'risk factors' associated with the likelihood of being suspended.

One subsequent finding was that very little research has been conducted giving voice to students' views about suspensions and exclusions.

It was also found that suspension, exclusion and expulsion from school is not effective in changing a student's behaviour because it does not address the underlying issues that lead to challenging behaviour. Further, the research literature shows that certain groups of students are more likely to be suspended, based on their socio-economic background, race, gender or other characteristics, such as learning or other developmental impairments.

Suspension, exclusion and expulsion from school can have serious, unintended and often cumulative effects on children and young people. These forms of discipline are highly correlated with youth offending and involvement in the youth justice system.

School suspension, exclusion or expulsion also may be indicators of a range of social and emotional issues facing the student, including child abuse and neglect, mental health issues, disability, bullying and difficulties at home. Students who are suspended or excluded from school are at a substantially greater risk of leaving school early.

As a signatory to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and other international treaties, Australia recognises the right of everyone to education. Education has been described by the Committee on Economic, Social and Cultural Rights (the Committee) as 'an indispensable means of realising other human rights'. In other words, in addition to being a human right in itself, it is an enabling or an empowering right. Suspending or excluding students from school classes is treated within most, if not all, schools as an action that falls within a spectrum or continuum of school disciplinary measures. However, student suspensions can also be seen as being part of an engagement-disengagement continuum and this in turn also directly relates to behaviour/classroom management.

#### Inquiry into the Alternatives to Secure Youth Detention in Tasmania

This Inquiry originated from a request by the then Minister for Children, the Hon Michelle O'Byrne, to the Commissioner for Children for advice in relation to the role of secure detention within Tasmania's youth justice system. This Inquiry was part of a much broader review of the Youth Justice system in Tasmania, which was being undertaken by the Department of Health and Human Services. The inquiry report was released on 22 August 2013.





'Here - you have to want to change. It's the ones who want to change that can get as much as they want out of it.'

COMMUNITY YOUTH
JUSTICE WORKER

#### The Inquiry found that:

- Only a very low percentage of Tasmanian youth commit crime.
- The trend in numbers of young offenders and those who are detained at Ashley Youth Detention Centre (including those on remand) has declined over the last 5 years.
- On an average day in 2011–2012, there were 21 young people in Ashley or 94 over the year.
- Ashley takes up a disproportionately high percentage of the Youth Justice budget in Tasmania – approximately \$12 million – despite the lack of evidence to suggest it is effective in deterring young offenders or that it promotes and facilitates reintegration into the community upon release.

The United Nations Convention on the Rights of the Child recognises the importance of diverting young offenders from the criminal justice system. It also provides that detention should only be used as a last resort and for the shortest possible period of time.

#### The report describes:

- the trends in youth detention in Tasmania
- the factors generally understood to be "risk factors" for youth offending
- the legal pathways through the youth justice system in Tasmania
- selected innovative models used elsewhere
- the outcomes of consultations with youth justice workers and young people in the youth justice system including at Ashley, and
- themes expressed in submissions to the Inquiry.

There are a number of recommendations, including:

• The State Government considers the adoption of a Justice Reinvestment Framework for the youth justice system in Tasmania. Justice Reinvestment is a form of preventative financing. It involves a shift of focus away from dealing with problems downstream (policing, youth detention) and towards tackling the underlying causes or risk factors of youth offending upstream (family breakdown, mental illness, disengagement from education, drug and alcohol dependence).

- A Justice Reinvestment approach is consistent with a public health model and the rights-based approach promoted by the United Nations' Convention on the Rights of the Child.
- Investigation of the feasibility of introducing a continuum of small residential facilities which provide community-based, moderate care and secure care programs. A model similar to this operates in the United States – the Missouri Model.
- Improved bail options such as a state-wide afterhours bail support service and a bail support program.
- The expansion of deferred sentencing options to youth justice courts across the State. Deferred sentencing is where a court delays sentence to enable a young offender to participate in a community based program designed to address the causes of their offending behaviour. The court can then consider their efforts toward rehabilitation at sentencing.







#### **Key projects**

#### **Bringing Baby Home**

The Bringing Baby Home Project about the development of resources to support young pregnant women and mothers when they leave hospital after the birth of their child, is one means of meeting the Commissioner's obligations to include children and young people in decisions that affect them.

The aim of the project was to gather the views of young pregnant women and mothers to develop a resource that provides information specifically targeting expectant young parents and will allow parents to make decisions about how safe they feel their environment is for their children.

The consultation process between late August through to early October 2013 was mainly through service organisations across the state that are providing services for young pregnant women and mothers.

Consultations took place with over 60 young pregnant women and mothers (and 2 dads) and other stakeholders via existing group structures and by individual interviews with a random sample of the young women.

Each of the groups selected to participate in the project were chosen to ensure the views of a broad range of young pregnant women and mothers from different types of groups in rural and urban areas.

The resource consisting of a booklet and a picture magnet was released in November 2013 and a second print run was needed to meet the high demand for the booklet from service organisations and young pregnant women and mothers.



The Listen UP project is a major research study on what children and young people consider important to their wellbeing. Children and young people, aged 5 to 18 years were consulted and shared their experiences and ideas, talked about what matters to them, what they want for themselves and others their age and what they hope for in the future.

The project is based on a similar project undertaken by the Western Australian Commissioner for Children and Young People which surveyed a variety of groups across Western Australia in 2010.1

The research was conducted in September and October 2012.

The Commissioner for Children, Aileen Ashford, resigned in June 2013 and the final report has not been completed.

<sup>1</sup> WA Commissioner for Children and Young People (2010), Speaking out about wellbeing: the views of WA children and young people

#### As Eye See It 2013

The project has its origins in Victoria and provides young people living in out of home care with an opportunity to share their experiences and stories with people who work with and care for them, and with the broader community, through a photographic exhibition.

Each young person involved in the exhibition is provided with a camera (which they keep) and is asked to submit their own photos and stories.

The first As Eye See It project in Tasmania was conducted in 2011 and was well received with 44 children and young people taking part in the exhibition. The outcome for the participants was very positive. For some, this was the first experience with digital photography and being able to express themselves through a creative initiative. In all cases, staff and young people indicated an enthusiasm for future projects and a commitment to support future activities.

In 2013 the Tasmanian As Eye See It project incorporated a photographic workshop for participants, facilitated by CREATE.

As in 2011 the Tasmanian project is part of a national project supported by the Australian Children's Commissioners and Guardians (ACCG).

In Tasmania there were 36 children and young people participating in the black and white exhibition which was launched in November, 2013.

"When she smiles, I'm content. She's my everything".

BRINGING BABY HOME



The project has some strong outcomes for young people living in care:

- Allowing young people to express how they see their life and what is important to them through the lens of a camera;
- Enabling young people's voices to be heard through the use of a powerful medium such as photography;
- Bringing about greater public understanding of children's experiences in care



## **Advisory councils**

### Vulnerable Children and Young Persons Advisory Council (VCYPAC)

In October 2013, the Vulnerable Children and Young Persons Advisory Council, established by former Commissioner, Aileen Ashford in April 2012, was reconvened by Acting Commissioner Elizabeth Daly.

The Council was established to provide advice to the Commissioner on issues impacting on children and young people, policies and practices that affect their wellbeing and protection; and identify solution focused services and strategies that will enhance the development of children and young people.

The meeting in October 2013 allowed members of the Council to share information with the Commissioner about the current issues for children and young people.

The Council did not meet in 2014.

#### Children, Young Persons Consultative Council

Under Section 81 and Schedule 2 of the *Children*, *Young Persons and Their Families Act* 1997 the Commissioner is required to establish a Children and Young Persons Consultative Council.

The Council is a group of children and young people under the age of 18 who share their views with the Commissioner for Children.

The Council members have been selected from secondary and primary schools in each of the four Department of Education areas to be involved in the consultation process.

Ideally, consultations utilise current structures, such as the Student Representative Council meetings at four schools within each area, from both primary and secondary schools (including high and district high schools), to provide information and advice to the Commissioner on a regular basis.

To ensure that a range of views from children and young people are captured each year the Commissioner selects different schools to take part.

In February 2013 the then Commissioner, Aileen Ashford, discussed with the Council members current issues for children and young people and asked them to seek the views of their school communities and provide feedback.

#### **The Consultation Process**

Each group of children and young people at the selected schools is given key questions about an issue that they then ask other children and young people in their school community. The questions may be:

- What do kids in your school think about how the issue affects children and young people? Why?
- What can children and young people do to improve the situation for children and young people in the community?
- When do you think children and young people should have a say about the issue?
- What is the best way to hear children and young people's voices about the issue?

Additional questions will be developed by each school group. Schools can then decide to approach this in a variety of ways such as conducting a survey, small group discussions and videoing individual interviews.

The Commissioner for Children will then return to the consultative council to gather the feedback from the consultations.

The feedback from the consultations will be compiled into a report.



# Overview of submissions by the commissioner for children



#### Evidence (Children and Special Witnesses) Amendment Bill 2013

On 8 August 2013, Acting Commissioner Daly made a submission to the Department of Justice on a draft Bill which proposed amendments to the *Evidence Act 2001* intended to increase protections for children when giving evidence.

#### Amendments to the Police Offences Act 1935

In August 2013, Acting Commissioner, Elizabeth Daly, provided comment on proposed amendments to the *Police Offences Act 1935*, the effect of which would be to regulate young people's access to tattooing and piercing procedures in Tasmania.

In providing comment, Acting Commissioner Daly endorsed advice provided by her predecessor Commissioner Ashford to Government. Commissioner Ashford's advice was informed by the views expressed by children and young people she consulted on this issue.

#### Mental Health (Consequential and Transitional Provisions) Bill 2013

On 15 August 2013, Acting Commissioner, Elizabeth Daly, provided comment to the Department of Health and Human Services in response to the draft Mental Health (Consequential and Transitional Provisions) Bill 2013. The Acting Commissioner's comment sought to ensure that patients who are children have standing in proceedings before the Mental Health Tribunal.

#### Contemplated amendments to the Forensic Procedures Act 2000

On 28 August 2013, Acting Commissioner, Elizabeth Daly, provided comment on a confidential basis to the Department of Justice in relation to contemplated amendments to the Forensic Procedures Act 2000.

#### Legislative Reform Project – amendments to the Children, Young Persons and Their Families Act 1997

In February 2013, (then) Commissioner, Aileen Ashford, made a submission to the Legislative Amendment Review Reference Committee considering amendments to the *Children*, *Young Persons and Their Families Act* 1997 in areas described in a December 2012 Discussion Paper issued by the Committee.



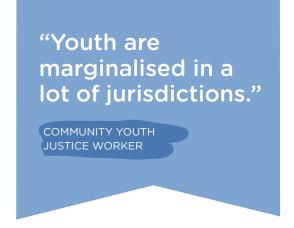
Commissioner Ashford supported the adoption of less adversarial processes for resolving child protection matters, called for inclusion of a list of factors to be considered when determining the best interests of a child under the Act and inclusion of the importance of taking account of cumulative patterns of harm as part of determining what is in a child's best interest and whether a child is in need of protection.

In October 2013 Acting Commissioner, Elizabeth Daly provided comment on a draft of amendments proposed to the *Children*, *Young Persons and Their Families Act 1997*, consistent with the recommendations made by Commissioner Ashford in her February 2013 submission.

#### Working with Vulnerable People (Background Checking) Bill 2013

On 10 October 2013, Acting Commissioner, Elizabeth Daly made a submission in response to the draft Working with Vulnerable People (Background Checking) Bill 2013 which provided for centralised background checking and registration of people working in Tasmania with children and other vulnerable people.

In her extensive submission, the Acting Commissioner advocated that the proposed background checking system should operate in conjunction with an enforceable obligation on affected organisations to establish and maintain a child safe/child friendly environment. The Acting Commissioner emphasised that regulated activities should include *child related work* which involves direct (and not incidental) contact with children and which occurs in specified sectors or in the context of particular activities or provision of services. Furthermore, she submitted that *child related work* should be understood to include the type of work that allows the development of a relationship of trust between an adult worker and a child.



#### Personal Searches of Young People in Custodial Premises Consultation Paper

On 28 November 2013, Acting Commissioner, Elizabeth Daly made a submission in response to a consultation paper released by the Department of Health and Human Services in relation to the personal searches of young people in custodial premises.

In her submission, the Acting Commissioner emphasised the human rights principles that must inform the practice of personal searches of incarcerated young people and the inherently harmful nature of routine personal unclothed searches of this vulnerable cohort. The Acting Commissioner expressed her clear opinion that the practice of routine personal unclothed searches of young people in custodial premises should cease.

The Acting Commissioner stressed that personal unclothed searches ('strip searches') should only be conducted where there is a belief based on reasonable grounds that a young person poses a particular risk and that the search may reveal an item that could be used to realise that risk. Further, search methods should be designed to be consistent with protecting the human rights and dignity of young people in custody. The Acting Commissioner suggested that systems for ensuring that appropriate protections are provided to young people in custodial settings could be informed by and/or developed with regard to work currently being undertaken in the area of child safe/child friendly organisations.

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

The Australian Children's Commissioners and Guardians (ACCG) brings together the Children's Commissioners and Child Guardians from each state and territory in Australia, along with the National Children's Commissioner. 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.

#### Submission to the Royal Commission into Institutional Responses to Child Sex Abuse – Child Safe Organisations

In October 2013, Acting Commissioner Daly, as a member of the Australian Children's Commissioners and Guardians (ACCG) endorsed an ACCG submission on Child Safe Institutions to the Royal Commission into Institutional Responses to Child Sexual Abuse.

That submission incorporated a set of Principles for Child Safety in Organisations.



'When I was taken into care, I knew what was happening and I was glad.'

CHILDREN IN OUT OF HOME CARE

## Advocacy and responding to public inquiries

#### **Public Inquiries**

The Commissioner for Children is unable to conduct investigations into the circumstances of an individual child or young person, or to commence inquiries into individual complaints unless requested to do so by the Minister for Children.

However the office receives regular contact from members of the public, regarding their concerns or issues. Public inquiries can complement the Commissioner's overall systemic advocacy on a range of issues and matters. In 2013 – 2014 the office received 106 public inquiries, no increase from the number of inquiries received in the previous financial year (106).

#### Issues /themes

Inquirers often raised multiple issues of concern. Of the 106 inquiries received during 2013 – 2014 the majority of concerns were regarding Child Protection (44), Child Protection Services complaints (11), followed by Out of Home Care (4), and 'other' (47), (which includes Family Law (11), Working with Children Check (9), Department of Education (8), Youth Health (5), Pontville Detention Centre (3), Community Youth Justice (2), Children's Contact Centre (1), Police (1), Youth Justice (1), Legal Aid (1), Privacy (1), Family Violence (1), cyberbullying and suicide (1), TV content (1) and no data recorded (1)).

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

The majority of inquirers were aware of the Commissioner for Children's office via previous contact (29), other (15) (includes colleagues (6), general knowledge (3), friends (2), non government organisations (1), walk in (1), community service (1), Legal Aid (1)), phone book (10), Internet (4), media (3) and not stated (45).

#### Referred to

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

57 referrals to 'other' (such as their lawyer, the Anti-Discrimination Commission, Workplace Standards Authority, Sexual Assault Support Service)

15 referrals to the Commissioner for Children

10 referrals to the Child Protection Advice and Referral Service

7 referrals to the Legal Aid Hotline

6 referrals to Child Protection (CAFS Service Centre)

4 referrals to the Ombudsman's office

4 referrals to the Deputy Secretary, Department of Health and Human Services

2 referrals to Tasmania Police

1 referral to Gateway Services

## Partnerships and collaboration

The Commissioner for Children meets with the other Commissioners and Guardians at the Australian Children's Commissioners and Guardians (ACCG) meeting which is held twice a year.

The Commissioner is a member of, or is represented on, a number of different reference groups and committees such as:

The Tasmanian Early Years Foundation

Council of Paediatric Mortality and Morbidity

Paediatric Mortality and Morbidity Subcommittee

Anglicare Research Project Youth Homelessness Research Project

Care Concerns Monitoring Group

Conception to Community: A Perinatal and Early Childhood Steering Group

HEARTS Project (Health, Education, Activities, Records, Tracking, Supports)

Hobart City Council Children and Families Network

Mental Health in Schools Reference Group (Kids Matter/Mind Matters)

Policy Officers Network - convened by TasCOSS

Review of the Youth Justice Act 1997 Steering Committee Member

State-wide Youth Collaborative (SYC) – co-chaired by Population Health & Youth Network of Tasmania (YNOT)

Tasmanian Child Safety Network

Youth Action Priorities (YAP)

Youth Network of Tasmania Youth Ethics Working



## Promotions and communication

#### **Speeches**

Teenage Pregnancy Research Report: Northern Tasmania Launch, 09-08-13 Launceston

Children's Book Council of Aust (Tas Branch) Launch, 23-08-13, Georgetown

NAPCAN National Child Protection Week - Play Your Part Awards Event, 02-09-13, Howrah

Tasmania Police Inspector Professional Development Programme, 30-10-13, Rokeby



#### **Media Releases**

CFC Media Release (Pontville Youth Detention Centre)

CFC Northern office opens 09-08-13

CFC Media Release – Alternatives to Secure Youth Detention in Tasmania Report released 22-08-13

Criminal Code Amendment (Sexual Offences Against Young People) Bill 19-09-13

#### **Publications**

Bringing Baby Home booklet

This resource is available at our website www.childcomm.tas.gov.au

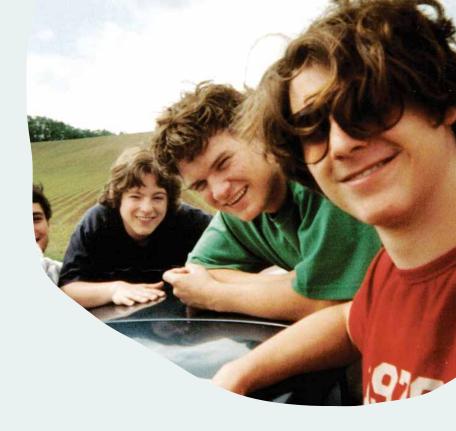
## Future initiatives

The term of the Commissioner is now for a five year period, which allows this office to develop strategic long term goals.

As in past years, in 2014–15 the office will focus on supporting and strengthening the voices of children and young people through a range of projects as well as advocacy for children and young people in contributing to legislation changes and reviews. We will also keep abreast of the main and emerging issues for children and young people.

At the time of the Annual Report being presented, the planning for 2015 and beyond is not yet complete, but information on future initiatives will be made available on the Commissioner's Website during the first quarter of 2015.

Increased consultation with children and young people, partnering with government and community sector agencies and working in a collaborative, respectful manner across the sector, will be our prime focus.



We will also continue to promote the interests and voices of children and young people in decisions or actions affecting their health, care, protection, development and education, across the Tasmanian population of children.

Our goal and commitment is to utilise our valuable resources and influence, to effectively contribute to the combined efforts of all agencies, organisations and individuals who share the aspiration that all Tasmanian children and young people reach their full potential in this community.



#### Online

The Annual Report can be accessed at www.childcomm.tas.gov.au

#### Hard cop

You can view printed copies of the Annual Report at:

#### Commissioner for Children

Level 1, 119 Macquarie St Hobart TASMANIA 7000

State Library 91 Murray St Hobart TASMANIA 7000

#### Contact

Commissioner for Childrer Level 1, 119 Macquarie St Hobart TASMANIA 7000

etepnone: (03) 6233 4520 Country Freecall: 1300 362 069

Email: childcomm@childcomm.tas.gov.au

**Web:** www.childcomm.tas.gov.au

