



CCYP

Commissioner for Children
and Young People Tasmania



Laying the Foundations:



**A Conceptual Plan
for Independent
Monitoring of
Out-of-Home Care
in Tasmania**



APRIL 2018



Laying The Foundations:

A Conceptual Plan For Independent Monitoring
of Out-of-Home Care in Tasmania

David Clements

Interim Commissioner for Children and Young People

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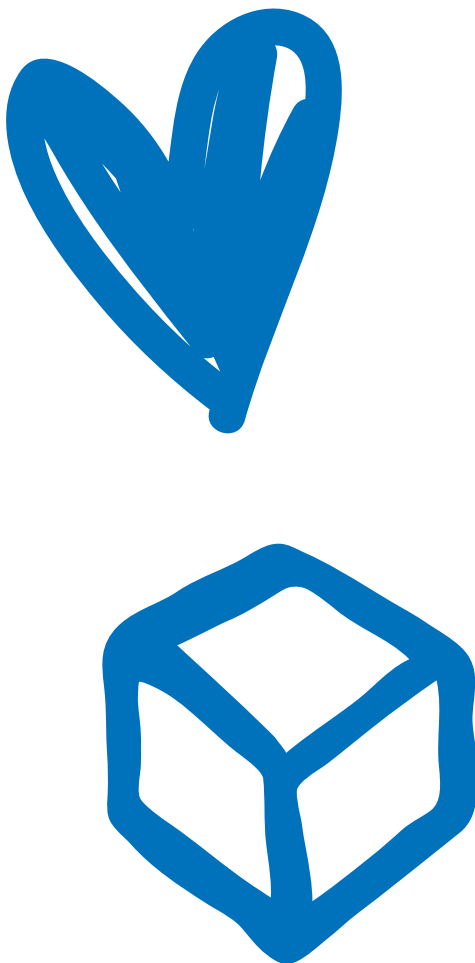
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Foreword



Raising children is rightly acknowledged as the primary role of parents and families. For many families, this can sometimes be a daunting task. Sometimes however, for a range of reasons, parents and families are unable to provide adequate care and support for their children and the State is required to step in to assume this responsibility.



Out-of-home care (OOHC) refers to the set of arrangements established by the State to provide alternative care for children and young people outside the family home. Its provision is an important means of ensuring children and young people are protected from harm. Such a system aligns with our international obligations under instruments such as the United Nations *Convention on the Rights of the Child* and is a mark of a functioning society.

Many individuals and agencies strive to ensure children and young people in OOHC in Tasmania are supported to reach their full potential, often in difficult and challenging circumstances. Their actions and successes are seldom publicly acknowledged or celebrated. For that reason, I wish to take this opportunity to thank and commend them for their substantial efforts. It is also the case however that, for a variety of reasons and despite our collective efforts, some children's experience of OOHC is less than desirable.

As Interim Commissioner for Children and Young People, my role is to provide impartial, independent, and apolitical oversight and advice which promotes the rights and wellbeing of children and young people in Tasmania. I am guided in my work by the principles, functions and powers set out in the *Commissioner for Children and Young People Act 2016* (the CCYP Act). Sections of the CCYP Act relevant to the monitoring work described in this document can be found at Appendix 2.

Independent, external monitoring of OOHC at a systemic level is an important oversight function which contributes to ensuring the accountability of the OOHC system. It is distinct from complaints handling and individual advocacy, although these latter activities can inform the way in which systemic monitoring is undertaken.

The purpose of this document is to provide a firm conceptual foundation for monitoring activities to be undertaken by my office. It establishes the overarching principles and describes the policy and program context within which the monitoring program is being established. Further work to determine specific elements of the Commissioner for Children and Young People (CCYP) Out-of-Home Care (OOHC) Monitoring Program ('the Monitoring Program') will be detailed in the forthcoming CCYP OOHC Monitoring Plan ('the Monitoring Plan').

In framing this Monitoring Program, I have sought to give primacy to the importance of adopting a child-centred approach. This is, in my opinion, the most fundamental component of accountability for those providing services and supports for children and young people in the Tasmanian OOHC system.

It is my intention that this Monitoring Program will complement the oversight and compliance activities of the Department of Health and Human Services and take account of the capacity for other entities to undertake monitoring and oversight activities, including those conducted by Tasmania's Ombudsman and Auditor-General. My preference is to undertake this monitoring function in a collaborative and non-adversarial manner which contributes to system improvements and learning. I envisage the combination of efforts by all stakeholders will ensure Tasmania has a more accountable, integrated, and coordinated system which in turn leads to better outcomes for children and young people with lived experience of OOHC.

David Clements
Interim Commissioner for Children
and Young People

April 2018

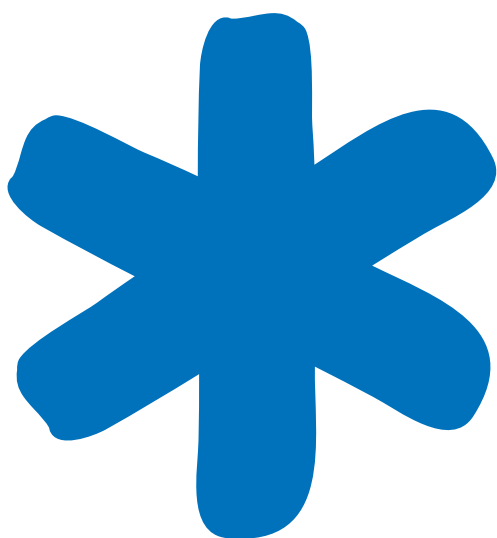




Executive summary



This document details the conceptual foundation for a new program of independent, systemic monitoring of out-of-home care (OOHC) in Tasmania, to be conducted by the Commissioner for Children and Young People (Tasmania) ('the Commissioner'). It also describes the policy and program context in which the Commissioner for Children and Young People (CCYP) Out-of-Home Care (OOHC) Monitoring Program ('the Monitoring Program') is being developed.



The Commissioner's mandate

The Commissioner is an independent statutory officer established by the *Commissioner for Children and Young People Act 2016* ('the CCYP Act'). The Commissioner's functions are highly relevant to monitoring OOHC, as they include, inter alia:

- » advocating for all children and young people in the State generally;
- » researching, investigating and influencing policy development into matters relating to children and young people generally;
- » promoting, monitoring and reviewing the wellbeing of children and young people generally;
- » promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives; and
- » assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.

In seeking to achieve these aims, the Commissioner's work must ensure that "the wellbeing and best interests of children and young people are paramount" and "observe any relevant provisions of the United Nations *Convention on the Rights of the Child*". Significantly, the CCYP Act provides that "the interests and needs of children and young people who are disadvantaged for any reason or vulnerable should be given serious consideration and taken into account".

Out-of-home care in Tasmania and nationally

OOHC is one component of the broader statutory child protection system. In Tasmania, OOHC is provided by Children and Youth Services in the Department of Health and Human Services, as well as by its contracted service providers. At 30 June 2017, there were 1,205 children in OOHC in Tasmania, a figure which has gradually increased over the past five years. In 2016–17, the rate of Tasmanian children in OOHC was above the national rate and the second highest in the country.

Nationally and internationally, child protection systems are under significant pressure from increasing demand on services and an inability to produce satisfactory outcomes for children and young people. In addition to significant national initiatives, the Tasmanian Government is engaged in a series of reforms to the State's child protection system, including the 'Strong Families – Safe Kids' initiative and reforms to OOHC. The Commissioner's Monitoring Program aims to coordinate with, and build upon, these initiatives.

Resources for the Monitoring Program

In the 2017-18 State Budget, the Tasmanian Government committed dedicated resources to the Office of the Commissioner for this monitoring function, to be conducted over four years, commencing in July 2017. This commitment arose from the Tasmanian Government's decision to accept former Commissioner Morrissey's recommendations in his January 2017 report into OOHC, *Children and Young People in Out of Home Care in Tasmania*. In October 2017, two Senior Policy Officers were appointed to the Commissioner's office, joining the Manager Strategic Policy and Review in assisting the Commissioner to: design the Monitoring Program in 2017-18 (Year 1) and implement it from July 2018 to June 2021 (Years 2, 3, and 4).

In December 2017, the Interim Commissioner appointed an expert panel, initially for a term of 12 months, to provide high-level technical expertise and strategic advice to the Commissioner for this program.

Given the available resources, the Monitoring Program will be strategically focused, being cognisant of oversight activities conducted by the Tasmanian Government and by other stakeholders or entities such as the Ombudsman and the Auditor-General.

Aim and key considerations of the Monitoring Program

The overarching aim of the Monitoring Program is to promote and protect the wellbeing and rights of children and young people in OOHC, by engaging in independent, systemic monitoring of OOHC.

The Commissioner's approach to monitoring OOHC in Tasmania is informed by multiple considerations, which are detailed in this document. These include:

- » the Commissioner's mandate to promote and protect the rights and wellbeing of all children and young people in Tasmania;
- » the Commissioner's key considerations and guiding principles for monitoring;
- » the policy and program context in which the Commissioner is working;
- » initiatives of the Tasmanian Government and the Federal Government; and
- » the complex, complicated, and fluid nature of the OOHC system.

Several key considerations have been taken into account in developing the Commissioner's Monitoring Program. Firstly, monitoring of OOHC will be *systemic* in nature; that is, it will be concerned with monitoring aggregated outcomes of children and young people (cognisant of disaggregation by age, sex, etc.); as well as monitoring the processes or features of systems which have led to those outcomes. Systemic monitoring is distinct from monitoring of individual outcomes or experiences, which is directed towards advocacy for individuals. In addition, the Monitoring Program will reflect a commitment by the Commissioner to avoid placing undue administrative burdens on agencies and organisations delivering OOHC. While the Program may require time and commitment by government and non-government agencies, its aim is to bring substantive benefits to all stakeholders in OOHC, via a particular focus on policy-oriented learning and continuous improvement. In order to avoid duplication of effort, the Monitoring Program will take account of reform and monitoring activities undertaken by the Tasmanian Government.

Features and principles of the Monitoring Program

Experience elsewhere with monitoring complicated, complex, and fluid programs demonstrates several means of productively engaging with these program features in order to generate a robust and feasible approach to monitoring. These strategies include:

- » initially identifying general principles rather than highly detailed plans;
- » identifying multiple options for monitoring;
- » approaching monitoring as a portfolio of different approaches; and
- » conducting iterative monitoring with short feedback loops which are timed to inform the next monitoring cycle.

All of these strategies have been incorporated into the Commissioner's monitoring of OOHC in Tasmania, as detailed later in this document.

Seven principles have been identified which will guide the design and implementation of the Monitoring Program. Firstly, the monitoring will be *child-centred*. This principle is foundational to the program: it emphasises the vital importance of taking a child rights approach to monitoring, such that children and young people in OOHC are viewed as individuals with their own rights and agency. This commitment to being child-centred will be reflected in monitoring activities, as well as in the Monitoring Program's publications – including a child-friendly version of this Conceptual Plan.

The other six principles guiding the Monitoring Program are:

- » useful and contributory;
- » relevant;
- » robust;
- » responsive and flexible;
- » feasible; and
- » ethical.

The Monitoring Program

The Monitoring Program is envisaged as a fully interconnected tripartite framework. It is anticipated that all three components of the Monitoring Program will be implemented concurrently, where necessary.


The different yet interrelated elements of the Program are as follows:

- » **Part A: Regular Data Monitoring** – This monitoring will entail the regular, routine flow of a discrete set of information to the Commissioner on specified matters relevant to OOHC. Work is underway to identify appropriate data and indicators, pending finalisation of the Tasmanian Government's Out-of-Home Care (OOHC) Outcomes Framework. Information gathered through this component may inform the focus of Part B and Part C of the Monitoring Program.
- » **Part B: Thematic Monitoring** – Each year, monitoring activities will be focused on a different theme, using the six domains of the Tasmanian Government's *Child and Youth Wellbeing Framework* and the proposed *OOHC Outcomes Framework*: being loved and safe, being healthy, participating, having material basics, learning, and having a positive sense of culture and identity. In addition to an annual thematic focus, the monitoring undertaken in Part B of the Monitoring Program will be guided by the cross-cutting consideration of *children and young people's participation*.
- » **Part C: Responsive Investigations** – The Commissioner, whether utilising "own motion" investigatory powers or undertaking an investigation at the request of the Minister, may dedicate resources to undertake a targeted, in-depth investigation of a particular issue in OOHC in Tasmania. This component of the Monitoring Program will not be specified in any detail in the forthcoming Monitoring Plan – this flexibility is intended to allow the Commissioner to respond to particular issues or potential concerns as they arise.

The Monitoring Program will be implemented through an iterative, cyclical process carried out on an annual basis. The first iteration of the monitoring cycle consists of five phases:

- (1) Laying the foundations. (The publication of this document represents the completion of this first phase of the monitoring cycle.)
- (2) Designing the Monitoring Program and documenting it in the Monitoring Plan.
- (3) Conducting monitoring activities.
- (4) Reporting on findings.
- (5) Reviewing and revising the Monitoring Plan for the following year, as needed.

These and other matters relevant to the Monitoring Program are detailed in the body of this document.



In seeking to achieve these aims, the Commissioner’s work must ensure that “the wellbeing and best interests of children and young people are paramount” and “observe any relevant provisions of the *United Nations Convention on the Rights of the Child*”. Significantly, the CCYP Act provides that “the interests and needs of children and young people who are disadvantaged for any reason or vulnerable should be given serious consideration and taken into account”.





1. The Monitoring Program



1.1 Independent and external systemic monitoring

The overarching aim of the Commissioner's Monitoring Program is to promote and protect the wellbeing and rights of children and young people in OOHC, by engaging in independent, systemic monitoring of OOHC in Tasmania.

Independent, external monitoring of OOHC at a systemic level is one of a number of activities which combine to comprise the system of oversight for OOHC. The Royal Commission into Institutional Responses to Child Sexual Abuse has provided a useful description of the various components of a comprehensive system of oversight:¹

Oversight in the context of service delivery and public administration carries a number of functions, including ensuring that:

- » operational processes are functioning properly
- » organisational objectives are being met
- » risks are recognised and mitigated
- » errors are uncovered and addressed
- » opportunities for improvement are identified and acted upon.

Oversight functions usually require the overseeing body or individual to:

- » monitor operations and outcomes
- » review the quality, compliance and defensibility of processes and decisions
- » investigate critical incidents and complaints about service delivery
- » develop recommendations to improve processes, correct errors, and/or compensate for identified failings.

In the context of OOHC, oversight typically involves:

- » service providers self-assessing and continually reviewing their own policies, procedures and service delivery against relevant standards
- » lead departments reviewing their own service delivery and that of non-government agencies they engage
- » independent systemic monitoring and review
- » independent investigation and complaints handling.

A range of regulatory bodies and oversight mechanisms designed to promote the wellbeing of children and young people in OOHC exists in each jurisdiction. Commissioners for Children and Children's Guardians in other states and territories undertake independent, external systemic monitoring of their respective state or territory's child protection system, including OOHC. (Refer to Appendix 1 for an overview of independent, systemic monitoring functions and oversight activities in other jurisdictions.)

In Tasmania, a complaint may be made to the Tasmanian Ombudsman by a person who believes they have been treated unfairly or unreasonably by a decision made by the administrators of Tasmanian public authorities (for example, a Child Safety Worker in relation to a child's care while in OOHC).² The important role of the Tasmanian Auditor-General also needs to be recalled. For example, the Auditor-General may conduct performance audits and compliance audits. Performance audits examine whether a State entity is carrying out its activities effectively and doing so economically and efficiently. The Auditor-General can also carry out investigations.³

In acknowledgement of the Commissioner for Children and Young People's particular mandate, the Tasmanian Government's 2017-18 State Budget commitment to dedicate resources to the Commissioner for Children and Young people to undertake independent, external monitoring of OOHC in Tasmania is welcomed. It arose from the Tasmanian Government's decision to accept former Commissioner Morrissey's recommendations in his January 2017 report into OOHC, *Children and Young People in Out of Home Care in Tasmania*. Recommendation five called on the Tasmanian Government to:

Establish independent external oversight and monitoring of the OOHC system, including by providing the Commissioner for Children and Young People with six-monthly reports on compliance with Standards and other agreed indicators of the wellbeing of children and young people in the OOHC system in Tasmania.⁴

1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Out of Home Care*, March 2016, p.54

2 For more information, refer to the *Ombudsman Act 1978*.

3 For more information, refer to the *Audit Act 2008*.

4 Commissioner for Children and Young People, *Children and Young People in Out of Home Care in Tasmania*, January 2017, p.9

Given the available resources, the Monitoring Program will be strategically focused; it will aim to build upon and add value to monitoring already conducted by the Tasmanian Government and by other stakeholders. Prior to the development of the forthcoming Monitoring Plan, the Commissioner has been reviewing and commenting on the Tasmanian Government's policies and programs relevant to OOHC.

1.2 The role of the Commissioner for Children and Young People

The Commissioner for Children and Young People ('the Commissioner') is an independent statutory officer established by the *Commissioner for Children and Young People Act 2016* ('the CCYP Act').

The United Nations *Convention on the Rights of the Child* (UNCRC) stipulates the "measures of implementation" which State Parties shall undertake to advance the rights of children and young people. One of these measures is the establishment of a statutory independent children's rights institution. In Tasmania, this body is the Commissioner for Children and Young People.

Under the CCYP Act, the Commissioner has a number of functions (extracted at Appendix 2 along with other provisions of particular relevance); broadly speaking, the Commissioner's role is to promote the wellbeing of all children and young people in Tasmania. For ease of reference these functions are also set out below:

The Commissioner has the following functions:

- (a) advocating for all children and young people in the State generally;
- (b) acting as advocate for a detainee under the *Youth Justice Act 1997*;
- (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
- (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;

- (e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally; and
- (g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.⁵

The child-centred focus of all of the Commissioner's work is apparent from the requirement in the CCYP Act that the Commissioner (or any other person performing a function, or exercising a power, under the Act), must –

- (a) do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
- (b) observe any relevant provisions of the United Nations *Convention on the Rights of the Child*.⁶

Other child-centred principles that are to guide the Commissioner and staff are:

- (a) children are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;
- (b) the interests and needs of children and young people who are disadvantaged for any reason or vulnerable should be given special regard and serious consideration;
- (c) the contributions made by children to the community should be recognised for their value and merit;
- (d) the views of children on all matters affecting them should be given serious consideration and taken into account; and
- (e) parents, families and communities have the primary role in safeguarding and promoting the wellbeing of children and should be supported in carrying out their role.⁷

⁵ *Commissioner for Children and Young People Act (Tas) 2016*, s. 8

⁶ *Commissioner for Children and Young People Act (Tas) 2016*, s. 3

⁷ *Commissioner for Children and Young People Act (Tas) 2016*, s. 3

The Commissioner's approach to monitoring OOHC in Tasmania is informed by multiple considerations, which are detailed below.

These include:

- » the Commissioner's guiding principles for monitoring;
- » the Commissioner's mandate to promote and protect the rights and wellbeing of all children and young people in Tasmania;
- » the policy and program context in which the Commissioner is working;
- » initiatives of the Tasmanian Government and the Federal Government; and
- » the complex, complicated, and fluid nature of the OOHC system.

1.3 Key considerations and guiding principles for monitoring

1.3.1 Key considerations

Several key considerations have been taken into account in developing the Commissioner's Monitoring Program. Firstly, the monitoring of OOHC will be systemic in nature, as distinct from monitoring of individual outcomes or experiences, which is directed towards advocacy for individuals. In addition, the Monitoring Plan will reflect a commitment by the Commissioner to avoid placing undue burdens on government or non-government agencies providing OOHC to provide new data for the Monitoring Program. While the Program may require time and commitment by government and non-government agencies, its aim is to bring substantive benefits to all stakeholders via a particular focus on policy-oriented learning and continuous improvement. (Refer to section 5.2.5 below for further discussion of these key considerations.)

1.3.2 Guiding principles

Taking into account the Commissioner's mandate and functions, seven principles have been identified which will guide the design and implementation of the Monitoring Program. The first of these principles, that the Monitoring Program will be child-centred, is foundational to its aim. Given its importance, this principle is detailed further in section 1.4 below.

The seven principles are:

- » **Child-centred** – Primarily, monitoring will be child centred; it will view each child or young person as an individual with rights, including their right to participate in decisions about them, in line with their age and maturity.⁸
- » **Useful and contributory** – Monitoring will generate useful knowledge that supports the Tasmanian Government and relevant organisations to make informed decisions about achievable improvements to OOHC in Tasmania.
- » **Relevant** – Monitoring will take into account the political and operational context of the OOHC system including: public concerns, current and future reform processes and monitoring frameworks, policy settings, legislation, and stakeholders' views.
- » **Robust** – Monitoring activities will generate valid and reliable information that can be analysed to produce legitimate findings, notwithstanding any limitations. Activities will reflect best practice in monitoring OOHC in other jurisdictions in Australia and internationally. The Monitoring Program will also collect data and disseminate findings which are viewed as credible by stakeholders.
- » **Responsive and flexible** – The Monitoring Plan will not be a fixed document; it will be reviewed and revised at least annually, to reflect changing policy and program delivery contexts, as well as lessons learnt from previous years of monitoring.
- » **Feasible** – The Monitoring Program will be based on data which can be reasonably obtained, either from existing data sources or through monitoring activities. Monitoring activities will be realistic and feasible, given available resources and timeframes.
- » **Ethical** – All monitoring activities will be conducted in accordance with the Commissioner for Children and Young People's policies and procedures, which are available at <http://www.childcomm.tas.gov.au>. In circumstances where the Commissioner may find it necessary to exercise his or her powers under the CCYP Act in order to fulfill his or her monitoring functions, he or she will do so in an ethical and impartial manner. General information about the Commissioner's investigative powers is also available on that website.

⁸ United Nations *Convention on the Rights of the Child*, 1990 and Eileen Munro, *The Munro Review of Child Protection: Final Report – A Child-Centred System*, UK Department for Education, May 2011

1.4 Child-centred monitoring

1.4.1 Being child-centred: Taking a child rights approach

In relation to monitoring, being child-centred entails taking a child rights approach to a monitoring program's aims, activities, data analysis, and reporting. The Australian Human Rights Commission defines a child rights approach as one which "recognises, respects and protects the rights of children in the development and implementation of laws, policies, practices and other decisions affecting them". This approach entails a shift away from viewing children as subjects in need of assistance and protection, towards viewing them as individuals with rights and agency, whilst also situated within families and communities.⁹ In this regard, the New Zealand Commissioner states that: "Being child centred is about recognising the needs, rights and views of children in the work of our organisations. It also means seeing children in the context of their families, *whānau* [extended family] or *mana* [spiritual power]".¹⁰

The Commissioner's Monitoring Program will place children, and their wellbeing and rights, at its centre. This is no small undertaking, but it is well worth doing. Listening to children and young people entails giving them an opportunity to speak, and really hearing what they have to say, even when that may be unexpected or uncomfortable for adults. It entails a shift towards joint decision-making, where children and young people are partners with adults, they are treated with dignity and respect, and their views are taken seriously. Listening to children and young people provides a sound information base for promoting their rights and improving their wellbeing. The International Institute for Child Rights and Development at Victoria University in Canada has identified five ways that child-rights centred monitoring can generate useful information to benefit children and young people. According to the Institute, the information gathered through monitoring can assist organisations to:

- (1) Determine whether interventions respect and target children's rights, well-being, health and development.
- (2) Determine whether interventions are making a discernible improvement to children's rights, well-being, health and development.
- (3) Explore the process of implementing programmes and policies for children and to better understand children's own experiences of these programmes and policies.
- (4) Provide information about how to adjust programmes, services, activities, and strategies to better meet children's needs and fulfil their potential.
- (5) Identify and share with others what we have learned.¹¹



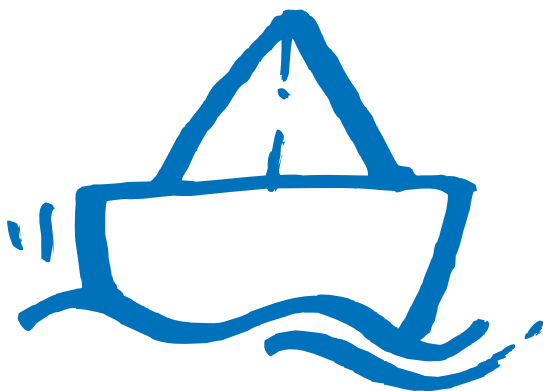
⁹ Australian Human Rights Commission, *National Statement of Principles – Child Safe Organisations Project*, <https://www.humanrights.gov.au/national-statement-principles-child-safe-organisations-project>, accessed at 27 November 2017

¹⁰ New Zealand Children's Commissioner, *Being Child-Centred – What does it mean for your organisation?*, revised August 2017

¹¹ Natasha Blanchet-Cohen et al., *Child Rights in Practice: Measuring and Improving our Impact, A Model of Accountability to Children*, International Institute for Child Rights and Development, University of Victoria, Canada, 2009, p.5

The participation of children and young people is foundational to a child-rights centred approach, such that participation is considered “the symbol for the recognition of children as rights-holders”.¹² Ensuring the active participation of children and young people in monitoring activities entails, in effect, making a values statement which asserts that *children and young people have lives which matter – and they are knowledgeable about those lives*.¹³ Participation for children and young people entails providing them with age appropriate information, listening to their experiences and opinions, and taking what they say seriously. It also entails a commitment to the principle of inclusion, such that even the voices of the most marginalised children and young people are heard.¹⁴ At a practical level, it may entail creating forums and opportunities for children and young people to express their views, share their experiences and engage in monitoring and decision-making that is safe and age-appropriate.

The Commissioner’s efforts to ensure participation of children in monitoring activities will be guided by the Commissioner’s Participation Policy and Practice Advice, and Ethical Consultation Policy which are available on the Commissioner’s website at: <http://www.childcomm.tas.gov.au>.



1.4.2 The wellbeing and rights of children and young people

Promoting the wellbeing of children and young people is closely linked to promoting their rights. Broadly speaking, wellbeing is understood as a measure of a person’s quality of life.¹⁵ The wellbeing of children and young people is evidently important in the present; a good quality of life during childhood and youth is a valued aspiration in itself. Additionally, wellbeing during childhood is important for providing a sound foundation for a child’s future life into adulthood.

A function of the Commissioner’s role is “promoting, monitoring and reviewing the wellbeing of children and young people generally”.¹⁶ The CCYP Act defines wellbeing as “the care, development and education, and the physical, emotional and psychological health and safety, of children and young people”.¹⁷

When Australia ratified the United Nations *Convention on the Rights of the Child* (UNCRC) in 1990, as a nation we made a formal commitment to promoting and protecting the rights and wellbeing of all Australian children and young people aged less than 18 years of age. This commitment “creates what can be regarded as a social contract between the state and its citizens as to the entitlements that children in its jurisdiction should be able to claim from state and society”.¹⁸ Efforts to fulfill this social contract are informed by the four guiding principles of the UNCRC: the right to non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6); and the right to participation (Article 12).¹⁹ Working towards full implementation of the UNCRC – such that children’s and young people’s rights are respected, protected, and fulfilled – is an important means of enhancing the wellbeing of all children and young people, including those in OOHC.^{20 21}

12 Committee on the Rights of the Child, “Report on the forty-third session, September 2006, Day of General Discussion, Recommendations, Preamble”, quoted in UNICEF Regional Office for Europe, *Implementation Handbook for the Convention on the Rights of the Child*, fully revised Third Edition, 2007, p.150

13 Toby Fattore et al., “Children’s conceptualisation(s) of their well-being”, *Social Indicators Research*, 80, pp. 5-29, 2007

14 Natasha Blanchet-Cohen et al., *Child Rights in Practice: Measuring and Improving our Impact, A Model of Accountability to Children*, International Institute for Child Rights and Development, University of Victoria, Canada, 2009, p.5

15 The Scottish Government, *Children’s Rights Legislation in Scotland: A Quick Reference Guide, Getting it Right in Policy and Legislation*, September 2015

16 *Commissioner for Children and Young People Act 2016*, s. 8

17 *Commissioner for Children and Young People Act 2016*, s. 4

18 Peter Dixon, *Child Rights Situation Analysis Guidelines*, Save the Children, 2013, p.9

19 United Nations Human Rights, Office of the High Commissioner, *Convention on the Rights of the Child*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, accessed on 27 November 2017

20 The Scottish Government, *Children’s Rights Legislation in Scotland: A Quick Reference Guide*, 2015

21 Danielle Kennan et al., *A Rights Based Approach to Monitoring Children and Young People’s Well-Being*, The Children and Youth Programme, UNESCO Centre, Northern Ireland, 2011

This interrelationship between rights and wellbeing is succinctly described as follows:

Whilst children's rights and child wellbeing are two discrete concepts, they are intrinsically linked: 'Wellbeing' is a measure of the quality of a child's life. It is understood in relation to objective measures (such as income, health status, being a victim of crime, educational achievement) and subjective measures (such as life satisfaction or reported levels of happiness). The implementation of the UNCRC is a mechanism through which wellbeing can be achieved. Where a child's rights have been respected, protected and fulfilled, their wellbeing should improve.²²

1.4.3 The wellbeing and rights of children and young people in out-of-home care

On 30 June 2017, there were 1,205 children in OOHC in Tasmania.²³ The UNCRC emphasises that children and young people in the care of the State are entitled to the same rights as all other children and young people. Additionally, Article 20 of the UNCRC sets out a State Party's responsibility to provide special care and assistance to those children who cannot be cared for by their families.²⁴ By taking these children and young people into their care, the State Party effectively enters into a social contract with them to protect and promote their rights and wellbeing.

In this regard, the child protection legislation in Tasmania, the *Children, Young Persons and Their Families Act 1997* (the CYPTF Act) – particularly in those provisions outlining the principles which should guide those exercising functions and powers under that Act – reflects to various degrees the importance of acknowledging that children and young people in the care of the State are rights holders. The CYPTF Act underlines the important role of a child's family. Reflecting Articles 3 and 5 of the UNCRC, the CYPTF Act states that the family of a child "has the primary responsibility for the care, upbringing and development of the child"; and "a child should only be removed from his or her family if there is no other reasonable way to safeguard his or her wellbeing".²⁵

The CYPTF Act also provides several guiding principles for engaging with children, which are grounded in the UNCRC, including:

- (a) the best interests of the child must be the paramount consideration (which reflects Article 3 of the UNCRC);²⁶ and
- (b) children have the right to participate in decisions which affect them, and to have their views taken into account; and children should be provided with assistance to express their views (which reflects Article 12 of the UNCRC).²⁷

In considering the rights and wellbeing of children and young people in OOHC in Tasmania, regard will be given to the *Outcomes Framework for Children and Young People in Out of Home Care Tasmania* which is currently being developed and the *Charter of Rights for Tasmanian Children and Young People in Out-of-Home Care*.



22 The Scottish Government, *Children's Rights Legislation in Scotland: A Quick Reference Guide*, 2015

23 AIHW, *Child Protection Australia 2016 -17*, Child Welfare Series No. 68, 2018

24 United Nations Human Rights, Office of the High Commissioner, *Convention on the Rights of the Child*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, accessed on 27 November 2017

25 *Children, Young Persons and Their Families Act 1997*, s. 10C

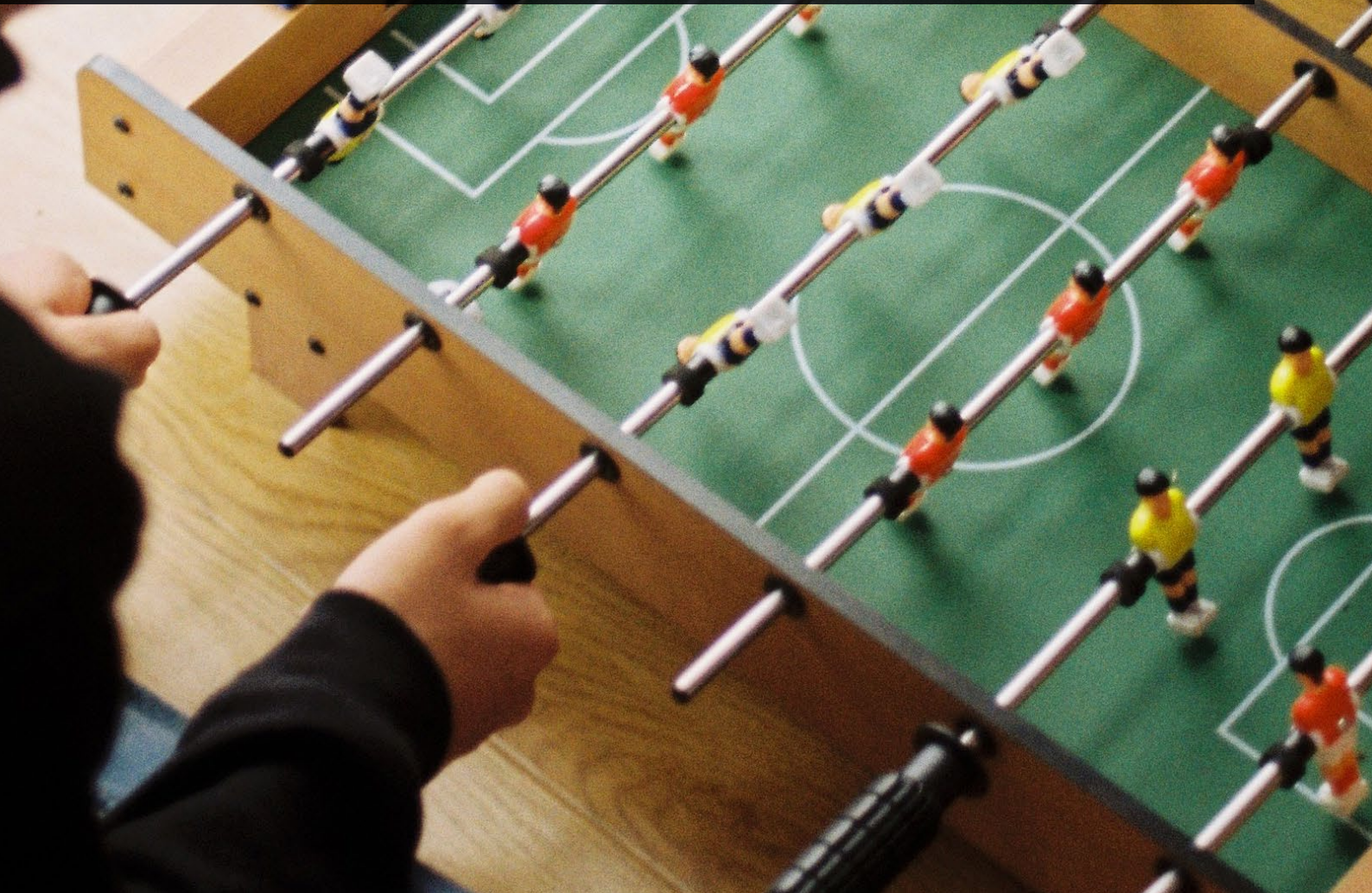
26 *Children, Young Persons and Their Families Act 1997*, s. 10E

27 *Children, Young Persons and Their Families Act 1997*, s. 10F



2.

Child
protection
and out-of-
home care:
the challenges



2.1 Child protection statistics – National

The most recent figures from the Australian Institute of Health and Welfare (AIHW) indicate that during 2016-17 there were 233,795 children in Australia suspected of being harmed or at risk of abuse and/or neglect (a rate of 42.8 per 1,000), resulting in 379,459 notifications. This is an increase of 6.6 per cent from the previous year.²⁸ The total number of notifications, investigations, and substantiations in Australia for the past four financial years is shown in Table 1.



Table 1: Child protection statistics for 2013-14, 2014-15, 2015-16, and 2016-17²⁹

Year	Total notifications	Total investigations	Total substantiation	Children on orders	Children in OOHC
2013-14	304,907	137,585	54,438	45,746	43,009
2014-15	320,169	152,086	56,423	48,730	43,399
2015-16	355,935	164,987	60,989	51,972	46,488
2016-17	379,459	177,056	67,968	54,666	47,915

The 67,968 substantiations recorded nationally in 2016-17 involved 49,315 children, which was a 7.9 per cent increase on the figure recorded in 2015-16. Substantiations occur when an investigation has concluded and there is reasonable cause to believe that the child had been, was being, or was likely to be, abused, neglected, or otherwise harmed.³⁰

Although child protection statistics are the best available indicator of the scale of the problem of child abuse and neglect in Australia, they are not an accurate measure of the number of children who are maltreated, as the figures include a certain number of children who are *at risk* of being harmed but have not yet been harmed, as well as those who have been harmed or are currently being harmed.³¹

²⁸ AIHW, *Child Protection Australia 2016-17*, Child Welfare Series No. 68, 2018

²⁹ Australian Institute of Family Studies, Child Family Community Australia, *Child Abuse and Neglect Statistics*, CFCA Resource Sheet, June 2017 and AIHW, *Child Protection Australia 2016-17*, Child Welfare Series No. 68, 2018

³⁰ AIHW, *Child Protection Australia 2016-17*, Child Welfare Series No. 68, 2018

³¹ Australian Institute of Family Studies, Child Family Community Australia, *Child Abuse and Neglect Statistics*, CFCA Resource Sheet, June 2017

2.2 Child protection statistics – Tasmania

The rates of children receiving child protection services by age group (number per 1,000 children), in Tasmania and nationally, is shown in Table 2 below. The highest rate is for children under one year of age.



Table 2: Number and rates of children receiving child protection services by age group in Tasmania (number per 1,000 children)³²

Age group (years)	TAS (number)	TAS (rate)	Australia (number)	Australia (rate)
Unborn	79	-	4,448	-
<1	155	26.6	11,363	37.2
1-4	607	25.2	37,466	29.7
5-9	766	23.6	49,572	31.4
10-14	707	22.8	46,509	32.0
15-17	291	15.1	18,963	21.8
Unknown	0	-	31	-
Total	2,605	23.1	168,352	30.8

Compared with 2015-16 figures, Tasmania showed a decrease of 30.1 per cent in notifications in 2016-17. It is important to note that, whilst this figure may reflect an actual change in the extent of child maltreatment, it is also possible that the number of notifications in Tasmania in 2016-17 resulted from changes in public awareness or child protection processes.³³ On the other hand, presumably some of the child abuse that occurs in Australia is not the subject of a notification and therefore not counted in official figures.



³² AIHW, *Data Tables: Child Protection Australia 2016-17*, 2018, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>, accessed 14 March 2018

³³ AIHW, *Child Protection Australia 2016-17*, Child Welfare Series No. 68, 2018

Table 3: Number of substantiations of notifications received during 2012-13 to 2016-17³⁴

Year	Tasmania	Australia
2012-13	1,035	53,666
2013-14	778	54,438
2014-15	904	56,423
2015-16	868	60,989
2016-17	802	67,968

In 2016-17, the primary substantiated types of harm in Tasmania followed a similar pattern to the national one, with the most frequent substantiated types of harm being emotional abuse, followed by neglect, physical abuse, and sexual abuse, as detailed in Table 4 below.³⁵

Table 4: Children who were the subjects of substantiations of notifications received during 2016-17 by type of abuse or neglect³⁶

Harm type	Tasmania	Australia
Emotional abuse	326	23,474
Neglect	224	11,841
Physical abuse	133	7,989
Sexual abuse	37	5,861
Not stated	35	150
Total	755	49,315



³⁴ AIHW, *Data Tables: Child Protection Australia 2016-17*, 2018, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>, accessed 14 March 2018

³⁵ Ibid

³⁶ Ibid

2.3 Challenges facing child protection systems nationally

OOHC is one component of a broader statutory child protection system. Given the child protection system is comprised of several interrelated and embedded components, the challenges that the broader system faces necessarily affect the functioning of OOHC. Nationally and internationally, child protection systems are under significant pressure from increasing demand on services, and an inability to consistently produce satisfactory outcomes for children and young people. In 2015, the Senate's Community Affairs References Committee reported that child protection systems nation-wide are "in crisis" and "crisis driven".³⁷ More recently, the Royal Commission into the Protection and Detention of Children in the Northern Territory noted that "child protection systems across Australia and internationally are struggling to manage the tasks of protecting children from harm and delivering effective child protection services".³⁸

These systems are almost universally characterised by rising notification rates, growing costs, and a high rate of repeat notifications – nationally, 74 per cent of children in the child protection system in 2016-17 had been the subject of a previous notification.³⁹ In general, Australian child protection systems currently lack sufficient capacity and/or evidence based interventions to effectively address the quantum or complexity of cases; and OOHC is often characterised by unstable placements and poor long-term outcomes for children and young people.⁴⁰

2.4 Out-of-home care - National

In Australia, state and territory governments have responsibility for statutory child protection, including OOHC. OOHC is defined by AIHW as "overnight care for children aged 0-17, where financial support from state or territory departments is given or offered to the carer".⁴¹ The AIHW identifies five main types of OOHC: home-based care, residential care, family group homes, independent living, and other arrangements, including boarding schools or motels.⁴² At 30 June 2017, the vast majority (93%) of Australian children in care were in home-based care, which includes relative/kinship care and foster care.⁴³

OOHC is generally considered an intervention of 'last resort' in Australian child protection systems. For those children and young people who do go into OOHC, the prevailing policy focus in Australia is on achieving a safe return home.⁴⁴ Notwithstanding this policy, a sizeable number of Australian children and young people spend at least some time in OOHC. Unfortunately, researchers have identified many negative outcomes for children and young people in OOHC, across several life domains including health and wellbeing, educational attainment, housing, employment, life satisfaction, and relationship stability.⁴⁵

Nationally, on 30 June 2017, 47,915 children were living in OOHC compared to 40,549 on 30 June 2013. This represents a total increase of 18.2 per cent between 2013 and 2017. The rate of children in OOHC rose from 7.7 per 1,000 in 2013 to 8.7 per 1,000 in 2017.⁴⁶

The over-representation of Aboriginal and Torres Strait Islander children and young people in contact with the child protection system in general is well documented and this over-representation extends to OOHC. The number of Aboriginal and Torres Strait Islander children in OOHC in 2016-17 was 10.2 times the rate of other children. Between 2012-13 and 2015-16, the rate of indigenous children admitted to OOHC rose from 12.8 to 14.6 per 1,000, and then fell to 13.6 per 1,000 in 2016-17.⁴⁷

37 Community Affairs References Committee, *Out of Home Care*, The Senate, August 2015, p.45

38 Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report*, Volume 3A, p.182

39 AIHW, *Data Tables: Child Protection Australia 2016-17*, 2018, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>, accessed 14 March 2018

40 Sarah Wise, *Developments to Strengthen Systems for Child Protection Across Australia*, CFCA Paper No. 44, Child Family Community Australia, Australian Institute of Family Studies, 2017

41 AIHW, *Australia's Welfare 2017*, Australia's Welfare Series No. 13, 2017

42 AIHW, *Child Protection Australia 2016-17*, Child Welfare Series No. 68, 2018

43 Ibid

44 AIHW, *Children Admitted to Out-of-Home Care 2014-2015*, Bulletin 145, November 2017

45 AIHW, *Australia's Welfare 2017*, Australia's Welfare Series No. 13, 2017

46 AIHW, *Data Tables: Child Protection Australia 2016-17*, 2018, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>, accessed 14 March 2018

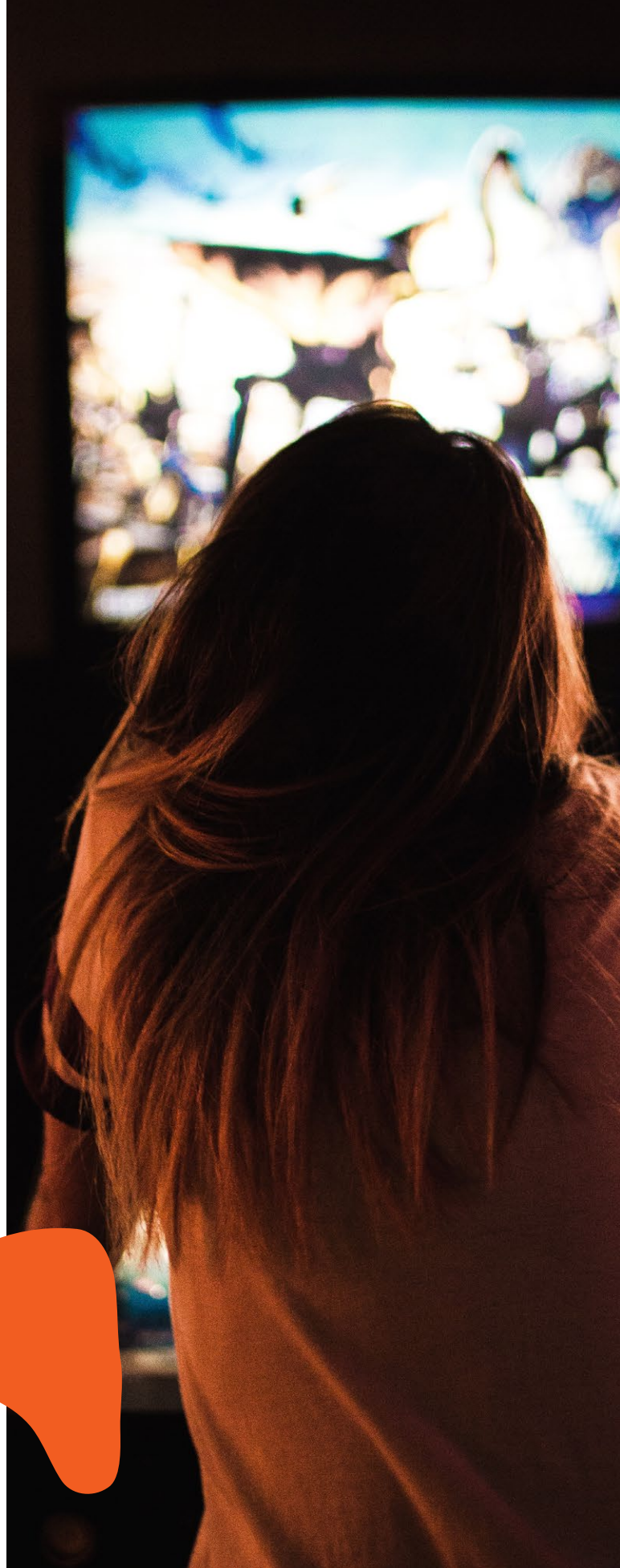
47 AIHW, *Child Protection Australia 2016-17*, Child Welfare Series No. 68, 2018

The number of children entering OOHC has been consistently above the number of children leaving OOHC; in 2016-17 there were 1,703 more children entering OOHC than were discharged. From 2012-13 onwards, children aged less than one have had consistently higher rates of admission into OOHC than the rates for any other age group. For children in this age group, admission rates rose from 6.4 per 1,000 in 2012-13 to 8.1 per 1,000 in 2015-16 and then fell to 7.4 per 1,000 in 2016-17. The rates for other age groups have remained more stable over the 5-year period.⁴⁸

During the five-year period between 2012-13 and 2016-17 the rates of children aged 15-17 discharged from OOHC were consistently higher than any other age group, with a rate of 3.6 per 1,000 in 2016-17.⁴⁹

2.5 Out-of-home care - Tasmania

In Tasmania, OOHC is provided by Children and Youth Services in the Department of Health and Human Services as well as by its contracted service providers. As shown in Table 5 below, the number of children and young people in OOHC in Tasmania has risen slowly over the past six years, from 966 at 30 June 2011⁵⁰ to 1,205 at 30 June 2017.⁵¹ The rate of children and young people in OOHC in the Tasmanian population was 10.7 per 1,000 people aged 0-17 years at 30 June 2017, which was above the national rate of 8.7 per 1,000 and the second highest in the country.⁵² In Tasmania, on 30 June 2017, only 5.1 per cent of children in OOHC were in residential care. However, it is an increase from 3 percent as at 30 June, 2016.⁵³ The OOHC system in Tasmania is faced with rising costs: total real expenditure on OOHC rose from \$43.1 million in 2011-12 to \$63.6 million in 2016-17.⁵⁴



48 Ibid

49 Ibid

50 AIHW, *Child Protection Australia, 2010-11*, Child Welfare Series No. 53, 2012

51 AIHW, *Child Protection Australia 2016-17*, Child Welfare Series No. 68, 2018

52 Ibid

53 Ibid

54 Australian Government Productivity Commission, *Report on Government Services 2018*, 2018

Table 5: Children aged 0-17 in out-of-home care, Tasmania, 30 June 2011 to June 30 2017⁵⁵

2011	2012	2013	2014	2015	2016	2017
966	1,009	1,067	1,054	1,061	1,150	1,205

The type of OOHC placement is shown in Table 6 below. Kinship/relative care is the most prevalent type of care nationally, with foster care being the most prevalent in Tasmania.

Table 6: Children in out-of-home care by type of placement, 30 June 2017 – Tasmania⁵⁶

Type of Placement	Tasmania	%	Australia	%
Kinship/relative care	338	28.0	22,639	47.2
Foster care	561	46.6	18,098	37.8
Other home-based care	228	18.9	3,932	8.2
Residential care	61	5.1	2,504	5.2
Family group homes	10	0.8	209	0.4
Independent living	5	0.4	167	0.3
Other (incl. unknown)	2	0.2	366	0.8
Total children	1,205	100.0	47,915	100.0

At 30 June 2017, there were 321 Aboriginal children and young people in OOHC in Tasmania, as shown in Table 7 below.⁵⁷

Table 7: Children in out-of-home care, by Indigenous status in Tasmania, 30 June 2017 (number)⁵⁸

	Indigenous	Non-Indigenous	Unknown	All Children (a)
Tasmania (b)	321	865	19	1,205
Australia Total	17,664	30,069	182	47,915

- (a) 'All Children' includes children whose indigenous status was unknown.
- (b) Tasmania data exclude children not under care and protection orders place with relatives for whom a financial contribution is made under Supported Extended Family or Relatives Allowance programs.

As at 30 June 2017 the ratio of Aboriginal children in OOHC in Tasmania to non-Aboriginal children in OOHC in Tasmania was 3.4, which is significantly lower than the national rate of 10.2.⁵⁹

55 AIHW *Child Protection Australia 2014-15*, Child Welfare Series No. 63, 2016 and AIHW, *Child Protection Australia 2015-16*, Child Welfare Series No. 66, 2017 and AIHW, *Child Protection Australia 2016-17*, Child Welfare Series No. 68, 2018

56 Australian Government Productivity Commission, *Report on Government Services 2018*, 2018 (Table 16A.18). The figures reported for children in each type of care show the relative use of each type of placement, although the types of care are not completely comparable. As 'voluntary out-of-home care' includes an array of respite and other arrangements, calculating the number of voluntary care placements can be difficult.

57 Ibid (Table 16A.15)

58 Ibid (Table 16A.18)

59 AIHW, *Data Tables: Child Protection Australia 2016-17*, 2018, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>, accessed 14 March 2018

Table 8: Children in out-of-home care, by Indigenous status in Tasmania, 30 June 2017 (number per 1,000 children)⁶⁰

	Indigenous	Non-Indigenous	All Children
Tasmania	29.1	8.5	10.7
Australia Total	58.7	5.8	8.7

The proportion of Aboriginal children in OOHC in Tasmania who are placed according to the Aboriginal Placement Principle is 41.3 per cent, which is significantly lower than the percentage for Australia in total which is 67.6 per cent.⁶¹ The objectives of the Aboriginal Child Placement Principle are to ensure that recognition is given to an Aboriginal child's right to be raised in his/her own culture and to the importance and value of family, extended family, kinship networks, culture and community in raising Aboriginal children. The Aboriginal Placement Principle outlines the hierarchy of preference when there is a need to place a child outside of his/her family. This order of priority should then be with:

- (1) A member of the child's extended family or relatives;
- (2) If this is not feasible or possible after consultation with an Aboriginal child/welfare organisation, the child may be placed with:
 - » An Aboriginal family from the local community and within close geographical proximity to the child's natural family;
 - » As a last resort, the child may be placed, with a non-Aboriginal family living in close proximity to the child's natural family.⁶²

The challenges faced by the Tasmanian child protection system are already well known. They have been detailed in multiple government reports in recent years, including:

- » *Report into Child Protection Services in Tasmania* (2006);
- » *Parliamentary Select Committee Report into Child Protection* (2011);
- » *Report of the Auditor-General: Children in Out of Home Care* (2011);
- » *Out of Home Care Reform in Tasmania* (2014);
- » *Redesign of Child Protection Services Tasmania 'Strong Families - Safe Kids'* (2016); and
- » *Findings, Recommendations and Comments of Coroner Olivia McTaggart following the Holding of an Inquest under the Coroners Act 1995 (Tas) into the Death of: BJay Adam Johnstone* (July 2017).

In 2014, in its report *Out of Home Care Reform in Tasmania*, the Tasmanian Government acknowledged the OOHC system in Tasmania was "stretched to capacity, unsustainable and lacks a strategic plan for its future".⁶³ Similarly, in 2016, the Tasmanian Government observed that "the Tasmanian child protection system, like similar systems nationally and internationally, is facing increasing pressure from rising notification rates, increased complexities and growing costs in terms of children being placed in out-of-home care".⁶⁴

In recent years, the Tasmanian Government has introduced a series of reform processes and initiatives to address the challenges faced by the child protection system in Tasmania. These are detailed in section 3 below.

⁶⁰ Australian Government Productivity Commission, *Report on Government Services 2018*, 2018 (Table 16A.2)

⁶¹ Ibid (Table 16A.20)

⁶² Arney et al., Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations, Child Family Community Australia, CFCA Paper No. 34, 2015. See also *Children, Young Persons and Their Families Act 1997*, s. 10G

⁶³ Tasmanian Government, Children and Youth Services, *Out of Home Care Reform in Tasmania*, 2014, p.3

⁶⁴ Tasmanian Government, Department of Health and Human Services, *Redesign of Child Protection Services Tasmania, 'Strong Families - Safe Kids', Report*, 2016, p.5

**3. Work underway
in response to
the challenges**



3.1 National initiatives and Inquiries

While child protection is a state and territory responsibility, the Commonwealth has taken the lead in developing a *National Framework for Protecting Australia's Children 2009–2020*.⁶⁵ The *National Standards for Out-of-Home Care* were released in 2011.⁶⁶ (Refer to Appendix 3 for these standards.) The *Third Three-Year Action Plan, 2015–2018* under the Framework includes three strategies: enhancing early intervention with a focus on the first 1,000 days from conception to two years; developing and strengthening support for young people in OOHC who are transitioning from care to independence; and assisting organisations to respond better to children and young people's need for safety.⁶⁷ The *Fourth Three-Year Action Plan, 2018–2020* is currently under development. In 2015, the AIHW conducted a pilot national survey of the views of children and young people in OOHC, presenting new data for eight indicators under the National Standards.⁶⁸ A follow-up survey will be conducted in 2018.

As part of the National Framework, the Australian Human Rights Commission is conducting consultations on the draft *National Statement of Principles for Child Safe Organisations*, which provides ten principles and linked performance indicators for child safe organisations. These principles serve to: confirm the value of children's safety and wellbeing; emphasise genuine engagement with children; aim to reduce the likelihood of harm; and increase the likelihood of harm being identified.⁶⁹ Permanency for children in OOHC is also on the national agenda; at a meeting of the states' and territories' Community Services Ministers in November 2016, Commonwealth, state, and territory governments agreed to develop a set of guiding principles to improve permanency outcomes for children in OOHC.⁷⁰ More recently, in August 2017, the Community Services Ministers committed to reduce state guardianship of children in OOHC by securing permanency outcomes, including adoption, for children who cannot be safely reunified with their families within a reasonable timeframe.⁷¹



65 Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020*, 2009

66 Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, *An Outline of National Standards for Out-of-Home Care*, July 2011

67 Commonwealth of Australia, Department of Social Services, *Third Three-Year Action Plan, 2015–2018 – Driving Change: Intervening Early*, National Framework for Protecting Australia's Children 2009–2020, 2015

68 AIHW, *The Views of Children and Young People in Out-of-Home Care: Overview of Indicator Results* from a pilot national survey, Bulletin 132, Australian Government, March 2016

69 Australian Human Rights Commission, *National Statement of Principles for Child Safe Organisations*, Consultation Draft, 2017

70 The Hon Christian Porter MP, Community Services Ministers' Meeting Communiqué, 11 November 2016.

71 Australian Government, *Community Services Ministers' Meeting Communiqué*, 25 August 2017

Another national initiative underway which is relevant to children and young people in OOHC is the *National Plan to Reduce Violence against Women and their Children 2010–2022*. In particular, Strategy 2.2 funds the Family Support Program to support vulnerable and disadvantaged families, and separating parents and their children. This program provides early intervention and prevention services to families to build and strengthen relationships, develop skills, and support parents and children.⁷²

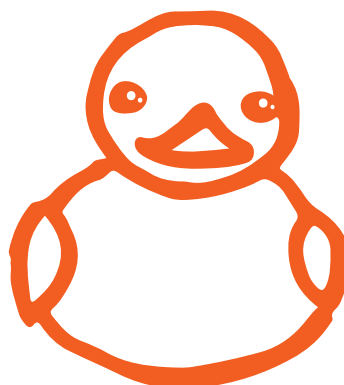
In addition, two Royal Commissions, both of which concluded in 2017, are informing state and territory governments' efforts to strengthen their child protection systems. In relation to OOHC, the Royal Commission into Institutional Responses to Child Sexual Abuse addressed incidences of sexual abuse in this type of care, and looked into the establishment of independent oversight of OOHC, including systemic monitoring and review, as a mechanism for preventing child sexual abuse within this care arrangement.⁷³ In its final report, the Royal Commission made 20 recommendations specific to OOHC, which address:

- » data collection and reporting;
- » accreditation of OOHC service providers;
- » authorisation of all carers, including foster and kinship carers;
- » an education strategy for children in OOHC;
- » creating a culture that supports disclosure and identification;
- » strengthening the capacity of carers, staff and caseworkers;
- » identifying, assessing and supporting children with harmful sexual behaviours;
- » preventing and responding to child sexual exploitation;
- » increasing the stability of placements;
- » supporting kinship/relative care placements;
- » an intensive therapeutic model of residential care; and
- » developing and implementing plans for Aboriginal and Torres Strait Islander children.⁷⁴

Released in November 2017, the *Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* made several findings and recommendations relevant to children in OOHC, including: intake and care planning, family reunification, and Aboriginal kinship care; the crossover of children from OOHC into youth detention; and the need to broaden the jurisdiction of and expand the resources assigned to the Northern Territory Childrens Commissioner, to ensure adequate oversight of the territory's child protection system.⁷⁵

In response to the evident strains on child protection systems nationwide, as well as the findings of the two Royal Commissions, state and territory governments are implementing plans and frameworks for major reforms or system changes. Whilst implementation details vary, a recent report by the Australian Institute of Family Studies noted that Australian jurisdictions share markedly similar reform goals, which include:

- » diverting children from statutory child protection;
- » reducing re-reporting to statutory child protection;
- » increasing exits from OOHC;
- » reducing the number of children in OOHC;
- » improving outcomes for children in OOHC and care leavers; and
- » reducing the over-representation of Aboriginal children in the child protection system.⁷⁶



72 Commonwealth of Australia, *National Plan to Reduce Violence Against Women and their Children 2010 – 2022*, 2009

73 Royal Commission into Institutional Responses to Child Sexual Abuse, *Consultation Paper: Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, March 2016

74 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Preface and Executive Summary*, December 2017

75 Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report*, Volume 3A

76 Sarah Wise, 2017, *Developments to strengthen systems for child protection across Australia*, CFCA Paper No. 44, Child Family Community Australia, Australian Institute of Family Studies

3.2 Tasmanian reforms

Reforms of the Tasmanian child protection system have been ongoing over recent years, but have recently gathered pace with the launch of two major reform processes: the OOHC reforms and the 'Strong Families – Safe Kids' initiative. The proposed reforms to OOHC, announced in 2014, flagged the Tasmanian Government's aspiration to make the system "evidence-informed, needs-based, planned, and strategic", introducing a "comprehensive continuum of care".⁷⁷ The *Strategic Plan for Out of Home Care in Tasmania 2017-2019* brings together several actions and initiatives which are "designed to focus effort on ensuring the delivery of out of home care services in Tasmania is planned and coordinated to meet the needs of children and young people".⁷⁸ The plan outlines five strategies:

- » leading an accountable system;
- » defining and delivering quality care;
- » building the OOHC system;
- » delivering a safe OOHC system; and
- » improving outcomes for children and young people in OOHC.⁷⁹

Monitoring of child protection by the Department of Health and Human Services is expected to be further strengthened by three monitoring frameworks currently under development: the *Out of Home Care (OOHC) Outcomes Framework*; its related *Quality and Accountability Framework*; and a *Quality Improvement Framework* for Children and Youth Services.

In 2016, the Tasmanian Government launched the 'Strong Families – Safe Kids' initiative, providing \$20.5m over four years for the implementation of the first phase of the redesign.⁸⁰ Planned reforms include:

- » refocusing the child protection intake service into an advice and referral service;
- » establishing a cross-government service coordination model for children at risk;
- » additional intensive family support services;

- » services and support for children in government schools, and child and family centres;
- » additional staffing resources for child protection; and
- » improvements to information technology.⁸¹

In particular, the additional intensive family support services listed above will be delivered via Intensive Family Engagement Services, which commenced with a pilot in early 2018 and aims to prevent the imminent separation of children from their primary caregivers by providing services for 15-20 hours per week over approximately 12-20 weeks, directed towards improving family functioning and parenting skills.⁸²

Another element of the 'Strong Families – Safe Kids' initiative is the development of the Tasmanian Child and Youth Wellbeing Framework, which is informed by *The Nest* – a framework of child and youth wellbeing developed by the Australian Research Alliance for Children and Young People (ARACY).⁸³ The Tasmanian Child and Youth Wellbeing Framework consists of six domains: being loved and safe, being healthy, participating, having material basics, learning, and having a positive sense of culture and identity.⁸⁴

In addition to these two reform processes, other initiatives include:

- » a comprehensive, internal review of compliance processes for Child Safety Services;
- » establishment of a Serious Events Review Team (SERT) within Children and Youth Services; and
- » additional funding, announced in the 2016-17 State Budget, for immediate stabilisation and upgrades to the Child Protection Information System (CPIS), the design of which will include integration of a range of data systems. This forms part of the Tasmanian Government's response to the Coroner's recommendations following the inquest under the *Coroner's Act 1995 (Tas)* into the death of a child known to Child Safety Services.⁸⁵

77 Tasmanian Government, Children and Youth Services, *Out of Home Care Reform in Tasmania*, 2014, p.3

78 Tasmanian Government, Department of Health and Human Services, Children and Youth Services, *Strategic Plan for Out of Home Care in Tasmania 2017-2019*, 2017, p.4.

79 Tasmanian Government, Children and Youth Services, *Strategic Plan for Out of Home Care in Tasmania, 2017-2019*, 2017

80 Tasmanian Government, Department of Health and Human Services, *Redesign of Child Protection Services Tasmania, 'Strong Families – Safe Kids'*, Report, 2016

81 Ibid

82 Tasmanian Government, *Update: 'Strong Families – Safe Kids' Implementation Project and Out of Home Care Reform*, December 2017

83 ARACY, *The Nest in Action*, 2017, <https://www.aracy.org.au/the-nest-in-action/in-aracy>, accessed at 18 December 2017

84 Tasmanian Government, *Tasmanian Child and Youth Wellbeing Framework*, http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0004/250987/Child_and_Youth_Wellbeing_Framework.pdf, accessed 1 December 2017

85 Tasmanian Government, *Response to the Recommendations of Coroner Olivia McTaggart Following the Holding of an Inquest Under the Coroner's Act 1995 (Tas) into the Death of BJay Adam Johnstone*, July 2017

Further to this, during the State Election in March 2018, the Tasmanian Liberals committed a majority Liberal Government, in its first 100 days of a second term, to “begin extending care for young people in Out of Home Care to 21 years” and “commence consultation and development of the new foster care allowance program, readying for implementation by October 2018”.⁸⁶ Acknowledging the longstanding challenges facing the Tasmanian child protection system, the former Commissioner for Children and Young People, Mark Morrissey, made seven major recommendations in his January 2017 report, *Children and Young People in Out of Home Care in Tasmania*, intended to advance reform efforts. (Refer to Appendix 4 for the full recommendations.) All seven recommendations were accepted by the Tasmanian Government, and the Department of Health and Human Services has commenced implementation of them. Initiatives already completed or underway include:

- » developing a strategic plan for the proposed OOHC reforms;
- » designing an outcomes framework for the provision of OOHC care in Tasmania;
- » appointing an advocate for children and young people in OOHC; and
- » establishing a visitor program for children and young people in OOHC.

Other current policy initiatives of the Tasmanian Government are relevant to the child protection system in general and OOHC in particular. In 2017, the Tasmanian Government released the *Youth at Risk Strategy* which aims to improve outcomes for young people at risk, with a particular focus on those young people who have come into contact with Child Safety Services or Youth Justice.⁸⁷ Another strategy, *Tasmania’s Family Violence Action Plan 2015-2020*, commits the Tasmanian Government to supporting families, children and young people affected by violence, through providing:

- » support to children and young people in schools and Child and Family Centres;
- » counselling to children and young people;
- » additional crisis accommodation; and housing support options for children and young people affected by family violence.⁸⁸

This is particularly significant because family violence is a major driver for children entering OOHC in Tasmania.

In addition, Tasmania’s new *Strategy for Children – Pregnancy to Eight Years 2018-2021*, and the development of the B4 Early Years Coalition in the Department of Education, have the potential to impact, at the population level, on the parenting capability of Tasmanian parents and the wellbeing of Tasmanian children, including those in OOHC.




86 Tasmanian Liberals, *Majority Liberal Government: 100 Day Plan*, March 2018, <https://www.tas.liberal.org.au/sites/default/files/First%20100%20Days.pdf>, accessed 15 March 2018

87 Government of Tasmania, *Youth at Risk Strategy* http://www.dhhs.tas.gov.au/youth/youth_justice/youth_at_risk, accessed 1 December 2017

88 Government of Tasmania, *The Safe Home Safe Families, Tasmania’s Family Violence Action Plan 2015-2020*, 2014



A hand holding a yellow cube with a red wire loop around it, set against a background of colorful geometric shapes.

4. Monitoring a complicated, complex, and fluid system

Three observations can be made about the nature of OOHC systems which are relevant to the task of designing a program of independent, systemic monitoring of OOHC in Tasmania. These features of OOHC are not inherently problematic; rather, they point to a need to employ monitoring strategies and methods which acknowledge these features, so as to ensure that the planned monitoring is rigorous, valid, and feasible. Firstly, an OOHC system is *complicated*. A complicated program is characterised by multiple components, multiple agencies, and multiple causal strands.⁸⁹ These complications are reflected in an OOHC system in several ways. OOHC operates alongside early intervention and family support services, intake, and investigation within the child protection system; children and young people in OOHC have moved through these other elements of the system before entering OOHC. Accordingly, the operation of other elements of the child protection system has flow-on effects for OOHC, including the number of children who are in OOHC or enter it at any particular point in time. An OOHC system is complicated in other, additional ways: it is made up of multiple care modalities, including foster care, kinship care, and residential care; and it is implemented by multiple organisations, both government and non-government.

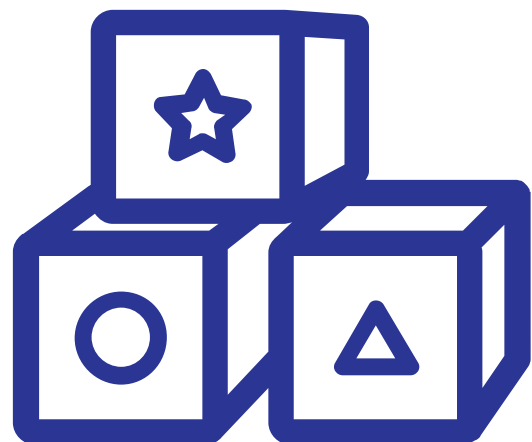
As well as being complicated, an OOHC system is *complex*. A complex program is characterised by: “recursive or reinforcing causal loops”, in which program outcomes influence subsequent activities; tipping points, in which a small change can make a big difference; and outcomes which emerge over time.⁹⁰ For example, a substantiation of neglect or abuse may lead to a child’s admission to OOHC, which then informs subsequent child protection activities such as reunification. As well, relatively minor interventions with families can make a big difference to the lives of children at risk of abuse or neglect; and longer-term outcomes, such as a child in OOHC subsequently living as an independent adult, generally unfold over many years and are not always readily predictable.

In addition to the OOHC system being complicated and complex, it also *fluid*: in most jurisdictions of Australia, the OOHC system is characterised by a very high degree of flux and change. There are multiple comprehensive reform processes underway at the state and territory level, in addition to the national frameworks, policies, and standards, and recent Royal Commissions.⁹¹ While worthwhile and promising, these new policy initiatives and reforms have the potential to generate unprecedented levels of change and uncertainty for people and organisations working within OOHC systems; and the outcomes of these initiatives are not yet fully realised.

Experience elsewhere with monitoring complicated, complex, and fluid programs demonstrates several means of productively engaging with these program features in order to generate a robust and feasible approach to monitoring. These strategies include:

- » initially identifying general principles rather than highly detailed plans;
- » identifying multiple options for monitoring;
- » approaching monitoring as a portfolio of different approaches; and
- » conducting iterative monitoring with short feedback loops which are timed to inform the next monitoring cycle.⁹²

All of these strategies have been incorporated into the Commissioner’s monitoring of OOHC in Tasmania, as detailed below.



89 Patricia Rogers, “Using programme theory to evaluate complicated and complex aspects of interventions”, *Evaluation*, 14(1), pp. 29-48

90 Ibid

91 Royal Commission into Institutional Responses to Child Sexual Abuse, 2017 and The Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017

92 Anne L. Buffardi, *When Theory Meets Reality: Assumptions, Feasibility and Implications of a Complexity-Informed Approach*, Methods Lab, Overseas Development Institute, Better Evaluation, and Department of Foreign Affairs and Trade, 2016

5.

The Monitoring Program



5.1 Expert advice for monitoring OOHC

In December 2017, the Interim Commissioner appointed an Expert Panel for the Monitoring Program, initially for a term of twelve months, to provide high-level technical expertise and strategic advice to the Commissioner for this program. Members of the panel were appointed because of their expertise in the areas of child protection; education (particularly alternative education programs and programs for children at risk of disengagement from the education system); engagement with and participation of children and young people; and monitoring and evaluation. The Panel members are:

- » Professor Daryl Higgins, Institute for Child Protection Studies, Australian Catholic University;
- » Professor Kitty te Riele, Peter Underwood Centre, University of Tasmania;
- » Professor Sharon Bessell, Crawford School of Public Policy, Australian National University; and
- » Dr Greet Peersman, the Australia and New Zealand School of Government (ANZSOG).

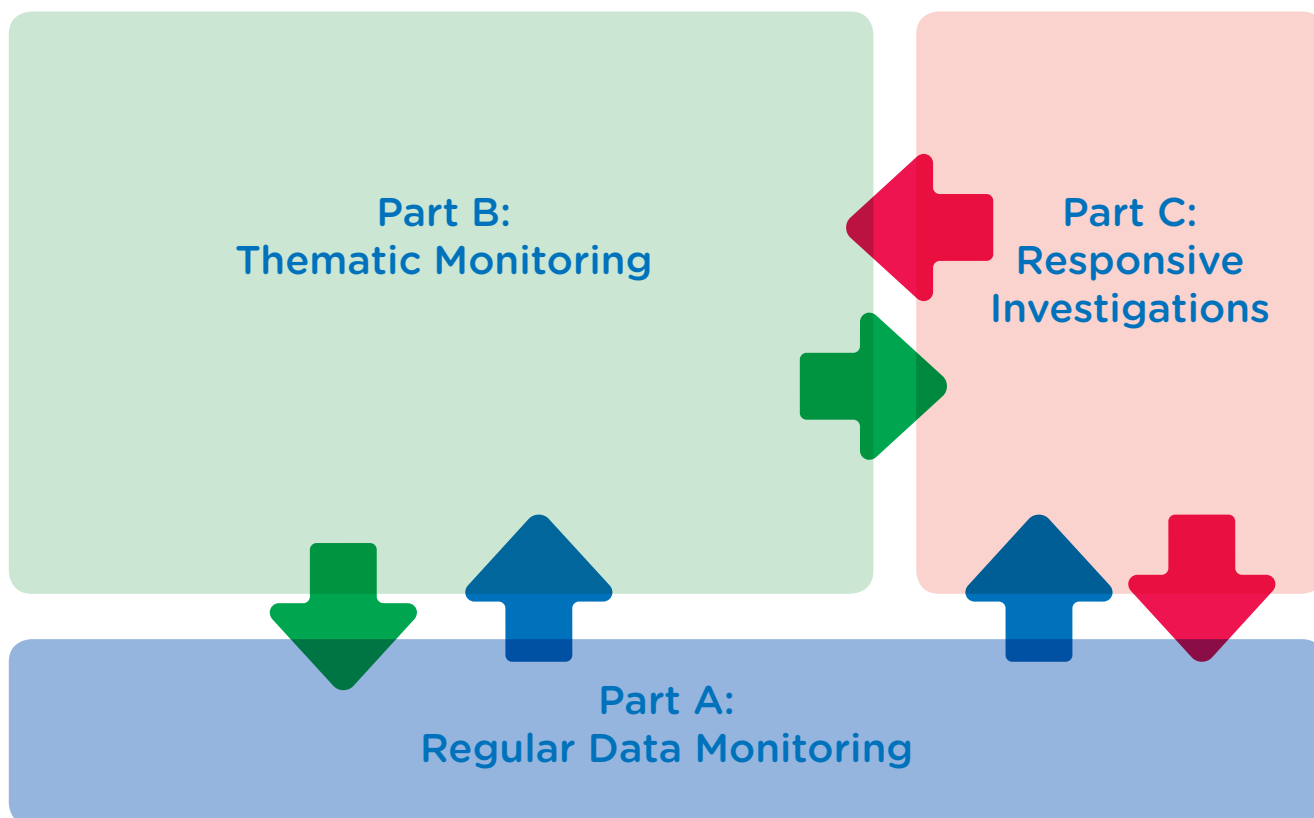
5.2 The structure of the Monitoring Program

5.2.1 Overview

In view of the complicated, complex, and fluid nature of the OOHC system in Tasmania, the Monitoring Program will be structured as a tripartite framework. It will incorporate three interconnected monitoring approaches in a single, comprehensive, and fully integrated framework, as illustrated in Figure 1.

This diagram is intended to represent the interrelated nature of the components of the Monitoring Program. The arrows in the diagram represent the flow of data and contextual information gathered, and analytical conclusions reached, during implementation of monitoring activities. As illustrated by the diagram, it is envisaged that data, contextual information, and analytical conclusions from each component of the Monitoring Program (Part A, Part B, and Part C) will inform the implementation of each of the other components.

Figure 1: The structure of the CCYP OOHC Monitoring Program



5.2.2

Part A: Regular Data Monitoring

Monitoring of OHHC data was flagged by Commissioner Morrissey in his January 2017 report into OOHC in Tasmania – specifically, he recommended the establishment of independent, external oversight and monitoring of the OOHC system, including by providing the Commissioner for Children and Young People with regular reports on compliance with Standards and other agreed indicators of the wellbeing of children and young people in Tasmania. This defined form of monitoring will entail the regular, routine flow of a discrete set of information to the Commissioner on specified matters relevant to OOHC – from, for example, the Department of Health and Human Services and/or from non-government organisations providing OOHC services in Tasmania. Although Regular Data Monitoring will make up a relatively small part of the Monitoring Program, it is significant because it is intended to inform, in an ongoing and iterative manner, the focus of monitoring undertaken in Thematic Monitoring (Part B), as well as Responsive Investigations (Part C).

5.2.3

Part B: Thematic Monitoring

This component will, most likely, be the largest component of the Monitoring Program. Each year, monitoring activities in this component will be focused on a different theme, according to the six domains of the Tasmanian Government's *Child and Youth Wellbeing Framework* and the proposed *OOHC Outcomes Framework*: being loved and safe, being healthy, participating, having material basics, learning, and having a positive sense of culture and identity. The theme for Year 2 of the Monitoring Program is under development; it will be described in the forthcoming Monitoring Plan, which will be released in mid-June 2018.

It is anticipated that for Year 3 and Year 4, different domains will be chosen by the Commissioner as the thematic focus for monitoring activities in each year. Informed by current reform processes, policy and program initiatives, and newly identified areas of opportunity, thematic monitoring will entail an in-depth focus on a particular theme, within the broader context of the OOHC system. It is anticipated that monitoring activities will include case studies of particular topics, employing mixed methods of monitoring to allow for an in-depth exploration of the policies and practices, experiences, and outcomes for children and young people in OOHC relevant to that year's theme.

In addition to the annual thematic focus, monitoring in Part B will be guided by the cross-cutting consideration of children and young people's participation, which is understood as children and young people having their voices heard and their active engagement in decision-making in relation to their own lives. It is anticipated that this cross-cutting consideration will be consistent over Years 2, 3, and 4 of the program.

5.2.4

Part C: Responsive Investigations

In this component of the Monitoring Program, the Commissioner, whether utilising "own motion" investigatory powers or undertaking an investigation at the request of the Minister, may dedicate resources to undertake a targeted, in-depth investigation of a particular issue in OOHC. Responsive monitoring will allow the Commissioner to respond to any emergent issues of concern arising in the fluid policy and program environment; and also allow for in-depth enquiry of the complex factors leading to a particular set of outcomes for children and young people in OOHC. This type of monitoring emphasises accountability towards achieving the best possible results and avoiding harm for all children in OOHC, especially those considered most vulnerable.

5.2.5 Monitoring considerations

It is important to note that the Commissioner's monitoring of OOHC will be systemic in nature. That is, it will be concerned with monitoring aggregated outcomes of children and young people (cognisant of disaggregation by age, sex, etc.); as well as monitoring processes or features of systems which have led to those outcomes. In this sense, systemic monitoring is distinct from monitoring of individual outcomes or experiences which is directed towards advocacy for individuals. Similarly, systemic monitoring is concerned with the ways in which processes operating within a system have contributed to particular outcomes, rather than being concerned with, for example, the professional practice of individuals in isolation.

Broadly speaking, systemic monitoring can be approached in two ways: (1) gathering, linking, aggregating or analysing existing data held by government or service providers; and (2) collecting new data through methods such as surveys, interviews or document reviews. The Children's Commissioner for England recently outlined an approach to monitoring activities which usefully emphasises the need to balance the use of pre-existing data with collecting new data, whilst keeping in mind the burdens that monitoring can impose:

We do not wish to add undue burdens upon local authorities and other agencies, but rather to make the most of data that is already collected. However, it is apparent that much of what we know matters to children in care is not recorded systemically and centrally, so approaches based on linking and analysing existing data will only take us so far. We will therefore work with others to improve what is recorded and how it is used, but we will also seek to ensure that the result of that minimise or reduce burdens while manifestly adding value.⁹³

Importantly, whilst monitoring activities conducted by the Commissioner for Children and Young People may necessitate stakeholders to undertake additional work or find new ways to work collaboratively, the aim of the Monitoring Program is to bring substantive benefits to all stakeholders. Monitoring will be directed toward policy-oriented *learning and improvement* for government and non-government organisations engaged in OOHC, rather than having a focus on highlighting any errors or shortcomings. To this end, the Monitoring Plan will include a detailed learning strategy which will outline means of embedding learning into the Monitoring Program. Learning mechanisms will include ensuring that monitoring reports include relevant, practical, and useful recommendations derived from evaluative conclusions. Consideration will be given to the Commissioner hosting 'learning events' to bring together stakeholders to consider evaluative conclusions, identify lessons, and formulate recommendations arising from the Monitoring Program.⁹⁴

In order to avoid duplication of effort, the Commissioner will seek to ensure that the Monitoring Program's activities are cognisant of monitoring activities undertaken by relevant Tasmanian Government agencies, including quality improvement activities. As well, in accordance with the Monitoring Program's guiding principles of being 'relevant', and 'responsive and flexible' (as described in section 1.3.2 above), the Monitoring Plan will incorporate a contingency plan, which will outline options

for adapting or modifying monitoring strategies and activities, in order to respond to significant changes in contextual factors such as, inter alia, new government policies, programs, or practices.

The Commissioner is cognisant of the practical implications which arise from making a commitment to child centred practice for monitoring OOHC. Accordingly, the Commissioner has commenced production of a child-friendly version of this Conceptual Plan, and will also involve children and young people in monitoring activities where this is appropriate and feasible.



93 Children's Commissioner for England, *Stability Index: Overview and Initial Findings*, April 2017

94 Anne Markiewicz & Ian Patrick, *Developing Monitoring and Evaluation Frameworks*, Sage Publications, Thousand Oaks, 2016

A person with dreadlocks is standing on an outdoor basketball court, balancing a basketball on their right foot. They are wearing a blue t-shirt, black pants, and black sneakers. The background shows a chain-link fence and trees. The text '6. The monitoring cycle and indicative timeframes' is overlaid on the image in white, with the number '6' circled in red.

6. The monitoring cycle and indicative timeframes

6.1 Phases of monitoring

6.1.1 Overview

The Monitoring Program will be implemented via an iterative, cyclical process. Each year's monitoring findings will inform the development of the subsequent year's evaluative questions and focus of monitoring activities. The first iteration of the monitoring cycle consists of five phases:

- (1) Laying the foundations
- (2) Designing the Monitoring Program and documenting its design in the Monitoring Plan
- (3) Conducting monitoring activities
- (4) Reporting on findings
- (5) Reviewing and revising the Monitoring Plan for the next year.

6.1.2 Phase 1: Laying the foundations

The purpose of the first phase of the monitoring cycle is to provide a firm conceptual foundation for the monitoring activities to be implemented in future. The publication of this document represents the completion of this first phase of the monitoring cycle. Activities in this phase included: understanding the policy and program context and learning from monitoring already underway; determining the principles underpinning the Monitoring Program; and developing the Conceptual Plan for the monitoring.

6.1.3 Phase 2: Designing the Monitoring Program

The purpose of this phase of the monitoring cycle is to map out what questions will be asked, and what monitoring activities will be undertaken. Activities to be completed during this phase include: drafting the Monitoring Plan, including the evaluative questions and focus of the monitoring activities; seeking feedback and technical advice from the Expert Panel and stakeholders, including the Tasmanian Government; and finalising and releasing the Monitoring Plan for implementation in the 2018-2019 financial year. In subsequent years, the monitoring will omit phases 1 and 2 of the cycle, instead completing phases 3-5 each year.

6.1.4 Phase 3: Conducting monitoring activities

This phase of the monitoring cycle entails seeking answers to the evaluative questions generated in Phase 2, by conducting the monitoring activities detailed in the Monitoring Plan. Monitoring activities may include, but will not be limited to:

- » monitoring changes in policy direction or service delivery, as well as wider factors in the community that may flow on to OOHC;
- » collating and analysing data collected by the Department of Health and Human Services and service providers of OOHC;
- » collecting and analysing qualitative and quantitative data via such methods as interviews, focus groups, or surveys; and
- » case file reviews to investigate systemic issues.

When these monitoring activities are either untested or entail new cooperative arrangements between stakeholders, the Commissioner may conduct a 'data dress rehearsal', which would allow monitoring activities to be practiced and trialled, and lessons learnt, prior to implementing them at full scale.

6.1.5 Phase 4: Reporting on findings

This phase of the monitoring cycle will have a regular component, in the form of an Annual Monitoring Report at the end of each financial year; and a flexible component, in the form of supplementary monitoring reports as required, for example to allow for timely reporting of findings from an investigation. The reports will communicate monitoring findings in a concise and accessible format, and will include well-informed and realistic recommendations developed following informal critical reflection of the findings with stakeholders. Findings will be disseminated according to a Communication Plan via various means, including reports, briefing papers, media communication, presentations, visual formats, and social media. Where appropriate, the Commissioner will endeavor to provide reports in formats which are friendly to children and young people, and suitable for providers of OOHC services, including Government agencies, non-government agencies, and practitioners.

It is important to note the requirement in the CCYP Act for a person to be given the opportunity to address and respond to adverse comments in a report of the Commissioner.⁹⁵ Furthermore, it is open to the Commissioner to table his or her reports in the Tasmanian Parliament.⁹⁶

6.1.6 Phase 5: Reviewing and revising the Monitoring Plan

The Monitoring Plan will be reviewed and updated each year as needed, during the fourth quarter of each financial year, in preparation for the conduct of monitoring activities in the next financial year. This review process may entail gathering feedback from the Tasmanian Government, and other members of the Tasmanian Parliament, service providers, advocacy organisations, the Expert Panel, practitioners, and children and young people.

6.2 Timeframes

Anticipated timeframes for the first monitoring cycle, which commenced in the second quarter of the current financial year, are detailed in Table 9 below.

Table 9: Anticipated timeframes for the first monitoring cycle

Phase	Quarterly timeframe
1: Laying the foundations	Q2 and Q3 of 2017 – 2018 Financial Year
2: Designing the Monitoring Program	Q3 and Q4 of 2017 – 2018 Financial Year
3: Conducting monitoring activities	Q1 – Q4 of 2018 – 2019 Financial Year
4: Reporting on findings	Q1 – Q4 of 2018 – 2019 Financial Year
5: Reviewing and revising the Monitoring Plan	Q4 of 2018 – 2019 Financial Year



⁹⁵ Commissioner for Children and Young People Act 2016, s. 21

⁹⁶ Commissioner for Children and Young People Act 2016, s. 19 and s. 22



Appendices



Appendix 1: Independent systemic monitoring of out-of-home care in other jurisdictions, 2017-2018⁹⁷

Jurisdiction	Relevant Functions	Activities	Independence
<p>ACT</p> <p>Public Advocate and Children and Young People Commissioner, Human Rights Commission</p> <p><i>Human Rights Commission Act 2005</i></p>	<p>Oversight of out-of-home care (OOHC) and child protection</p>	<p>In the ACT, oversight of OOHC and child protection is provided by the Office of the Public Advocate and the Children and Young People Commissioner. The Public Advocate advocates for the rights of children and young people and also has functions under the <i>Children and Young People Act 2008 (ACT)</i>. The Public Advocate must be notified if any reports of abuse are made regarding a child in OOHC. The Public Advocate will then monitor action taken in response to the incident.</p> <p>The Children and Young People Commissioner reviews services for children and young people and provides advice to government on how to improve services</p>	<p>The Commission is not subject to the direction of anyone else in relation to the exercise of a function under the Act, except when directed by the Minister to inquire into and report on a particular matter (s. 16).</p>
<p>Northern Territory</p> <p>Children's Commissioner</p> <p><i>Children's Commissioner Act 2013</i></p>	<p>Systemic monitoring of the care and protection of children, and undertaking inquiries</p>	<p>The Children's Commissioner has broad functions which include systemic monitoring of the care and protection of children and undertaking inquiries. Individual complaints regarding OOHC and child protection are also dealt with by the Commissioner.</p> <p>As well as complaints handling, the Commissioner has extensive monitoring responsibilities regarding the care and protection of children such as the implementation of government decisions, administration of the <i>Care and Protection of Children Act</i>, and the way the department deals with allegations of abuse in OOHC.</p>	<p>The Commissioner is an independent statutory office which is not subject to the direction of anyone in relation to the way its functions are performed (s. 11).</p>
<p>NSW</p> <p>Advocate for Children and Young People</p> <p><i>Advocate for Children and Young People Act 2014</i></p>	<p>Systemic monitoring</p>	<p>The Advocate focuses on systemic issues facing children and young people, giving priority to the interests and needs of those who are vulnerable and disadvantaged, and promoting their participation (s. 15). At the Advocate's request or on the Minister's own initiative, the Minister may ask the Advocate to conduct special inquiries into particular issues affecting children or young people (s. 24)</p>	<p>The Advocate is an independent statutory office (s. 10) which reports directly to the Parliamentary Joint Committee on Children and Young People (ss. 32, 37).</p>

⁹⁷ Current as at 1 January, 2018.

Jurisdiction	Relevant Functions	Activities	Independence
<p>NSW</p> <p>Children’s Guardian</p> <p><i>Children and Young Persons (Care and Protection) Act 1998</i></p>	<p>Oversight and monitoring of OOHC service providers in NSW</p>	<p>The functions of the Children’s Guardian include promoting the best interests of all children and young persons in statutory OOHC and ensuring their rights are safeguarded and promoted. The Children’s Guardian accredits and monitors designated agencies and adoption providers against the NSW Child Safe Standards for Permanent Care and maintains the NSW Carers Register for authorised carers. The functions also include registration and monitoring of organisations that provide or arrange voluntary OOHC. The Children’s Guardian also encourages organisations to develop their capacity to be safe for children and provides education and support to organisations on child-safe practices and child-safe organisations.</p>	<p>The Children’s Guardian is an independent statutory position which reports directly to the Minister for Family and Community Services.</p>
<p>NSW</p> <p>Ombudsman</p> <p><i>Ombudsman Act 1974</i></p>	<p>Systemic monitoring</p>	<p>As well as complaints handling, the NSW Ombudsman conducts audits of OOHC and oversees the Department’s handling of reportable conduct allegations.</p>	<p>The Act does not explicitly refer to independence; however the website states that the NSW Ombudsman is an independent and impartial watchdog.</p>
<p>Queensland</p> <p>Family and Child Commission</p> <p><i>Family and Child Commission Act 2014</i></p>	<p>Oversight of the child protection system</p>	<p>The QFCC monitors, reviews, and reports on the child protection system from a systemic perspective. The QFCC is required to provide an annual report on the performance of the child protection system. The Commissioner is not involved in any individual advocacy or investigations.</p>	<p>The Commissioner is subject to the directions of the minister in performing the Commissioner’s functions under the Act (s. 22).</p>
<p>South Australia</p> <p>Guardian for Children and Young Persons</p> <p><i>Children and Young People (Oversight and Advocacy Bodies) Act 2016</i></p>	<p>Oversees the circumstances of children in OOHC – systemic and individual</p>	<p>The Guardian monitors residential care through the use of surveys, reviews of records, and informal visits. The Guardian may inquire into and provide advice to the Minister in relation to system reform to improve the quality of care, and may investigate and report matters referred by the Minister. The Guardian audits a sample of the annual reviews that are held for children and young people in long-term state care, monitoring the quality of their care and the effectiveness of case planning in meeting their needs. Observations during monitoring can sometimes lead to advocacy on systemic issues, as well as individual advocacy.</p>	<p>The Guardian is independent of direction or control by the Crown or any Minister or officer of the Crown (s. 21).</p>

Jurisdiction	Relevant Functions	Activities	Independence
<p>Victoria</p> <p>Commission for Children and Young People</p> <p><i>Commission for Children and Young People Act 2012</i></p>	<p>Systemic oversight of OOHC and child protection</p>	<p>The Commission provides advice to Ministers and others regarding the provision of services to children and child-safety, conducts inquiries into, inter alia, the safety and wellbeing of an individual or group of vulnerable children or young people and systemic issues in the provision of services to vulnerable children and young people. The Commission also monitors reports of adverse incidents of children in out of home care, and promotes the provision of out of home care services that encourage the active participation of children in decisions that affect them. Victoria also has a Commissioner for Aboriginal Children and Young People to oversee policies and practices that affect Aboriginal children and young people. The main provisions in the <i>Commission for Children and Young People Act 2012</i> (Vic) that relate to the Commission's systemic monitoring of OOHC functions are: s. 28 Functions in relation to out of home care; s. 37 Inquiry into individual child or young person or group of children or young people; s. 39 Inquiry concerning the provision of services; and s. 60A Disclosure of information by the Secretary.</p>	<p>The Commission must act independently and impartially in performing its functions (s. 8). The Commission reports to the Minister and the Victorian Parliament.</p>
<p>Victorian Ombudsman</p> <p><i>Ombudsman Act 1973</i></p>	<p>Systemic and individual investigation of children in care</p>	<p>The Ombudsman has jurisdiction to investigate complaints by a child or young people in care. The Ombudsman can also commence an investigation into a particular matter using 'own motion' powers, without having received a specific complaint.</p>	<p>The Act does not explicitly refer to independence; however the website states that the Victorian Ombudsman is an independent officer of the Victorian Parliament.</p>
<p>Western Australia</p> <p>Commissioner for Children and Young People</p> <p><i>Commissioner for Children and Young People Act 2006</i></p>	<p>Systemic monitoring and review</p>	<p>The Commissioner is responsible for monitoring and reviewing legislation, policies, practices and services affecting the wellbeing of children and young people. The Commissioner also monitors the handling by government agencies of complaints made by children and young people, including any trends. The Commissioner may also conduct special inquiries into matters affecting the wellbeing of children and young people, on his or her own initiative or at the request of the Minister. The Commissioner does not investigate or otherwise deal with individual complaints.</p>	<p>The Commissioner is an independent statutory office not subject to direction by the Minister, except where the Minister has given directions in relation to general policy to be followed (ss. 25,26).</p>
<p>New Zealand</p>	<p>Systemic monitoring and assessing</p>	<p>Monitors the services provided under the <i>Children, Young Persons and their Families Act 1989</i>. The Act gives the Commissioner three functions: monitoring assessing and reporting on services provided under the Act; advocating for the interests, rights, and wellbeing of children; and raising awareness of and advancing the United Nations <i>Convention on the Rights of the Child</i>.</p>	<p>The Commissioner for Children must act independently when performing his or her statutory functions (s. 12(2)).</p>

Appendix 2: Relevant sections of the Commissioner for Children and Young People Act 2016

PART 1 – Preliminary

3. Principles to be observed

- (1) The Commissioner or any other person performing a function, or exercising a power, under this Act, must –
 - (a) do so according to the principle that the wellbeing and best interests of children and young people are paramount; and
 - (b) observe any relevant provisions of the United Nations Convention on the Rights of the Child.
- (2) Subject to subsection (1), this Act is to be administered according to the following principles:
 - (a) children are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;
 - (b) the interests and needs of children and young people who are disadvantaged for any reason or vulnerable should be given special regard and serious consideration;
 - (c) the contributions made by children to the community should be recognised for their value and merit;
 - (d) the views of children on all matters affecting them should be given serious consideration and taken into account;
 - (e) parents, families and communities have the primary role in safeguarding and promoting the wellbeing of children and should be supported in carrying out their role.

PART 2 – Office of Commissioner for Children and Young People

Division 2 – Functions and powers of Commissioner

8. General functions of Commissioner

- (1) The Commissioner has the following functions:
 - (a) advocating for all children and young people in the State generally;
 - (b) acting as advocate for a detainee under the *Youth Justice Act 1997* ;
 - (c) researching, investigating and influencing policy development into matters relating to children and young people generally;
 - (d) promoting, monitoring and reviewing the wellbeing of children and young people generally;

(e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;

(f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally;

(g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them;

(h) such other functions as are prescribed.

- (2) If the Commissioner advises the Minister under this Act or any other Act, the Commissioner must also provide the advice to any other Minister who administers the department, Agency or legislation that is the subject of the advice.
- (3) Unless otherwise specified, the Commissioner must act independently, impartially and in the public interest when performing a function, or exercising a power, under this Act or any other Act.
- (4) For the purpose of performing any function, or exercising any power, the Commissioner may determine when a child is considered a young person for the purpose of the function or power.

...

11. General powers of Commissioner

- (1) The Commissioner has the power to do all things necessary, or convenient, to be done in connection with the performance of his or her functions, and the exercise of his or her powers, under this or any other Act.
- (2) Without limiting subsection (1) , the Commissioner may –
 - (a) require any person to provide information, answer questions, or produce documents, so far as may be relevant to the performance of the functions, or the exercise of the powers, of the Commissioner or the administration of this Act; and
 - (b) require information and data for the purposes of –
 - (i) collating, studying, interpreting and maintaining information in relation to the wellbeing of children and young people in the State; and

(ii) identifying and monitoring trends in respect of the wellbeing of children and young people in the State; and

(c) investigate, and make recommendations in respect of, the systems, policies and practices of organisations, government or non-government, that provide services that affect children and young people; and

(d) investigate, and make recommendations in respect of, the effects of any legislation, proposed legislation, documents, government policies, or practices or procedures, or other matters relating to the wellbeing of children and young people; and

(e) advise and make recommendations, in relation to the rights and wellbeing of children and young people, to Ministers, State authorities and other organisations; and

(f) provide information to other organisations in accordance with this Act or any other Act; and

(g) report publicly on the wellbeing of children and young people in the State; and

(h) exercise such other powers as are prescribed.

(3) In performing a function, or exercising a power, under this Act, the Commissioner –

(a) may regulate any proceedings held under this Act in any manner he or she considers appropriate; and

(b) is not bound by the rules of evidence but may inform himself, or herself, on any matter in any manner the Commissioner thinks fit; and

(c) is not required to hold a hearing as part of an investigation or review, or as part of the performance of any other function, under this Act; and

(d) may investigate, or review, a matter in any manner he or she considers appropriate; and

(e) may hold an investigation, or review, under this Act in public or in private.

12. Power to compel information

(1) If necessary for the performance of a function, or the exercise of a power, the Commissioner may require a person to do any one or more of the following:

(a) to provide information in the format, or manner, specified by the Commissioner, including information that contains identifying details of a child or young person if specifically required by the Commissioner;

(b) to answer questions whether orally or in writing;

(c) to produce documents as specified in the requirement

(2) A person must comply with a requirement of the Commissioner under subsection (1) unless, to do so, would require the person to provide information, answer questions, or produce documents –

(a) in respect of which there is a lawful claim or right of privilege; or

(b) that contain information, communicated to a medical professional in confidence, relating to the physical, mental or psychological health of a person; or

(c) that may incriminate the person in an offence.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(3) In addition to any penalty imposed on a person under subsection (2), a court may make an order requiring the person to provide information, answer questions, or produce documents, to the Commissioner in accordance with the order.

(4) A person complying with a requirement of the Commissioner under subsection (1) or of a court order under subsection (3) cannot, by virtue of complying with that requirement –

(a) be held to have breached any code of professional etiquette or ethics; or

(b) be taken to have departed from acceptable standards of professional conduct; or

(c) be taken to have contravened any confidentiality requirements of any Act.

...

PART 3 – Reporting

20. Other reports

- (1) The Commissioner may, at any time, prepare a report on –
 - (a) any investigation, review or research conducted in the performance of the Commissioner’s functions; or
 - (b) any other matter arising in the performance of those functions; or
 - (c) any other matter or issue relating to children that the Commissioner considers appropriate.
- (2) A report under subsection (1) may include recommendations relating to –
 - (a) changes to written law, draft law, policy, practice or procedure; or
 - (b) the taking of any other action that the Commissioner considers appropriate to safeguard and promote the wellbeing of children.
- (3) The Commissioner must provide the Minister with a copy of the report under subsection (1) within 7 days after the report is finalised.
- (4) The Commissioner may cause a copy of a report under subsection (1) to be laid before each House of Parliament no sooner than 7 sitting-days after a copy of the report has been given to the Minister in accordance with subsection (3).

21. Adverse comments in reports

Despite anything in this Part, the Commissioner must not include a comment in a report that is adverse to a person unless the Commissioner has –

- (a) notified the person in writing of his or her intention to make the comment; and
- (b) allowed the person at least 15 working days to make representations to the Commissioner in respect of the comment before the report is finalised.

22. Publication of reports

- (1) The Commissioner –
 - (a) must publish a version of the report, or such parts of the report as the Commissioner considers appropriate, in a form that is suitable for children unless the Commissioner considers that it is not appropriate to do so; and
 - (b) may publish the report, including a version of the report to be published under paragraph (a), in any manner the Commissioner considers appropriate.
- (2) Despite subsection (1), if the Commissioner intends to lay a report before both Houses of Parliament, the Commissioner must not publish the report until after the report has been laid before both Houses of Parliament.

Appendix 3: National Standards for Out-of-Home Care⁹⁸

Standard 1: Children and young people will be provided with stability and security during their time in care.

Standard 2: Children and young people participate in decisions that have an impact on their lives.

Standard 3: Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people.

Standard 4: Each child and young person has an individualised plan that details their health, education and other needs.

Standard 5: Children and young people have their physical, developmental, psychosocial and mental health needs assessed and attended to in a timely way.

Standard 6: Children and young people in care access and participate in education and early childhood services to maximise their educational outcomes.

Standard 7: Children and young people up to at least 18 years are supported to be engaged in appropriate education, training and/or employment.

Standard 8: Children and young people in care are supported to participate in social and/or recreational activities of their choice, such as sporting, cultural or community activity.

Standard 9: Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings or other family members.

Standard 10: Children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.

Standard 11: Children and young people in care are supported to safely and appropriately identify and stay in touch, with at least one other person who cares about their future, who they can turn to for support and advice.

Standard 12: Carers are assessed and receive relevant ongoing training, development and support, in order to provide quality care.

Standard 13: Children and young people have a transition from care plan commencing at 15 years old which details support to be provided after leaving care.

⁹⁸ Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, *An Outline of National Standards for Out-of-Home Care*, July 2011

Appendix 4: Recommendations from former Commissioner Morrissey's report, January 2017⁹⁹

One: Prioritise the development of a strategic plan and implementation plan for the OOHC reform. Ensure the strategic plan incorporates strong governance and oversight.

Two: More closely integrate the OOHC reform and the CPS Redesign, and provide the resourcing required for successful and ongoing implementation, including by providing dedicated funding for implementation teams.

Three: Establish an independent expert oversight committee to provide assistance and guidance to those implementing the child protection and OOHC reforms, accompanied by robust reporting arrangements on progress.

Four: Establish an ongoing consultative panel of young people who have had experience of the OOHC and child protection systems, and who are therefore well-placed to contribute directly to the reform processes.

Five: Establish independent external oversight and monitoring of the OOHC system, including by providing the Commissioner for Children and Young People with six-monthly reports on compliance with Standards and other agreed indicators of the wellbeing of children and young people in the OOHC system in Tasmania.

Six: Ensure that mechanisms are in place to seek out and listen to the individual voices of children and young people in the OOHC system, including by:

Establishing a visiting program for individual children and young people in OOHC – which incorporates an individual advocacy component.

Reviewing the CSS Policy on visiting children in OOHC and reporting publicly on compliance with it.

Expediting the establishment of a Tribunal in Tasmania vested with jurisdiction that includes decisions made about children's wellbeing in OOHC.

Seven: The Tasmanian Government develop and adopt Standards for the provision of OOHC in Tasmania and provide regular reports on compliance with these Standards.

Noting the work currently being undertaken on child wellbeing as part of the Child Protection Redesign, the Tasmanian Government also develop an Outcomes Framework specific to children and young people in OOHC in Tasmania.

⁹⁹ Commissioner for Children and Young People, *Children and Young People in Out of Home Care*, January 2017





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