

NEWSLETTER

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The Office of the Guardian for Children and Young People advocates for and promotes the best interests of young people and children under the guardianship or custody of the Minister.

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Strengthening the voice and influence of children in state care

I recently had the opportunity to speak with the Legislative Council Select Committee on Statutory Child Protection and Care specifically about the *Children and Young People (Safety) Bill 2017*, following my two written submissions in January and February.

All three submissions were about the children and young people whose interests I represent – the almost 3,400 in state care and those detained in the Adelaide Youth Training Centre.

I would like to share some of the things I said to the Select Committee:

‘Underpinning what we do is the drive to make transparent what is happening for children and young people in state care and to strengthen their voice and capacity to influence what happens in their lives. It is a commitment to the fundamental rights of children and young people.

‘The concepts of safety, best interests and wellbeing of children and young people are not mutually exclusive. It is in a child’s best interests to protect them from harm, protect their rights and promote their development in age, stage and culturally appropriate ways.

‘When children are at risk of harm, or indeed harmed, there must be action to protect and heal. What this looks like should depend on an individual child’s needs in those specific circumstances. Some will need services and supports to maintain them safely within their home and with their parent/s. And it will be in their best interests, and promote their wellbeing, to do so. Sadly, some will need intervention to place them in an alternative environment in order to secure their safety and wellbeing. And it will be in their best interests to do so. We’ve heard that directly from children in care.

‘Legislative reform, including the current Safety Bill, is only a part of the significant change needed to promote the safety and wellbeing of children and young people in South Australia. It does contribute incremental improvements in this overall context and substantial innovations in specific areas (for example the proposed community visitor scheme for children and young people in residential and emergency care). But, legislation alone will not revolutionise the system that children and young people currently live within.’

‘We all have to look at other crucial factors, especially policy reform and organisational culture.

‘In our advocacy and monitoring work we often see a significant disconnection between policy and implementation.

‘The transformation of our child protection and out of home care systems require cooperation and collaboration within government, between government and non-government organisations, with academia and the community ... and we all must listen respectfully to those most directly affected – the children and young people who live this.’



Amanda Shaw
Guardian

What's been done

March – May 2017

Following the Guardian's submissions in January and February regarding the *Children and Young People (Safety) Bill*, the Guardian gave evidence in April to the *Legislative Council Select Committee on Statutory Child Protection and Care in South Australia* about the Bill.

The Office submitted responses to the Child and Adolescent Mental Health Service (CAMHS) organisational restructure and the Commonwealth Government's Joint Standing Committee on the National Disability Insurance Scheme (NDIS) for people with psychosocial disabilities related to a mental health condition.

The Office published an analysis of the [Expenditure on child protection in South Australia 2015-2016, the Snapshot of South Australian Aboriginal and Torres Strait Islander Children and Young People in Care and/or Youth Detention from the Report on Government Services 2017](#) and prepared a report on *Children and Young People in State Care in South Australian Government Schools 2008-2016* for publication shortly.

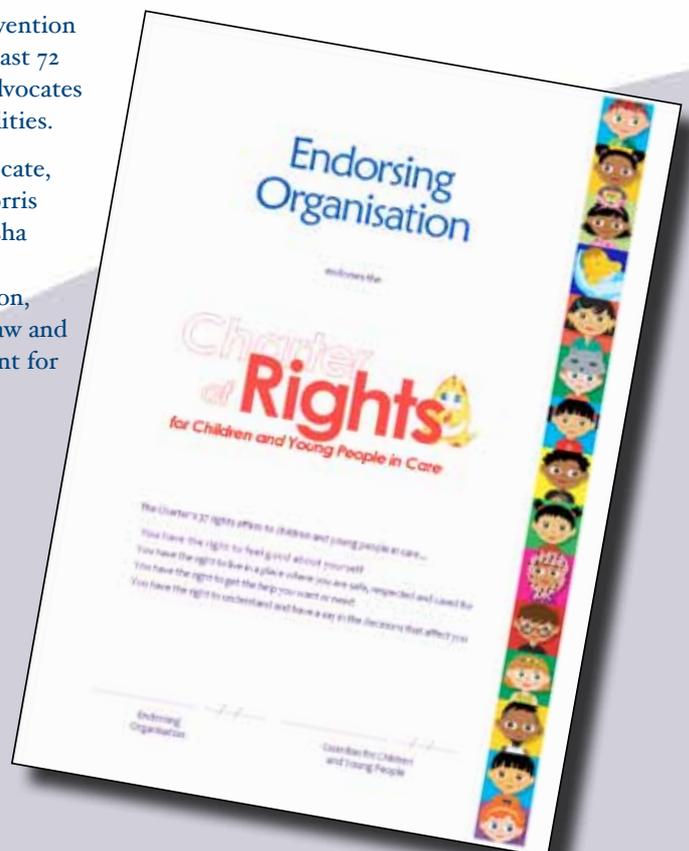
The preliminary work to establish the operations of the *Training Centre Visitor*, as per the *Youth Justice Administration Act 2016* commenced in May. The Office also started work on an education program about their rights for children and young people in residential and emergency care and preparations to trial a community visitor program, both recommendations from the Nyland Royal Commission.

The Guardian welcomed South Australia's inaugural Commissioner for Children and Young People, Helen Connolly, in April and with the Senior Policy Officer, attended the Australian Children's Commissioners and Guardians meeting in Hobart in May.

The Office continues to receive applications from agencies, government, non-government and private, to endorse the revised *Charter of Rights for Children and Young People in Care*. To date, 79 agencies have endorsed the revised Charter, and an additional three have commenced the endorsement process. There are now 418 Charter Champions.

In the first quarter of 2017, the Office received 45 requests for intervention about children and young people under guardianship, involving at least 72 children. The Senior Advocate audited 29 annual reviews and the Advocates made 12 official visits to residential care houses or youth justice facilities.

The Office welcomed the addition of Kate Cameron as Senior Advocate, Sarah-Jayne Meakin as Assessment and Referral Officer, Conrad Morris as Advocate – Aboriginal Children, Zoë Dalton as Advocate and Rasha Dietrich as Senior Project Officer. We farewelled Belinda Lorek (Advocate), who was seconded to the Equal Opportunity Commission, Michelle Hopkins (Advocate), who commenced working in family law and Kendall Crowe (Senior Policy Officer) who moved to the Department for Child Protection.



OPCAT ratification signals a shakeup in SA's youth detention oversight

The oversight of South Australia's Youth Training Centre will be energised by the Australian Government's ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

This coincides with work in South Australia on *Youth Justice Administration Act 2016* initiatives such as the Training Centre Visitor program.

Recent revelations of the abuse of young people in the Don Dale Youth Detention Centre and the treatment of other young people in detention centres across Australia, are likely to have been a catalyst for the Government's decision to ratify. Last year Australians were shocked to view footage showing young men being tear-gassed, spit-hooded and shackled in the Northern Territory's youth detention system. This triggered the [Royal Commission into the Protection and Detention of Children in the Northern Territory](#) and Commonwealth Attorney General George Brandis suggested the scandal may not have occurred if better oversight bodies had been in place.¹

Human Rights Commissioner, Ed Santow, said;
"When a person is detained in prison, a mental health facility, anywhere, they remain human... Protecting their basic dignity is just as important as it was before their detention."²

In 2009, Australia became a signatory of OPCAT, the aim of which is to prevent mistreatment and promote humane conditions in detention by establishing systems for independent monitoring and inspection.

But ratification is a much greater commitment.

Ratification will make the treaty binding on Australia, and will apply to all places of detention including prisons, police cells, juvenile and immigration detention and secure mental health and disability facilities.

[Australian Children's Commissioner Megan Mitchell](#) said, 'We must ensure that we foster a culture of care in our youth justice systems, that is grounded in respect for human rights and the best interests of children and young people.'

Implementing OPCAT will require Australian governments to permit visits from the *United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* to any place of detention within Australia. It will mandate the establishment of an independent *National Preventative Mechanism* and identify suitable independent inspecting bodies to conduct inspections of all places of detention.

Ratification will include a requirement in law to undertake regular preventive visits to specified places of detention.

The Commonwealth Ombudsman in collaboration with the states, territories and other relevant parties, will be in charge of coordinating inspections and oversight in Australia.

South Australia has already made a start in looking at protections for young people in youth detention with the passage of the *Youth Justice Administration Act 2016* in and the adoption of the *Youth Justice Administration Regulations 2016*. Among other things, the Act provides for additional sentencing options for young offenders, a charter of rights for young people in youth justice detention and directs the establishment of an official Training Centre Visitor scheme.

Taking on the role of Training Centre Visitor, Guardian Amanda Shaw says that her Office will be very involved with the OPCAT process in this state.

'I am looking forward to working with the State and Commonwealth Governments over the next few months to ensure that the full range of OPCAT protections are extended to young South Australians,' she said.

When a person is detained in prison, a mental health facility, anywhere, they remain human...Protecting their basic dignity is just as important as it was before their detention.

Human Rights Commissioner,
Ed Santow



¹ *Oversight may Have prevented Don Dale*: AG, SBS 9 February 2017

² *OPCAT: Australia makes long-awaited pledge to ratify international torture treaty*, Alexandra Beech, ABC 9 February 2017

Setting the record straight

Record keeping can be seen as just another chore, the domain of archivists concerned with keywords and disposal schedules or a tedious administrative task for overworked caseworkers.

But for people who have spent a significant portion of their life in the care of institutions, official records can assume a huge significance as they try to craft a personal history and an identity from fragmented memories.

Children who grew up with their families might ask a family member ‘how did you wrap me as a baby’, ‘why did you pick that school for us’, ‘how old was I when I got my first tooth’ or ‘can we look at my kindy book?’ They might trawl shoeboxes of old photos or swipe through an iPhone to look at pictures. They might see certificates of their achievements displayed on the walls of their home alongside pictures of special holidays or treasured relatives. They might uncover birth certificates in bottom drawers or in the backs of filing cabinets alongside old x-rays and school reports.

For children who have been in care with little access to these kinds of resources, formal records can hold large parts of the story of their lives, sometimes the only way to fill in key pieces of the puzzle.

But organisations are not always good at keeping records.

Record keeping has been historically biased towards text, such as case plans, file notes and reports. We often ignored the rich life-information that waited to be interrogated in the photographs, documents and memorabilia that also surrounded a child.

Record keeping is not always sensitively done, either, allowing that records may later be read by the very people who were once their subject.¹ Children and young people are seldom asked to contribute to their own records.

Record keeping historically has been mostly concerned with the needs of the organisation, to record what was needed to conduct the business, rather than considering the future needs of the child.

And records are not always complete. Important conversations are not noted and the reasons for life-changing decisions are sometimes scantily recorded or not recorded at all.

Even when records have been made, the documents have not always been treated with a level of care consistent with their future value to children. Many older records have been misplaced or damaged in fire or floods. A presenter at the recent *Setting the Record Straight for the Rights of the Child* national summit observed cynically that one particular organisation seemed especially prone to flooding.

Where records are made and survive, we are not always good at providing access to them to people who have been in care. Although the right to access their records is now guaranteed in jurisdictions across Australia, people who have tried to access them have not always found it easy. There can be considerable work involved in preparing and presenting records, and some organisations have tried to avoid that work by refusing or delaying requests for access.

Where records are provided, they are frequently redacted, that is, sections are blacked out with the intention of protecting the privacy of third parties. While protecting third parties is laudable, redaction has been inconsistent, sometimes being light and at other times removing so much of a record that it conveys very little of use.

But simply handing over records to a former client does not end an organisation’s responsibility. Presentation of records should be done in a way that assists the recipient to deal with their contents practically and emotionally. Records frequently need to be interpreted. Helping a person to understand the context for a record can be all-important to them constructing a cohesive story around the events that are recorded. Records will frequently trigger emotions or reawaken trauma and having skilled staff on hand to help is also the responsibility of the record keeper.

‘...knowing who you are and your history’ is one of the rights enshrined in the [Charter of Rights for Children and Young People in Care](#). It is based on the understanding that a respectful, comprehensive and vibrant archive of a child’s history can be central to developing a strong identity with lifelong benefits to happiness and wellbeing.

Much more than a dull chore.



¹ The Guardian’s publication ‘[Child sensitive record keeping](#)’ is a useful download.

For abuse to occur, the child's voice must be silenced

For abuse of a child to occur, the first necessary condition is that the child remain silent, that their voice not be heard. This silence may be engineered by the abuser, using their status, fear or shame. It may be engineered by institutions that are passive in protecting children or complicit in covering it up or by adults and peers who are not alert to the signs or do not know how to respond.

A just-released Child Family Community Australia (CFCA) Practice Paper [Protection through participation – Involving children in child safe organisations](#) is a practical guide to how to talk with children about their safety and feelings of safety. The paper is itself based on the [Australian Catholic University's research](#) into how children understand and experience safety in institutions conducted last year for the Royal Commission into Institutional Responses to Child Abuse.



Image by Rebecca Barry

The paper is an excellent resource, suitable for organisations developing their child protection systems and for individual concerned adults. It combines general discussion with some specific and practical advice and tools. It tells us:

- Children want to be in the know. They want to understand if there are risks or troubling events. Adults sometimes minimise this information thinking they are protecting the child but, in the words of one young person, 'They think they should hide that stuff from kids to keep them safe but you feel more scared if you don't know what's happening.'
- Children want to be asked for their views and involved in solutions. Sometimes group discussions are appropriate but some situations, where the level of trust is not high or there is likely to be shame or embarrassment, anonymous reporting via suggestion boxes or surveys may be a way to start the conversation. Involving children in decisions about a wide range of issues that affect them is good practice and should be normal in institutions. It builds confidence in children for when more challenging matters arise for them.
- Adults need to be skilled and calm. They need to be informed about the real risks faced by children, the possible signs of abuse and to know how to approach a child or how to respond if approached. Responses that adults may have heard and learned in their own childhood like 'just grow up', 'walk away' or 'it's not a big deal' can close down approaches by children and end conversations about abuse. Adults must be aware of their own emotional triggers and set them aside to explore a child's disclosures calmly and reasonably.
- Adults need to be available. Children will raise issues more readily with people with whom they have a meaningful relationship and this takes time to build. Opportunities for discussion can occur at unpredictable times, like doing the dishes or driving somewhere in the car, and the adults who are physically and emotionally present are key to hearing a child's concerns.
- Recognise and use the power of peers. The paper says it most succinctly: *'Young people are more likely to listen to peers and those people who have successfully protected themselves or dealt with situations if they arose. Working in partnership with young people to run workshops, teach classes or initiate conversations were all seen as helpful.'*

*Apologies to fans of the usual back page report highlighting the insights and opinions of young people. Our most recent consultation with young people has needed to be rescheduled and will not be available in time for this edition.