

Child and Young Person's Visitor

Annual Report

2018-2019



Government of South Australia

Office of the Guardian
for Children and Young People

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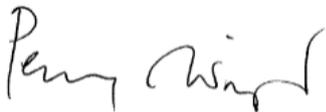
The Hon. Rachel Sanderson, MP
Minister for Child Protection
GPO Box 1072
ADELAIDE SA 5001

Dear Minister

I am pleased to present to you the report of the Child and Young Person's Visitor for the year ended 30 June 2019, as required under section 119(1) of the Children and Young People (Safety) Act 2017.

This report provides information about the work of the Child and Young Person's Visitor for the 2018-19 financial year.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Penny Wright', written in a cursive style.

Penny Wright
Child and Young Person's Visitor

30 September 2019

Notes to this report

Scope

This report refers to the activities of the Child and Young Person's Visitor, a role established by section 117 of the *Children and Young People (Safety) Act 2017*. Section 119(1) of that Act requires the Child and Young Person's Visitor to provide a report to the Minister on the work of the Visitor for the preceding financial year.

The Child and Young Person's Visitor is Penny Wright, who is also the Guardian for Children and Young People, and the Training Centre Visitor.

Ms Wright's appointment to this position was published in the Government Gazette of 13 February 2018, to take effect from 26 February 2018 and expiring on 9 July 2022, or until she ceases to hold office as the Guardian for Children and Young People.

Ms Wright holds the position of Child and Young Person's Visitor 'ex-officio', ie by virtue of holding the position of Guardian.

The establishment of the Visitor role post-dated a project tasked to the Guardian for Children and Young People in 2017 to develop a trial visiting scheme, which is outlined below. The Guardian had been provided with a budget over two years to undertake this project.

No additional budget was allocated to the Guardian subsequent to her appointment as CYP Visitor. For this reason, the Guardian/CYP Visitor has not been in a position to undertake any additional visiting or more generally fulfil her statutory functions beyond those encompassed in the trial project, run by the Guardian.

Accordingly, this report will not include the comprehensive reporting ordinarily provided in an annual report. Details of the Guardian's trial visiting scheme will be included in the Guardian's annual report.

The Office of the Guardian

The Office of the Guardian is the umbrella term used to encompass the unified work and activities of three positions: the Guardian for Children and Young People, the Training Centre Visitor and the Child and Young Person's Visitor.

The activities of the Guardian, the Child and Young Person's Visitor and the Training Centre Visitor are conducted in one location with the same administrative infrastructure.

Glossary

CYP	Children and Young People (Child and Young Person)
CYP Visitor	Child and Young Person's Visitor
CYPV Program	Child and Young Person's Visiting Program
DCP	Department for Child Protection
DEd	Department for Education
GCYP	Guardian for Children and Young People
NGO	Non-Government Organisation
TCV	Training Centre Visitor
<i>Safety Act</i>	Children and Young People (Safety) Act 2017

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1. The role of the Child and Young Person's Visitor

Penny Wright was appointed the inaugural Child and Young Person's Visitor from 26 February 2018. She is also the Guardian for Children and Young People (the Guardian)¹ and Training Centre Visitor (TCV)² and holds all three positions until 9 July 2022.

The Child and Young Person's Visitor (CYP Visitor) is established by Chapter 9 of the *Children and Young People (Safety) Act 2017 (the Safety Act)* and reports to Parliament through the Minister for Child Protection.

The CYP Visitor's role is designed to promote and advocate specifically for the best interests of children and young people who are under the guardianship, or in the custody, of the Chief Executive for Child Protection, and who are living in residential care in South Australia.

'Residential care' denotes a form of care where children and young people live with others in facilities staffed by rostered and paid carers, as distinct from family-based care such as foster or kinship care.

The role of the CYP Visitor also includes monitoring the circumstances of these children and young people and advising the Minister for Child Protection with a view to improving the quality of their care, treatment or control.

Functions and Powers

The CYP Visitor has the following functions, as set out in section 118(1) of the *Safety Act*³:

- conduct visits to, and inspections of, residential care facilities⁴
- communicate with children living in residential care facilities
- promote the best interests of children living in residential care facilities
- act as an advocate for children living in residential care facilities to promote the resolution of issues to do with their care, treatment and control
- inquire into and provide advice to the Minister in relation to any systemic reform needed to improve the care, treatment and control of residents or the management of residential care facilities.

¹ Established by section 21 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2017*.

² Established by section 11 of the *Youth Justice Administration Act 2016*.

³ See the section in full, in Appendix 1.

⁴ In the *Children and Young People (Safety) Act 2017*, residential care facilities are called "prescribed facilities" (section 116).

In fulfilling these functions, the CYP Visitor is required to pay particular attention to the needs and circumstances of residents who are Aboriginal or Torres Strait Islander, or who have a physical, psychological or intellectual disability⁵.

The CYP Visitor must also encourage residents of residential care facilities to express their own views and must give proper weight to those views⁶.

Activity in 2018-2019

When the *Safety Act* was passed by the South Australian parliament in July 2017, the role of the CYP Visitor was established and the Visitor's functions and powers legislated in sections 117-119 of the *Safety Act*, consistent with Commissioner Nyland's Recommendation 137.

The *Safety Act* provisions that are relevant to the CYPV role (including those which establish which facilities come within the meaning of 'prescribed facilities' for the purposes of visiting) commenced in March 2018 and at various stages thereafter as the *Safety Act* was introduced in stages.

Since the commencement of the CYP Visitor's functions and the appointment of Penny Wright as CYP Visitor in February 2018, no additional budget has been allocated to the Office of the Guardian to implement the requirements of the role.

As is discussed below, the Guardian was already undertaking the development of a trial visiting scheme, the 'Child and Young Person's Visiting Program,' and this continued.

The Guardian (as CYP Visitor) has not been in a position to undertake any additional visiting, or more generally fulfil her s 117 statutory functions beyond those encompassed in the trial project.

Accordingly, the current report will not include the comprehensive reporting ordinarily present in an annual report. Details of the Guardian's trial visiting scheme will be included in the Guardian's annual report, which must be presented to the Minister for Child Protection by 31 October 2019.

⁵ S 118(2)(b) *Safety Act*

⁶ S 118(2)(a) *Safety Act*

2. The Guardian's 'Child and Young Person's Visiting Program'

In her report from the SA Child Protection Systems Royal Commission, *The life they deserve*, Commissioner Nyland recommended that the government:

'Legislate to provide for the development of a community visitor's scheme for children in all residential and emergency care facilities'⁷.

In 2017, as part of the SA government's response to the findings of the Royal Commission, 'A fresh start' reform of child protection, the Department for Child Protection (DCP) asked the Guardian for Children and Young People to undertake a:

'two-year pilot visiting scheme for 100 children and young people in residential and commercial care facilities, to be finalised in June 2019'.

The Guardian has been developing and trialling this scheme, called the 'Child and Young Person's Visiting Program,' since then.

The development and implementation of the trial scheme started before the passage of the *Safety Act* and the creation of the CYP Visitor role, and before the Guardian was also appointed to the CYP Visitor role.

The trial scheme was initially scheduled to finish on 30 June 2019 but further funding was provided to enable it to be extended for an additional three months. The trial visiting scheme will cease on 30 September 2019.

Between July 2018 and August 2019, the CYPV Program provided for visits to 97 children. As at 31 March 2019, 421 children and young people lived in residential care.

The Guardian for Children and Young People is in the process of producing a final report on the trial scheme which will be provided to the Department for Child Protection and which will provide information about the structure of the Child and Young Person's Visiting Program, visiting, advocacy and monitoring activities and its outcomes. The final report will include recommendations arising from the results of the trial and a formal 'developmental evaluation' of the program undertaken by Flinders University of South Australia.

⁷ Recommendation 137, *The life they deserve: the Child Protection Systems Royal Commission Report 2016*, p.xli.

These recommendations may assist the government to make decisions as to the implementation of a visiting scheme in the future to enable the CYP Visitor to adequately fulfil the statutory functions of the role.

A summary of the Child and Young Person's Visiting Program final report will form part of the Guardian's Annual Report, to be provided to the Minister by 31 October 2019.

3. Previous 'monitoring' of residential care by the Guardian

Prior to the commencement of the trial visiting scheme in 2017, the Guardian's advocacy team had conducted visits to residential facilities since 2004 to fulfil the Guardian's monitoring function under the *Children's Protection Act 1993*.

The number of children in care grew significantly between 2004 and 2017, with the number of facilities to be visited increasing exponentially from 18 in 2006 to more than 130 in 2017.

In 2017 the Acting Guardian determined that it had become impossible to visit and monitor even a proportion of these facilities satisfactorily, with a team of only three Advocates whose advocacy workload had also increased with the large numbers of children and young people entering care.

With the advent of the trial visiting scheme, the Guardian's 'monitoring visits' to DCP facilities ceased.

4. The future for the CYP Visitor role

With the cessation of the Guardian’s trial visiting scheme on 30 September 2019, no further resources have been allocated to enable the Office of the Guardian to fulfil the significant responsibilities of the CYP Visitor.

The number of facilities to be visited by the CYP Visitor (including both DCP and NGO residential care facilities) is now greater than 180.

In the absence of additional resources, there is currently no capacity within the Guardian’s office to adequately meet the CYP Visitor’s responsibilities.

It is anticipated that the final report of the Guardian’s two year trial CYP Visiting Program will help inform decision-making and planning by government about the structure, arrangements and resourcing that will be necessary to enable the CYP Visitor to fulfil the requirements of the role *in the future*.

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**APPENDIX 1**

The functions of the CYPV are specifically set out in section 118(1) of the *Safety Act*, as follows:

**118—Functions and powers**

- (1) The functions of the Child and Young Person's Visitor are—
  - (a) to conduct visits to, and inspections of, prescribed facilities as required or authorised under this Chapter; and
  - (b) to communicate with children and young people resident in prescribed facilities; and
  - (c) to promote the best interests of the children and young people resident in prescribed facilities; and
  - (d) to act as an advocate for children and young people resident in prescribed facilities and to promote the proper resolution of issues relating to their care; and
  - (e) to inquire into, and provide advice to the Minister relating to, any systemic reform necessary to improve—
    - (i) the quality of care, treatment or control of children and young people resident in prescribed facilities; or
    - (ii) the management of prescribed facilities; and
  - (f) any other functions assigned to the Child and Young Person's Visitor under this or any other Act.
  
- (2) In performing functions under this Act, the Child and Young Person's Visitor—
  - (a) must encourage children and young people resident in prescribed facilities to express their own views and give proper weight to those views; and
  - (b) must pay particular attention to the needs and circumstances of—
    - (i) Aboriginal or Torres Strait Islander children or young people; or
    - (ii) children and young people who have a physical, psychological or intellectual disability; and
  - (c) may receive and consider any information, reports and materials that may be relevant to performing the Child and Young Person's Visitor's functions.

- (3) On a visit to a prescribed facility under this Chapter, the Child and Young Person's Visitor may—
- (a) inspect any part of the prescribed facility; and
  - (b) make inquiries about the care, treatment and control of each child or young person resident in the prescribed facility; and
  - (c) take such other action as may be reasonably required to perform the Child and Young Person's Visitor's functions under this Act.
- (4) Subject to subsection (5), a visit to a prescribed facility—
- (a) may be made by the Child and Young Person's Visitor on the Child and Young Person's Visitor's own initiative or at the request of a child or young person who is or was resident in the prescribed facility; and
  - (b) may be made at any reasonable time; and
  - (c) may be of such duration as the Child and Young Person's Visitor thinks appropriate.
- (5) The Child and Young Person's Visitor must—
- (a) except in exceptional circumstances, give the person in charge of a prescribed facility reasonable notice of a visit; and
  - (b) take steps to ensure that the safe administration of the prescribed facility is not compromised by a visit; and
  - (c) obey the reasonable directions of the person in charge of the prescribed facility in relation to any genuine concerns the person may have in connection with the safe management of the prescribed facility.
- (6) If the person in charge of a prescribed facility refuses to allow the Child and Young Person's Visitor to visit the prescribed facility because of genuine concerns the person may have in connection with the safety of the Child and Young Person's Visitor (whether related to a security risk, a health related risk or some other reason), the person must, as soon as reasonably practicable, provide the Child and Young Person's Visitor with written advice as to why entry to the prescribed facility was refused.
- (7) The Child and Young Person's Visitor has such other powers as may be necessary or expedient for, or incidental to, the performance of the Child and Young Person's Visitor's functions.