

Annual Report

2013-2014



Government of South Australia

Office of the Guardian
for Children and Young People

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Office of the Guardian for Children and Young People

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The Hon Jennifer Rankine MP
Minister for Education and Child Development
GPO Box 1563
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Dear Minister

I am pleased to present to you the annual report of the Guardian for Children and Young Persons for the year ended 30 June 2014, as required under Section 52D(2) of the *Children's Protection Act 1993*.

This report provides a summary of the activities and achievements for the 2013-14 financial year.

Yours sincerely

A handwritten signature in black ink that reads "Pam Simmons". The signature is written in a cursive style with a large, looped initial "P".

Pam Simmons
Guardian

7 October 2014

Contents

What we do	1
The year in review	5
Functions and outcomes	10
Promote.....	11
Advocate.....	13
Monitor.....	18
Advise	24
Inquire	32
Investigate	34
Our organisation	35

What we do

The Office of the Guardian for Children and Young People promotes and protects the rights of all children and young people under the age of 18 years who are under court orders granting guardianship or custody to the Minister for Education and Child Development.

The position of Guardian for Children and Young Persons was established in an amendment to the *Children's Protection Act 1993* proclaimed on 1 February 2006.

We work to improve services to children and young people in out of home care, to promote and protect their rights and to strengthen their voice. To do this we work in partnership with children and young people, their families and carers, government agencies and non-government organisations.

The Office of the Guardian is an independent government agency and the Guardian advises the Minister for Education and Child Development.

Functions

The Guardian has six statutory functions:

- Promote the best interests of children under the guardianship, or in the custody, of the Minister, and in particular those in alternative care.
- Act as an advocate for the interests of children under the guardianship, or in the custody, of the Minister and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse.
- Monitor the circumstances of children under the guardianship, or in the custody, of the Minister.
- Provide advice to the Minister on the quality of the provision of care for children under the guardianship, or in the custody of, the Minister and on whether the children's needs are being met.
- Inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care provided for children in alternative care.
- Investigate and report to the Minister on matters referred to the Guardian by the Minister.

I report against these functions in this annual report.

At the Office of the Guardian...

We believe that children and young people have fundamental rights which include the right to feel good about themselves, the right to live in a place where they are safe and well cared for, the right to get the help they want or need and the right to understand and have a say in decisions that affect them.

Our values

- We are caring, brave and tenacious in our advocacy for children and young people.
- We are mindful of the responsibility, independence and reach of our office.
- We seek others' perspectives, and take decisive action to do the right thing. We are optimistic that through this commitment change will happen.
- We are committed to ensuring the voice of children and young people informs our work and are active in pursuing their best interests. We encourage others to do the same.
- We are respectful of the challenges facing children and young people and our colleagues in pursuing their best interests.
- We act ethically, with understanding and take responsibility to create confidential, safe spaces that facilitate honest and robust interactions.
- We are playful and creative in our work and encourage innovation.

Who we work for

We promote and protect the rights of the seven in every thousand South Australian children and young people who are under the guardianship, or in the custody of, the Minister for Education and Child Development. This includes those who are in relative or kinship care, foster care, residential care or secure custody.

As at 30 June 2014 in South Australia there were 2577 children and young people under the guardianship of the Minister through care and protection court orders, (not counting the 50 on interim or temporary orders). They had the following characteristics:

Children and young people under the guardianship of the Minister through care and protection court orders at 30 June 2014	
	%
Male	52
Female	48
0-1 years	5
2-4 years	15
5-9 years	32
10-14 years	32
15-17 years	17
Aboriginal or Torres Strait Islander	30
long-term care and protection orders	87
12 month care and protection orders	13

The living arrangement for children and young people under court orders, including temporary and voluntary custody orders are as follows:

Care arrangements for children and young people in alternative care ¹ at 30 June 2014 (AIHW counting rules)	
	%
Foster care	42
Relative or kinship care	37
Residential care	10
Specific child only	7
Emergency/temporary (commercial care)	3
Independent living	1

¹The numbers of children and young people under the guardianship of the Minister and those defined as in alternative care under AIHW rules refer to similar but not identical populations.

The year in review

I write this at a time of heightened public scrutiny and diminished faith in the capability of the child protection system. The allegations of terrible abuse of a small number of children by a care worker has rocked everyone and resulted in an inquiry into the child protection system (Royal Commission) that is to examine the adequacy of child protection laws, policies, procedures and practices.

There will be many hours of debate and discussion generated by the Royal Commission which is also an ongoing conversation predominantly had by adults. The voice and views of children and young people are too easily drowned out in the enthusiastic deliberation. So, **what do children want from us?** In the ten years of asking this question of children and young people in state care there are some fundamentals.

- If their family could care for them safely, they want us to help their family.
- If their family cannot, they want a second family, not to replace the first but to be their safe and secure and loving home.
- They want to be treated like other children who do not live in care and to have the same opportunities.

If these are our yardsticks, how do we measure up?

Children want family help

The social and economic benefit of assisting families to safely care for their children is understood by everyone working in human services. The levers to do this are seriously constrained.

Underway is a shift in emphasis within Families SA case practice and approach so that the statutory intervention is more supportive of families, and less punitive. On their own, Families SA employees cannot get the outcomes in lowering the rates of children in state care and improving safety and wellbeing for children. They can set the standards high and they can improve the accountability for decisions and action, but this alone will not make it better for children.

South Australia has an uncoordinated family support services system. Access to services is highly dependent on where a family resides, who engages with them, and whether the family has the capacity to respond to referrals. We can get more consistent results if the initial approach by all service providers is highly proactive and flexible.

Together with planning and improvements to practice is financial investment. Some 70 per cent of the 'child maltreatment' budget (child protection, out of home care, intensive family support services) goes on out of home care, and out of home care costs have risen 400 per cent in the past 10 years. Just five per cent is spent on intensive family services. Low expenditure on family support is not the sole cause of the growing cost of out of home care but they are closely related.

Public attention and government openness to improving how we provide protective services to children has never been stronger.

There is opportunity to invigorate government effort on protecting children with:

- *A child protection plan for SA that articulates government direction and action.*
- *An across-portfolio Inter-Ministerial Council on child safety and wellbeing which would drive the change required in all human services.*

Children want safe and secure out of home care

Most children who are under the guardianship of the Minister have loving care provided by excellent carers. The children we worry about are those who do not, who are in tenuous arrangements and have no significant relationships with trustworthy adults.

South Australia has an unacceptably high use of residential care for children, often used for lack of an alternative rather than positive choice. There are interim care arrangements which stretch on for years in some cases, and little suitable care for children with very high and complex needs.

As a state, we spend a lot of money on out of home care but have relatively poor outcomes for those children with high needs. The demand for out of home care has not been accompanied by sound planning for timely provision, resulting in a distended emergency segment of the out of home care system.

There is opportunity for joint government and non-government planning for the timely provision and steady improvement of out of home care.

Children want the same opportunities as others

A good education and good health are fundamental to sound child development; as is strong cultural belonging and knowledge.

Based on data and anecdotes, I know that we, as a state, are making some progress on closing the gap in outcomes between children under guardianship and their age peers. My Office's tracking of educational results shows small but steady improvements. There is no room for complacency however, as persistent significant gaps between children in care and their age peers remain.

In 2005 the state government commenced giving children under guardianship priority to public services such as primary health, mental health, housing and disability services. This was called Rapid Response and was effective in several ways. It raised the status and profile of children under guardianship in a positive way because it emphasised shared responsibility among public servants for the children's development. It gave people, who are beyond the child's immediate circle, concrete actions to contribute to their wellbeing. It was a public statement of good intent and action by the 'state' in its care of 'its' children. It resulted in better access to some public services and a more coordinated service response.

It is time now to make a renewed commitment because the job is only half done. There has been a narrowing gap between educational outcomes for children in care and their age peers, but there is still a sizeable gap. Inconsistent access to timely physical and mental health services remains. The Office's work on advocating for individual young people tells us that some young people are leaving care into homelessness. Our audit of annual reviews

tells us that some Aboriginal children are growing up without the benefit of acceptance and knowledge of their family clan groups.

The commitment should commence with a new action plan for priority access to government services monitored by an Inter- Ministerial Council. It should be considerably strengthened though by a truly ambitious collective impact approach to the state's 'parenting' of this group of children.

There is opportunity to make a promise to exceed the Australian average for wellbeing of children and young people in out of home care, as indicated by educational achievement, stability, strong cultural identity and successful transition to adulthood.

Children are experts on their own lives. The obligation of adults who are making decisions for them is to seek their views and advice, listen closely, and treat these views and experience with respect. Everywhere I look there are inspiring children and dedicated adults.

I thank everyone my office has worked with over the past year for their cooperation and goodwill. Any progress reported here is testament to children's, workers' and carers' resolve.

In 2013-14 the Office of the Guardian

- Produced a video of young people giving their views on what should be done to assist children who have to move while in care (changing placements). The video accompanied the release of the report on the 2013 inquiry.
- Together with 21 young people, completed a comic book on the exploits of an independent young woman who learns to resolve conflict in a way that has something for everyone.
- Commenced a series on consultation workshops with children and young people in care, about what 'respect' means to them.
- Extended the network of advocates for children's rights to 266 Charter (of Rights) Champions, across 65 agencies.
- Responded to 134 requests for intervention, involving 193 children and young people in care. Of these requests, 19 per cent were from children and young people themselves.
- Audited 208 annual reviews of the circumstances of children under long term guardianship of the Minister, (9.3 per cent of this group of children).
- Visited 153 children and young people living in residential care or youth justice detention, in 34 announced visits.
- Reported on trends in school enrolment, attendance and literacy and numeracy skills from 2007-2013 for students under guardianship compared to their age peers.

Functions and outcomes

The Guardian has six functions defined in Section 52C of the *Children's Protection Act 1993*.

- To promote the best interests of children under the guardianship, or in the custody, of the Minister, and in particular those in alternative care.
- To act as an advocate for the interests of children under the guardianship, or in the custody, of the Minister and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse.
- To monitor the circumstances of children under the guardianship, or in the custody, of the Minister.
- To provide advice to the Minister on the quality of the provision of care for children under the guardianship, or in the custody of, the Minister and on whether the children's needs are being met.
- To inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care provided for children in alternative care.
- To investigate and report to the Minister on matters referred to the Guardian by the Minister.

In this section, I report on the work and outcomes of the Office in relation to meeting the statutory functions of the Guardian.

Promote

Statutory function

To promote the best interests of children under the guardianship, or in the custody, of the Minister, and in particular those in alternative care.

Our goals

Action is prompt on issues that impact on the safety and wellbeing of children and young people.

Effective early intervention services for high need families ensure only those who need state care are taken into care.

Responsibility for the safety and wellbeing of children and young people is shared.

Promote the rights of children in care as expressed in the Charter of Rights

The *Charter of Rights for Children and Young People in Care* (the Charter) was launched in 2006. In September 2010 the Charter was tabled in parliament, as required in the *Children's Protection Act 1993* Section 52EE(2). A person exercising functions or powers under relevant laws must, in their dealings with, or in relation to, a child who is under guardianship, or in the custody, of the Minister, seek to implement to the fullest extent possible, the terms of the Charter (S52EF(1)).

The Office of the Guardian has the responsibility for promoting and monitoring the implementation of the terms of the Charter. At the end of this year, 65 agencies had endorsed the Charter, an increase of eight agencies from 2013. There were 266 Charter Champions engaged to promote children's rights in their agencies, an increase of 65 from the year before.

In 2013-14 the implementation committee continued to meet, representing the experiences of government and non-government agencies in providing services to children in care. The major topics of discussion were the use of seclusion to manage behaviour, views of young people about priorities for reform, and the service provision landscape for children with disabilities.

A third comic book was added to the *Being in Care* products. The theme of this book is about negotiating for what you want.

Engage children and young people in our work through whatever avenue we can

Core to the purpose of the Office is strengthening the voice of children and young people and modelling their participation in decisions. The Office's youth participation strategy details this undertaking. In 2013-14 the Office changed the strategy to engage more children and young people in consultation workshops. This approach is being tried as a more practical and effective way to satisfy the requirements for a Youth Advisory Committee in the *Children's Protection Act 1993*. The principal theme for the workshops in 2014 is 'what respect means to children and young people'.

In addition, young people have been engaged in the project work of the Office of the Guardian, notably the development of the third comic book and the production of a ten minute film about children's experiences of moving while in care. The monitoring visits to residential and youth justice units also engage young people in talking about their views on the care provided.

Through a range of media, share the knowledge we have

The website is the major source of public information about the Office's activities, findings and views. Viewer numbers have been steady over the year at about 700 each month. Quarterly newsletters and more frequent electronic bulletins keep the 874 subscribers up to date with news.

The Office's Twitter stream has 362 followers, a 29 per cent increase from the 2012-13 year. In this past year a video on children's experiences of moving while in care was produced.

Advocate

Statutory function

To act as an advocate for the interests of children under the guardianship, or in the custody, of the Minister and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse.

Our goals

More children and young people in care feel good, are safe and cared for, get help, understand and have a say.

Allegations of sexual abuse of children in care are investigated promptly.

Through outreach activity we ensure that children and young people who need individual advocacy receive it

Through the 'being in care' products the Office reinforces messages about children's rights and provides information about where to go for assistance. The product range was developed with advice from young people in care and now includes booklets, contact cards, USBs, comic books, flash cards, backpacks, wristbands, tattoos, key-rings, soft toy, stress balls, drink bottles, bucket hats and scribble pads with crayons. These products are provided free to children in care and are available to agencies that have endorsed the *Charter of Rights*. Oog, the creature created for children in care, was again in the Credit Union Christmas Pageant.

In 2013 the Office produced an educational video and accompanying written material on advocacy for children and young people based on the experience of the Office's advocates. The package is for training and professional development purposes. It has proved to be the most popular of the videos and has had 827 viewings to date.

The Office's advocacy for individual children is consciously linked to our advocacy on systemic issues. Trends, or repetition of problems, are identified and pursued. In 2013-14 the Office received 164 requests for intervention on behalf of children and young people. Of these, 134 fell within our mandate, that is, they were requests about children and young people under guardianship, or in the custody, of the Minister. This is a 20 per cent increase from the previous year.

A single matter sometimes affects more than one child or young person in care. We therefore assisted or advocated on behalf of 193 children and young people. Our intervention ranges from providing information about policies or rights through to a full review of the circumstances of a child with advocacy for change. We reviewed 29 cases, with an additional nine cases carried over from 2012-13.

The 134 requests that were within our mandate were made by:

Adult in child's life (carer, parent, other relative)	59
Child or young person	25
Families SA	15
Alternative care agency	7
Education	6
Health	5
Youth Justice	5
Other	12

The presenting issues² were in the categories of:

Stable and secure placement	48
Participation in decision making	31
Contact with significant others	26
Safety	26
Understanding current circumstances	19
Education	13
Access to health and disability services	10
Nurturing environment	7
Relationship with social worker	5
Appropriate care	3
Other	10

² There is often more than one presenting issue in a request and one issue may affect more than one child. Therefore the total is greater than the number of requests.

Through the advice we provide we ensure that what we hear and see results in systemic change

Once advice has been provided to the Minister on specific issues [see *Advise*] the Office pursues most matters through advocacy. In 2013-14 the major issues for advocacy were:

- Halting the use of residential facilities which accommodate more than four young people.
- Improvements in conditions for young people residing in Youth Training Centres and residential care.
- Child protection system reform, particularly for renewed emphasis on family support services.
- Improvements to the support provided to children who are moving while in care (changing placements).
- Reducing the reliance on temporary rented properties and agency staff to care for children.

Three reports on what the Office learnt from its monitoring work were released this year. The first, in August, was a report on the audits of annual reviews for children who are under long term care and protection orders and the second and third, in March, were about children and young people in residential care.

The Guardian is a member of the Australian Children's Commissioners and Guardians network. In 2013-14 the major areas of work were the development of a model charter of rights for children and young people in youth justice detention and providing advice to the Royal Commission into Institutional Responses to Child Sexual Abuse on creating child safe and child friendly organisations.

Work with the police, public prosecution and investigations units to ensure that children involved in investigations of sexual abuse in care have an advocate and that investigations are conducted in a timely manner.

The Office is notified by the Departments³ Care Concern Investigations unit about allegations of serious sexual abuse of children in care. The role of the Office is to monitor the progress of the investigations and to ensure that the child has an advocate. This is done in cooperation with the Care Concerns units, the South Australian Police and the Office of the Director of Public Prosecutions.

In 2013-14, 15 notifications categorised as serious were referred to the Office for monitoring. In addition the Office monitored 31 investigations that were ongoing from previous years.

The notifications related to alleged serious sexual abuse in the following care arrangements:

Residential care	5
Foster care	5
Relative care	4
Youth detention facility	1

³ The Departments are: Department for Education and Child Development and Department for Communities and Social Inclusion.

'Cassie', 15, lived in foster care with her two foster parents until they separated and she went to live with her foster mother.

An alternative care agency worker contacted the Office of the Guardian reporting that Cassie would prefer to live with her foster father.

Cassie, a mature and articulate young woman, confirmed this in conversation with an advocate from the Office. She reported that she had spent considerable time thinking about the benefits and had spoken to her allocated case worker but had not received any response. With Cassie's permission, the advocate contacted the Families SA office.

The Families SA Supervisor provided a history of Cassie's positive relationships with Families SA social workers and the carers' circumstances. The Supervisor agreed to meet with Cassie and her nominated support person but said that a consideration of the entire circumstances would be required.

The advocate maintained regular communication with the Supervisor and the case worker for six months during which there were significant delays in reaching a conclusion due to Families SA staff unavailability.

In the end, Cassie accepted Families SA's view that her foster mother had greater capacity to provide a stable, nurturing and supportive home for her. She said to the advocate that, because she was finally able to participate in the decision making, she understood Families SA's view.

Monitor

Statutory function

To monitor the circumstances of children under the guardianship, or in the custody, of the Minister.

Our goals

Know what is happening for children and young people in care.

Identify and promote what is working well.

Identify weaknesses in the child protection system.

Monitoring activities

In 2007 the Office introduced a framework for its monitoring activities to report against standards deemed acceptable by children. There are 12 quality statements based on the rights in the children's charter. The Office undertook the following activities to monitor the circumstances of children and young people in care:

- Receipt and analysis of aggregate data available from the Department for Education and Child Development.
- Audits of annual reviews (9.3 per cent of children on long term orders).
- Enquiries lodged at the Office of the Guardian (6.5 per cent of children on care and protection orders).
- Visits to residential care houses and youth training centre units (34 visits).

Reports on findings of monitoring

Three reports on the findings of the monitoring were released. The first, in August, was a report on the audits of annual reviews for children who are under long term care and protection orders and the second and third, in March, were about children and young people in residential care.

Aggregate data

Aggregate data is primarily sourced through and with the cooperation of the Departments for Education and Child Development and Communities and Social Inclusion. The most current and all-purpose data is available from the Guardian's [website](#). Notable changes for 2013-14 are:

- The numbers of children on 12 month and long term care and protection orders at 30 June 2014 was 2577 an increase of 11.9 per cent from 2010 but, for the first time since our Office has recorded data, a *fall* of 1.5 per cent from the 2,615 at 30 June 2013.
- A total of 451 individuals were housed in the Adelaide Youth Training Centre at some time in 2013-14 compared with 485 in 2012-13.⁴ The rate of average daily occupancy in youth training centres fell from 61.4 in 2012-13 to 57.6 in 2013-14.

Children in motel-type accommodation

The Office began monitoring the numbers of children in motel-type emergency accommodation in February 2005 when the number was only ten children. The number rose to an average of 54 on any one night in 2006-07 and has stayed high since then. In 2013-14 the average number was 50, a fall from 56 in the prior year.

In 2013-14, the highest number at any one time was 75, in June 2014. At the end of 2013-14 (25 June), the number was 71. At 30 June 2014, 57 children had had stays of over 60 days compared with 52 children in June 2013.⁵

These physical environments are considered inappropriate for children who are already vulnerable and there is limited continuity and consistency in carers. While the quality of day-to-day care varies hugely, the instability and uncertainty for children is universal. The Office of the Guardian has received reports of, or witnessed, problems such as frequent absconding, inconsistency in boundaries and approach to behaviour, missed schooling, lack of personal belongings, and isolation.

⁴ Some of these young people will have been admitted several times during that period so the total admissions will be significantly higher than this figure.

⁵ These numbers may vary slightly from that discussed in *Aggregate data* above due to variations in counting methodology.

In June 2013 the Minister announced that an additional 360 staff would be engaged on contracts over the next three years to replace carers engaged through commercial agencies and to move children from motel rooms to residences.

In June 2013 the Guardian wrote a summary of the information held at the Office about children in these arrangements for discussion with the Department for Education and Child Development. A second report will be prepared in July 2014.

The Office follows up on the circumstances for children who had been in this form of accommodation over 18 months. This activity was temporarily suspended in August 2013 at the request of the Department but will re-commence in July 2014.

Audits of annual reviews

The Senior Advocate audited 208 annual reviews at 12 Families SA offices. Some offices scheduled regular reviews and were visited on more than one occasion. On four occasions the Office declined invitations to attend scheduled annual reviews due to prior commitments with other offices. Annual reviews are conducted for children and young people placed under long-term guardianship orders. The Office audited 9.3 per cent of reviews that were to be conducted, up from 8.4 per cent in 2012-13.

A report on the audit is provided to the Minister annually. The major findings for 2013-14 were:

- Of the 208 children and young people whose cases were reviewed, 169 (81 per cent) were in stable, long-term placements.
- Of the children and young people whose cases were reviewed, 196 (94 per cent) had at least one significant adult in their lives.
- Twelve children and young people (six per cent) including five adolescents approaching independence did not have any significant connections beyond Families SA.
- Forty-two of the annual reviews audited were for Aboriginal children and young people. Twenty-four (57 per cent) were placed with their extended family or with Aboriginal carers.

- Of the 171 children and young people who were considered capable of directly contributing to their annual reviews, 67 (39 per cent) participated in their annual review, either by attending (11 per cent), teleconference (one per cent) or by completing a survey (27 per cent). Two country offices were responsible for half of the direct participation of children and young people in annual reviews in 2013-14. Sixty-one per cent of children and young people, who could have directly participated, did not.
- Twenty-three children and young people (11 per cent of those capable of presenting their views to the panel) did not have a voice, directly or indirectly in their annual reviews.
- Of the 208 children and young people whose cases were reviewed, 176 (85 per cent) were confidently considered safe and reported to feel safe.
- Of the 166 children and young people who were of school age and attending a public pre-, primary or secondary school, it was reported that 130 (78 per cent) had current Individual or Negotiated Education Plans at the time of the annual reviews.
- Of the 208 children and young people whose cases were reviewed, 165 (79 per cent) were receiving standard health services and, where necessary, specific health and disability services to meet their needs. Twenty-one per cent were not receiving the services they required.
- Fifty-two children and young people (25 per cent) whose cases were reviewed did not have regular contact with the same worker. Of this group, 22 (11 per cent of the total number of annual reviews audited) who were allocated a social worker received less than the recommended monthly face-to-face contact, including five children who were receiving an assessed and approved differential case management response. In another nine cases (four per cent) the regularity of contact between the children and social workers could not be determined based on limited information available at the annual reviews. Twenty-one children (ten per cent) were not allocated to a case worker.
- Nine of the 35 young people aged 15 years and over (25 per cent) did not have transition plans as required by Families SA policy.

- Of the 125 children and young people who had the capacity to understand, 86 (69 per cent) had been provided with the *Charter of Rights for Children and Young People in Care*.
- One hundred children and young people (48 per cent) whose cases were reviewed had a Life Story Book. This included 27 Aboriginal children and young people who had been supported to develop a culturally appropriate Life Story Book.

Residential care and youth training centres

In 2013 the Office implemented a new model to monitor the residential care environments provided by Families SA, non-government organisations, and the youth training centres. The model incorporates a review of records that relates to the physical and emotional safety of residents and a visit to residents to hear their perspectives about the care they are provided. In addition, the residential care environments complete an annual self-evaluation survey that captures the perspective of the service provider and staff. The purpose of the new model is to obtain robust information about residential care environments and target visits to the most vulnerable children and young people. Targeting became necessary because of the growth in the number of residential houses.

In 2013-14 there were 60 residential care properties provided by Families SA and non-government organisations for children and young people under the guardianship or custody of the Minister. The GCYP Advocates conducted a review of records and visited 22 residential facilities. A detailed report was provided to the managers.

In November 2011, at the urging of the Guardian, the Minister for Education and Child Development agreed to progressively close the six larger and older residential care facilities, with two scheduled for replacement by the end of 2013 and the six to have been closed by mid-2016. As at mid-2014, there have been no closures. Two are now scheduled to close in August 2014. In the meantime the upkeep of the facilities has been minimal with further deterioration in living conditions apparent.

These large facilities house up to 12 young residents, most with high needs. Experience and evidence about residential care tell us that the risk of harm is higher when staff have only limited control over the mix of residents and when a resident's high needs makes peer relationships threatening or hostile. In larger residential facilities these risks are hard to avoid. This has been the Guardian's advice since 2005. In 2011 and 2013 the Guardian

provided further documented evidence of harm to children and young people residing in the larger facilities.

Magill Youth Training Centre closed in September 2012 and residents were relocated to the new Adelaide Youth Training Centre. There are two campuses at Cavan, under a single management team. In 2013-14 the Advocates conducted six reviews of records and 12 visits to units within the youth training centre to talk with groups of residents. A detailed report following each visit was provided to the general manager.

Ten year old 'Natalie' who was in foster care, had four siblings, three of whom had moved interstate and were in a mix of relative and foster placements. Natalie's carer contacted the Office of the Guardian reporting that Natalie was distressed by the lack of contact with her siblings. Natalie was invited to talk with an advocate.

With the assistance of the carer and Families SA a meeting was arranged and preparations made to work with Natalie's communication difficulties.

Natalie explained why the existing contact arrangements were unsatisfactory to her. She also said when the social worker visited the 'adults only talk to adult' and 'I don't get to say anything'.

With the advocate's help Natalie described what contact would be ideal, what was acceptable and what was not acceptable. The advocate explained that her siblings may have different views and that there may be circumstances that could make it difficult to have the contact she wished.

In subsequent discussion with the Families SA supervisor, it was acknowledged that this situation was complex, as are others where there are multiple children in distant placements.

The Office promoted the role of the social worker as being Natalie's 'natural' advocate and a second visit was arranged for the advocate and social worker to develop a plan for sibling contact and schedule future meetings between the worker and Natalie.

Natalie subsequently told the advocate that she was having regular conversations with her social worker and she did not need the involvement of GCYP any further.

The new plan, involving two Families SA Offices and two sets of carers, provided for increased contact with her brother in South Australia.

Advise

Statutory function

To provide advice to the Minister on the quality of the provision of care for children under the guardianship, or in the custody of, the Minister and on whether the children's needs are being met.

Our goals

Advice results in action on critical issues for groups of children and young people.

The Minister and others have confidence in the advice provided.

Advice and inquiry

Written advice included:

- Child Development legislation and an SA Children's Commissioner
- Youth Justice Administration Bill
- The impact and experience of children moving while in care
- Results of the audit of annual reviews
- Comparisons of expenditure on child protection, out-of-home care and intensive family support over ten years and with national averages
- Closure of the large residential facilities
- Model charter of rights for children and young people detained in youth justice facilities
- Children and young people in care in SA government schools.

SA Children's Commissioner and Child Development legislation

In September 2013 the Guardian's response to the exposure draft of the Child Development Bill included the following:

- There is no reference in the 19 objects and principles (combined) to the rights of children and young people, except by implication as "valued citizens". This results in a Bill that over-emphasises the obligations to provide for and protect children and

young people rather than their active participation and entitlement. (This has been addressed in the re-drafted Bill.)

- There is considerable ambivalence in the draft Bill about the independence of the Commissioner for Children and Young People, which can be easily resolved.
- The functions of the Commissioner should include the capacity to investigate matters of significant concern and that appear to violate the rights or interests of either a child or young person or a group of children. This is not a complaints function but a proactive investigative role.
- The obligations to provide information should be extended to commercial agencies and non-government organisations.
- The Commissioner must be able to make a report public when this is in the public interest.

Youth Justice Administration Bill

The key points of advice provided to the Minister and the Department for Communities and Social Inclusion in September 2013 were:

- There are some important emphases in both the *Young Offenders Act 1993* and the *Family and Community Services Act 1972* that appear over-shadowed in the summary of principles that are proposed for the Youth Justice Administration Act. Notably these are the 'care...necessary for [a young person's] development' and the 'proper realisation of their potential' (Object (1) in the *Young Offenders Act 1993*). This is no minor point when the state takes custody of children, temporarily or ongoing. For a short time at least the state accepts some parental responsibility for children and young people, in addition to protecting the community.
- At the least, the proposed Administration Act should aim to improve conditions for incarcerated young people by: increasing the level of accountability and transparency; increasing the care, protection and rehabilitation of young people who are incarcerated or who have been; and comply with human rights principles, including that of participation of children and young people in decisions that affect them.

- The delinking of youth justice administration from the *Family and Community Services Act 1972* (F&CS Act) inadvertently leaves the responsibility for ensuring the provision of community-based accommodation with *no-one*. At present, the intention, if not the reality, is that community accommodation including foster care, can be extended to all children and young people in need of such accommodation such as young people who are in secure custody for want of an alternative safe place to reside. It would be preferable for a Minister responsible for youth justice administration to be explicitly responsible for ensuring suitable community based accommodation for those young people eligible for bail.
- The F&CS Act has a clause that limits the engagement of for-profit service providers in the long-term care of children. In the context of the care and custody of young people in detention, a similar provision would ensure that monetary profit was not the principal motivation for providers of care, education or health services.
- The requirement for rehabilitation should be developed in the Administration Act from a general object to specific conditions, such as sound assessment and case management, provision of effective rehabilitation and therapeutic programs and oversight by an advisory body.
- The proposed Administration Act should refer to rehabilitation *and* therapeutic interventions to assist with desistance from unlawful behaviour. Behaviour usually has an underlying emotional purpose and offending behaviour is often a coping mechanism in response to earlier abuse or neglect.
- The functions of an independent monitor should be what the Guardian currently provides in the Adelaide Youth Training Centre. The Guardian proposed to add announced and unannounced inspections of the facilities, public reports on conditions and treatment of detainees and regular audits of performance in key operational areas.
- It is preferable that the independent monitor be named in the Administration Act but regardless there should be a requirement that the monitor have specialist expertise in child development and children's rights, and principles specific to the detention of juveniles.

The impact and experience of children and young people moving while in care

The Guardian's Inquiry into the impact and experience of children moving while in care was conducted between September 2012 and June 2013. The report was released in October 2013. It included a review of the literature and legal/regulatory framework, a review of 100 randomly selected case records of children, in-depth interviews with 18 young people, and consultation with placement decision-makers.

The recommendations from the inquiry are reprinted on p.32 of this report.

Results of the audit of annual reviews

The Senior Advocate audited 208 annual reviews at 12 Families SA offices. Some offices scheduled regular reviews and were visited on more than one occasion. On four occasions the Office declined invitations to attend scheduled annual reviews due to prior commitments with other offices. Annual reviews are conducted for children and young people placed under long-term guardianship orders. The Office audited 9.3 per cent of reviews that were to be conducted, up from 8.4 per cent in 2012-13.

The key findings are reprinted on p.20 of this report.

Comparisons of expenditure on child protection, out of home care and intensive family support

In April 2013 the Guardian provided charts showing the bias in budget expenditure towards out-of-home care and away from intensive family support services, compared to other states and over time. An updated report was provided in 2014. These charts show the following:

- Expenditure on child protection per child in SA in 2012-13 was the second lowest of all states and territories (after the ACT), and 69 per cent of the overall Australian rate.
- Expenditure on out of home care per child in 2012-13 was above the overall Australian rate.
- Expenditure on intensive family services per child in 2012-13 was 53 per cent of the overall Australian rate.

- In the ten year period from 2003-04, SA has increased expenditure on child protection services per child by 62 per cent. The increase overall in Australia was 90 per cent.
- In the ten year period from 2003-04, SA has increased expenditure on out of home care per child by 380 per cent. The increase overall in Australia was 117 per cent.
- In the ten year period from 2003-04, SA has increased expenditure on intensive family support services per child by 288 per cent. The increase overall in Australia was 151 per cent. The comparisons on intensive family services should be treated with caution because of the uncertainty among all states and territories about what is counted.

These charts are available from the Office's [website](#).

Closure of the large residential facilities

In November 2013 I advised that the replacement program for the large residential care units should be modified. This follows advice in previous years on the inappropriateness of accommodating children in units of more than three or four children.

In summary, the six older style units were to be progressively closed from early 2014. Budgetary constraints on recurrent expenditure lead to a conclusion that equally large units should replace them, because of the lower staff to resident ratio made possible by accommodating more children on one site. This addresses the physical design problems with the 1980s buildings but not the more significant problems that result from accommodating up to 12 young people who have high needs on one site and with less adult attention.

The higher rates of absconding, sexual abuse and use of physical restraint in response to violent incidents continue in the two new units which opened in 2009 and 2010. The use of physical restraint has increased since 2007-08 when the Guardian conducted an inquiry into the use of restraint in residential care. Self-reported data on missing persons from residential care settings for a 12 month period spanning 2012 and 2013 totaled 3,123. Of these, 1,981 (63.4 per cent) were reports from the larger units, which accommodate less than a quarter of the total residential care population group.

Of the 225 notifications of serious sexual abuse reported to the Office of the Guardian since November 2008, 53 (23.6 per cent) were reported to involve at least one resident from the larger

units. Over the same period, children in large residential facilities were only 2.8 per cent of the care population. Of the 365 individual children who were subjects of sexual abuse notifications, 30 were involved in multiple notifications of sexual abuse. Fourteen of the 30 (47 per cent) lived in the large residential units.

Of the 92 notifications of *peer on peer* serious sexual abuse, 44 occurred in large residential facilities (48 per cent). The alleged abuse is both on- and off-site. Just looking at the residential care population group, the large residential units accommodate less than half of the total but account for 77 per cent of the reported incidents of peer abuse in residential care.

The Guardian's advice has been for many years, that , with few exceptions for sibling groups, it is unsafe and inappropriate to accommodate children and young people in residential care units of more than three or four young people (on any one site), particularly if they are to be there for more than several months.

A model charter of rights for children and young people detained in youth justice facilities

The *model charter of rights for children and young people detained in youth justice facilities* was prepared by members of the Australian Children's Commissioners and Guardians (ACCG). The rights are drawn from international agreements to which Australia is a signatory.

The *model charter* was released on 7 July 2014. Following its national release, each state Commissioner or Guardian commenced negotiation with youth justice senior officers on its implementation.

In South Australia the *Charter of Rights for Children and Young People in Care* has applied in youth justice detention facilities since 2006. Monitoring of conditions and circumstances of residents has been done by the Guardian, using that Charter as the foundation for reporting. So a *Charter of Rights* and its promotion is not new in this state. The *model charter* though is more specific to the rights of young people who are detained.

Children in motel-type accommodation (commercial care)

[Also see p.19] In 2013 the Guardian completed a short report on the numbers and profile of children in commercial care over an eight year period. The report was provided to the Department for Education and Child Development and summarised for the Minister. The announcement by the Minister that additional staff would be engaged to provide residential

care and to replace care provided through commercial agencies was welcomed but did not change the need to expand other forms of care; especially family-based care for children with high needs, long term care for sibling groups and appropriate non-family based care for young people with intellectual disabilities.

A second report is in preparation.

Children and young people in care in SA government schools

The Guardian's report on participation and NAPLAN results from 2007-2013 for students under guardianship who are enrolled in government schools shows a persistent gap in literacy/numeracy knowledge and skills between this group of students and the general SA government schools population.

While the absence rates are equivalent between the two groups, this does not record how many hours in a day a student attends. In our experience, there are a small but significant number of students under guardianship who are accepted in the school on a part-time basis only. This may have been planned only as a temporary measure while the student settles in, but in some cases this has continued for long periods of time, sometimes for years. There is no readily available data on part-time attendance so we cannot confidently say how widespread this practice is.

Individual Education Plans (IEP) were introduced in 2007 as a means of focusing school and home attention on the learning needs of all students under guardianship. No evaluation of their effectiveness has been conducted so the reports of results are only anecdotal. From our observations the quality of the planning varies hugely as does the commitment of the schools to their implementation. Regardless of the quality, less than 50 per cent of all students under guardianship have an IEP (only 58 per cent of school aged children attend government schools and only 70 per cent of government students under guardianship have an IEP).

There is considerable reliance on the use of School Support Officers for children under guardianship who need temporary one-on-one assistance with their participation and learning. Little is known though about what sort of support is provided, to whom, and with what outcome.

Child safe environments

The Guardian is a member of the Australian Children's Commissioners and Guardians network. In 2013-14 the major areas of work were the development of a model charter of rights for children and young people in youth justice detention (see above) and providing advice to the Royal Commission into Institutional Responses to Child Sexual Abuse on creating child safe and child friendly organisations.

Inquire

Statutory function

To inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care provided for children in alternative care.

Our goal

Inquiries result in systemic reform that is long-standing.

The impact and experience of children moving while in care

The Guardian's Inquiry into the impact and experience of children moving while in care was conducted between September 2012 and June 2013. It included a review of the literature and legal/regulatory framework, a review of 100 randomly selected case records of children, in-depth interviews with 18 young people, and consultation with placement decision-makers. The inquiry report was released in October 2013.

There were seven recommendations arising from the findings.

1. The *Children's Protection Act 1993* be amended to make it mandatory for a child to be present, or the child's views to be presented by an advocate, at any meeting where a placement move is being decided and also at annual reviews of the child's circumstances.
2. The Department for Education and Child Development, in collaboration with the non-government organisations providing out-of-home care, develop models for projecting future demands for types of out of home care that attempt to ensure demand is met through planned capacity increases.
3. An independent audit be conducted and reported publicly of compliance by the Department and non-government organisations with core standards 1 (Entering Care) and 2 (Case Management) of the SA alternative care standards.⁶
4. An independent audit be conducted and reported publicly of implementation of the 2011 recommendation from the Guardian for decisions about placement of siblings.
5. A system of accreditation for child protection practitioners be introduced which is mandatory for case workers and alternative care support workers and provides off-

⁶ The audits in recommendations 3 and 4 were not done as part of this Inquiry because of time constraints.

and on-site professional development and training over a two year period, with an individually tailored study of working with Aboriginal children and families, Aboriginal history and culture.

6. A mandatory training module be developed on welcoming and parting from children and young people, for residential, foster and kinship carers.
7. At meetings where placement moves are being decided and as part of the documentation of decisions and action, decisions that can be made by the child or young person about the move are identified, recorded and communicated to the child, and, if required, the child assisted to make and implement the decisions.

Investigate

Statutory function

To investigate and report to the Minister on matters referred to the Guardian by the Minister.

Our goal

Investigations result in practical recommendations that are acted on.

No matters were referred to the Guardian by the Minister.

Our organisation

Legislation

The position of Guardian for Children and Young Persons was established in an amendment to the *Children's Protection Act 1993* (the Act) proclaimed on 1 February 2006. Further amendments made in late 2009 strengthened the independence and powers of the position.

Governance

Under the Act, the Guardian is appointed by the Governor. The Guardian has statutory functions and reporting requirements which are discussed elsewhere in this report. The functions are broadly those of monitoring conditions of care, investigating matters of concern and advocating for children and young people under guardianship, or in the custody of, the Minister. The Guardian provides advice to the Minister for Education and Child Development on these matters.

The Guardian is not subject to directions from the Minister which inhibit inquiries or investigations, prevent or restrict communications or which limit the content of advice, reports or recommendations made in fulfilling the statutory functions.

The Guardian has powers necessary, expedient or incidental to the performance of the Guardian's functions. The Act explicitly gives the Guardian the power to require information from organisations and people that is necessary to fulfilling the Guardian's functions.

The Guardian is required to maintain a Youth Advisory Committee which assists the Guardian in the performance of their functions by ensuring that they are aware of the experiences of, and receives advice from, children who are, or have been, under the guardianship or in the custody of the Minister.

The Guardian makes frequent use of other consultative bodies to inform projects and develop advice and recommendations but these have no formal governance role.

Location

The Office of the Guardian for Children and Young People is located at Level 4 East , 50 Grenfell Street, Adelaide.

The office hours are Monday to Friday, 9am to 5pm.

Access

The office has been designed for wheelchair access and, within workplace imperatives, for children.

The Guardian's website is built on a self-hosted Wordpress platform which is compliant with the World Wide Web Consortium's web content accessibility guidelines.

Complaints

The grievances and complaints policy is available from the website and is provided when someone complains about the service.

There have been no formal complaints made to the Office about the service in 2013-14.

Energy management

The Office of the Guardian recycles all waste paper, rubbish is sorted for recycling and power standby features are engaged. The Office uses a fuel-efficient hybrid vehicle.

Freedom of information

Legislation exempts information about individual cases from disclosure under the *Freedom of Information Act 1991*. There have been no FOI requests for other information during 2013-14.

Strategic and organisational planning

The office released its Strategic Plan for 2011-15 in June 2011. The office has an annual work plan which is reviewed quarterly.

Employee numbers, gender and status

Total number of employees (including Guardian) at 30 June 2014					
Persons	8				
FTEs	6.6				
Gender	% Persons	% FTEs			
Male	12.5	12.1			
Female	87.5	87.8			
Number of persons during 2013-14					
Separated from agency	0				
Recruited to agency	0				
Number of persons at 30 June 2014					
On Leave Without Pay	0				
Number of employees by salary bracket at 30 June 2014					
Salary bracket	Male	Female	Total		
\$0 - \$54 799					
\$54 800 - \$69 699		1	1		
\$69 700 - \$89 199	1	4	5		
\$89 200 - \$112 599		1	1		
\$112 300+		1	1		
Total	1	7	8		
Status of employees in current position at 30 June 2014					
Persons	Ongoing	Short term	Long term	Other	Total
Male	1				1
Female	4	2	1		7
Total	5	2	1		8

Workforce diversity

Number of employees by age bracket by gender at 30 June 2014					
Age bracket	Male	Female	Total	% of Total	Workforce benchmark (%)
15-19					6.1
20-24					10.6
25-29					10.5
30-34					9.4
35-39		2	2	25	11.2
40-44		4	4	50	11.1
45-49					12.2
50-54					11.0
55-59		1	1	12.5	9.2
60-64					6.0
65 +	1		1	12.5	2.9
Total	1	7	8	100	100.0

Aboriginal and/or Torres Strait Islander employees at 30 June 2014				
Male	Female	Total	% of Total	Workforce benchmark (%)
0	1	0	12.5	2

Cultural and linguistic diversity					
	Male	Female	Total	% of agency	SA community (%)
Number of employees born overseas	1		1	12.5	20.3
Number of employees who speak languages other than English at home				0	16.6

Employees with ongoing disabilities requiring workplace adaptation			
Male	Female	Total	% of agency
0	0	0	0

Leave management

Average days leave taken per full time equivalent employee	
Leave type	2013-14
sick leave	7.5
family carer's leave	1.6
miscellaneous special leave	0.9

Employees using voluntary flexible working arrangements by gender at 30 June 2014			
	Male	Female	Total
purchased leave			
flexitime	1	6	7
compressed weeks			
part time job share			
working from home			

Performance development

Documented review of individual performance development plan	
Employees with ...	% total workforce
a review within the past 12 months	100
a review older than 12 months	
no review	

Consultants

There were no consultants engaged by the office during 2013-14.

Workplace health and safety

In 2013-14 there were no incidents resulting in workplace injury.

Financial

Expenditure

Financial services are provided by the Department for Education and Child Development. The financial operations of this Office are consolidated into and audited through the Department. Accordingly, full financial reports are not provided as part of this annual report. A summary of expenditure is provided below.

Financial summary of expenditure			
Item	Actual	Budget	Variation
Salaries and wages	699 520	722 300	22 779
Goods and services	151 936	135 400	(16 536)
Total	851 457	857 700	6 242

The staff team

Office Manager

Yvette Roberts (to March 2014)

Meagan Klapperich (from April 2014)

The Office Manager provides a range of services within the office including records management, human resources and finance support. She manages the implementation and maintenance of key facilities and services. Recent project work has focussed on the implementation of the Charter of Rights.

Communications Officer

Malcolm Downes

The Communications Officer researches and produces print, online and video materials for electronic and paper distribution, oversees the website and provides ad hoc support and services to Office staff on communications and information matters.

Senior Policy Officer

Kendall Crowe

The Senior Policy Officer conducts research and consultations, prepares policy papers, briefings and reports for the Guardian.

Senior Advocate

Amanda Shaw

The Senior Advocate leads the advocacy team, manages the Office's monitoring activities and audits annual reviews for children and young people under guardianship.

Advocates

Belinda Lorek (to February 2014)

Melissa Clarke

Jodie Evans

Sarah Bishop (from March 2014)

Advocates investigate and advocate on individual matters and monitor quality of care in residential and youth justice facilities. They also undertake project work specific to their skills and areas of interest to the Guardian.

Youth Advisors

Mellita Kimber

David Wilkins

Sara Bann

Thomas Manning

Bennita Brinkworth

The Youth Advisors work with staff to provide advice, suggestions and guidance on matters that affect children and young people under the guardianship, or in the custody of, the Minister. The role of the Youth Advisors ceased in November 2013 when it was replaced with a broad-based youth consultation process. Our thanks to the Youth Advisors for their valuable service.

Membership of external committees

Australian Children's Commissioners and Guardians – Pam Simmons

Across Government Guardianship Steering Committee – Pam Simmons, Kendall Crowe

National Framework for Child Protection SA Partnership Group – Pam Simmons

Statutory Authorities Network – Pam Simmons

Social Impact Investment Product Advisory Committee and Social Impact Bonds
Government Steering Committee – Pam Simmons

Private Sector Collaboration and Social Innovation working group – Amanda Shaw

Vulnerable Youth People Exiting Guardianship Research Working Group – Jodie Evans

Learning and development

Responding to Abuse and Neglect

Business Management Diploma

Counselling Skills

Attachment Across the Life Span