

Child and Young Person's Visitor

Annual Report

2019 - 2020



Government of South Australia

Office of the Guardian
for Children and Young People

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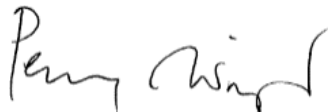
The Hon. Rachel
Sanderson, MP
Minister for Child
Protection GPO Box
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Dear Minister

I present to you the report of the Child and Young Person's Visitor for the year ended 30 June 2020, 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 2019-20 financial year.

Yours sincerely



Penny Wright
Child and Young Person's Visitor

30 September 2020

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 holds the position of Child and Young Person's Visitor 'ex-officio', i.e. by virtue of holding the position of Guardian. Ms Wright's appointment to this position was published in the Government Gazette on 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.

The enactment 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 was provided with special purpose funding over two years, 2017-2019, to undertake the trial visiting project.

Since the trial came to an end in September 2019, no additional budget has been allocated to the Guardian to undertake the additional functions associated with the CYP Visitor role. The CYP Visitor has not been in a position to undertake any additional visiting or more generally fulfil statutory functions beyond those that were encompassed in the completed trial project, run by the Guardian.

For this reason, this report will not include the comprehensive reporting ordinarily provided in an 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
DHS	Department for Human Services
GCYP	Guardian for Children and Young People
NGO	Non-Government Organisation
TCV	Training Centre Visitor
the Minister	the Minister for Child Protection
<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

The *Child and Young Person (Safety) Act* was passed in 2017 and Penny Wright was appointed to the role of Child and Young Person's Visitor (CYP Visitor) on 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 CYP Visitor role is set out in Chapter 9 of the *Children and Young People (Safety) Act 2017 (the Act)* with the specific purpose of visiting, monitoring, promoting and advocating for the best interests of children and young people who are living in 'prescribed residential facilities' ('residential care') in South Australia.

Children living in 'prescribed residential facilities' are under the guardianship, or in the custody, of the Chief Executive for Child Protection and living with others in facilities staffed by rostered and paid carers, as distinct from family-based care such as foster or kinship care.

The CYP Visitor is an independent role³ and reports to Parliament through the Minister for Child Protection.

Section 117(2) provides that the role is to be independent of the Crown or any Minister.

Functions and Powers

The CYP Visitor has the following specific *functions*, as set out in section 118(1) of the *Safety Act*⁴:

- conduct visits to, and inspections of, residential care facilities⁵
- 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 S 117(2) *Safety Act*

⁴ See the section in full, in Appendix 1

⁵ In the *Children and Young People (Safety) Act 2017*, residential care facilities are called "prescribed facilities"

The CYP Visitor must encourage residents of residential care facilities to express their own views and must give proper weight to those views⁶ and 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 disability.⁷

The CYP Visitor's *powers* are set out in s.118(2) to (7) of the Act.

Background to the establishment of CYP Visitor role

The 2016 SA Child Protection Systems Royal Commission recommended the development of a community visitor's scheme for children in all residential and emergency care facilities.⁸

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

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 received two year's special purpose funding for the trial (\$1.4m) and developed and trialled the scheme, called the 'trial Child and Young Person's Visiting Program,' over that timeframe.

At the time the trial was started, in 2017, the role of CYP Visitor was legislated but not established. The trial visiting scheme was tasked to, and overseen by, the Guardian for Children and Young People.

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 function to monitor the circumstances of children in care, under the *Children's Protection Act 1993*.

⁶ S 118(2)(b) *Safety Act*

⁷ S 118(2)(a) *Safety Act*

⁸ Commissioner Nyland, *Recommendation 137, The life they deserve: the Child Protection Systems Royal Commission Report 2016*, p.xli

The number of children in care grew significantly between 2004 and 2017 as did the number of children living in residential care. There was a 622% increase in the number of individual facilities to be visited, from 18 in 2006 to more than 130 in 2017, with no increase in staffing.

Due to the increase in the number of facilities, and an expanded workload due to increased numbers of children entering care, it was not possible to visit and monitor even a proportion of these facilities satisfactorily, with a team of only three Advocates. Monitoring visits became a simplified audit process with a relatively small number of visits achievable.

With the advent of the trial visiting scheme in 2017, the Guardian's 'monitoring visits' to DCP facilities ceased. In June 2020, the number of residential and commercial care placements numbered more than 200.

Since the finalisation of the trial CYP Visiting Program in September 2019, the Guardian's Advocacy Team has recommenced a small number of brief 'audit' visits to residential facilities to fulfil the Guardian's function to 'monitor the circumstances of children under the guardianship, or in the custody of, the Chief Executive of the Department for Child Protection'.

Between May and September 2020, in response to the Covid-19 pandemic the Guardian's Advocacy Team implemented several 'virtual' audit visits (via video conferencing), in place of face-to-face visits.

The Guardian's trial CYP Visiting Program

Between July 2018 and August 2019, the Guardian's trial CYPV Program visited 95 children. Visiting commenced in September 2018 and finished in August 2019. The end date for the trial was extended to 30 September 2019.

A [final report](#) for the trial CYP Visiting Program was provided to the Minister for Child Protection and the Department for Child Protection in December 2019.

In 2019-2020, a carry-over of unspent budget from the trial scheme (\$200,000) was granted to the Guardian for Children and Young People to fund 1.62 FTE staffing for -

- subsequent monitoring of DCP responses to recommendations arising from the visiting scheme
- follow-up reporting on the trial
- advocacy arising from the trial visiting scheme
- conduct of 'audit visits' with the GCYP Advocates' Team

Financial Summary of expenditure 2019-20 ('000)

Project 972: Community Visitor Scheme

Item	Actual	Budget	Variation
Salaries and wages	196	200	4
Grants, goods and services	0	0	0
Total	196	200	4

Summary of trial CYP Visiting Program Final Report

A de-identified version of the report, to protect the privacy of children and staff, was published in February 2020 and is available here: <http://www.gcyp.sa.gov.au/wp-content/uploads/2020/02/2020-Final-report-on-Trial-Child-and-Young-Persons-Visiting-Program-de-identified.pdf>

The target of visiting 100 unique, individual children and young people was nearly achieved within the specified timeframe. Information was received about 99 children (as one child was visited twice after moving facilities) and four children were actually absent on school camp when the visit occurred. The target would have been exceeded but for repeat visits to some facilities, which meant that 20 children and young people were visited by a Community Advocate more than once (between 2 and 5 times). Repeat visiting provided valuable information about the benefits of more frequent and repeated visits.

Details of visits undertaken

- Facilities
 - ranged from 2 to 6 bed (some were capped but had the capacity for 8 or 12 beds)
 - northern and southern metropolitan and regional
 - residential and assessment units
- Number of individual facilities: 24
- Number of individual children visited: 95
- Number of facilities visited and formally reported on: 23
- Number of visits (some facilities visited more than once): 37
- Number of reports provided to DCP: 14
- Number of formal DCP responses (in December 2019): 9
- Number of recommendations made in 14 reports: 107
- Number of recommendations formally responded to by DCP (in December 2019): 63
- Number of recommendations accepted by DCP: 53
- Number of recommendations not accepted: 1
- Number of recommendations being further considered: 9

Outcomes

To date, the trial has given rise to a series of clear outcomes and benefits to individual children and young people, relating to physical and emotional safety, health and wellbeing, cultural identity, connection with family, access to education, participation in decision-making and the circumstances of their life, decisions about placement, personal development and interests.

On a facility level there have been positive outcomes through improvements to physical and social environments, and the support, training, performance management and wellbeing of staff.

Broader systemic issues including placement decision-making, access to educational opportunities and the availability of vehicles have been raised with the Department for Child Protection.

Examples of Outcomes from trial CYPV Program visits

Report/Visit	Outcomes
A	YP's wishes to visit country and work on his Life Story book are in progress
	YP's educational needs and reengagement in mainstream school are being progressed
	YP's placement had been reviewed and he was re-placed in a culturally appropriate placement
	Additional services were engaged to support a YP and behavioural presentations had decreased as a result
	YP has been supported to be engaged in his community and referred to a culturally responsive health service
	YP's disability needs are being reviewed (YP was referred to ## NGO program, psychological therapy and exploration of special education and therapeutic placement is being explored)
B	YP has been reviewed and moved to a more appropriate placement and regular care team meetings being held to support her complex needs
	The Southern Region has reviewed placement for 2 young people and transitioned them to more suitable placements
	A new vehicle acquisition plan working group has been established to consider fleet management issues
C	The Executive Director OOHC will investigate issues related to placement of siblings in residential care
	DCP is commencing further work with the Department for Education regarding CYP in care
	Confidential resident information was moved from view to a secure place
	At a local level the unit had taken measures to empower YP in decision making and contributing to their environment
	YP had been encouraged to decorate their own rooms and personalise their space
	YP were involved in meal planning
D	Supervisor will have regular contact with case managers and advocate according to need
	The lived experience of CYP in residential care will be considered in the broader context of OOHC reform (making places less institutional)
	A sibling group's ACIST will be reviewed
	Attendance at cultural events facilitated
	Refresher training and reflective discussions were held for a staff member
	Repairs, upgrades and maintenance was conducted on the facility
	Case manager contact with siblings extended to visiting them at the facility

Evaluation

The trial was evaluated by Dr Kate Seymour, Professor Sarah Wendt and Associate Professor Lorna Hallahan of SWIRLS (Social Work Innovation Research Living Space) at Flinders University. They concluded:

The OGCYP has embraced, and largely delivered on, Royal Commissioner Nyland's vision of a

community visiting scheme staffed by selectively recruited professionals focused 'solely on the child's views and interests' and providing 'high quality reporting and advocacy' (Nyland, 2018, p. 331).

The impacts of broader systemic factors on both the functioning of residential care facilities and the experiences of their CYP residents, however, are both substantial and incredibly difficult to tackle, transcending the mandate of any single department, agency or facility.

This intersection of residential care issues and the broader systems of child protection, including – but not limited to – DCP policies, practices and processes, is evidenced throughout the site reports analysed for this evaluation. Concerns raised about the adequacy of intervention programs and support services, the quality of CYP's relationships with their DCP case managers, and actions taken to meet the needs of CYP (such as cultural identity plans or ACISTs), along with issues regarding placement planning and decision making, for example, point to the complexities associated with multiple systems facing high and competing demands and multidimensional, multi-causal problems, within the context of considerable (local and national) political and economic pressure.

Recommendations from the trial CYPV Program

Recommendation 1

Ensure that the overall orientation, purpose and ethical principles underpinning the program are clear. Seek to prioritise the main services to be provided.

Recommendation 2

A visiting program needs to focus both on the 'rights' and the 'best interests' of children and young people, rather than one or the other.

Recommendation 3

In order to promote the participation of children and young people with the visiting program, it is crucial to develop strategies and practices that enhance engagement, including:

- Regular and predictable visits
- Pre-visit information for residents
- Encouraging staff to promote and facilitate visits
- Post-visit contact and feedback with residents – in writing, by phone and, where appropriate, quick follow up visits

Recommendation 4

Due to the complexity of visiting, advocating and reporting with respect to children and young people and systems, a visiting scheme for CYP living in residential and commercial care requires the paid employment of experienced and appropriately qualified staff in the role of visitors and advocates.

Recommendation 5

The hours of employment of Community Advocates must make sufficient provision for the completion of pre and post visit tasks and the completion of reports.

Recommendation 6

A future visiting scheme should strive to employ, using targeted recruitment, an appropriate number of Aboriginal staff that reflects the proportion of Aboriginal children in residential and commercial care.

Recommendation 7

Given the issues that arose in relation to CYP with a disability, a future visiting scheme would benefit from staff with, or access to, expertise about the care needs of CYP with a disability.

Recommendation 8

In designing a visiting program, regard should be had to the Australian Childhood Foundation's *Practice guide: Creating positive social climates and home-like environments in therapeutic care* and ensure that assessment of physical and emotional safety needs goes beyond merely asking CYP directly.

Recommendation 9

In the event that a limited, targeted scheme is resourced, ensure that the purpose of the visiting scheme is explicit and that the CYP Visitor has clear responsibility to define and set priorities for the program within the resources allocated.

Recommendation 10

Ensure the CYPV has the powers and other measures necessary to enable the setting of priorities for a visiting program (including the systematic provision of data from DCP that will help target visits/inspections).

Recommendation 11

Consider legislative amendment to achieve consistency in Freedom of Information requirements for the roles of Guardian, TCV and the CYP Visitor.

Recommendation 12

Consider legislative amendment to the *Safety Act* to give the CYP Visitor the power to require information, consistent with the powers of the Guardian and TCV.

Recommendation 13

Consider legislative amendment so that the CYP Visitor may delegate functions and powers, consistent with the powers of the Guardian.

Recommendation 14

Amend the legislation to provide for the resourcing of the CYP Visitor role with the staff and other resources reasonably needed for carrying out the Visitor's functions.

2. CYP Visitor Activity in 2019-2020

The CYP Visitor received no dedicated budget to implement the specific legislative functions associated with the CYPV role in 2019-2020.

As a consequence, no staff have been employed by the CYP Visitor and the CYP Visitor has not been in a position to undertake additional visiting or inspections (as provided for in s.117 of the *Safety Act*) beyond those associated with the trial project undertaken by the Guardian for Children and Young People.

There were no formal complaints made about the CYP Visitor in 2019-2020

There were no work health and safety claims during 2019-2020.

There were no Freedom of Information requests during 2019-2020.

3. The future for the CYP Visitor role

The future of the CYP Visitor role remains to be seen.

Section 118 of the *Safety Act* gives the CYP Visitor clear responsibilities, and powers to fulfil those responsibilities, but (unlike the role of Guardian and Training Centre Visitor) there is no specific legislative entitlement to adequate resources to do so.

The legislated 'community visitors scheme' envisaged by Commissioner Nyland, is not feasible without the staff necessary to support the CYP Visitor.

There are now over 500 children living in residential and commercial care in South Australia, a higher reliance than most other Australian jurisdictions, and their unique vulnerabilities have been the subject of many reports and inquiries, including *The Children in State Care Commission of Inquiry* (Mullighan Report), *The life they deserve: the Child Protection Systems Royal Commission Report 2016* (Nyland) and the final report of the federal *Royal Commission into Institutional Responses to Child Sexual Abuse*.

In particular,

- Aboriginal children are significantly over-represented in residential and commercial care
- It is estimated that 25 and 30 per cent of children and young people in care have a disability and/or significant developmental delay
- Children and young people living in residential and commercial care are the subject of a vastly disproportionate rate of Missing Persons Reports. (In 2017-18, for instance, there were 7,755 missing persons reports recorded by DCP of which 98 per cent arose from the residential and commercial care placements.)
- Those children living in a residential or commercial care are seriously over-represented in the youth justice system and particularly in youth detention
- Despite work by DPC towards improving staff training, improving physical environments and advancing a therapeutic framework in residential care, it remains the case that having a number of children with often complex behaviours under one roof can create an unsafe living environment. Commissioner Nyland noted that, "*the risks of peer-to-peer sexual abuse, assaults and other critical incidents are aggravated by poor matching of residents within the units*"⁹. This is still the case, with a very low vacancy rate exacerbating issues around the matching of residents.

⁹ Commissioner Nyland, *Recommendation 137, The life they deserve: the Child Protection Systems Royal Commission Report 2016*, p.xlii

- As identified by Commissioner Nyland, children in institutional care are especially vulnerable to sexual abuse and if they are to stay safe this risk must be addressed.

The value of visiting schemes in protecting vulnerable people living in institutional environments has most recently been strongly restated by the *Oakden Report* (Commissioner Bruce Lander) and the 2020 *Safeguarding Taskforce Report* by Dr David Caudrey and former MLC Kelly Vincent.

The risks associated with non-delivery of the CYPV's functions

Non-delivery of the legislated Child and Young Person's Visitor role increases the risk for children and young people living in residential and commercial care, as a result of:

- Reduced opportunity to have contact with an independent person with whom they can raise concerns and make disclosures of harm
- Reduced opportunity to be advised of their rights and the existence/role of GCYP Advocacy
- reduced intelligence on the part of the Guardian about critical situations (bullying, peer sexual abuse, violence, physical or emotional abuse) to inform targeted monitoring and assistance, particularly for Aboriginal children and children with physical, psychological or intellectual disabilities
- reduced intelligence on the part of the Guardian about the quality of care, systems issues such as restrictive practices, use of medication, recourse to SAPOL and access to education, and consequently systemic reforms necessary.

In May 2020 the CYP Visitor raised concerns with the Minister about the potential legal and reputational risks that arise for her in holding a role with associated functions and powers but no capacity to fulfil those. This situation is yet to be resolved.

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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.