

**Ministry of Health submission**  
**Statutory Review**  
***Advocate for Children and Young People Act 2014 (NSW)***

- Question 1** — What do you think about the principles of the Advocate?
- Question 2** — What do you think about the responsibilities of the Advocate
- Question 3** — Are there other things the Advocate should consider when performing its responsibilities?
- Question 4** — What do you think about the set-up of the YAC, e.g. number of members, age limits, etc?
- Question 5** — What do you think about the functions and responsibilities of the YAC? Should they be doing more/less
- Question 6** — Do you have any other comments about the YAC?
- Question 7** — What do you think about the special inquiry function? Do you think it is necessary to retain the ability for the responsible Ministers to require a special inquiry?
- Question 8** — Should there be any changes to the way in which the Advocate is able to run a special inquiry?
- Question 9** — What do you think about the annual reports the ACYP has developed? Do you think there are any other issues of importance to children and young people that should be reported on?
- Question 10** — Do you think it is a good idea that Parliament monitors the work of the Advocate? Why or why not?
- Question 11** — Do you have any comments about the Act that you would like to raise?

The NSW Ministry of Health (**Ministry**) welcomes the opportunity to provide a submission to the statutory review of the *Advocate for Children and Young People Act 2014 (NSW)* (**the Act**). The Ministry recognises that a voice for children and young people and their representation through the Advocate to the NSW Government is important. The Ministry considers that the policy objectives of the Act remain valid and the terms of the Act remain appropriate for securing those objectives. Notwithstanding this, the Ministry recommends consideration be given to whether the Act should be amended to better support the functions of the Advocate and transparency of the role. For the purposes of this submission, the Ministry has focussed on Questions 2, 3, 4, 7, 8, 9, 10, and 11 of the discussion paper.

**Question 2 — Responsibilities of the Advocate**

Key responsibilities of the Advocate under the Act (s.15) are to:

- advocate for and promote the safety, welfare and well-being of CYP
- to promote the participation of CYP in the making of decisions that affect their lives; and
- to conduct special inquiries into issues affecting CYP.

The Ministry would strongly support the establishment of an Advocate for Aboriginal Children and Young People. This role would bring a strong voice for Aboriginal CYP in NSW and ensure participation in decisions that impact Aboriginal peoples and communities. It is noted that both Victoria and South Australia currently have an independent Commissioner for Aboriginal Children and Young People, albeit with a slightly varied role scope than the NSW statutory responsibilities of the Advocate.<sup>1</sup> It is noted that the 2019 ACYP report '*What Aboriginal children and young people have to say*' included a recommendation that a NSW Commissioner for Aboriginal Children and Young People be set up independently to the Advocate for Children and Young People. Establishing a

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<sup>1</sup> Victorian established the Commissioner for Aboriginal Children and Young People in 2013

<https://ccyp.vic.gov.au/>

South Australian established the Commissioner for Aboriginal Children and Young People in 2018

<https://cacyp.com.au/>

statutory role of Advocate for Aboriginal Children and Young People could also assist in NSW meeting commitments under the National Agreement for Closing the Gap.

The recent appointment of the inaugural NSW Deputy Children's Guardian for Aboriginal Children and Young People would benefit from a parallel in the advocacy space, noting the intersects between the regulatory role of the Office of the Children's Guardian (including in regulating the out-of-home care sector) and the Advocate for Children and Young People in providing a voice for NSW CYP. Should such a role be supported as part of this statutory review, the Act could be amended to facilitate the appointment of one or more Deputy Advocates, who are statutory office holders, and who are subject to the same terms of office as stated in s.5, s.8, s.9, and s.10 of the Act. If this proposal is supported, the proposed Advocate for Aboriginal Children and Young People should be an 'identified' Aboriginal position.

Section 15(1)(g) of the Act requires the Advocate to prepare a 3-year strategic plan for NSW CYP. The NSW Strategic Plan for Children and Young People 2016-2019 was launched by the NSW Government on 26 July 2016. Despite the plan expiring in 2019, as of March 2021, a new strategic plan has yet to developed. The Ministry queries whether interim measures are required to address any gaps between the implementation of strategic plans. The Ministry submits that the promotion of child safe organisations should be included as a specific focus area either in the next strategic plan or through legislative amendment. The recent exposure draft of the *Children's Guardian Amendment (Child Safe Scheme) Bill 2020* sets out a proposed child safe regulatory scheme for NSW, which if passed, will require organisations subject to the Reportable Conduct Scheme to implement the Child Safe Standards recommended by the *Royal Commission into Institutional Responses to Child Sexual Abuse*. Leveraging this framework for CYP safety could strengthen the Advocate's s.15 functions; including the Advocate's role in focussing on systemic issues affecting CYP. Inclusion of this responsibility would align with the Advocate's role to promote the participation of CYP in the making of decisions that affect their lives; and provide an important perspective during implementation of the Child Safe Standards.

### **Question 3 — Things the Advocate should consider when performing its responsibilities**

There are three key things that the Advocate should consider when performing responsibilities:

- Reporting on outcomes of the 3 year strategic plan — It would be beneficial to be able to communicate back to CYP about what has been delivered from the plan and strengthen accountability of government to fulfil on initiatives and make the plan a living document.
- Advocating for younger children — In practical terms the role of the Advocate appears to be strongly focussed on consultation with and advocacy for young people. This leaves a gap in advocacy and guidance on consultation with those children who are not yet at school. The NSW Ministry of Health would like to see the role of the Advocate assist, as the Commission for Children and Young People once did, with efforts to genuinely engage children 0-5 years.
- Advocating for sexuality and gender diverse young people — The Ministry is proposing explicit consideration is given to the voice, rights and issues affecting sexuality and gender diverse young people in NSW. Their issues should be considered and they should be represented on the YAC. This group is not being mentioned explicitly across the discussion document or in the reports. Disadvantaged young people are mentioned as important cohort for the Advocate to consider. Elsewhere it is stated that the Advocate wants to seek views of young people who have disability, young people who are living in rural areas, who are CALD, or Aboriginal. It is also stated that the YAC should be representative of all communities of young people in NSW. This group is important as they are a minority group who experience the effects of stigma, discrimination and marginalisation. This was highlighted by the recent *Writing Themselves In 4* report including over 6000 LGBTQ young people aged 14-21 years, who experience high rates of harassment, bullying and exclusion in

all areas of their life, and high rates of mental health issues and suicidal ideation compared to the general population of young people, and barriers in access to healthcare. It is also recognised by recent work by NSW Ministry of Health to support the health needs of this group.

#### **Question 4 — Youth Advisory Council**

There is benefit in ensuring that all members of the Youth Advisory Council (rather than only six members) are persons who are under the age of 25 years at the time of their appointment. Also, it would be appropriate that at least one member on the YAC has a lived experience of mental illness to ensure a more inclusive representation of the committee and reflect the importance of mental health issues for children and young people. It is noted that annual representation of members may make it difficult to establish cohesion and trust, and build members skills.

#### **Question 7 — special inquiry function**

The DCJ discussion paper states that as at September 2020 the Advocate has never been subject to a Ministerial request to conduct a special inquiry. The Ministry notes that the ACYP Annual Report FY2019-20 refers to a request to undertake a Special Inquiry in relation to CYP's 'experience of disasters' (page 64). Ultimately it was considered that 'existing powers under the Act were sufficient to undertake this project' and to not utilise the Advocate's special inquiry functions. This raises the question whether an inquiry function is necessary under the Act. In considering whether it is necessary to retain the inquiry power, the Ministry would encourage further consideration of existing powers and investigative functions held by other bodies that may perform a similar function. Where there are other powers available to facilitate the investigation of specific issues that affect CYP, NSW Health would recommend prioritising the power of special inquiry with the body that has existing expertise in investigations and inquiry.

#### **Question 8 — Should there be changes to the way the Advocate is able to run a special inquiry?**

The Ministry of Health support promotion of the role of the Advocate including a role in governmental inquiries that affect young people to ensure the voice of young people are heard (eg, Prevention of Youth Suicide by Legislative Council). The Ministry also supports retention of special inquiry function, but recommend considering why this function has not been used to date.

#### **Question 9 — annual reports**

There is benefit in ensuring the reports are concise and the existing reports could be shortened. The Ministry considers there would be a public interest in further transparency to the consultations and collaboration that occur throughout the ACYP reporting year. This can be facilitated by prescribing in the Act a requirement for other reporting requirements in the annual report that the Advocate submits to Parliament. The Ministry would support additional ACYP reporting requirements that sets out:

- the number of CYP consulted, including disaggregation of consultation data to reflect the demographics (i.e. gender, Aboriginality, cultural and linguistically diverse communities, disability, LGBTQIA) to ensure accountability for proportionate engagement and representation of children and young people across NSW's communities; and
- monitoring and reporting against the work being done across NSW government in support of the strategic plan, together with acknowledgment of the expiry of strategic plans and process for development of its next iteration; and
- reporting on the implementation of the strategic plan.

These additional reporting requirements will support public confidence that the Advocate is giving priority to the interests and needs of vulnerable and disadvantaged CYP. It will also facilitate

transparency and support the functions of the Parliamentary Committee on Children and Young People (the Committee) by ensuring they are advised of ACYP initiatives. It is noted that the Committee in their 2020 Review of the Annual Reports and other matters of the Office of the ACYP also recommended reporting on work done by government agencies that are given responsibility for implementation of the strategic plan. A COVID-19 report focused on current and long term impacts on Children and Young People is recommended.

#### **Question 10 – ACYP oversight**

Yes, it is important that Parliament has access to information about key issues impacting children and young people, and that the scope of work of the Advocate remains consistent.

The Ministry supports the independence of the Advocate, so that the role can focus on enhancing the lives of CYP free of influence and independent from other agendas. The Committee has oversight of the Office of the Advocate and allows for that independence. However, it is noted that the Committee was unable to examine the 2017-18 Annual Report before the expiration of the Parliament prior to the NSW state election 2019. As such, both the 2017-18 and 2018-19 Annual Reports were considered together by the Committee as part of its 2020 review. The Ministry queries whether there may be other mechanisms for review by the Committee or another body in order to prevent future incidences where there is a lengthy gap between the submission of reports and consideration by the Committee.

#### **Question 11 – other issues**

**Cooperation with other agencies** — The Ministry would support further discussion of s.16 of the Act and whether amendments are required to strengthen the Advocate’s role in leading consultation for programs of work across NSW government that impact on CYP. While the current section mandates for ‘work in co-operation’ with other government agencies, explicitly prescribing for the Advocate’s role would recognise the Advocate’s leadership in providing a voice for CYP and ensure that their interests are genuinely considered in decisions that impact them.

**Term of appointment** — The Ministry notes that other Australian jurisdictions (notably Queensland) provide for a shorter appointment term (three years) for the equivalent position of the Advocate. Under the Act (s.5), the NSW Advocate holds a term of 5 years, which may be extended to a maximum of two terms. NSW Health would welcome discussion about the length of the term, and whether the role may benefit from diversity in appointments that could be facilitated under shorter appointment terms. Further, noting that the existing Acting Advocate has held that role under s.11 of the Act since January 2020, the Act may benefit from clarification regarding the maximum length of acting appointments in order to ensure continuity of work and certainty in representation and how this interacts with s.5 appointment terms.

#### **Vacancy in office**

Existing s.8(1)(f) requires the Advocate to vacate office if convicted of a NSW (or equivalent interstate/foreign) offence punishable by imprisonment for 12 months or more. Noting the close engagement that the role of Advocate has with CYP, and notwithstanding this provision aligns with other statutory appointees,<sup>2</sup> there could be benefit in extending its operation to *any* child-related offence to ensure lower level summary offences are also covered (see for example, s.11F *Summary Offences Act 1988* regarding sale of knives to children).

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<sup>2</sup> See eg s.8(4C)(f) *Ombudsman Act 1974* (NSW) and