



Youth Detention Review

Submission to the Independent Review of
Youth Detention Discussion Paper

October 2016

About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity, and children and young people in out-of-home care or staying at a visitable site.

The OPG provides an important protective role in Queensland by administering a community visitor program, which provides statewide visiting services to:

- adults with impaired decision-making capacity residing in government funded facilities and some private hostels, and
- children and young people in out-of-home care (foster care, kinship care, residential care) or at a visitable site (residential facilities, detention centres, corrective services facilities, authorised mental health services).

The OPG also supports children and young people in care through the child advocacy program. This program gives children and young people engaged with the child protection system an independent voice, ensuring their views are taken into consideration when decisions are made that affect them, thereby implementing a key element of the United Nations *Convention on the Rights of the Child*.

The community visitors and child advocates provide an oversight mechanism to ensure that the Charter of Rights for a child in care under the *Child Protection Act 1999* are upheld. This includes upholding the rights of children and young people to be provided with a safe and stable living environment, and to be placed in care that best meets their needs and is culturally appropriate.

The OPG also works to protect the rights and interests of adults who have impaired capacity to make their own decisions, recognising that everyone should be treated equally, regardless of their state of mind or health. The OPG has a direct role in implementing obligations and ensuring rights as prescribed by the United Nations *Convention on the Rights of Persons with Disabilities* are upheld.

The OPG's legislative obligations with respect to adults with impaired capacity are to:

- make personal and health decisions if the Public Guardian is their guardian or attorney
- investigate allegations of abuse, neglect or exploitation
- advocate and mediate for adults with impaired capacity, and
- educate the public on the guardianship and attorney systems.

When appointed by the Queensland Civil and Administrative Tribunal as guardian, the Public Guardian routinely makes complex and delicate decisions on health care and accommodation, and guide adults through legal proceedings in the criminal, child protection and family law jurisdictions.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* set out the OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision makers under an Advanced Health Directive or an Enduring Power of Attorney.

Submission to the review

Position of the Public Guardian

The Office of the Public Guardian (OPG) welcomes the opportunity to provide a submission to the Independent Review of Youth Detention.

The OPG has considered the terms of reference and has focused on issues 3 and 4 of the discussion paper, namely the oversight of Queensland youth detention centres and prisons with respect to 17-year-old prisoners. The purpose of this submission is to outline the OPG's role as an external oversight mechanism, and to highlight key issues faced by children and young people when raising complaints within the youth justice system.

The OPG would be pleased to lend any additional support as the review progresses. Should clarification be required regarding any of the issues raised, the OPG would be happy to make representatives available for further discussions.

The OPG's role in the youth justice system

The OPG was established following recommendations made by the Queensland Child Protection Commission of Inquiry (QCPCI), which was tasked with reviewing the Queensland child protection system. While youth justice was outside the scope of the inquiry, the QCPCI acknowledged that 'child maltreatment has been linked to an increased risk of youth offending, and as at 30 June 2012, 72% of children and young people in the youth justice system were known to the child protection system'.¹

The OPG combines roles that were previously separately undertaken by the Office of the Adult Guardian, and the community visitor function of the former Commission for Children and Young People and Child Guardian (CCYPCG). Other functions of the CCYPCG were taken on by the Queensland Family and Child Commission (QFCC); the Department of Communities, Child Safety and Disability Services (DCCSDS); the Queensland Ombudsman; and the Public Safety Business Agency. The 'child guardian' function of the OPG relates to its role as an oversight mechanism for individual children and young people in out-of-home care and the youth justice system, and 17 year olds in adult correctional facilities. It should not be interpreted as inferring a role as 'locus parentis'.

The OPG provides a community visitor program to protect the rights and interest of children and young people in out-of-home care or staying at a visitable site, complemented by the Public Guardian's child advocacy program. Both of these services aim to help children and young people to resolve issues and disputes, make complaints, and provide support for them in court proceedings and other processes where decisions are to be made in relation to their care.

¹ Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013, p.36.

The OPG's community visiting and advocacy functions as set out in the *Public Guardian Act 2014* (PGA) are designed to ensure that the Standards of Care prescribed under the *Child Protection Act 1999* are met, and to provide a direct voice for children and young people in care. The statutory functions of the community visitors² and child advocates³ include the development of a trusting and supportive relationship with the child, so far as possible. This facilitates the creation of a safe environment in which a child may better feel empowered to make disclosures about abuse, neglect or exploitation.

Community visitors practice within a human rights framework and are educated on the United Nations *Convention on the Rights of the Child*, in particular giving strong credence to Article 12.

Section 7 of the PGA sets out the principles to be applied by community visitors and child advocates when performing their functions. The main principle is that the best interests of the child are paramount; others include:

- the child's family has primary responsibility for the child's upbringing and development and should be supported in that role
- the child is a valued member of society
- the child is to be treated in a way that respects the child's dignity and privacy
- the child is to be cared for in a way that protects the child from harm, promotes the child's wellbeing and allows the child to reach their full potential
- the child's emotional, moral, social and intellectual development is important and must be taken into account
- the child is entitled to be heard, even if others may not agree with the views expressed by the child
- the child should be able to exercise their rights and participate in decisions that affect their life
- the child should be able to access available services necessary to meet their needs
- an ongoing relationship between the child and the child's family is important for the child's welfare and wellbeing and must be taken into account, and
- an ongoing connection with the child's culture, traditions, language and community is important for the child's welfare and wellbeing and must be taken into account.

There are currently seven levels of oversight of the youth justice system in Queensland: the OPG, the Department of Justice and Attorney-General Ethical Standards Unit (ESU), the Crime and Corruption Commission (CCC), the QFCC, the Queensland Ombudsman, Queensland Corrective Services (QCS), and Youth Justice.

The OPG is the only oversight body that represents the voice of the child, and has the most frequent, direct and ongoing access to the child. In this way, the OPG plays an important and unique role in the oversight framework of youth detention centres and adult corrective services facilities. A primary focus of the OPG is on building relationships with children and young people in the youth justice

² *Public Guardian Act 2014*, s.56(1)(a).

³ *Public Guardian Act 2014*, s.13(1)(a).

system; these relationships may have been established before the child's entry into detention, or maintained after their release, if the child is in out-of-home care or staying at another visitable site.

Community visitor program

A person is eligible for appointment as a community visitor for children and young people only if the Public Guardian considers the person has the knowledge, experience or skills needed to perform the functions of a community visitor.⁴ In appointing a person as a community visitor, the Public Guardian must also take into account the desirability of the person reflecting the social and cultural diversity of children in Queensland.⁵ Community visitors are employed by the Public Guardian as casual contract employees and come from a diverse range of backgrounds; some have qualifications and professional skills, including psychology, teaching and social work, while others have extensive experience in human services. The OPG seeks people with life and professional experience which has prepared them to relate well with children and are prepared to undertake the responsibility of being a community visitor. The OPG finds that the role attracts a high calibre of applicant.

Community visitors must regularly visit visitable sites, which are defined to include youth detention centres and adult corrective services facilities.⁶ A young person remains visitable if they are in the child protection system, or reside at a visitable site, until they turn 18 years old.⁷ As such, a visitable site may include an adult corrective services facility where a 17 year old may be detained.

Youth detention centres are visited by community visitors on a weekly basis. Adult corrective services facilities are visited at least on a monthly basis if a young person is being detained at the facility during a particular month. Visiting may be more frequent conditional on factors such as the number of young people detained at the facility, the length of time of detention, any particular vulnerabilities of the young people, and the nature of issues identified during past visits.

Children and young people in youth detention centres or adult corrective services facilities may also request additional visits from community visitors.⁸ If a child or young person asks a staff member of the site to arrange for a community visitor to visit, the staff member must notify the Public Guardian about the request as soon as practicable.⁹

Community visitors have a number of statutory functions relating to children and young people in youth detention centres and adult corrective services facilities, including:¹⁰

- developing a trusting and supportive relationship with the child, so far as is possible
- advocating on behalf of the child by listening to, giving voice to, and facilitating the resolution of, the child's concerns and grievances
- seeking information about, and facilitating access by the child to, support services appropriate to the child's needs provided by service providers

⁴ *Public Guardian Act 2014*, s.111.

⁵ *Public Guardian Act 2014*, s.111(3)(b).

⁶ *Public Guardian Act 2014*, s.58.

⁷ *Public Guardian Act 2014*, ss.51 and 52.

⁸ *Public Guardian Act 2014*, s.60.

⁹ *Public Guardian Act 2014*, s.60(2).

¹⁰ *Public Guardian Act 2014*, s.56.

- inquiring into and reporting on the adequacy of information given to the child about the child's rights
- inquiring into and reporting on the physical and emotional wellbeing of the child
- inspecting the site and reporting on its appropriateness for the accommodation of the child or the delivery of services to the child
- ensuring the child's needs are being met by staff members at the site
- inquiring into and reporting on any other matter relating to a child staying at a visitable site, if requested by the Public Guardian, and
- performing any child advocate function, if directed by the Public Guardian.

Community visitors also have powers to enter youth detention centres and adult corrective services facilities without notice, inspect the site, and require staff members to answer questions and produce documents.¹¹

When a community visitor arrives at a youth detention centre, they will talk with the centre manager to determine all recent events at the centre and to follow up on any outstanding issues.

During each visit to a youth detention centre or adult corrective services facility, the community visitor will engage with the child or young person about their current situation and experiences. After each visit, the community visitor will prepare a site report which covers general issues; if the child or young person is also on a child protection order, the community visitor will also prepare a monthly child report which is specific to that child or young person.

The purpose of the community visitor program is to ensure that the voice of the child or young person is heard. If a child or young person has an issue with a youth detention centre or an adult corrective services facility, there are a number of child-friendly complaints mechanisms by which they may make a complaint to a community visitor or to the OPG. The OPG has a centrally based statewide virtual access point which facilitates online contact through the OPG quick message function, by email, by text message, or by telephone on a free-call number. Youth detention centres have OPG communication boxes which provide an avenue for complaints or other communications to be made to community visitors in confidence.¹² Adult corrective services facilities have a 'blue letter' system whereby complaints are put in blue envelopes in a complaints box. These mechanisms allow for complaints to be made anonymously. If the child or young person is unable to or would prefer not to put their complaint in writing, they may make a verbal complaint to a community visitor directly. The OPG is also aware that youth workers visiting sites advise children and young people about the complaints function of the community visitor program.

Concerns raised by children and young people in the youth justice system can be categorised into the following classes: safety and treatment, conditions, programs and services, social supports, child protection, and release or transitions. When a community visitor learns of a complaint or issue in

¹¹ *Public Guardian Act 2014*, s.57.

¹² The OPG's role in resolving complaints about youth detention centres is supported by s.277(3) of the *Youth Justice Act 1992*, which provides that a child in a youth detention centre is entitled to complain directly to a community visitor or child advocate.

relation to a child or young person, they will gather as much information and evidence as possible in preparation for resolution, escalation or referral as required.

Community visitors make every effort to resolve complaints and issues relating to service delivery to a child or young person at the local level where possible and appropriate. Local resolution involves the OPG working to resolve the concerns and grievances of a child or young person with the manager of the site (Manager Monitoring and Compliance). Unresolved issues may be escalated through the community visitor to their regional visiting manager, the Director Visiting or Principal Legal Officer, the Deputy Public Guardian, and the Public Guardian. Allegations of harm are referred to the relevant authority for appropriate action depending on the nature of the alleged harm. Where the allegation of harm relates to suspected misconduct or corrupt conduct, the matter is referred to the CCC or the ESU, in accordance with their respective legislative and policy requirements.

The OPG considers that community visitors play an important role in providing an independent avenue for children to share concerns and potentially disclose information which may not otherwise be brought to light.

Child advocacy program

The OPG's child advocates have a specific role to support children and young people in the child protection system, and ensure that their views are considered when decisions are made which affect the child or their care arrangements, including decisions made by Child Safety, other government departments, tribunals and courts. The child advocates are legally qualified officers who operate by way of referral from a variety of sources including community visitors, foster parents, courts and Child Safety. Child advocates provide services to children and young people who fall within the definition of 'relevant child' in s.52 of the PGA; that is, children and young people who are subject to child protection orders. Consequently, child advocates can only assist children and young people in youth detention centres or adult corrective services facilities if they are also subject to child protection orders (also referred to as 'dual orders').

Child advocates have a number of functions relating to children and young people in youth detention centres or adult corrective services facilities who are on dual orders, including:¹³

- developing a trusting and supportive relationship with the child, so far as is possible
- providing advice and information to the child about matters the child is concerned about
- supporting the child at, and participating in, conferences or mediations ordered or facilitated by a court of tribunal, family group meetings, or any other meetings
- helping the child to resolve issues or disputes with others
- monitoring any plan prepared for the child's health, education or benefit to ensure it is being adhered to
- working with government and non-government agencies that provide a service or facility to the child
- seeking to resolve disputes about reviewable decisions of Child Safety
- helping the child to make an official complaint about a matter to someone

¹³ Public Guardian Act 2014, s.13.

- helping the child to seek, or respond to, the revocation of a child protection order affecting the child
- helping the child to initiate, or initiating on the child's behalf, an application to the tribunal for review of a child protection matter
- helping a recognised entity to support the child in referring a matter to the tribunal
- supporting the child at a proceeding before a court or the tribunal, and
- making submissions, calling witnesses and testing evidence in proceedings relating to child protection matters.

Children and young people will usually have their own legal representation if they are in a youth detention centre or adult corrective services facility; consequently, the role of the child advocate is often to fill in any gaps with respect to the child's legal support, such as advocacy around case planning, placement and contact. The child or young person's first point of contact with the OPG is usually through a community visitor; if issues are raised which need legal expertise, the matter can be escalated through an internal referral process to a child advocate.

Key principles of effective oversight

The OPG considers that the oversight function carried out by its community visitors, and the provision of targeted advocacy in instances where concerns or issues are identified in relation to relevant children, are important mechanisms to protect and promote the safety and wellbeing of children and young people in youth detention centres and adult corrective services facilities. These functions provide an independent overview of service delivery for children and young people, particularly those most at risk.

The OPG recently convened a youth justice roundtable with representatives from the seven 'levels' of oversight that have been characterised of the youth justice system. The purpose of this roundtable was to identify any opportunities for improvement to timeliness, streamlining and transparency in between each body tasked with oversight. A number of issues were raised at the roundtable regarding the processes for actioning matters raised by or on behalf of children and young people. The OPG considers that the following are key principles of effective oversight, and could be better integrated into the current oversight framework of the youth justice system.

Each oversight body plays a different role in the process of managing child complaints and issues; the investigation and referral processes between each can result in delays, incoherence and confusion for clients. This could be seen to dilute responsibility to the point that there is no real locus of accountability. The OPG considers that there is merit in rationalising the number of bureaucratic levels of oversight to a locus of accountability; however, the voice of the child must be given paramount priority and real weight in complaints management processes and the resolution of issues in any oversight framework. It is submitted that the OPG, through its community visitors and child advocates, is well placed to ensure their voice is effectively heard in all matters that concern them.

A fundamental principle of effective oversight must be that any consequences or actions taken must be proximate in time to the issues arising or being disclosed. Time is of the essence when actioning a child's complaint; if a timely response or resolution is not provided, the child loses trust in the

system. In the OPG's experience, issue resolution, investigations and inquiries progress very slowly. It is critical that all children and young people, particularly those at greatest vulnerability, and where the allegations or complaints are most serious, are provided with a timely and informed response that is rights based and young person centred. This may be achieved by the introduction of consequences for delays in actioning issues, and incentives for timely resolutions.

Delays also contribute to the reduced availability of material evidence, which is pivotal in effecting outcomes for complaints and issues raised by or on behalf of children and young people. One very effective measure for both preventing incidents and providing evidence is CCTV. However, OPG understands the youth detention centres and adult corrective services facilities do not have capacity to retain CCTV footage after a 30-day period, due in part to the costs of digital storage. Many children and young people are unaware of this, and may raise conduct issues after footage has already been destroyed. CCTV footage often makes a big difference to validating and acting more expeditiously on complaints. To ensure the availability, quality and integrity of evidence, the complaint or issue needs to be actioned in proximity to the incident in question.

The need to keep the child or young person informed about the progress and outcome of their matter is critical. In practice, feedback to children and young people on the progress of their complaints or issues is not always optimal. Community visitors are a good avenue to provide this information back to the child or young person; however, community visitors are rarely kept informed about a matter after it has been referred to the relevant oversight body for action. To ensure the OPG is kept informed about a matter's progress, the OPG has begun referring complaints to other agencies in addition to the ESU. The OPG also has an internal policy of ensuring that any allegations of excessive force are escalated to the Public Guardian within 24 hours. Within 24 hours of this occurring, the Public Guardian will raise this complaint directly with the Assistant Director-General of Youth Justice (or Commissioner of Corrective Services where it involves a 17 year old in prison). While it is recognised that increased information sharing between the oversight bodies may provide significant benefit in this area, each agency's relevant legislation must be reviewed to determine their respective limits and obligations.

The OPG's role as an oversight body is significant and unique in that it is the only agency to directly represent the voice of the child or young person and it is imperative that this role remains. However, it is limited to referring complaints and issues raised by children and young people to other oversight bodies for investigation and action. The OPG has an individual client-based, not a systemic oversight role in relation to the youth justice system. In the OPG's experience, there can be a de-escalation of behavior when a child or young person has an independent advocate and knows they are being heard. The OPG's child advocacy function is the OPG's strongest power in relation to complaints and issues raised by children and young people; however, in the youth justice system it is limited to children and young people who are on dual orders. Any expansion of this function would require additional resources. The OPG recommends that power in effecting change be given to the representative of the child's voice.

The effectiveness of the complaints system has a direct impact on disclosure rates. It is important to encourage greater disclosure of issues directly by children and young people, as well as disclosure from staff members at the youth detention centres and adult corrective services facilities.

Community visitors complete detailed reports of each visit to a youth detention centre and when visiting 17 year olds incarcerated in adult correctional services facilities. The Public Guardian shares this information with external agencies to help better inform its own oversight functions.

Actions taken by the OPG to address issues

The OPG is currently undertaking a number of initiatives to address issues faced by the OPG and our clients in youth detention centres and adult corrective services facilities.

An internal project has been commenced to strengthen data collection, identification and sharing with other oversight bodies. This project relates to data collected by community visitors and child advocates in relation to all of their functions; however, it will encompass the data collected by community visitors and child advocates in relation to their roles in the youth justice system. Among other things, the project aims to identify the range of data and different sources of data received and captured by the OPG, and to make recommendations as to the use of this data, with consideration especially given to the limited legislative obligations and associated resources provided to the OPG which make it clear the OPG is not empowered to undertake systemic monitoring or advocacy. This will include identifying which information collected by the OPG should be shared with the QFCC and DCCSDS, to inform them of systemic trends, or to provide them with the information to analyse and determine systemic trends. However, sharing data is dependent on the OPG's IT system, which is extremely limited as to what it can extract due to the age and functionality of the system. In particular, the system does not have capacity to identify key issues and generate reports, which would assist in highlighting systemic issues in the youth justice system.

The OPG has also recently settled a protocol with Youth Justice which governs visits to youth detention centres. The purpose of the protocol is to clarify and standardise the processes for information exchange and communication between Youth Justice and the OPG in relation to the OPG's community visitor functions to regularly visit children and young people detained in youth detention centres. Among other things, the protocol requires youth detention centre employees to provide copies of reports about harm to children in youth detention centres to the OPG.¹⁴ The OPG is in the process of finalising a similar protocol with QCS.

The OPG is also looking at ways to strengthen our advocacy function, through earlier referrals of issues from community visitors to child advocates. This may assist with the timely resolution of issues for children and young people on dual orders, and will ensure that the child or young person has an advocate assigned to them.

¹⁴ Section 268 of the *Youth Justice Act 1992* imposes an obligation on youth detention centre employees to report harm to children in youth detention centres to the chief executive; the protocol requires these harm reports to be provided to the OPG.