

Australian Human Rights Commission

Submission to the National Children's Commissioner on
the Optional Protocol to the Convention Against Torture
in the context of Youth Justice Detention Centres

Public Guardian
June 2016

About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office established to protect the rights and wellbeing of adults with impaired decision-making capacity, and children and young people in out-of-home care and others residing at “visitable sites.”

The OPG administers a community visitor program, which provides state-wide 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 or staying at a visitable site, including residential facilities, detention centres, corrective services facilities, and 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.

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.

Position of the Public Guardian

The Office of the Public Guardian (OPG) welcomes the opportunity to provide a submission to the National Children's Commissioner on the Optional Protocol to the Convention Against Torture in the context of Youth Justice Detention Centres.

The OPG has considered the terms of reference and the questions raised by the National Children's Commissioner; however, the purpose of this submission is to outline the OPG's role and experiences as an external oversight mechanism of Queensland's youth detention centres and adult corrective services facilities.

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

Background to the National Children's Commissioner's inquiry

The United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention) sets out the obligations of State Parties to prevent acts of torture or other cruel, inhuman or degrading treatment or punishment. It also establishes the Committee against Torture to monitor implementation of the Convention. Australia ratified the Convention on 8 August 1989.

The Optional Protocol to the Convention (OPCAT) came into force on 22 June 2006. The OPCAT provides for the establishment of 'a system of regular visits to be undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment'.¹ Implementation of the OPCAT requires each state party to establish an independent National Preventative Mechanism (NPM) and identify suitable bodies to conduct inspections at all places of detention.

The OPCAT was signed by Australia on 19 May 2009; ratification is currently being considered by the Australian Government. As part of this process, the National Children's Commissioner is examining how the special needs and interests of children and young people under the age of 18 in youth detention centres and adult corrective services facilities could be monitored in an NPM under the OPCAT.

The definition of torture

This submission is based on the OPG's understanding of the nature of torture and how it may occur in youth detention centres and adult corrective services facilities.

Article 1 of the Convention defines 'torture' to mean:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

¹ *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art.1.

Section 320A of the *Criminal Code Act 1899* defines ‘torture’ as the intentional infliction of severe pain or suffering on a person by an act or series of acts done on more than one occasion. ‘Pain or suffering’ is defined to include physical, mental, psychological or emotional pain or suffering, whether temporary or permanent.

The OPG’s role in relation to children and young people

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. Whilst 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’.²

The OPG provides a visiting program to protect the rights and interest of children and young people in out-of-home care, complemented by the Public Guardian’s child advocate 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. An historical background of the community visitors’ role in youth detention centres is provided at Attachment A.

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 voice for children and young people in care. The statutory functions of the community visitors³ and child advocates⁴ 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.

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
- 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.

² Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, June 2013, p.36.

³ *Public Guardian Act 2014*, s.56(1)(a).

⁴ *Public Guardian Act 2014*, s.13(1)(a).

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.⁵ 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.⁶ 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.

The role of community visitors in Queensland has been refocused following the QCPCI, which found that the community visitor program could be better targeted. Accordingly, for children in out-of-home care (not in detention) the OPG determines how often an individual child should be visited based on the level of identified risk for the particular child. Assessments to determine visiting frequency are made by community visitors in consultation with their regional visiting manager, based on observations and any child advocacy activities which have occurred to resolve identified issues. Section 57 PGA sets out the criteria to be considered in determining visiting frequency, e.g. the child's age, the number of placements and whether the child has been subject to any action or orders under the *Youth Justice Act 1992*.

The visiting regime is different for children and young people in detention. Community visitors must regularly visit visitable sites, which are defined to include youth detention centres and adult corrective services facilities.⁷ 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.⁸ As such, a visitable site may include an adult corrective services facility where a 17 year old may be detained. During 2014-15, community visitors provided 100 reports from visits to 17 year olds in adult corrective services facilities and recorded 174 issues arising from these visits.⁹ The most common issues recorded were in relation to:

- programs and services (37%) – provision of education, recreation and legal services
- contact (26%) – improved means and opportunity to communicate with family members, legal representatives and other persons
- transition into the community (11%) – planning for the future, including how to manage finances and find accommodation.

There are two youth detention centres in Queensland: the Brisbane Youth Detention Centre, located at Wacol, and the Cleveland Youth Detention Centre, located in Townsville. The youth detention centres are visited 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.

⁵ *Public Guardian Act 2014*, s.111.

⁶ *Public Guardian Act 2014*, s.111(3)(b).

⁷ *Public Guardian Act 2014*, s.58.

⁸ *Public Guardian Act 2014*, ss.51 and 52.

⁹ Office of the Public Guardian Annual Report 2014-15, p.20.

Children and young people in youth detention centres or adult corrective services facilities may also request additional visits from community visitors.¹⁰ 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.¹¹

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 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 state-wide virtual access point which facilitates contact online 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. The OPG endeavours to resolve complaints at the local level where possible, and will assist the child or young person to pursue the issue and ensure appropriate action is taken.

Community visitors have a number of statutory functions relating to children and young people in youth detention centres and adult corrective services facilities, including:¹³

- 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
- 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.¹⁴

¹⁰ *Public Guardian Act 2014*, s.60.

¹¹ *Public Guardian Act 2014*, s.60(2).

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.

¹³ *Public Guardian Act 2014*, s.56.

¹⁴ *Public Guardian Act 2014*, s.57.

When a community visitor arrives at a youth detention centre, they will talk with the centre manager to find out about any news or recent developments 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 child report covers a wide range of questions that are discussed with the child or young person, including, relevantly:

- Do you feel safe here?
- Do you feel threatened by staff or other young people?
- Have you been harmed by anyone here?
- Do you need help with health-related services or issues?
- Do you have contact with your family or friends?
- Do you have enough activities to do here (e.g. education, training, work, recreation)?
- Are you satisfied with the way staff treat you?
- Have you been subjected to a body search, strip search or room search?
- Have you been disciplined in any of the following ways (e.g. separation, group punishment)?
- Have you been restrained by staff?
- Is there anything else here that is a concern for you?

Community visitors make every effort to resolve 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.

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 Crime and Corruption Commission or the Ethical Standards Unit, Department of Justice and Attorney-General, in accordance with their respective legislative and policy requirements.

Types of issues reported to community visitors include conflict with staff and other detainees, incidents of self-harm, and dissatisfaction with services and facilities, for example:

- a young person was experiencing conflict with another young person in his section and he advised that they intended to sort out their differences in a physical manner later that day
- coverings on the televisions in a young person's new section were very scratched, making it difficult to watch programs
- a young person advised that he had been injured and threatened by a staff member during ground stabilisation
- a young person was concerned that the long grass behind his section could attract snakes, adding that a snake had recently been seen in the area
- a young person was physically assaulted by another young person at the youth detention centre
- a young person advised that staff were arbitrarily extending lockdown periods
- a young person made threats to self-harm and commit suicide
- removal of an entire section's televisions because of a single young person's actions
- telephones in a section were placed closely together, thereby preventing private conversations

- a group of young people advised that food provided is unpleasant and insufficient to sustain them through the night.

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. Community visitors will refer information to the appropriate authorities for resolution.

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:¹⁵

- 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
- 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.

¹⁵ Public Guardian Act 2014, s.13.

Overrepresentation of Aboriginal and Torres Strait Islander children and young people

Aboriginal and Torres Strait Islander children and young people are a priority population group for the OPG. In Queensland, and in Far North Queensland in particular, Aboriginal and Torres Strait Islander children and young people are overrepresented in the child protection and youth justice systems. As at 1 May 2016, the OPG was supporting 6,671 children; of these, 2,806 children identified as being Aboriginal and/or Torres Strait Islander (42%). In 2014-15, child advocates provided assistance to 358 children; of these, 146 children identified as being Aboriginal and/or Torres Strait Islander (41%). The OPG is committed to ensuring the cultural competency of staff and the provision of culturally accessible services for Aboriginal and Torres Strait Islander children and young people.

Community visitors consult with “recognised entities”¹⁶ and cultural liaison officers to ensure Aboriginal and Torres Strait Islander children and young people located in youth detention centres and adult corrective services facilities are provided appropriate support. When visiting a youth detention centre or adult corrective services facility, community visitors have regard for the site’s cultural framework and the cultural component of case plans from Child Safety for any children and young people on child protection orders. The community visitor program also has linkages with the Youth Justice Service Centre for the Cleveland Youth Detention Centre, which has oversight of discharge plans for Aboriginal and Torres Strait Islander children and young people.

Effectiveness of oversight mechanisms

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 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.

In the OPG’s experience, there is a reasonable amount of internal and external oversight of youth detention centres in Queensland. Review of the OPG’s data with respect to children and young people in youth detention centres or adult corrective services facilities indicates that there are no relevant issues which would fall within the scope of ‘torture’ as defined by the Convention. However, in some cases it appears that young people are not well informed of their rights when detained and how to enforce their rights. It also appears that time in police watch-houses can be particularly fraught with risks and vulnerabilities. For example, a 17 year old in an adult corrective services facility known to the OPG was previously held in the Mareeba and Cairns police watch-houses; the young person incurred five additional charges while in the Mareeba watch-house and attempted suicide three times while in the Cairns watch-house.

¹⁶ Section 6 *Child Protection Act 1999* provides that when making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive must consult with a recognised entity. It further provides that when the Children’s Court is making decisions about an Aboriginal or Torres Strait Islander child it must consult with a recognised entity about the child’s cultural background and needs. It further states the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community. A “recognised entity” is a service provider funded by the Department of Communities, Child Safety and Disability Services. See s.246I for who can be a recognised entity.

The OPG is currently undertaking a number of initiatives in relation to children and young people in youth detention centres or adult corrective services facilities, including development of a visiting and advocacy framework for children and young people in youth detention centres who are on dual orders, which will include development of guidelines to determine visiting frequency. The OPG has also recently settled a protocol with Youth Justice, Department of Justice and Attorney-General which governs regular 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.¹⁷ The OPG is in the process of finalising a similar protocol with the Department of Corrective Services.

Additional resources

The OPG notes the following resources may be of interest to the National Children's Commissioner as the review progresses:

- *Official Visitor Program Review Report: A review of the Official Visitor Program operating in custodial settings in New South Wales*, Inspector of Custodial Services (NSW), April 2015¹⁸
- *Advocacy for Children in Tasmania Committee (ACTC): Report and Recommendations*, ACTC (Tas), November 2013¹⁹
- *Children's Visitor Pilot evaluation: For the Commissioner for Children, Tasmania*, 3pconsulting (Tas), undated
- *A community Visitor Program for Children in State Care*, Office of the Guardian for Children and Young People (SA), August 2010.

¹⁷ 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.

¹⁸ <http://www.custodialinspector.justice.nsw.gov.au/Documents/Official%20Visitor%20Program%20Review%20Report.pdf>.

¹⁹ http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0004/152059/Final_Report_Advocacy_for_Children_in_Tasmania_Committee.pdf.

Attachment A

History of the community visitors role in youth detention centres

The introduction of official visitors to youth detention centres

Official visitors were first introduced into youth detention centres following the introduction of the *Juvenile Justice Act 1992*. That Act saw Queensland take a more open approach to the management of youth detention centres than under the previous legislation, and an important initiative introduced under that Act was the appointment of official visitors who had the authority to fully investigate any complaints.²⁰

An official visitor for a youth detention centre was required to visit the centre at least once each month and prepare a report for the chief executive.²¹ When a child was admitted to a youth detention centre, the chief executive was to give them a form and document about how to complain to an official visitor or have a complaint referred to the official visitor.²² The official visitor was obliged to hear and investigate a complaint made or referred under that section (unless it was trivial, or made to annoy, or did not relate to a function of the chief executive under the Act). Official visitors had to report to the chief executive on any investigations.²³ The official visitor had power to ask questions of a child detained or of a member of staff, ask them to provide information and examine and copy documents.²⁴ They were also entitled to conduct interviews in private and to have correspondence between them and a detained child kept private.²⁵

The Forde Inquiry

The Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry) examined the role and functions of official visitors in youth detention centres and identified a number of deficiencies in the official visitors program, including issues with frequency of contact, feedback to official visitors and detainees, lack of clarity of official visitor functions, and inadequate training and support.²⁶

The Forde Inquiry noted the limited jurisdiction of the Children's Commission official visitor program²⁷ and that a separate program was provided for young people in youth detention centres. Although it recognised the issue was outside its terms of reference, the Forde Inquiry observed 'it would seem appropriate for the Commission to extend its program to cover all children in residential facilities – those not subject to statutory care orders as well as young people in detention'.

²⁰ Second Reading Speech, Hon A.M. Warner, 18 June 1992, p.5,927

²¹ *Juvenile Justice Act 1992*, s.205.

²² *Juvenile Justice Act 1992*, s.215.

²³ *Juvenile Justice Act 1992*, s.216.

²⁴ *Juvenile Justice Act 1992*, s.217.

²⁵ *Juvenile Justice Act 1992*, s.218.

²⁶ Forde Inquiry Report 1999, p.230-232.

²⁷ The Children's Commission, established under the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*, was responsible for a program of official visitors to residential facilities such as the Challinor Centre (s.35 and Explanatory Notes, p.4). An independent review of that Act conducted by John Briton (the Briton review) made a number of recommendations which were implemented, along with the Forde Inquiry recommendations, in the *Commission for Children and Young People Act 2000*.

The Forde Inquiry made a number of recommendations concerning the official visitor programs:

- a review of the Children’s Commission official visitor program focusing on the legislative base, policy and procedural guidelines, actual practice and effectiveness of the service be undertaken
- the official visitor program be maintained and extended with a view to providing a comprehensive monitoring function of all residential facilities for children and young people, including those not funded by the State but which, nevertheless, provide a similar service, including juvenile detention centres
- visits from official visitors be regular and frequent, and the number of visitors reflect the size of the client base
- official visitors be empowered to act as advocates for children and young people in care by listening to, giving voice to, and facilitating the resolution of, their concerns and grievances
- official visitors be provided with a complete orientation and training in alternative care practice, standards of residential care, advocacy issues and practice, and developing trusting relationships with young people
- official visitors be given access to relevant information about children and young people in care, and they should be bound by the same rules of confidentiality as other Children’s Commission and departmental staff.

The Commission for Children and Young People Act 2000

The recommendations of the Forde Inquiry were accepted by the Queensland Government and implemented in the *Commission for Children and Young People Act 2000*. In the second reading speech, the Hon A.M. Bligh noted that the Bill provided the Commission with a number of ways to meet the needs of children and young people in Queensland, with particular emphasis on children and young people who are vulnerable or at risk. These included advocacy, a state-wide community visitor program, and a formal complaints mechanism. In carrying out its advocacy and other functions, the Commission for Children and Young People was to give priority to the needs of the most vulnerable children; that is, those who are in or may enter out-of-home care or detention. Accordingly, the community visitors program was expanded to include visits to children and young people in youth detention centres (along with mental health facilities and non-government funded residential facilities).

The Crime and Misconduct Commission inquiry

In 2004, the *Commission for Children and Young People Act 2000* was amended and became known as the *Commission for Children and Young People and Child Guardian Act 2000*. The amendments were made in response to the Crime and Misconduct Commission (CMC) report, *Protecting children: An Inquiry into the Abuse of Children in Foster Care (2004)*. The report recommended extending the community visitor role to cover children in active care, including all active foster homes.²⁸

²⁸ CMC report, recommendation 5.23, p.161.

In its report, the CMC appreciated that this would substantially increase the scope of the community visitor program and that practically, it might not be possible for every child to be visited. To this end, it said that it would be up to the Child Guardian to make a decision based on resource availability about which places were visited on a regular basis. However, it was expected that priority would be given to places where there were numerous children and where notifications had been made about foster carers. Other visits would likely be conducted either on a random basis or in a targeted manner derived from research or complaint trends generated by the Commission for Children and Young People and Child Guardian.²⁹

In 2010, the community visitor provisions in the *Commission for Children and Young People and Child Guardian Act 2000* were renumbered but no substantive change occurred.

The Queensland Child Protection Commission of Inquiry

In 2013, the Queensland Child Protection Commission of Inquiry (QCPCI) released its report, *Taking Responsibility: A Roadmap for Queensland and Child Protection*. The report made a number of comments about the Commission for Children and Young People and Child Guardian community visitor program, including:³⁰

- visits were too frequent for some children, especially those who are older or in long-term stable care
- it was not always easy to distinguish between Child Safety officers and community visitors
- low-level issues identified by some community visitors tended to demand a faster response than high-priority issues at a Child Safety service centre
- the focus of the community visitor role was on identifying but not directly resolving issues
- there were potential negative effective effects of having an additional adult in the child's life, along with foster carers, Child Safety officers, foster care agencies, education support workers, which might conflict with the aim of normalising their childhood experiences
- the volume of community visitor reports might not be warranted
- there appeared to be no matching of a particular community visitor with a child (for example, by qualifications, cultural background or interests)
- there was a tendency for some community visitors to advocate for the carer rather than the child.

The QCPCI supported strong casework by Child Safety officers, and for resources to be directed to ensuring regular contact and support for children and young people to reach their case plan goals rather than on external monitoring of Child Safety practices. Non-statutory issues most frequently identified by community visitors, such as sibling contact and health and education appointments, might be addressed by para-professional Child Safety staff and non-government service providers. The QCPCI proposed to reduce the ambit of the community visitor role to reflect the CMC inquiry's recommendations and to allow for more specialised advocacy services related to children's rights. The QCPCI proposed that regular visits should be continued to children and young people who are considered most vulnerable. These could include:

²⁹ CMC report, p.160.

³⁰ QCPCI report, Volume 2, p.414-415.

- the very young
- those with mental health problems and in mental health facilities
- those displaying high-risk behaviour
- those with complex needs, disabilities or with impaired decision-making ability
- those entering care from culturally and linguistically diverse backgrounds
- those in residential care
- those at risk of entering juvenile detention
- other vulnerable groups such as those at risk of absconding or self-placing.

The QCPCI suggested that visits may be introduced for a time in response to an increased number of matters of concern or notifications received in relation to particular out-of-home care arrangements or where there are numerous children in a placement.

The QCPCI said that a refocused community visitor program would be more in line with New South Wales and the Australian Capital Territory – the two other jurisdictions which had a community visitors program for children on orders in residential care.

The role of child and youth advocates

The QCPCI proposed that a child and youth advocacy program, to operate under the Child Guardian, replace the Commission for Children and Young People and Child Guardian community visitor program, providing advocacy and mediation to children in out-of-home care, including those in rural and remote areas, while maintaining a visiting program for highly vulnerable children and young people. They would:

- visit children and young people in out-of-home care who are most vulnerable, including those in youth detention centres, mental health facilities and shelters, and residential care facilities, with visits based on sound risk assessment
- listen to children and young people and help them to say what they want to say
- provide children and young people in care with advice and information about what they are entitled to and can expect, assisting with representation and referral to services, supporting them if they want to have a decision reviewed, and acting as a conduit for their concerns
- play an active role in ensuring that appropriate support is being provided to facilitate meeting case planning goals
- work collaboratively with Child Safety service centres and other government agencies who provide services to children in care such as schools, child and youth health services, community-based services and support networks, recognised entities and other non-government service providers
- support children and young people at family group meetings and court-ordered conferences
- ensure that case plans appropriately reflect the child or young person's needs and that case plan goals are adhered to
- where appropriate, ensure that transition from care plans are in place and young people are receiving the necessary assistance to support their move to independent living
- if appropriate, assist a young person to seek or respond to a revocation or variation of an order

- assist recognised entities to support a child or young person in referring a matter to the Queensland Civil and Administrative Tribunal where the child or young person disagrees with a Child Safety decision.

The refocused advocacy model should promote resolution of matters through mediation with child and youth advocates supporting children and young people to settle disputes without going to court, potentially supported by Department of Justice and Attorney-General mediation services.

The recommendations were adopted by the Queensland Government and implemented in the *Public Guardian Act 2014*, which transferred the refocused child guardian functions, including child advocacy and community visiting, from the Commission for Children and Young People and Child Guardian to the Public Guardian.