

# Child Advocates

## What is a Child Advocate?

Child Advocates perform child advocacy functions with the benefit of legal training. Their role is to advocate for the rights and interests of children/young people in the child protection system and ensure their voice is heard, particularly when decisions are made that affect them and their care arrangements.

A Child Advocate's advocacy is guided by principles set out in the [Public Guardian Act 2014](#). The main principle is that the child/young person's best interests are paramount. Other guiding principles include that the child/young person:

- is a valued member of society
- is to be treated in a way that respects their dignity and privacy
- is entitled to be heard, even if others may not agree with their views
- should be able to exercise their rights and participate in decisions that affect their life
- should have access to services necessary to meet their needs.

Depending on the advocacy being undertaken, a Child Advocate's advocacy will also be guided by other principles such as those set out in the [Child Protection Act 1999](#) or the [Youth Justice Act 1992](#).

## How are Child Advocates different from other lawyers working with children and young people in care?

The Child Advocate role seeks to fill a gap in advocacy for children/young people in the child protection system. A Child Advocate's role is best characterised as an independent advocate facilitating children/young people's participation in the decision-making that affects them, and advocating for decision-makers to take into account a child/young person's views and wishes and to uphold their rights and interests in accordance with relevant legislation, policies and procedures. Where another service is available to provide an advocacy or advice function for a child/young person, a Child Advocate can support the child/young person to access that service.

## Who can a Child Advocate help?

A Child Advocate performs child advocate functions for 'relevant children'. The [Public Guardian Act 2014 \(section 52\)](#) defines relevant children as children/young people subject to:

- intervention with Parental Agreements, Care Agreements or a Support Service case
- Temporary or Court Assessment Orders
- Temporary Custody Orders
- Child Protection Orders including Supervision Orders, Directive Orders, Custody or Guardianship Orders, Transition Orders or Permanent Care Orders
- an application for a child protection order

A child/young person stops being a relevant child if they stop being subject to an intervention, agreement or order, or when they turn 18. However the OPG may continue to provide advocacy for a child/young person after they stop being a relevant child where the Public Guardian believes it is appropriate to finish providing help or the child/young person requires particular help to review a decision ending the intervention, agreement or order. A child/young person transitioning to independence may also seek help from a Child Advocate after they turn 18 if the Public Guardian is satisfied that they continue to need particular help for their transition.

## Does a Child Advocate perform instructed advocacy or non-instructed advocacy?

The [Public Guardian Act 2014](#) does not provide any age limit to the individual advocate functions that can be performed by Child Advocate. In practice this means that a Child Advocate may assist children/young people from 0-18 years of age with some capacity to extend their advocacy functions beyond the age of 18. Child Advocate may provide instructed advocacy for a child/young person who is considered to be Gillick competent.

The Gillick test refers to a test set out in an English House of Lords decision which was subsequently adopted by the High Court of Australia in a case known as Marion's Case. The test provides that a child will be able to make their own decision when they have "achieved a sufficient understanding and intelligence to enable him or her to understand fully what is proposed". While the original test relates to medical decision making, the test can be applied across a range of circumstances, including in an assessment as to whether a child has capacity to instruct a lawyer.

Non-instructed advocacy can be provided to children/young people who are assessed not to have capacity to provide instructions. In these cases, a Child Advocate will undertake advocacy that seeks to ensure that the child/young person's rights and interests are protected, in accordance with their rights under the *Public Guardian Act 2014*, the *Child Protection Act 1999*, *Human Rights Act 2019* and any other relevant legislation or policy.

Non-instructed advocacy is undertaken with or on behalf of a child/young person who is unable to give clear direction of their views and wishes in a particular situation. The Child Advocate will ascertain the child/young person's views and wishes to the extent this is possible.

### **What types of issues can a Child Advocate help with?**

A Child Advocate performs child advocate functions. Child advocate functions are defined in the *Public Guardian Act 2014* ([section 13](#)). A Child Advocate will usually only provide advocacy relating to legal issues, and only where other external stakeholders are not able to effectively respond to the child/young person's advocacy needs. Key areas of legal advocacy undertaken by Child Advocates include:

#### **Review of Education Queensland decisions**

A Child Advocate may support a child/young person to challenge decisions that appear to have been made contrary to Education Queensland's policies, procedures and legislative requirements. This includes exclusion decisions, charge related suspensions, and refusals to enrol.

#### **Transition to adulthood**

A Child Advocate can support a child/young person's right to information and accessing their file or a Time in Care Information Access Service (TICIAS) report. If an application is made for pre-appointment of an administrator or guardian for the young person when they become an adult, the Child Advocate can support their participation in those proceedings.

#### **Complementary advocacy in Youth Justice proceedings**

A Child Advocate may support a direct legal representative in youth justice proceedings by advocating to ensure a child/young person involved in the youth justice system has access to an appropriate placement and service provision to mitigate the risks of criminalisation and recidivism, particularly for children/young people remanded in detention. A Child Advocate may also support a direct legal representative by providing submissions in support of a bail application or in mitigation of sentence, but does not act as a direct legal representative in youth justice proceedings.

#### **Participation advocacy in child protection proceedings**

A Child Advocate may support a child/young person to participate in child protection proceedings, including participation at family group meetings, court ordered conferences, court mentions and hearings. A Child Advocate may independently advocate for a child/young person's views and wishes in child protection proceedings where the child/young person does not wish to participate directly, and may make submissions and test evidence in child protection proceedings.

#### **Advocacy in QCAT proceedings relating to reviewable child protection decisions, such as contact and placement decisions**

A Child Advocate may help a child/young person to seek a review of a reviewable decision, and advocate for the child/young person in QCAT proceedings. The Public Guardian may also seek to review a reviewable decision on the Public Guardian's own initiative, particularly where a child/young person is unable to do so themselves.



At times, a Child Advocate may also support a child/young person in relation to other legal issues, including:

- Issues relating to immigration and visa status
- Seeking advice about victims of crime or civil litigation.

### **How does a Child Advocate perform this advocacy?**

The way in which child advocate functions are performed will vary depending on the needs of the individual child/young person. Typically, a Child Advocate will:

- visit the child/young person (in person wherever practicable) to build a trusting and supportive relationship, and to seek their views and wishes
- contact Child Safety and other stakeholders to gather information about the child/young person
- provide information and advice to the child/young person about decisions being made, court and tribunal processes, and the child/young person's rights
- explain the child/young person's right to participate in decision-making processes, and how to review decisions that have already been made
- support the child/young person to provide their views and wishes to the decision-makers, including in court and tribunal proceedings
- advocate with Child Safety and other stakeholders to ensure the child/young person's rights and interests are being met.

Child Advocate perform their role with an appreciation of trauma-informed practice that recognises and responds to the child/young person's history of trauma, and that acknowledges the impacts of inter-generational trauma on the child/young person and their family. Child Advocate also perform their role in a manner

that respects and promotes the child/young person's existing relationships with family, as well as with other professionals including Child Safety Officers, youth worker staff and other legal professionals.

### **Why is a Child Advocate necessary when there is a Child Safety Officer and other professionals involved?**

All professionals play an important role in seeking a child/young person's views and wishes about decisions that are made about them while they are in care. However there may be times when those views and wishes are in conflict with what the professionals consider to be in the child/young person's best interests. It is important that children/young people in out-of-home care have access to an independent advocate who can educate children/young people about their rights and advocate for them if their rights and interests are not being met. The experience of advocacy can be empowering for children/young people. A child/young person may feel more confident to express their views and wishes when they understand what their rights are and are provided with the information they need to understand what decisions are being made about them.

### **Who can refer a child or young person for help from a Child Advocate?**

Anyone (including the child or young person) can make a referral seeking assistance from a Child Advocate. A referral may be made using the [referral form](#) found on the OPG website.

### **Questions?**

If you are unsure, please contact us and ask. Contact the team on [child-advocate-refer@publicguardian.qld.gov.au](mailto:child-advocate-refer@publicguardian.qld.gov.au) or call 1300 653 187 and ask to speak to a member of the team.

A decorative horizontal line in a light green color with several small circles of varying sizes along its path.

## **Contact us**

t. 1300 653 187

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