

**Child and Young Person's Visitor
Annual Report
2020-2021**



Guardian
for Children and
Young People



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Office of the Guardian for Children and Young People

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The Hon. Rachel Sanderson, MP
Minister for Child Protection
Level 12, 1 King William Street
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Dear Minister

I present to you the report of the Child and Young Person's Visitor for the year ended 30 June 2021, as required under section *119(1) of the Children and Young People (Safety) Act 2017*.

This report provides information about the work of the Child and Young Person's Visitor for the 2020-2021 financial year.

Yours sincerely

A handwritten signature in black ink, appearing to read "Penny Wright".

Penny Wright
Guardian for Children and Young People (and formerly Child and Young Person's Visitor)

30 September 2021

Notes to this report

Scope

This report refers to the activities of the Child and Young Person's Visitor, a role established by section 117 of the *Children and Young People (Safety) Act 2017*. Section 119(1) of that Act requires the Child and Young Person's Visitor to provide a report to the Minister on the work of the Visitor for the preceding financial year.

The Child and Young Person's Visitor was Penny Wright, until 23 August 2021. Ms Wright is also the Guardian for Children and Young People and the Training Centre Visitor.

Ms Wright held the position of Child and Young Person's Visitor 'ex-officio', ie by virtue of holding the position of Guardian. Ms Wright's appointment to this position was published in the Government Gazette on 13 February 2018, to take effect from 26 February 2018 and expiring on 9 July 2022, or until she ceases to hold office as the Guardian for Children and Young People.

Ms Wright resigned from the role of Child and Young Person's Visitor on 23rd August 2021.

The enactment of the Visitor role post-dated a project tasked to the Guardian for Children and Young People in 2017 to develop a trial visiting scheme. The Guardian was provided with special purpose funding over two years, 2017- 2019, to undertake the trial visiting project.

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

For this reason, this report will not include the comprehensive reporting ordinarily provided in an annual report.

The Office of the Guardian

The Office of the Guardian is the umbrella term used to encompass the unified work and activities of three positions: the Guardian for Children and Young People, the Training Centre Visitor and the Child and Young Person's Visitor.

The activities of the Guardian, the Child and Young Person's Visitor and the Training Centre Visitor are conducted in one location with the same administrative infrastructure.

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Glossary

CYP	Children and Young People (Child and Young Person)
CYP Visitor	Child and Young Person's Visitor
CYPV Program	Child and Young Person's Visiting Program
DCP	Department for Child Protection
DEd	Department for Education
DHS	Department for Human Services
GCYP	Guardian for Children and Young People
NGO	Non-Government Organisation
TCV	Training Centre Visitor
the Minister	the Minister for Child Protection
Safety Act	<i>Children and Young People (Safety) Act 2017</i>

1. The Role of the Child and Young Person’s Visitor

The *Children and Young People (Safety) Act* was passed in 2017 and Penny Wright was appointed to the role of Child and Young Person’s Visitor (CYP Visitor) on 26 February 2018.

She is also the Guardian for Children and Young People (the Guardian)¹ and Training Centre Visitor (TCV)² and initially held all three positions until 9 July 2022.

The CYP Visitor role is set out in Chapter 9 of the *Children and Young People (Safety) Act 2017 (the Act)* with the specific purpose of visiting, monitoring, promoting and advocating for the best interests of children and young people who are living in ‘prescribed residential facilities’ (‘residential care’) in South Australia.

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

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

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

Functions and Powers

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

- conduct visits to, and inspections of, residential care facilities
- communicate with children living in residential care facilities
- promote the best interests of children living in residential care facilities
- act as an advocate for children living in residential care facilities to promote the resolution of issues to do with their care, treatment and control
- inquire into and provide advice to the Minister in relation to any systemic reform needed to improve the care, treatment and control of residents or the management of residential care facilities.

¹ Established by section 21 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2017*

² Established by section 11 of the *Youth Justice Administration Act 2016*

³ S 117(2) *Safety Act*

The CYP Visitor must encourage residents of residential care facilities⁴ to express their own views and must give proper weight to those views⁵ and is required to pay particular attention to the needs and circumstances of residents who are Aboriginal or Torres Strait Islander, or who have a physical, psychological or intellectual disability⁶.

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

Background to the establishment of CYP Visitor role

The 2016 SA Child Protection Systems Royal Commission recommended the development of a community visitor's scheme for children in all residential and emergency care facilities⁷.

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

In 2017, as part of the SA government's response to the findings of the Royal Commission, 'A fresh start' reform of child protection, the Department for Child Protection (DCP) asked the Guardian for Children and Young People to undertake a:

'two-year pilot visiting scheme for 100 children and young people in residential and commercial care facilities, to be finalised in June 2019'.

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

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

⁴ In the *Children and Young People (Safety) Act 2017*, residential care facilities are called "prescribed facilities"

⁵ Section 118(2)(b) *Safety Act*

⁶ Section 118(2)(a) *Safety Act*

⁷ Commissioner Nyland, Recommendation 137, *The life they deserve: the Child Protection Systems Royal Commission Report 2016*, p.xli

Previous 'monitoring' of residential care by the Guardian

Prior to the commencement of the trial visiting scheme in 2017, the Guardian's advocacy team had conducted visits to residential facilities since 2004 to fulfil the Guardian's function to monitor the circumstances of children in care, under the *Children's Protection Act 1993*.

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

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

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

The Guardian's trial CYP Visiting Program

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

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

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

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

Summary of trial CYP Visiting Program Final Report

A de-identified version of the report, to protect the privacy of children and staff, was published in February 2020 and is available here:

<http://www.gcyp.sa.gov.au/wp-content/uploads/2020/02/2020-Final-report-on-Trial-Child-and-Young-Persons-Visiting-Program-de-identified.pdf>

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

Details of visits undertaken

- Facilities
 - ranged from 2 to 6 bed (some were capped but had the capacity for 8 or 12 beds)
 - northern and southern metropolitan and regional
 - residential and assessment units
- Number of individual facilities: 24
- Number of individual children visited: 95
- Number of facilities visited and formally reported on: 23
- Number of visits (some facilities visited more than once): 37
- Number of reports provided to DCP: 14
- Number of formal DCP responses : 14
- Number of recommendations made in 14 reports: 107
- Number of recommendations formally responded to by DCP: 107
- Number of recommendations accepted by DCP: 97
- Number of recommendations not accepted: 1
- Number of recommendations being further considered: 9

Outcomes

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

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

Since the trial was completed, one large unit has been de-commissioned as a residential unit, consistent with recommendations that arose from one of the Trial Program visits and reports. A further large unit, which was the subject of several visits and serious concerns about the social and physical environment, has been subject to significant refurbishment.

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

Evaluation

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

The OGCYP has embraced, and largely delivered on, Royal Commissioner Nyland's vision of a community visiting scheme staffed by selectively recruited professionals focused 'solely on the child's views and interests' and providing 'high quality reporting and advocacy' (Nyland, 2018, p. 331).

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

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

Recommendations from the trial CYPV Program

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

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

Recommendation 4

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

Recommendation 5

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

Recommendation 6

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

Recommendation 7

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

Recommendation 8

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

Recommendation 9

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

Recommendation 10

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

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

Recommendation 14

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

2. CYP Visitor Activity in 2020-2021

The CYP Visitor received no dedicated budget to implement the specific legislative functions associated with the CYPV role in 2020-2021.

As a consequence, no staff have been employed by the CYP Visitor and the CYP Visitor has not been in a position to undertake additional visiting or inspections (as provided for in s.117 of the *Safety Act*).

There were no formal complaints made about the CYP Visitor in 2020-2021.

There were no work health and safety claims during 2020-2021.

There were no Freedom of Information requests during 2020-2021.

3. Resignation of the CYP Visitor

Penny Wright tendered her resignation from the role of Child and Young Person's Visitor by letter to the Minister for Child Protection on 22 August 2021. The resignation took place at 5pm on 23rd August.

The position is now vacant. As there has been no effective activity in the role between 30 June 2021 and 23 August 2021, this is the final Annual Report for Ms Wright in the role.

Ms Wright made a public statement regarding her resignation as follows:

In February 2018, as well as my existing roles of Guardian and Training Centre Visitor, I agreed to take on the new role of 'Child and Young Person's Visitor,' to head up a visiting and advocacy scheme focused specifically on the children and young people living in residential and emergency care.

Since then, my staff and I have worked extremely hard to make the role work for the benefit of these children. As Guardian, I conducted a funded two-year trial visiting program then, when that funding ceased, we spent many more (often unrecorded) hours, refining a system of visiting and feedback that reflected children's voices, serious safety concerns and both good and poor practice.

Before the last budget I submitted a detailed business case to government to support a scheme to visit a reasonable proportion of the 200 residential care properties which now house over 600 children and young people. As this was not successful, there is no ongoing funding for the role or scheme.

I have now concluded that, in the absence of any dedicated resourcing for the Child and Young Person's Visitor, and no likelihood of resourcing in the foreseeable future, I am just not able to meet the obligations of the role.

In principle, the South Australia community would take some comfort in knowing that there is a statutory position dedicated to looking out for these vulnerable children and young people.

However, a role in name only, without resources, does not enable me to fulfil its functions even to a minimum standard.

It is for these reasons, as a matter of good conscience and transparency, that I resigned from the role of Child and Young Person's Visitor, on 23rd August.

4. Background to the Resignation of the CYP Visitor

The role of Child and Young Person's Visitor was established in the *Children and Young People (Safety) Act* in 2017. It was intended to head up a 'scheme' for visiting and inspecting over 180 individual residential and emergency care homes (at that time), to meet with and advocate for the children and young people who were living in them.

Thanks to the work of Justices Layton, Mullighan and Nyland, in a series of South Australian inquiries and royal commissions spanning more than 15 years, the risks and challenges faced by children living in residential care are well understood.

South Australia has a much greater reliance on residential care to house children in care, than any other state. There are now over 600 children and young people living in residential care in South Australia, in over 200 facilities. This is about 14 per cent of the care population. The national average is 6.5 per cent.

The role of Child and Young Person's visitor came out of recommendation 137 of the Nyland Inquiry (the 'South Australian Child Protection Systems Royal Commission').

This inquiry heard case studies and information about longstanding safety and wellbeing issues associated with residential care, where children are housed together, with rostered carers. Some of these young people have very complex behaviours, related to past and ongoing trauma. Residential care can be a volatile environment where children and young people are at a higher risk of conflict, peer-to-peer sexual abuse and other critical incidents than they would be if they were living in foster or kinship care.

Commissioner Nyland's recommendation was based on evidence that community visiting schemes can help keep vulnerable people in institutions safe and give the residents an opportunity to have their voices heard.

In 2018, before the formal appointment of a Child and Young Person's Visitor, the Office of the Guardian was already running a trial visiting program for 100 children and young people in residential care. By the end of the trial, DCP had accepted the great majority of the 129 recommendations made by the Guardian, resulting in tangible improvements to children's safety and protection, health and disability support, access to culture, their living environments and the quality of care they received. When children told the visiting

Advocates about their fears and concerns, DCP responded by identifying 'problematic practices by staff', raising care concerns and moving particular staff members away from a facility.

5. Future visiting – 'Monitoring' visits by the Guardian

Past Guardians have always visited a small number of residential care facilities as part of the Guardian's responsibility to 'monitor' the circumstances of children in care. These 'monitoring visits' will continue, with the assistance of the existing GCYP advocates.

Between the finalisation of the trial CYP Visiting Program in September 2019 and September 2020, the Office of the Guardian's Advocates recommenced a small number of brief 'audit' visits to residential facilities to fulfil the Guardian's function to 'monitor the circumstances of children under the guardianship, or in the custody of, the Chief Executive of the Department for Child Protection'. Between May and September 2020, in response to the Covid-19 pandemic, these took the form of 'virtual' audit visits (via video conferencing), in place of face-to-face visits.

Once it was possible to resume actual visiting, between January and June 2021, the Advocates conducted 7 further *actual* visits to residential facilities and saw a total of 32 children and young people, aged between 6 and 17 years. These residential care visits and the rigorous auditing and reporting process, developed by Principal Advocate, Merike Mannik, which underpinned them, were intended to form a foundation for the commencement of the Child and Young Person's Visiting Scheme, as envisaged by Commissioner Nyland.

Further detail about the nature of these visits, outcomes and the themes that emerged will be provided in the Guardian's 2020-2021 Annual Report, in the near future.

However, as no funding has been provided for the establishment or continuation of the Visiting Scheme and no additional staff provided to implement the scheme, it is not feasible.

Since 2017 there has been no increase in staffing of the Guardian's Advocates Team, although the workload has increased significantly due to a 30 per cent increase in the numbers of children in the care system and an 80 per cent increase in inquiries and requests for assistance.

In the absence of additional resources for visiting, a new model of limited 'monitoring' visits will be rolled out by the Office of the Guardian in the next months, which will be able to visit a small proportion (less than 10 per cent, or 20 facilities) of the over 200 residential facilities housing children and young people in South Australia.