



Guardian
for Children and
Young People

2022-23

ANNUAL REPORT

**Guardian for Children and Young
People**

Report prepared by the Guardian for Children and Young People

The Guardian for Children and Young People respectfully acknowledges and celebrates the Traditional Owners of the lands throughout South Australia and pays respects to their Elders, children and young people of past, present and future generations.



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The Hon. Katrine Hildyard, MP
Minister for Child Protection
GPO Box 1072
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31 October 2023

Dear Minister

I am pleased to present to you the annual report of the Guardian for Children and Young People for the year ended 30 June 2023, as required under section 28(2) of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

This report provides a summary of my activities and achievements for the 2022-23 financial year.

With kind regards

A handwritten signature in black ink, appearing to be "Shona Reid". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Shona Reid
Guardian for Children and Young People

Content Warning

This report contains information and case examples about children and young people in care that may be distressing to some readers. This includes discussion about self-harm and violence against children.

If you or someone you know is in danger, call **000** immediately.

If you experience distress or find the information in this report confronting, we encourage you to seek support from family, friends and community or contact services like:

Kids Help Line on 1800 551 800

Lifeline on 13 11 14.

Request to the Media, Stakeholders and Politicians

This report contains descriptions, quotes and representations of the lives of children and young people. Behind each statistic, quote and anecdote is a child, whose whole life and self is more than the sum of one experience. When reporting or commenting on these matters we ask that you do so in that context.

The Guardian for Children and Young People encourages reference to key best practice guidelines when reporting on information disclosed in this report, including Mindframe's [Reporting suicide and mental ill-health: A Mindframe resource for media professionals](#) (2020).

Acknowledgement

Young People

The Guardian for Children and Young People acknowledges the children and young people who shared their views and lived experience with herself and her Advocates – without your honesty, this would be a lesser report.

Carers and Caseworkers

Thank you to the tireless carers, caseworkers and other staff. Your work, never-ending efforts, and passions are recognised in this very complex sector.

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NOTES

About this Report

This report refers to the work and activities of the Guardian for Children and Young People (Guardian) in 2022-23. The Guardian also holds the roles of Training Centre Visitor, Child and Young Person's Visitor, Youth Treatment Order Visitor and (nominally) holds the OPCAT National Preventative Mechanism (NPM) role as the Training Centre Visitor. Annual reports have been prepared separately for each of these mandates, except for the NPM role which is currently not resourced or legislated.

Aboriginal and Torres Strait Islander People

Reflecting community preference, references to Aboriginal people in this report includes both Aboriginal and Torres Strait Islander people.

Case Studies and Quotes

Children and young people are at the heart of this report, and the Guardian has amplified their voices and experiences in the following ways:

- **Stories:** to ensure an understanding of the experiences of young people, the Guardian has included descriptions of experiences common in care and as described to Advocates. These stories, while familiar to many in the sector, are not inspired wholly by the experience of any specific young person – any resemblance to existing young people is coincidental.
- **Case examples:** identifying characteristics have been changed to protect children and young people's privacy where case examples have been included.
- **Quotes:** this report presents direct quotes from children and young people in care, from discussions they had with GCYP Advocates in 2022-23. All quotes are anonymised.

Data

Much of the data presented in this report has been collated and analysed by the Guardian's staff, in performance of her statutory functions. While the Guardian has been cautious to ensure that all data in this report is accurate at the time of publication, it is

acknowledged that there may be unintentional errors or discrepancies.

It is acknowledged that for some data the Department for Child Protection (DCP) may not collate and/or report on comparable datasets.

Please note that some data may not add up due to decimal rounding.

Ethical Reporting

Discussion about the lives of children and young people in the child protection system inevitably must deal with confronting, even tragic circumstances. As the Guardian's functions often require direct involvement in individual lives, there are (appropriate) constraints upon what she can publish and comment on publicly, especially where a specific child or young person is involved.

These constraints are reflected in the scope of some of the sensitive matters discussed in this report. Yet, the Guardian must exercise discretion to address those matters, where there is a strong public interest in the Guardian publicly reporting and commenting. This is especially important should a child or young person be named and potentially become subject to media coverage, as happens, for example when a Coroner's Report is released (as occurred in 2022-23). This also extends to situations in which, without specific naming, the identity of a child or young person could still be exposed through public discussion. The Guardian's approach is cautious, ultimately mindful of a child's right to privacy and protection from potentially triggering exposure.

For this reason, the Guardian's submission to the five-year review of the *Children and Young People (Safety) Act 2017* included Recommendation 11, which proposed measures to better protect the privacy of children and young people. As noted there:

When information is reported about child protection cases, that information is on the public record for the child or young person's whole life. Long after public interest has subsided, children and young people may experience ongoing effects of shame, stigmatisation and re-traumatisation. This may arise from accessing the information personally, the knowledge that the information is publicly available, or adverse treatment from friends, family or community members who become aware of the information.¹

¹ OGCP, *A rights-based approach to safety: OGCP submission to the five-year review of the Children and Young People (Safety) Act 2017* (2022), p 37.

Key Guardian Reports 2022-23

Substantial background is provided about matters discussed in this annual report in the following major reports publicly released by the Guardian in 2022-23:

- A rights-based approach to safety: OGCYP submission to the five-year review of the Children and Young People (Safety) Act 2017. OGCYP, Adelaide 2022.
- Final Report of the South Australian Dual Involved Project: Children and young people in South Australia's child protection and youth justice systems OGCYP, Adelaide 2022.
- Child protection in South Australia, from the Productivity Commission's Report on Government Services 2023. OGCYP, Adelaide 2023.

Language and Terminology

The social services sector, South Australian community, and children and young people use different language to express their experiences with and about the child protection and out-of-home care system. In this report, wherever possible, the Guardian adopts language and terminology used by the children and young people who she and her staff worked with through the year. This may not be wholly consistent with language endorsed by DCP.

The language used throughout this report will be, as far as possible, faithful to the words of young people. This means the report may contain some swearing and confronting content. This is the language used by the young people with whom the Guardian's office works, who often may swear to express the intensity of their feelings. The Guardian is committed to amplifying these voices.

Acronyms and Abbreviations

ACIST	Aboriginal Cultural Identity Support Tool
ANZCCGA	Australian and New Zealand Children's Commissioners, Guardians and Advocates Group
CYP Safety Act	Children and Young People (Safety) Act 2017
CALD	Culturally and Linguistically Diverse
CARU	Carer Assessment and Registration Unit
CYP	Children and/or Young People (Child and/or Young Person)
CYP Visitor	Child and Young Person's Visitor
DCP	Department for Child Protection
DHS	Department of Human Services
MPR	Missing Person Report
OGCYP	Office of the Guardian for Children and Young People
OOHC	Out-of-home care
SADI Project	South Australian Dual Involved Project
TCV	Training Centre Visitor
The Guardian	Guardian for Children and Young People
YTO Visitor	Youth Treatment Order Visitor
Youth Justice Centre	Kurlana Tapa Youth Justice Centre (formerly the Adelaide Youth Training Centre)

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FROM THE GUARDIAN

In its simplest form, my role as Guardian is fundamentally dedicated to uplifting and amplifying the voices of children and young people in care. Whether children and young people live in family-based care, residential care or even in youth detention, these voices and their perspectives are integral in ensuring children and young people are growing up well and nurtured.

I have the utmost privilege to see, hear, work with and for children and young people who astound me with the clarity of their voices, the perspectives that they bring and the resoluteness they hold for natural justice. Their strength and courage is something I hope to achieve one day, and I start this report in recognition of them.

My office provides a unique and valuable viewpoint about both individual and systems advocacy matters as they relate to children in care and detention; perspectives always centred on their current needs and rights. My capacity to both advocate for individuals as well as play a role in systemic improvements offers us all an opportunity to do better, when discharging our common responsibility for caring for South Australia's most vulnerable children and young people.

This year saw considerable growth, yet again, in the number of people seeking our advocacy support. This growth was from both children themselves and adults who care and support them. The growth was such that, when a submitted budgetary bid was refused, I took the difficult decision to not replace outgoing projects and communications staff in my office, so that I could provide additional responsive advocacy. While I feel this was the right decision in the circumstances, it has come at a cost, with serious implications for my capacity to more broadly promote the best interests of vulnerable children and young people outside of my advocacy service.

My capacity to have a line of sight into family-based care also diminished in 2022-23, with a 75% reduction in completed Annual Review Audits. Previously, this activity provided valuable insight into



Guardian for Children and Young People
Shona Reid

the care and wellbeing of children in kinship and general foster care.

This year, I had to reduce this function in order to direct my resources to the 'call line' and support the individual advocacy function (with the majority of enquiries relating to children and young people in residential care). The direct result is that many children and young people in kinship and foster care arrangements now have less access to advocacy from my office, while I have a reduced capacity to perform my function to provide advice to the Minister for Child Protection on systemic reform necessary to improve the quality of care that DCP provides.

In addition to amplifying voices of children and young people in care, I also am the primary independent mechanism providing oversight on behalf of the South Australian Parliament. I can confidently advise Parliament that, despite the increasing number of children and young people entering out-of-home care, despite their increasing advocacy needs, and despite the increased demand for my office's knowledge across the state and nationally, my requests for increased resourcing have been left wanting.

Parliament now carries the serious risk of relying on an underfunded independent oversight body as its primary source of frank, independent and comprehensive advice on the operations of its government. This matter does, and will continue to, impact on some of the most vulnerable members of our community.

With more and more requests for support coming into my office, I am gaining a much fuller understanding of the experiences of children in both family based and residential care. Children are calling us about feeling left out of decision-making that determines the quality of their lives; they are missing their siblings and just want to see them more; sometimes, they share with us that they fear the houses they have been placed in and want to find somewhere safer to stay. Children even call us to talk about how they want to be more connected with their culture because they don't know who they are and where they are from.

Whilst there may be perfectly 'justifiable' reasons as to why certain things do or cannot happen, it does not stop the feelings of loneliness, unfairness and sometimes abandonment. What does help, is when the people around them tend to these uncertainties and big feelings. In our advocacy work, we do see some amazing people working hard for children and young people in these situations. I pay my respects

to the care teams, carers and case workers that do work tirelessly to be there for each and every child and young person in care. This work is just as much challenging as it is rewarding, and I thank you for your dedication and commitment to these very important people.

As this report unpacks a considerable number of system challenges, I necessarily draw attention to what I see as problems within the sector. However, I do this with great respect for those that work tirelessly to support the most vulnerable children and young people in our community – from the Department of Child Protection to non-government organisations, to the individuals and carers that work within them. Whilst I raise many issues and challenges throughout this report, I do not devalue the care and commitment shown on a daily basis to children and young people. So, I thank you for being there for children and young people in need.

Also, my heartfelt thanks to my hard-working staff in my Advocacy team. Your warmth, kindness and sincerity is seen and heard by all who contact our office. It is with these qualities that you are able to make meaningful and much needed change for children and young people who feel lonely, lost and sometimes without hope.



Shona Reid
Guardian for Children and Young People

ABOUT THE GUARDIAN

Statutory Functions

Shona Reid commenced as the Guardian on 1 August 2022, with her predecessor, Penny Wright, being the Guardian in the first month of the financial year.

The role of Guardian for Children and Young People (the Guardian) is established by the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (the *CYP Advocacy and Oversight Bodies Act*), to promote the rights of all children and young people who are under the guardianship, or in the custody, of the Chief Executive of the Department for Child Protection and to advocate for their best interests.

The Guardian holds an independent position that reports to Parliament through the Minister for Child Protection. Her functions with respect to these children and young people are to:

- promote their best interests
- advocate for them, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse
- monitor their circumstances
- provide advice to the Minister on the quality of the provision of their care and whether their needs are being met
- inquire into, and advise the Minister in relation to systemic reform necessary to improve the quality of care provided for children in alternative care
- investigate and report to the Minister on matters referred by the Minister.²

In carrying out her duties, the Guardian must encourage young people to express their own views and give proper weight to those views. She must also pay particular attention to the needs and circumstances of young people who have a physical, psychological, or intellectual disability.³

² Children and Young People (Oversight and Advocacy Bodies) Act 2016, s 26(1).

³ Ibid, s 26(2). For each of the other three statutory mandates held by the Guardian – namely, as the CYP Visitor, Training Centre Visitor and Youth Treatment Order Visitor – she must also pay particular attention to the needs of Aboriginal children and young people. Although this same statutory obligation does not apply to this mandate, the Guardian pays particular attention to the needs and circumstances of Aboriginal children and young people in care as a policy position. This is discussed in more detail at: [Legislative Focus on Aboriginal Children and Young People in Care](#).

⁴ Information about these roles is available on the Guardian's website, www.gcyp.sa.gov.au.

Four Roles in One Office

During the reporting year, the Guardian for Children and Young People (the Guardian) also held three other statutory appointments, as the Training Centre Visitor (the TCV), Child and Young Person's Visitor (CYP Visitor) and Youth Treatment Orders Visitor (YTO Visitor). The Guardian is supported by staff who are situated within the office hosting these four mandates.

As noted below, a fifth mandate exists that is not yet legislated, as a National Preventive Mechanism for the Optional Protocol for the Prevention of Torture.

Table 1: The Guardian's four statutory positions

Appointment	Description
Guardian for Children and Young People	Promote the rights of all children and young people under the guardianship, or in the custody, of the Chief Executive of DCP and to advocate for their best interests.
Child and Young Person's Visitor	Promote the rights of children and young people who are under the guardianship, or in the custody, of the Chief Executive of the DCP and who are living in residential care, and to advocate for their best interests.
Training Centre Visitor	Promote the rights of young people sentenced or remanded to detention in youth training centres in South Australia, and to advocate for their best interests.
Youth Treatment Orders Visitor	Monitor the health, safety and wellbeing of young people detained under mandatory treatment orders for drug dependency.

This Annual Report details the work, activities, and achievements of the Guardian. Annual reports have been prepared separately for each of the concurrent positions of TCV, CYP Visitor and YTO Visitor.⁴

Overlapping Mandates

The Guardian exercises other statutory functions and responsibilities affecting young people in care, through her concurrent roles as the TCV and CYP Visitor. Young people in care are significantly overrepresented in the youth justice system, including in youth detention.⁵ While young people in care amount to 1% of the South Australian child population, one in three young people in detention on an average day were under guardianship orders in 2022-23.⁶ The Guardian uses the language of ‘dual involved’ to describe young people in these circumstances, to reflect that they exist under two separate court orders: relating to their care and protection, and their detention.



Figure 1: Young people & overlapping mandates.

This social phenomenon – which is commonly referred to as ‘care criminalisation’ – reflects the complexity of vulnerable young people’s lives, often associated with experiences of disability, trauma and social stigma, prejudices, and exclusions.

Dual involved young people are also under the Guardian’s mandate, with up to 90% of the dual involved population in South Australia living in residential care.⁷ As the CYP Visitor is established to visit and advocate for children and young people in residential care, much of the Guardian’s advocacy work overlaps with this mandate.

While each of the TCV, Guardian and CYP Visitor mandates emphasise the voice and best interests of young people, the different functions provide multiple (and sometimes overlapping) avenues to address their concerns.

OPCAT

In December 2017, Australia ratified the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). Intended to prevent mistreatment of people in detention, OPCAT requires each country to establish an independent National Preventive Mechanism (NPM) to inspect places of detention and closed environments and provide preventive oversight and broad civil society input.

As the TCV, the Guardian was administratively assigned an NPM role by the state government with respect to young people detained at the Kurlana Tapa Youth Justice Centre (the Youth Justice Centre), a role which nominally commenced in January 2023. The Guardian considers that, as places in which children and young people may be deprived of liberty, the scope of OPCAT should also extend at least to residential care houses.⁸ There therefore is an overlap between the Guardian’s functions under the Act and an OPCAT NPM’s responsibilities. The Guardian/TCV participated actively in National NPM Network meetings convened by the Commonwealth Ombudsman.

At the time of submitting this Annual Report, the OPCAT process in Australia continues to be problematic in the context of the UN Subcommittee for the Prevention of Torture’s (SPT) aborted Australian inspection in late 2022.⁹ Commonwealth and state governments have been seriously criticised for failure to comply with basic OPCAT commitments. Identified problems go to the heart of OPCAT compliance, including for South Australia, where current NPM arrangements do not meet SPT requirements. This has been raised by the Guardian/TCV with successive South Australian governments.

As pointed out by the SPT, NPM functions must be based on **appropriate legislation and resources**. Considerable problems remain to be resolved with respect to an appropriate scope and capacity to conduct an NPM role in South Australia, including with respect to engaging with Civil Society, the National NPM Network and the SPT itself.

⁵ OGCYP, Final Report of the South Australian Dual Involved Project: Young people in South Australia’s child protection and youth justice systems (2022) (*‘the Final SADI Report’*).

⁶ Office of the Guardian for Children and Young People, Training Centre Visitor 2022-23 Annual Report (2023).

⁷ OGCYP, The Final SADI Report, n 5.

⁸ The potential for young people to be deprived of their liberty in family-based care, coupled with the State’s responsibility to oversee these care arrangements, means that the scope of NPM functions may also extend to family-based care.

⁹ United Nations, Office of the High Commissioner for Human Rights (20 February 2023), <<https://www.ohchr.org/en/press-releases/2023/02/un-torture-prevention-body-terminates-visit-australia-confirms-missions>>.

CHILDREN AND YOUNG PEOPLE IN CARE

What Does it Mean to be in Care?

In a technical sense, being ‘in care’ refers to children and young people who are under the guardianship, or in the custody, of the Chief Executive of the Department for Child Protection (DCP). When children and young people come into care, the Chief Executive assumes the ordinary legal rights and responsibilities of a parent or guardian, with statutory powers to determine things such as who they live and have contact with, and make arrangements for their health, education and other care.¹⁰

In a practical sense, this means that the day-to-day lives of children and young people are heavily influenced and controlled by both the legal arrangements of their care, and the organisational governance that comes with having the head of a government department as your legal guardian. This means living in a way that fits within structured policies and procedures, including statutory reporting, record-keeping, and financial management obligations. It also means that the key relationships with adults are often those who are *employed* to provide care or case support.



“DCP is my life - DCP is their job, I don't get paid for this”.

Young Person in care

Unlike many other children and young people, those in care have a legal guardian who likely does not know them on a personal level, is removed from providing their day-to-day care, and has a fixed end-date of responsibility for their lives.



“The people who make these decisions don't have relationships with us kids”.

Young Person, aged 15

Being cared for by a government department in this way – combined with the circumstances that lead children and young people to come into care, which often involve traumatic experiences – can lead to particular needs and vulnerabilities.

This report includes significant discussion of the Guardian's systemic observations, as formed in the course of her advocacy and monitoring functions and incorporating the direct views and experiences of the children and young people she and her team worked with in 2022-23. This includes:

- how legal and departmental arrangements affect particular groups of young people in care
- trauma and harm that may be caused by the child protection and other systems
- features of funding and practice arrangements which are contributing to a rising care population in South Australia.

Underlying these observations is the recognition that, in many circumstances, being in care is not an ideal situation. Engaging in commentary about the circumstances of children and young people in care, and analysing measures in place to allow children and young people to grow up within their families (wherever this is safe and possible), is an essential part of the Guardian's functions. But, when entering into these discussions, the Guardian recognises the importance of always engaging with children and young people first as individuals, not as ‘victims’ or ‘products’ of these systems.

Figure 2 below shows profiles of just some of the amazing children and young people in care that the Guardian and her advocates engaged with throughout the year.

¹⁰ Children and Young People (Safety) Act 2017, s 84.

Kane and Justin 8 & 9 years old



Brothers Kane and Justin love to watch cartoons, play games on their iPads and do lots of colouring in. Kane and Justin love it when people visit, and play hide-and-seek and jump on the trampoline with them.

Jamie, 12 years old



LASHES
Make everything better

Jamie enjoys listening to music in her room and has a passion for creating new eye make-up looks using different colours. Jamie also like getting her nails done and expressing herself through her nail colours. Jamie would really like to be a professional makeup artist when she is older.



Jason, 17 years old



Jason likes going to his Jigsaw program in the city. He also recently joined a Personal Training course, where he enjoys learning about new and different exercises. In his spare time, Jason likes gaming and spending time hanging out with his girlfriend.



RUBY & LYLA 6 & 8 YEARS OLD



Sisters Ruby and Lyla love doing everything together - playing soccer, dancing, doing chalk drawings and jumping on trampolines. When Advocates spend time with Ruby and Lyla, they love sharing and teaching their favourite dance moves - giggling when Advocates mess up the moves and showing them how to get it right!



Daniel, 9 years old

Daniel invited an Advocate to visit his placement, so he could show them all his favourite things. Daniel shared his love of Pokemon, Star Wars and dragons, and was excited to share how great he is at colouring in posters and pictures of his favourite ones!



Matthew and Tahlia, 15 and 17 years old

Matthew and Tahlia both love to game and have even converted one of the spare rooms into a dedicated gaming room, which they use to 'chill out' after a busy day at school.

Matthew is very proud of the vegetable patch he is growing in the backyard. He calls it his "pride and joy" because he loves picking and cooking with the fresh tomatoes and herbs.



Tahlia loves to create new artworks to decorate her house. It makes her feel good knowing she can put her paintings and drawings up on the walls for others to enjoy..



Figure 2: Profiles of children and young people in care

Coming into Care

In most circumstances, children and young people come into care following the outcome of a DCP child protection investigation, that identifies a serious risk of harm if they remain in their current living or care arrangements. The legal process for coming under the guardianship or custody of the Chief Executive may occur because:

- a child or young person's parents/guardians enter into a 'voluntary custody agreement' with DCP¹¹
- DCP administratively issues an 'instrument of guardianship',¹² on becoming aware that a child or young person is living with a parent who has been found guilty of certain serious child abuse, homicide and/or neglect offences
- DCP or other child protection officers (including police officers), exercise statutory child removal powers¹³ on the basis of a belief that the child or young person has suffered (or is at risk of suffering) serious harm
- the Youth Court has made formal orders granting the guardianship or custody of the child or young person to the Chief Executive.¹⁴

When DCP exercises administrative powers to assume custody and/or guardianship of children and young people, this action must be followed with either an application to the Youth Court to confirm the guardianship status, or returning the child or young person to their family.¹⁵

The DCP may make an application to the Youth Court while young people are still living with their parent/s, guardian/s, or other carer/s; but, in many circumstances, the application is made once the child or young person has already been removed from their family.



"When we were placed into [care]... the carers who looked after us... they were complete strangers to us... we were scared".

Young Person, aged 15

In either situation, the Youth Court may make orders granting guardianship or custody of the child or young person to the Chief Executive on an interim basis pending further court hearings, or as a 'confirmed' order on either a 'short-term' (up to 12 months) or 'long-term' (up to age of 18 years) basis. It is possible to revoke these orders if options present to reunify children and young people with their families; however, from a practical perspective these long-term orders often signal the end of departmental reunification efforts.

Ways that children and young people may be 'discharged' or 'leave' care include:

- reunification with their families
- leaving care on their 18th birthday
- short-term orders expire and the DCP does not make an application to extend the order
- an order is made granting guardianship to another person such as long-term foster or kinship carers (known as 'third-party parental responsibility orders').

'Placements' for Children and Young People in Care

When children and young people come into care, the Chief Executive has the power to 'place' the child or young person in a particular care arrangement, or allow them to remain in the care of a member of their family.¹⁶

In making this decision, the Chief Executive is bound by the 'paramount consideration' to ensure that children and young people are protected from harm, as well as considering the following needs:

- to be heard and have their views considered
- for love and attachment
- for self-esteem
- to achieve their full potential.¹⁷

When a child or young person is removed from their parent, guardian or other carer and placed into a different care arrangement, this is referred to as 'out-of-home care' (OOHC). Not all children and young people who are under the custody or guardianship of the Chief Executive live in OOHC, but most do.

¹¹ Children and Young People (Safety) Act 2017, s 96.

¹² Ibid, s 45.

¹³ Ibid, s 41.

¹⁴ Ibid, s 53.

¹⁵ Ibid, s 50.

¹⁶ Ibid, s 84(1)(a).

¹⁷ Ibid, ss 7-8.

Children and young people in OOHC may be placed into either 'family-based' or 'non-family-based' care. The differences between these care arrangements are set out in Table 2 below. In most circumstances, preference should be given to family-based placements (family, foster, or kinship care) consistent with provisions of the *CYP Safety Act* that stipulate:

- all young people should be placed in a safe, nurturing, stable and secure environment, and placements with a person who has an existing relationship with the child/young person are preferred¹⁸
- high priority placements in accordance with the Aboriginal Child Placement Principle (ACPP) are a member of the child's family, a member of their community, or with an Aboriginal carer.¹⁹ Following best practice guidance, residential care should only be considered as a last resort.

What?

do children and young people say about being in care?



Image 1: What do children and young people say about being in care.

¹⁸ Ibid, s 11(1)(a) and (b).

¹⁹ Ibid, s 12.

Table 2: Definitions of placement types for children and young people in care

	Living Arrangement	Description
Family-based care	Kinship care	Care is provided by an approved person to one or more specific children or young people with whom they have a family or kinship connection. A kinship carer may be directly related to the child or young person in their care by blood, marriage, own community or according to Aboriginal cultures and/or kinship rules. Care is provided in the carer's own home. ²⁰
	Foster care	Care is provided by an approved person (not being a guardian, relative or kin of a child or young person), typically in their own home. ²¹
	Specific Child Only (SCO) Care	Care is provided by an approved person, in their own home, to a specific child or young person with whom they have a connection (that does not fit the definition of kinship care) through their personal, professional or ethno-specific community life (which includes sharing a cultural, ethnic or religious community connection with the child or young person) without, in some instances, directly knowing the child or young person or their family. ²²
	Guardianship Family Day Care (GFDC)	A GFDC carer is a self-employed family day care service provider, who provides family day care (FDC) services through a regulated FDC scheme and has been assessed as being suitable to provide care in their own home to a child or children under custody or guardianship of the Chief Executive (DCP). GFDC carers provide immediate short-term family-based placements for children aged under 6 years, where no family-based care options are available and the child would otherwise be placed into residential care, while long-term family-based options are being explored. ²³
	Temporary Placements	Provision of care in their own home by a person who is not an approved carer. These placements are intended for circumstances where the placement of the child is urgent, there is no available placement with an approved carer and the risk of harm to the child if they are not placed into temporary care exceeds the risk of harm occurring to the child in temporary care. ²⁴ Under the <i>CYP Safety Act</i> , these placements must not exceed three months. ²⁵ Temporary carers may apply to become a kinship or SCO carer.
Non-family-based care	Residential Care	Care is provided for children and young people by government and/or non-government paid or contracted workers, on a rotational roster, in a residential premises (not a carer's or young person's own home). ²⁶
	Supported Independent Living Services (SILS)	SILS may be available for young people aged 16-17 as part of their transition from care planning. SILS provides accommodation, delivers programmatic responses to skills development, and individually tailored support to assist young people to transition to independent living. 24/7 support is provided to young people, however, the nature and intensity of support will be dependent on individual young people's independent living skills, support needs and developmental capacity as determined by DCP case management. ²⁷

²⁰ Government of South Australia, DCP, Carer approvals, agreements and cancellations for family-based carers Procedure (v 2.2, May 2023).

²¹ Ibid.

²² Ibid.

²³ Government of South Australia, DCP, *Guardianship Family Day Care Procedure* (v 2.2, November 2022).

²⁴ Government of South Australia, DCP, Carer approvals, agreements and cancellations for family based carers Procedure (v 2.2, May 2023).

²⁵ While section 77 of the *CYP Safety Act* requires that these placements must not exceed three months, information provided by DCP indicates that, in 2022-23, 1,117 temporary placements were extended beyond three months. This is discussed in more detail at: [Delayed Kinship and SCO Carer Assessments](#).

²⁶ Government of South Australia, DCP, *Residential care* (accessed October 2023) <<https://www.childprotection.sa.gov.au/work-with-us/service-providers/service-specifications/residential-care>>.

²⁷ Government of South Australia, DCP, *Supported independent living services* (accessed October 2023) <<https://www.childprotection.sa.gov.au/work-with-us/service-providers/service-specifications/supported-independent-living-p104>>.

Residential Care

Residential care houses are managed by DCP or Non-Government Organisations (NGOs) contracted by DCP, where young people have 24/7 rostered carer support. In South Australia, there were 263 Residential Care Houses operational across the financial year.²⁸ Each of these accommodated between one to four young people,²⁹ who may be siblings or come from different families and backgrounds.

These houses are found across the state and are usually indistinguishable from a *typical* house on the outside. Inside, the houses may show indications of their purpose – to “ensure ... young people who have been removed from the care of a person are placed in a safe, nurturing, stable and secure environment.”³⁰ This involves the complex establishment of a home environment to meet workplace standards.

While these houses are ostensibly ‘homes’ for children and young people, they are also workplaces for carers. A standard feature of residential care houses is a carers’ room, which nearly always occupies the master bedroom (to allow carers to use the ensuite). This room is often ‘off-limits’ to children and young people and houses workstations, carers’ belongings, white boards with operational tabling, medication, sharps, and items confiscated or removed from children and young people.

Work Health and Safety requirements, such as hand washing signs, evacuation procedures, fire extinguishers, illuminated exit signs, and sanitary bins, feature throughout houses. There may also be ‘restrictive practices’ in place as a risk mitigation measure, limiting children and young people’s full access to their houses.

As a workplace, the house is visited by many adults in a way not experienced by children and young people in the wider community: minor maintenance contractors, case managers, therapists, licensing, auditors, and even the CYP Visitor’s Advocates fall into this category. Multiple cars may be parked in front of the house signalling difference to neighbours. CCTV cameras, duress and perimeter alarms may be present in some houses, and reinforce a sense of unrest or distrust.

Day-to-day life for children and young people in residential care should not be too different to life in the broader community. However, there are more rules and routines in place to promote consistency, in an environment where children and young people may change houses and carers regularly, and may have disability related needs. These include:

- carers work on a rotational basis across three shifts (AM, PM, and Night). Children and young people therefore may wake up with different adults in the house to those who said goodnight to them the previous evening.
- with each change in shift, there is a carer handover. These occur in the carers room, and may mean there are up to five adults in the house. When this occurs, children and young people are not able to access carers, and report a sense they are being spoken about.
- houses are expected to hold ‘house meetings’ on a regular basis, to ensure children and young people can raise issues.
- meals are prepared by either carers or children/young people depending on age. Whether these meals are eaten together varies house-to-house (and carer-to carer).
- there are set routines for ‘bedtime’, which may involve Wi-Fi being turned off, bath time, and an expectation that young people will remain in their rooms.



"I just try to live up to the expectations of the house and follow the rules".

Young Person, aged 17

In a *typical* home, similar routines may exist for children and young people, but be applied flexibly by a consistent parent or guardian, enabling spontaneity or special occasions. In residential care, capacity to make exceptions to routines is reduced – the number of carers involved in a house means there is emphasis on striving for *consistency*. When applied to routine, this can result in rigidity for children and young people’s daily lives. Deviation from routines may need to be logged and accounted for by carers.

²⁸ This figure is based on data provided by DCP. It does not account for non ‘licensed’ facilities. This data was current at 30 June 2023.

²⁹ At the end of 2022-23, the CYP Visitor understands that there were four houses accommodating between 5-6 young people (one of which accommodates two of the young people in a wing for independent living arrangements).

³⁰ Government of South Australia, DCP, *Residential care* (accessed August 2023) <<https://www.childprotection.sa.gov.au/work-with-us/service-providers/service-specifications/residential-care>>.



Image 2: Common features in residential care houses

Care Population in 2022-23

On 30 June 2023, there were 4,683 children and young people under the custody or guardianship of the Chief Executive, 4,485 (95.8%) of whom lived in OOHC. Compared to 2021-22, this amounted to an increase of 131 children and young people in care (2.9%).

For those who lived in OOHC, they resided in the living arrangements set out in Table 3 below.

Compared to the previous financial year, there was an overall increase in the number of children and young people living in OOHC at 30 June 2023, across the following placements:

- Temporary placements: 86 individuals (+29.9%)
- Residential care: 58 individuals (+9.1%)
- SCO Care: 18 individuals (+7.6%)
- Guardianship Family Day Care: 8 individuals (+22.9%)

There was a decrease in young people living in all other placement types, including kinship and foster care.

At 30 June 2023, there were also 379 children and young people living in 'other supported placements', which refers to those who:

- live under a third-party parental responsibility order, following transfer of guardianship from the Chief Executive to a person who is not the parent/s or guardian/s from whom they were removed³¹
- those who remain in financially supported family or non-family-based care arrangements after their 18th birthday.

From 2018-19, these placements have been excluded from the definition of OOHC for national reporting purposes; however, DCP's public reporting on a state-based level continues to include children and young people in these circumstances as living in OOHC.³² As these children and young people are not under the custody or guardianship of the Chief Executive, the Guardian reports separately on these population figures and has no mandate to monitor best interests or advocate for children and young people in these circumstances.

While these children and young people are not within the Guardian's mandate, it is noted that they may experience many of the same circumstances and vulnerabilities as those in care but may live within an advocacy 'gap'. This is discussed in more detail at: [Advocacy gaps for children and young people in 'alternative care'](#).

³¹ These living arrangements include ongoing case management and, in some circumstances, financial support.

³² Government of South Australia, DCP, *Reporting and Statistics* <<https://www.childprotection.sa.gov.au/department/reporting-and-statistics>>.

Table 3: Comparison: Children and young people in care living in OOH at 30 June 2022 and 2023, by living arrangement³³

Living arrangement	2022		2023		Difference	
Family-based care	3,669	(84.0%)	3,742	(83.4%)	+73	(+2.0%)
Kinship Care	1,655	(37.9%)	1,623	(36.2%)	-32	(-1.9%)
Foster Care	1,517	(33.3%)	1,453	(32.2%)	-7	(-0.5%)
Family Day Care – Guardianship	35	(0.8%)	43	(1.0%)	+8	(+22.9%)
Specific Child Only (SCO) Care	238	(5.5%)	256	(5.5%)	+18	(+7.6%)
Temporary placements	238	(6.4%)	374	(8.3%)	+86	(+29.9%)
Non-family-based care	697	(16.0%)	743	(16.6%)	+46	(+6.6%)
Residential care	637	(14.6%)	695	(15.5%)	+58	(+9.1%)
Independent living	60	(1.4%)	48	(1.1%)	-12	(-20.0%)
Total	4,366		4,485		+119	(+2.7%)

Rights in Care

All young people have fundamental rights. Those in care or detention have specific rights relating to that status, including the right to feel good about themselves, the right to live in a place where they are safe and well cared for and get the help they need, and the right to understand and be heard about decisions that affect them.



"I have a right to make a decision".

Young Person, aged 16

Rights for young people in care are set out in the [Charter of Rights for Children and Young People in Care](#) (the Charter), prepared and maintained by the Guardian, as required by section 13 of the *Children and Young People (Safety) Act 2017* (the *CYP Safety Act*). Young people in youth justice detention have rights set out in the [Charter of Rights for Youths Detained in Training Centres](#).

One of the Guardian's most important responsibilities is to uphold and support these rights. They are consistent with the UN Convention on the Rights of the Child (UNCRC) with section 5 of the *CYP Oversight and Advocacy Bodies Act* requiring that every State Authority in South Australia respect

and uphold UNCRC rights when implementing its functions and powers.

All people and bodies involved in the administration, operation, or enforcement of laws relevant to the Child Protection system must exercise their powers and perform their functions to give effect to the *Charter of Rights*, limited only by the need to hold the safety of young people as paramount.³⁴ This includes the Guardian and all relevant DCP staff, from Executive, through to Carers.

Core rights in the Charter include to have access to key services such as health and education, have a say in decisions made about care, and to have contact with significant people including family.

Young people are provided with copies of the Charter on coming into care, and poster versions were often displayed in residential care houses visited. However, despite distribution and display, many young people report a disconnect between the principles espoused by the Charter, and their daily lives.



"I get DCP's side of things - I've heard what they have to say, but they haven't listened to what I have to say".

Young Person, aged 17

³³ Data source: Government of South Australia, Department for Child Protection (unpublished).

³⁴ Children and Young People (Safety) Act 2017 (SA), s 13(9).

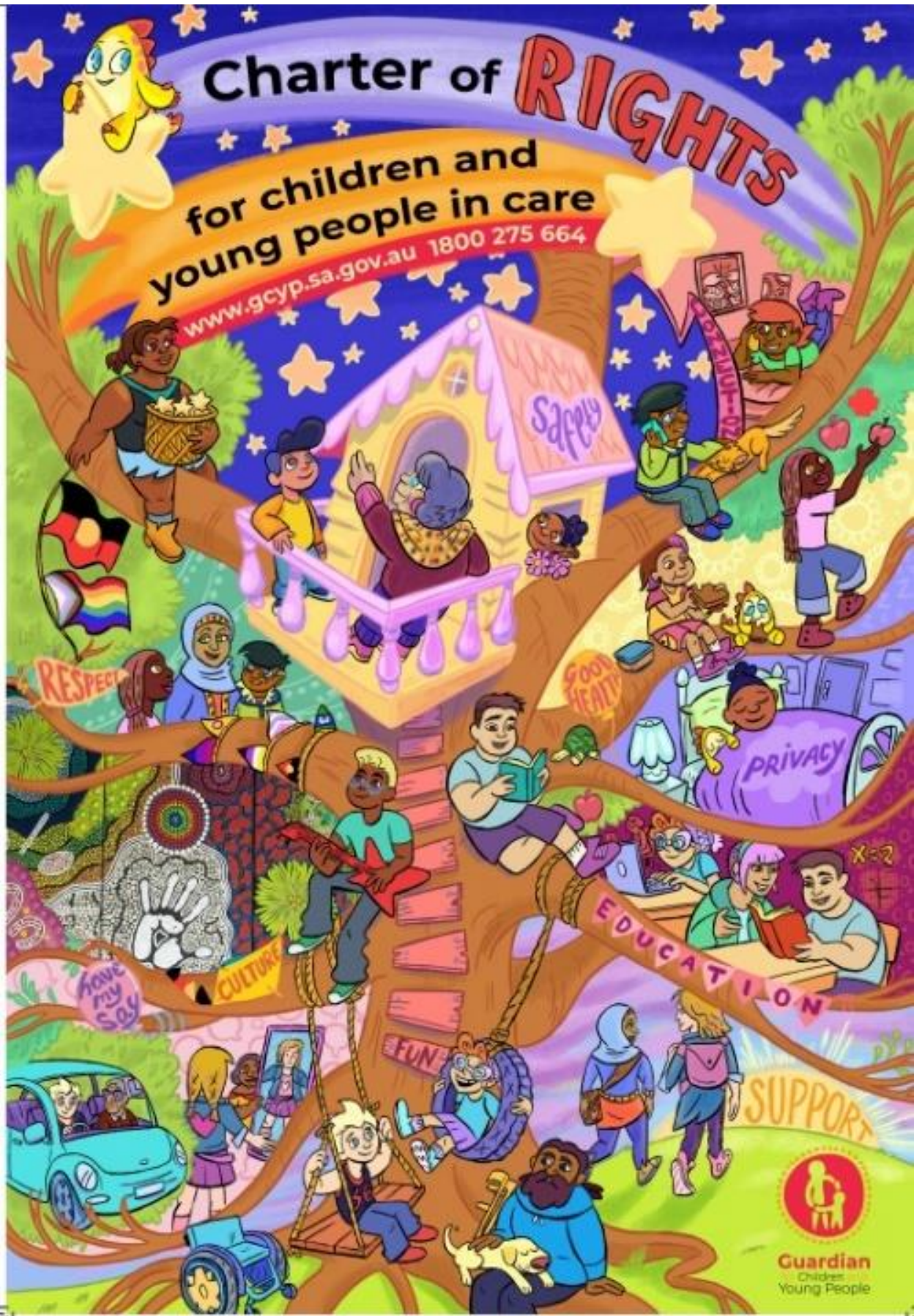


Image 3: Charter of Rights for Children and Young People in Care

Activities in 2022-23

Advocate

The Guardian acts as an advocate for the interests of children under the guardianship or custody of the Chief Executive and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse.³⁵



"It's using your voice to help my voice".

Young Person, aged 15

In 2022-23, 602 enquiries were received, of which 541 fell within the Guardian's 'mandate' or scope of responsibility. In other words, they were 541 requests for assistance in relation to children and young people under the guardianship, or in the custody of, the Chief Executive of the Department for Child Protection.

This is a 23% increase compared to the 441 'in-mandate' enquiries of the previous year (2021-22).

The remaining 61 enquiries were 'out-of-mandate' (i.e., did not relate to children and young people in state care) and, where appropriate, were referred to other agencies. This represents a 45% increase in the number of 'out-of-mandate' enquiries compared to 2021-22. These 'out-of-mandate' enquires, whilst referred to other more appropriate agencies, do consume considerable Guardian resources, with staff hearing the matter, determining its legislative fit and then identifying a more appropriate agency.

For further information relating to Advocacy types please see Appendix 1.

Enquiry Types and Demographics

Of the 'in-mandate' enquiries received, 471 (87%) were requests for advocacy. The remaining 13% primarily related to:

- consultations on other action that could be taken regarding a child's (or children's) circumstances

2022-23 SNAPSHOT

ADVOCACY

477 Individual Children & Young People

541 In-Mandate Enquiries

338 Assessment, Advocacy & Monitoring

Image 4: Advocacy snapshot 2022-23

- complaints which were re-directed (such as complaints about the actions or decision-making of DCP and other agencies, where the child or young person's rights or best interests are not the central concern)
- actions arising from Annual Review Audits or the R20 Arrangement (refer to the monitoring function for more information in relation to R20)
- information sharing between agencies.

At times, a single enquiry may relate to more than one child or young person in care, and multiple enquiries may be raised by (or about) the same individual. The 541 'in-mandate' inquiries received related to 477 individuals, which was a 10% increase from 434 individuals in 2021-22.

Thirty-four per cent of the total number of children and young people (224) identified as Aboriginal or Torres Strait Islander, and six per cent (40) were from Culturally and Linguistically Diverse (CALD) backgrounds.

From the total number of 'in-mandate' enquiries received in 2022-23, 20% of children and young people were reported by the enquirer to have known disabilities, while a further 3% were suspected by the enquirer as having undiagnosed disabilities and/or were in the process of being assessed. The highest prevalence was autism spectrum disorder, intellectual disability, and attention deficit hyperactivity disorder.³⁶

³⁵ Children and Young People (Oversight and Advocacy Bodies) Act 2016, s 26(1)(b).

³⁶ This information is reported by the enquirer to the best of their knowledge, in accordance with their understanding of the child or young person's circumstances; this information is not necessarily complete or able to be confirmed by the Guardian at the point of enquiry.

Enquiry Pathways and Referral Sources

Each ‘in-mandate’ enquiry is assessed against a threshold for Guardian involvement. The most common ‘in-mandate’ enquiry pathways were as set out in Table 4 below.

Table 4: In-mandate enquiry pathways in 20223

Pathway	No.	%
Followed up for further assessment, monitoring and/or advocacy	338	62%
Not progressed, due to advocacy request withdrawn or enquirer disengaging from the assessment process	66	12%
Referred to other services due to not meeting the Guardian’s threshold for intervention, or being outside the Guardian’s scope of responsibility	54	10%
Assessed to require no action unless (and until) direct contact was received from the young person	51	9%
Other 37	32	6%
Total	541	100%

Over the course of the year, 184 children and young people in care self-referred to the Guardian, initiating a total of 34% of enquiries (which was a 2% decrease from 2021-22).

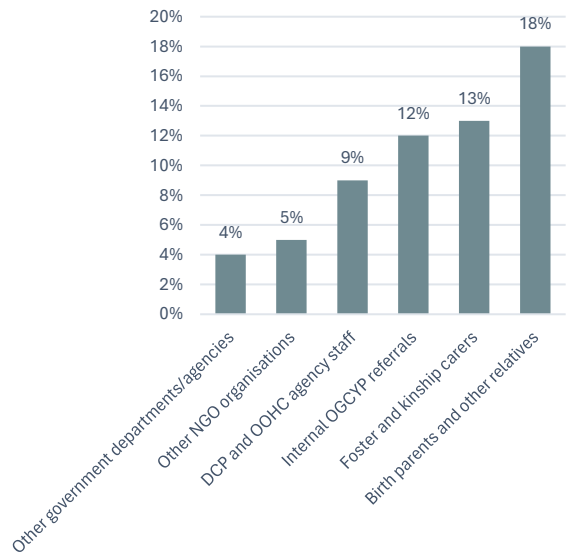


“I called [the Guardian] because I need help advocating for something and nobody’s listening”.

Young Person, aged 15

Other common referral sources, as depicted in Figure 3 below, were birth parents and other relatives, foster and kinship carers and internal referrals from other programs and functions within the Guardian’s office (including the TCV and CYP Visitor programs).

Figure 3: Most common sources for enquiries not directly from children and young people in 2022-23



The remaining referral sources were primarily unknown, or from disability and legal services.

Children and young people living in non-family-based care (residential care) made up the highest number of enquiries directly from children and young people. While they make up 17% of the care population, they constituted 68% of the enquiries received from children and young people during the year (compared to 78% last year).

In comparison, children and young people living in family-based care (foster, kinship, temporary, family day care, and specific child only) constitute most of the care population (83%) but the enquiries from them totalled only 11% (compared to 9% last year).

The remaining enquiries received directly from children and young people either had no DCP approved placement, had self-placed with family, friends, or acquaintances (some considered unsafe), resided in independent living, were reunified, were in custody, or their placement type was unknown.

Figures 4 and 5 demonstrate the proportion of children and young people who contacted the Guardian directly for support by placement type.

³⁷ Primarily referred for other internal action or follow-up (such as posting of Charter of Rights and other information to the child, referral to the Training Centre Visitor Unit, or referral for a priority Annual Review Audit or visit by the Child and Young Person’s Visitor Program – CYPVP). Some enquiries yielded insufficient information to determine the appropriate pathway.

Figure 4: Direct contact from children and young people by placement type

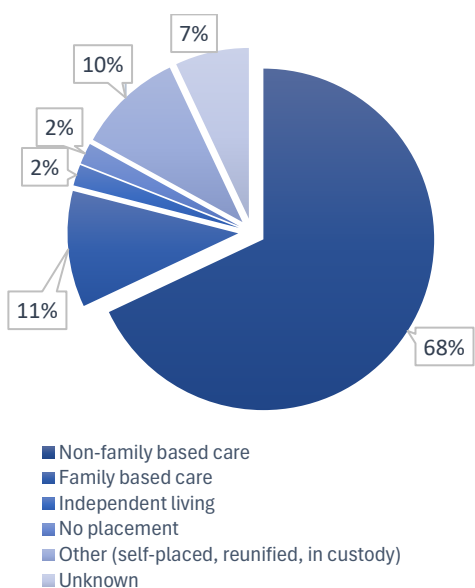
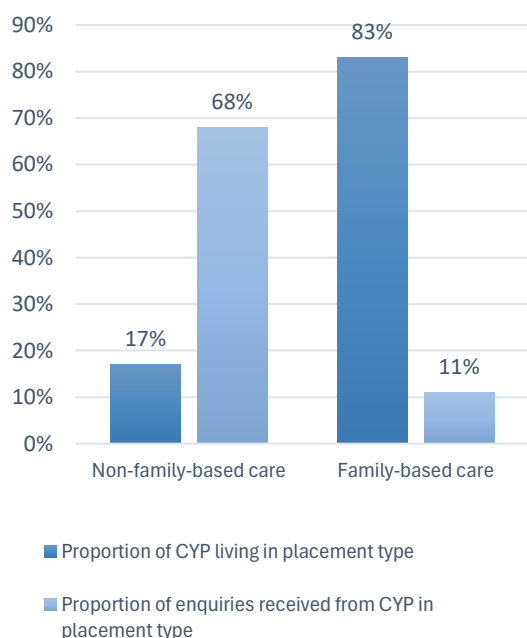


Figure 5: Proportion of children and young people who directly initiated enquiries, compared to the proportion of children and young people in care, by placement type



Presenting Issues – All Enquiries

Across all enquiries (from children, young people and adults), the most common presenting issues³⁸ were as follows:

Table 4: Most common presenting issues in enquiries in 2022-23

Issue	%
1 Safe and stable placement	30%
2 Contact with significant others	29%
3 Participation in decision-making	19%
4 Case management and service coordination	8%

By contrast, when enquiries came directly from children and young people, the most common presenting issues were:

Table 5: Most common presenting issues in enquiries directly from children and young people in 2022-23

Issue	%
1 Participation in decision-making	34%
2 Safe and stable placement	31%
3 Contact with significant others	25%
4 Understanding circumstances	15%



"I want to live in the places that I choose to live in".
Young Person, aged 13

Monitor

The Guardian must monitor the circumstances of children under the guardianship, or in the custody, of the Chief Executive.³⁹ To meet this obligation, Advocates undertake activities that include assessing enquiries to determine further action, attending and auditing Annual Reviews. Additionally, the Guardian monitors allegations of sexual abuse of children and young people in care.

Since December 2022, the monitoring function has been additionally supported by the CYP Visitor program for children and young people in residential care to observe whether their needs are being met

³⁸ Excluding 'unknown' presenting issues and presenting issues categorised as 'other'. Up to three presenting issues are recorded for each enquiry, therefore percentages may total more than 100.

³⁹ Children and Young People (Oversight and Advocacy Bodies) Act 2016, s 26(c).

and ensure that they have a living environment that supports children and young people to grow and thrive.⁴⁰

The monitoring function is primarily conducted through 'Annual Review Audits', and 'R20 Monitoring', discussed below.



Image 5: Monitor snapshot 2022-23

Annual Review Audits

Every child in care is entitled to have their circumstances reviewed by DCP at least once per year.⁴¹ The Guardian audits a proportion of these DCP Annual Reviews to gain an overview of the circumstances of children in care, and how they are faring.

Annual Review audits focus on monitoring individual and overall wellbeing outcomes for children and young people in OOHC. The audit process involves looking at case planning processes and attending Annual Reviews. The audits seek to ensure that children and young people are included in their Annual Review and decision-making process, to make sure their best interests and support needs are being met, while contributing to learning and continuous quality improvement in the OOHC system.

In some instances, the Guardian will generate individual or systems advocacy arising from observations during Annual Reviews and/or monitor

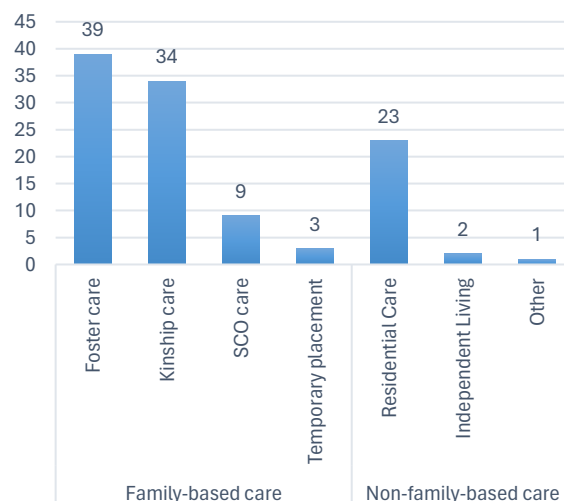
the timely completion of casework actions to address gaps in support and care provision.

The Guardian aims to meet an audit target of 5% of the total care population (reduced from 10% in 2019-2020); however, in 2022-23, this audit target was not met due to resourcing constraints and competing work demands. With 112 Annual Review audits conducted across 16 of the 21 DCP offices that provided case management to children and young people in care, the Guardian achieved this monitoring function for 2.5% of the care population (as at 30 June 2022). Associated issues are discussed in more detail at [Reasonable Resourcing](#).

Of the 112 Annual Reviews audited, 37.5% were for Aboriginal and Torres Strait Islander children and young people; 60% were for those who were described by DCP as 'Other Australian'; and 2.5% were for children and young people with CALD backgrounds.

Annual Review audits were conducted across nearly all care types (except Guardianship Family Day Care), with three-quarters being for children and young people living in family-based care (n 85:76%), including foster care, kinship care, SCO care, and temporary placements.

Figure 6: Number of Annual Review Audits conducted in 2022-23, by living arrangement.



The circumstances for children and young people were followed up in 18% of cases, an increase from last year's figure of 10%. The following was noted:

⁴⁰ In 2022-23, 91 young people were visited via the program, across 30 separate residential care houses. For further discussion, see the separate Child and Young Person's Visitor 2022-23 Annual Report.

⁴¹ Children and Young People (Safety) Act 2017, s 85.

- no disparity between genders
- 70% of children and young people were aged 10-17 years
- 30% were Aboriginal
- 60% were living in family-based care
- 40% were in residential care.

Notably, 65% of children and young people had a diagnosed disability (autism, intellectual disability, and developmental delay), and another 10% still needed assessments.

Access to disability services and support was the most prevalent presenting issue (40%), followed by safety (30%) and family/sibling contact (20%). A further 23% of children and young people with disabilities had Charter of Rights cards posted to them, following their Annual Reviews.

Relevant findings from all Annual Review Audits are discussed below, and across relevant matters addressed throughout the remainder of this report.

Placement safety and stability

Most children and young people (91%) were living in safe and *stable* placements, with only 2.7% living in safe and *unstable* placements. Of the Annual Review Audits, 6.3% required review with regards to safety and stability of placements for relevant children and young people.

Participation by children and young people

The attendance of children and young people at their Annual Reviews remains low, with less than one-third attending, which is a trend that continues from previous years. This is contrary to the *Charter of Rights for Children in Care*, which states children have the right to be listened to, be included and have a say in decisions that affect them and their plans for their future. Of the Annual Review Audits where children and young people did attend: 68% attended in person, 17% attended by phone and 15% attended by Teams online.

Of the children and young people who did not attend their Annual Review, 53% were invited to attend but declined due to:

- being at school or having another commitment
- 'not being interested'
- extenuating circumstances
- 42% were not invited to attend their Annual Review due to
- young age/capacity
- school/other commitment

- behaviour.

It was unknown whether the other 5% of children and young people had been invited to attend their Annual Review.

Child and Young Person's voice

Section 85(3)(b)(ii) of the *CYP Safety Act* prescribes that:

in carrying out a review, the panel must notify the prescribed child or young person of the review and give them reasonable opportunity to make submissions (in whatever manner the child or young person thinks fit...) to the panel for the purposes of the review; and have regard to any submissions made.

Additionally, regulation 8(2) of the *Children and Young People (Safety) Regulations 2017 (CYP Safety Regulations)* requires DCP case workers to take reasonable steps to gain the views, and encourage the participation of, any person with relevant information to inform case plan development.

Children and young people are experts in their own lives, they have unique and powerful perspectives on their experiences and what matters to them and the right to be involved in decision-making that affects their lives. Incorporating the child's voice into their case plan and giving it due accord in decision-making individualises case plans, creates partnership between the child and their case worker, ensures the child's needs are accurately represented, enables informed decision-making about the child's needs, and is a critical element in child-centred casework.



"I have only heard things second-hand - nobody has talked to me."

Young Person, aged 16

There are many opportunities to include children and young people's voices; be it face-to-face, emails, text, letters and drawings. All play an important part of creating agency for children and young people. Completing a Child Survey is another way for children and young people to have their voice heard. Of the children and young people of an age and developmental ability to be able to complete a survey, around one-quarter (26%) had done so. The main reasons cited for surveys not being completed

were 'not actioned' by the Case Manager, and refusal by the child or young person.

Ensuring that the direct voice of the child or young person is gained for (and at) their Annual Review, as well as recorded in their case plan, remains a considerable practice gap. The Guardian welcomes the introduction of the 'My Voice/Our Views' Survey, which was developed in consultation with children and young people in care, as a more engaging and user-friendly survey tool that will hopefully result in increased survey participation and completion rates.

Life Story Work

Life story work and Aboriginal life story work are processes which support children and young people in care to develop a balanced, realistic and consistent narrative of their history (life story) that they are able to develop and integrate into their sense of self.⁴² Life story work helps children and young people to make sense of their experiences, including the reasons they were placed into care, and should occur throughout the child or young person's care journey. For Aboriginal children and young people, Aboriginal life story work is critical for developing their cultural identities, which begins by knowing where they come from and how they fit within their family, kinship structures, and community.⁴³

Life story work records a life story of children and young people who have spent a lot of time living in care. It records the child's history and personal development, and can help them maintain a connection to their identity, their birth family and their origins.

Of all Annual Review Audits undertaken, 92% of children and young people had some form of record about their life (Life Story Book, scrapbook and/or a memory box), with 8% having no life story record or this information was unknown.

Child and Young Person Wellbeing Checklist

The Guardian utilises twelve wellbeing measures that reflect children and young people's rights as outlined in the *Charter of Rights for Children and Young People in Care*, with indicators for each wellbeing statement used as a guide to determine the extent to which these rights are being met.

A Wellbeing Checklist is utilised during audit, with the Guardian's staff making assessments based on

information provided via case plans, the Annual Review meeting and additional information provided by child or young person, case worker, care team and significant other people in the child or young person's life. The Wellbeing Checklist is a tool developed and utilised within the Guardian's office and not garnered from other sources.

Using the Wellbeing Checklist, the Guardian documents the total number and percentage of children and young people for whom each wellbeing statement was assessed as being 'Met' from their Annual Review audit. Most children and young people reportedly live in a kind and nurturing environment (89%), are physically and emotionally safe (87%), culturally safe (86%) and live in stable and secure placements (87%).

The lowest wellbeing rating, specific to Aboriginal and CALD children, was for the child or young person having contact with their culture and community (38%). This figure shows a downward trend over the last 3 years, decreasing from 48% in 2020-2021 and 40% in 2021-22. Indicators for contact with culture and community include:

- carers sharing the same background as the child or young person
- carers meeting the child or young person's needs relating to cultural background and identity
- the child or young person having access to people and information from their community
- the child or young person having a current, implemented plan of cultural connection incorporated into their case plan
- the child or young person being supported with cultural connection (to family, community, Country and meaningful cultural activities).

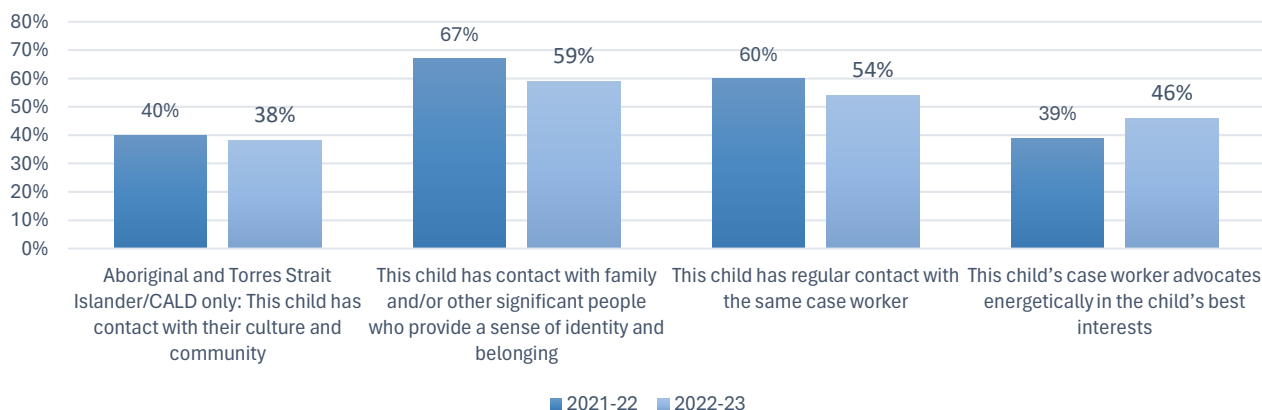
Contact with family and/or significant others also decreased by 8%, from 67% to 59%.

The wellbeing rating pertaining to the child having regular contact with the same case worker decreased by 6 percentage points, from 60% to 54%. The Case Managers of 42% of children and young people had been allocated for 6 months or less, with over one-quarter (28%) allocated for 3 months or less.

⁴²Government of South Australia, Department for Child Protection, *Tools, processes and practice guidance: Life story work and Aboriginal life story work Practice Paper* (2021).

⁴³ Ibid.

Figure 7: Lowest wellbeing ratings in 2022-23



The Guardian noted that knowledge of, and participation by, children and young people in decision-making increased from 77% to 84%. However, the child's voice at Annual Reviews was primarily relayed by their carer or case manager in instances where the child did not attend. Key indicators of the child or young person having knowledge of and participating in decisions that involve them include:

- the child or young person reporting in their Child Survey or at their Annual Review that they have been involved in decision-making that affects their lives
- feedback from the child or young person, from their Child Survey or consultation about their case plan, is recorded and actioned in the case plan
- the child or young person has access to and receives culturally appropriate support to participate in decision-making
- children/young people who have limited English, or who have special communication needs, have access to an interpreter and/or appropriate communication devices
- anecdotal, written and/or observational evidence that the case worker and carers support the child or young person's participation in decision-making.

Follow Up by the Guardian's Office

In undertaking the Annual Review Audits, from time to time there are matters that require ongoing monitoring, follow-up or children and young people may request ongoing engagement regarding specific matters. Of the audits undertaken, 18% required some level of follow up; this was an increase from 10% in 2021-22.

There was no distinguishing gender disparity for matters being followed up. Other relevant characteristics included:

- 70% were aged 10-17 years
- 30% were Aboriginal
- 60% lived in family-based care
- 40% lived in residential care.

As noted earlier in this report, 65% of children and young people whose Annual Reviews were audited had a diagnosed disability, with a small sample of children and young people needing assessments.

Access to disability services and supports was the most prevalent presenting issue, for 40% of children and young people, followed by safety in placement for 30% and contact with family/siblings 20%. Another 10% of children and young people with disabilities had Charter of Rights cards posted to them, following their Annual Reviews.

Systemic issues

The most prevalent systemic issues identified through Annual Review Audits continues to be access to disability support services (particularly in regional areas), sibling contact (where siblings are case managed by different DCP offices and reside in different care arrangements), and turnover/frequent change of Case Managers.

Further, the Guardian also notes the lengthy delays for completion of full assessments for Temporary Placements, with the 3-month completion timeframe reportedly often extended.

Monitoring Allegations of Sexual Abuse

The Guardian has a specific responsibility arising from Recommendation 20 ('R20') of the Mullighan Inquiry,⁴⁴ which concluded that allegations of sexual abuse of children and young people in care, and their investigation, should be independently monitored by the Guardian.

The current 'R20' process is an intensive formal activity whereby the Guardian is notified about all Care Concern Referrals (CCRs) from the DCP Care Concern Management Unit (CCMU), in which the allegation relates to sexual abuse and/or neglect, and the direct conduct or actions of the carer is alleged to have resulted in the alleged exposure to sexual abuse. The Guardian's R20 role is to monitor the progress, timeliness, and outcome of investigations into the care concerns, and where necessary, advocate for the child's best interests.

Follow-up of children and young people's best interests, arising from the R20 process, generally relate to:

- ensuring that children and young people's voices are heard and responded to
- advocacy and/or monitoring of SAPOL's investigative response (where relevant)
- advocacy and/or monitoring of placement moves and placement matching, to ensure that children and young people are safe from further harm
- promoting implementation of safety plans and risk mitigation strategies, such as increased staffing and supervision, to safeguard children and young people (where a placement move may not be in their best interests)
- advocacy for and/or monitoring of access to therapeutic support and intervention
- ensuring children and young people have been provided with information about the Charter of Rights and how they can request support from one of the Guardians Advocates
- ensuring young people have received information about the National Redress Scheme or other compensation avenues and support they may be eligible for post-care.

The Guardian convenes quarterly meetings attended by SAPOL (State Crime Assessment Centre & Public Protection Branch), the DCP Investigations Unit and the DCP CCMU. As well as monitoring the progress of investigations, we also consider systemic issues

that may have contributed to the abuse and promote discussion about reforms that would improve safety.

In 2022-23, the Guardian received:

- 28 Serious Care Concern Referrals which were subject to investigation by SAPOL and/or DCP. This compared with 57 Serious Care Concern notifications in 2021-22, representing a 51% decrease.
- 28 ongoing/carryover investigations from previous years were monitored.
- 13 Minor and 18 Moderate Care Concern Referrals, which compared with 16 Minor and 47 Moderate Care Concern Referrals in 2021-22 (19% and 62% decrease, respectively).

The Guardian received 63 referrals in 2022-23 for a fourth category referred to as 'No Action', compared to 40 in this category in 2021-22 (a 57% increase). This brings the total number of referrals received in 2022-23 to 122.

It is important to note that the categorisation of these referrals as 'No Action', 'Minor', 'Moderate' and 'Serious' by the CCMU does not necessarily reflect the seriousness of the allegations, but rather the type of response assessed as appropriate at the time the allegations are raised.

It is difficult to theorise about what may underlie peaks and troughs in the number of care concern referrals received via the R20 Arrangement. It is notable that an increase has already been observed in the first quarter of 2023-24. Some variation in thresholds and categorisation is to be expected but is likely not the only factor.

Referrals are not an indicator of prevalence

It is also important to note that the number of referrals received is not necessarily an indication of the prevalence of sexual abuse – these only indicate the instances where children and young people have made disclosures or where the allegations have otherwise come to light. Some survivors may not disclose until many years later, or may not disclose at all.

Of the total number of No Action, Minor, Moderate and Serious Care Concern Referrals received in 2022-23, 43% related to or included concerns about sexual behaviour occurring between or from other children and young people in care, or risk of exposure to the harmful sexual behaviour of other

⁴⁴ E Mullighan, Children in State Care Commission of Inquiry (2008) pp. 23-24.

children and young people. The concerns varied across the broad spectrum of behaviour – from sexual behaviour considered outside the normal or age-appropriate range (but not necessarily resulting in harm to another child), through to potential sexual offences.

It is important to note that Care Concern Referrals do not paint a complete picture of all allegations of sexual abuse of children and young people in care. Other situations, including some instances of alleged sexual abuse by adults in the community or harmful sexual behaviour between children and young people may not always give rise to concerns about the quality of care the child received (and are therefore not raised as Care Concern Referrals). As a result, the Guardian will not be made aware of these via the R20 Arrangement; however, some of these circumstances may be notified to the Guardian through other mechanisms.

Promote

The Guardian must promote the best interests of children under the guardianship, or in the custody, of the Chief Executive, and in particular those in alternative care.⁴⁵ To understand and respond to matters affecting children and young people in care, the Guardian must engage with broader child protection and related sectors, facilitating dialogue and future systems-level advocacy, and promote community awareness about these matters.

2022-23
SNAPSHOT
PROMOTE

- 12** Submissions
- 10** Media Releases
- 25** Blog Posts
- 4** Key notes

Image 6: Promote snapshot 2022-23

In 2022-23, the Guardian promoted young people’s best interests through:

- addressing seminars
- publishing reports and blogs, via the Guardian’s website
- contributing to inquiries and other projects through verbal and written submissions
- liaising with government, non-government and community stakeholders
- educating young people about the Charter of Rights during advocacy and other functions.

Education and Training

To promote the best interests of children and young people, the Guardian works to increase stakeholder knowledge and awareness of the Charter of Rights, the work of the Guardian (including in her other capacities as TCV and CYP Visitor), and the experiences and perspectives of young people in care.

In 2022-23, this included presentations to the Commissioner for Aboriginal Children and Young People, Youth Affairs Council of South Australia (YACSA), South Australian Council of Social Service (SACOSS), University of Adelaide Faculty of Law, the Australian Centre for Child Protection, Uniting Country SA, Centacare CSA, Aboriginal Family Support Services (AFSS), Legal Services Commission (LSC) and various DCP offices.

Stakeholder Engagement

Making Sector Connections

The Guardian focussed her efforts this year on ensuring community and stakeholder awareness, to enable cooperation by:

- promoting her role and functions to those who support young people, encouraging them to advocate when necessary
- attending community events to bolster awareness of her mandates, including the emergent role of the CYP Visiting Program⁴⁶
- establishing lines of communication with NGO and DCP practitioners and leaders.

⁴⁵ Children and Young People (Oversight and Advocacy Bodies) Act 2016, s 26(1)(a).

⁴⁶ Attendance at events in 2022-2023: Child Protection Awards (9 September 2022), Closing the Gap Day (16 March 2023), Residential Care Nunga Time Resource Centre Launch (27 April 2023), Reconciliation Breakfast (26 May 2023).

In 2022-23, the Guardian and her staff met regularly with key stakeholders to exchange information and discuss important (and emerging) matters of interest for young people in care in South Australia. This included meetings and correspondence with:

- Care Leavers (young people)
- Minister for Child Protection, Katrine Hildyard
- Minister for Human Services, Nat Cook
- SA Ombudsman, Wayne Lines
- SA Chief Psychiatrist, John Brayley
- The Australian and New Zealand Children Commissioner's, Guardians and Advocates Group (ANZCCGA)
- ANZCCGA First Nations caucus
- Australia's (OPCAT) National Preventive Mechanism network
- SA Commissioner for Aboriginal Children and Young People, April Lawrie
- SA Commissioner for Children and Young People, Helen Connolly
- SA Commissioner of Police, Grant Stevens
- DCP Chief Executive, initially Cathy Taylor, then Jackie Bray
- DHS Chief Executive, commencing with Lois Boswell, and then Sandy Pitcher
- YACSA CEO, Anne Bainbridge
- SACOSS CEO, Ross Womersley
- (Then) CREATE Foundation SA State Coordinator, Ashleigh Norton
- Aboriginal Family Support Services
- CAMHS
- Transition from Care stakeholder group (regular attendance)
- The Constellation Project
- Karen Fitzgerald Foundation
- Multicultural Communities Council of SA.

Regarding direct service provision, the Guardian and her staff met with relevant DCP executives and workgroups, the Transition from Care Stakeholder Group, CAMHS, SAPOL and the NDIS Community Engagement Team.



Image 7: The Guardian with Principal Advocate, Merike Mannik, presenting to CAFFSA.



Image 8: The Guardian and team with the Commissioner for Aboriginal Children and Young People



Image 9: Advocates with Nunga Oog at the launch of the Nunga Time Resource Centre

Regional and Remote Areas



Image 10: The Guardian with staff from Uniting Country Care SA

Accompanied by an Advocate or Principal Advocate, the Guardian commenced visits to promote her various functions within regional and remote South Australian communities. This is a dialogue focussed process that will inform her understanding of regional issues.

The first visits occurred in Mt Gambier (22 to 24 November), followed by visits to Ceduna (7 to 8 June) and Whyalla/Port Augusta (21 to 22 June). The Guardian most recently visited Pt Pirie (23 March) to audit Annual Reviews and engage with local agencies. The Guardian will continue to forge local connections and open lines of communication

through attendance at events, ranging from casual afternoon teas with carers and young people, to more formal meetings with local agencies and community groups.

ANZCCGA Engagement

The Guardian’s work is enhanced by participation in the Australian and New Zealand Children’s Commissioners, Guardians and Advocates Group (ANZCCGA). Drawing together peers from across Australian jurisdictions and New Zealand (Aotearoa), this is a critical forum through which to discuss, and address matters that affect children and young people in the child protection and youth justice systems. In early 2023, Shona Reid assumed the Co-Convenor role for this group.

For the first time, a formal First Nations Caucus was convened from within this group, with eight statutory officers now appointed in various jurisdictions, in either First Nations’ specific or generalist roles (South Australia, Victoria, Northern Territory, Western Australia, the ACT, Queensland and New South Wales).

In January 2023, the First Nations Caucus developed and agreed to adopt eleven advocacy priorities to improve the lives and wellbeing of Aboriginal children and young people. In April 2023, other Australian members of the ANZCCGA agreed to adopt these advocacy priorities. Briefly stated, they address:

- the need for a National Aboriginal Children’s Commissioner
- support for implementation of the Uluru Statement from the Heart
- the importance of ensuring governments meet their commitments and actions under the National Agreement on Closing the Gap
- support strengthening the Aboriginal and Torres Strait Islander community-controlled sector
- a nationally consistent approach to monitoring over-representation of Aboriginal and Torres Strait Islander children and young people in child protection and youth justice systems
- raising the age of criminal responsibility to 14
- ending harmful and inhumane practices that violate the rights of detained children and young people, including solitary confinement, the use of spit hoods and detention in adult facilities.
- monitoring the application of the Aboriginal and Torres Strait Islander Child Placement Principle

(including with respect to family preservation and reunification, and placement in residential care)

- raising the visibility of children and young people who go missing, including those who self-place from the child protection system
- distinguishing between the impact of poverty and wilful neglect, highlighting that poor families love their children too
- the need for greater investment in support services for vulnerable and impoverished families.⁴⁷

Members expressed commitment to progressing these 11 priorities, in alignment with Australia’s international obligations to implement the United Nations *Convention on the Rights of the Child*, the *Convention on the Rights of Persons with Disabilities*, the *Declaration on the Rights of Indigenous Peoples*, and United Nations Development Program *Sustainable Development Goals*.

Associated ANZCCGA work in 2022-23 also delved into other sectoral issues, including the problem of children and young people being held in police cells; legislative reviews of child protection and youth justice legislation in several jurisdictions (including South Australia); dual involved children and young people; and Child Safe Standards and Reportable Conduct schemes.

Speeches and Keynotes



Image 11: The Guardian at Tindo Utpurdee (Sunset Ceremony)

During 2022-23, the Guardian provided the following speeches and keynote addresses:

- Launch of The Constellation Project, Lived Experiences Voices Report (November 2022)
- Tindo Utpurdee, Sunset Ceremony (January 2023)

⁴⁷ The [11 advocacy priorities](#) can be viewed in full on the Guardian’s website.

- SA Royal Commission into Early Childhood Education and Care First 1000 Days Roundtable (February 2023)
- SAMHRI International Women's Day Event (March 2023)

Submissions

The Guardian made 12 formal submissions to royal commissions, inquiries, reviews, and other consultation processes during 2022-23, including the following:

- *Review of the Children and Young People Safety Act 2017*: an extensive submission to the five-year legislative review of SA's child protection legislation, with 26 recommendations for legislative reform to improve the lives of young people in care.
- *Commissioner for Aboriginal Children and Young People's inquiry into the Aboriginal Child Placement Principle (ACPP)*: input to Commissioner Lawrie's inquiry into the ACPP with a comprehensive analysis of data regarding the application of the ACPP, and commentary on key barriers to implementation.
- *Royal Commission into Early Childhood Education and Care*: Guardian highlighted the circumstances of young children living in residential care, and barriers to accessing ECEC services for young parents with care experiences.
- *Review into South Australia's Outcomes Framework*: Guardian advocated for the inclusion of measures and indicators that reflect the lives and experiences of young people in care.
- *Social Development Committee Inquiry into NDIS impacts on participants with complex needs*: Guardian highlighted the overrepresentation of NDIS participants in OOHC, and the interaction between service barriers and paths to residential care and/or youth detention.
- *Review of DCP Licensing Quality and Compliance Framework*: Guardian recommended the inclusion of the Guardian's Charter endorsement program within DCP's Licensing Quality and Compliance Framework, to strengthen the obligation on an organisation to demonstrate its commitment to the Charter of Rights.

Youth Education and Engagement

Nunga OOG Project

The long-awaited arrival of South Australia's Aboriginal safety symbol for children and young people in care was launched on 20 January 2023. The launch provided an opportunity for both artists and participants to be recognised for their contributions to the project.

The Nunga OOG project commenced in 2019 after Aboriginal children and young people in care advised that it was important to have a dedicated safety symbol for Aboriginal children and young people. A Nunga OOG working group was set up in February 2020 comprised of community Elders and Aboriginal children and young people.

With Covid 19 restrictions limiting in-person contact, the project adapted in July 2020 by sending out art boxes to residential care placements asking Aboriginal children and young people to design their idea of their safety symbol. From January 2021 until October 2021, Conrad Morris, who led this initiative for the Guardian, visited regional areas of South Australia to engage with children and young people and local Aboriginal artists about the project.

Conrad Morris, Aboriginal Advocate at the Guardian's office said, *"I feel privileged to have been part of such an empowering and rewarding project and would like to thank my fellow staff for all their hard work and dedication and, most importantly, I would like to acknowledge the amazing contributions of each child and young person involved in creating Nunga OOG"*.

Artwork for Nunga OOG was finalised in January 2022 and development of the Nunga OOG plush toy commenced. The Nunga OOG cartoon character was developed and incorporated into Charter of Rights materials such as booklets, posters, and tattoos. A life-size Nunga OOG mascot was developed and has since been very popular at many community events including the launch of DCP's Aboriginal Cultural Centre 2023, NAIDOC family day 2023 and Aboriginal Children's Day 2023.

Since the 'launch' of Nunga OOG, the office has provided Aboriginal children and young people with their very own plush Nunga OOG toy: 2,081 Nunga OOGs now remind Aboriginal children and young people of their right to be connected to culture, family, community, and to be culturally safe.



Image 12: Nunga Oog and Oog

Charter of Rights: Children and Young People in Care Work continued in 2022-23 to upgrade resources and activities relating to the revised Charter of Rights that was adopted in February 2021.

Animated videos were developed to promote the Charter based on workshops held with children and young people from 2021-22 (including with them providing voiceovers) which was launched in October 2023 to acknowledge and celebrate the young peoples' input prior to public release.

The Guardian's **Charter flashcards** were updated. Originally designed in 2011, these are a fun and interactive tool intended to facilitate engagement with children and young people who have disability or additional support needs. With supportive input from DCP Disability and Development Services, we simplified the structure of the cards, aligned the content with the revised Charter, and reviewed the 'helpful hints' for each 'right'. Illustrator, Madeleine Karutz, updated the graphics, and the cards were launched in March 2023. Organisations that have endorsed the Charter can order the flashcards from the Guardian's website.

Participation in Staff Recruitment

Our recruitment processes for all positions feature participation by young people or young adults who have experienced living in care and/or detention. Apart from bringing a 'lived experience' lens into the process, this provides them with an opportunity to learn about merit selection, developing interview questions and participating on interview panels. They receive an honorarium for their work.

Three panel processes, from which 5 employees were recruited occurred in 2022-23.

Events

The Guardian has attended events to engage with children and young people in care, such as DCP's youth advisory group, No Capes for Change. The Guardian also hosted care leavers at Reconciliation SA Annual National Reconciliation Week Breakfast.

Inquire & Advise

The Guardian must inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care provided for children in alternative care.⁴⁸

The Guardian must also advise the Minister on the quality of the provision of care for children under the guardianship, or in the custody of, the Chief Executive of the DCP and on whether the children's needs are being met.⁴⁹

The Guardian fulfils this function through reports, correspondence, and meetings with the Minister. Over the 2022-23 financial year, the Guardian wrote two formal letters to the Minister, two formal meetings with the Minister and one special report. Through these mechanisms the Guardian raised:

- insufficient resource allocation to residential care sector
- placement matching and safety in residential care houses
- impact of DCP Boundary re-alignment on young people's relationships with case workers and transition from care
- critical service gaps in access to the Intensive Therapeutic Care Program (ITCP), due to existing program being at capacity⁵⁰
- placement and staffing shortages in residential care
- conditions of detention for dual involved young people.

In May 2023, the Guardian published a 'special report' on child protection expenditure in South Australia,⁵¹ advising the Minister about:

- serious forecasted consequences of underfunding prevention and family support

⁴⁸ Children and Young People (Oversight and Advocacy Bodies) Act 2016, s 26(1)(e).

⁴⁹ Ibid, s 26(1)(d).

⁵⁰ The Intensive Therapeutic Care Program (ITCP) was established and currently sits within the Yarrow Place Rape and Sexual Assault Service (part of the Youth and Women's Safety and Wellbeing Division of the Women's and Children's Health Network - WCHN). The ITCP provides clinical services for young people, aged 12-25 years and under guardianship (at the time of referral), who are running away from care and/or at risk of sexual exploitation.

⁵¹ This report was prepared for the Minister via both the Guardian and CYP Visitor Mandate, per the Child and Young Person (Safety) Act 2017 (SA), s 119(3), and *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)*, s 29.

services, contributing to a growing residential care population

- lowered expenditure per child in residential care in 2021-22, compared to three years earlier when the *Child and Young Person (Safety) Act 2017* commenced.

The report is available on the Guardian's website.⁵²

During the reporting period, the Guardian commenced a project related to sibling contact, noting that sibling contact is one of the top enquiry issues raised with the Guardian's Office. Children have the right to know about, and maintain relationships or get to know, their siblings and to have regular and meaningful connection with them.

The project aims to identify (systemic and practice issue) barriers that inhibit sibling contact, highlight the impact of this on children and young people in care and develop recommendations to effect systems improvements. The project is being progressed, with reporting anticipated for the 2023-24 financial year.

Review of the *CYP Safety Act*

A major focus for the Guardian's 2022-23 strategic work was the development of her submission to the five-year review of the *Children and Young People (Safety) Act 2017*. That submission, *A rights-based approach to safety*, was provided to DCP through the submission process, and also separately to the Minister for Child Protection as a report detailing advice on 26 proposed legislative amendments to promote the rights and wellbeing of children and young people in care. It was released publicly in November 2022.⁵³

The Guardian's submission noted that, in its current form, the *CYP Safety Act* remains primarily a framework for child removal, rather than a holistic document for promoting the best interests of children and young people in South Australia. While some constructive and incremental improvements have been made to the child protection system under the new legislation, the Guardian's submission provided guidance about legislative amendments to build on this work, and outcomes for children and young people.

The government's report on the review included a significant (and welcome) focus on legislative change to implement the Aboriginal Child Placement Principle to the standard of active efforts, and the

resolve to strengthen the community-controlled sector to deliver child protection services. Another important recommendation was to embed a whole-of-government approach for care leavers, identifying priority government services to be part of the support network once young people leave care.

However, while several suggested amendments to the Act reflected matters raised in the Guardian's submission, the report was silent about the majority of the 26 recommendations. At the time of writing this Annual Report, it is not known whether the upcoming amendment bill will respond to these recommendations or not. Following publication of the government's report, the Guardian drew attention to five matters that warrant clarification or more focus:

- that meeting the best interests of children and young people should be the overall object of the Act, with safety and other core elements critical components of what this entails
- the importance of sibling relationships and that these should be considered when determining best interests, including with the concept of 'sibling' being responsive to cultural norms
- guaranteed rights to access supported placements and financial assistance to prevent young people exiting from care to homelessness
- strengthening civil rights for children in care, including through improved redress options for when there is a breach of a Charter of Rights commitment
- enhanced attention to the rights and needs of children in care who have disabilities and a range of psychosocial and developmental concerns, including victims/survivors of sexual abuse in care.

Many of the matters raised in the Guardian's submission are reflected in themes identified in the [Systemic Advocacy and Oversight](#) section of this report.

Investigate

The Guardian must investigate and report to the Minister on matters referred by the Minister.⁵⁴

No matters were referred by the Minister for investigation in 2022-23.

⁵² , [South Australian child protection expenditure from the Report on Government Services 2023](#) (2023)

⁵³ OGCYP, *A rights-based approach to safety* (n 1).

⁵⁴ Children and Young People (Safety) Act 2017, s 26(1)(f).

Barriers to Functions

Reasonable Resourcing

Under section 24 of the *CYP Oversight and Advocacy Bodies Act*, the Minister for Education, Skills and Training has a statutory obligation to provide the Guardian with the staff and other resources she reasonably needs to exercise her functions. Despite this statutory obligation, multiple budgetary bids in recent years (including one submitted during the 2022-23 financial year) have been unsuccessful. The Guardian considers that these bids have been reasonable and modest (particularly noting an annual child protection budget of over \$700 million), and in direct response to an increase in demand for her services and a rising care population.

It is relevant to highlight that total enquiries to the Guardian’s office have increased by 267% over the past 10 years, with an even greater (304%) increase in ‘in-mandate’ enquiries (see Figure 8).

As some enquiries relate to more than one child, there has in fact been a 237% increase in the number of children and young people to whom enquiries relate, over the same period.

Despite the growing demand for advocacy from the Guardian, the 267% increase in total enquires has only seen an actual increase in staff of one full-time position in January 2017. Since this time there has been an 130% increase in ‘in-mandate’ enquiries (see Figure 9).

The only increases provided to the Guardian were the addition of further mandates. Even in these instances, this resourcing is inadequate to enable the Guardian (along with her additional mandates) to meet her legislative responsibilities for these growing sectors.

A continuing increase in enquiries and the associated growing demand for individual advocacy, the ever-evolving requirement for systemic advocacy, accountability and oversight mean that government and Parliament must re-evaluate funding allocations to this office to meet both legislative requirements and community expectations.

Figure 8: Increasing numbers of enquiries received by GCYP (2013-14 - present)

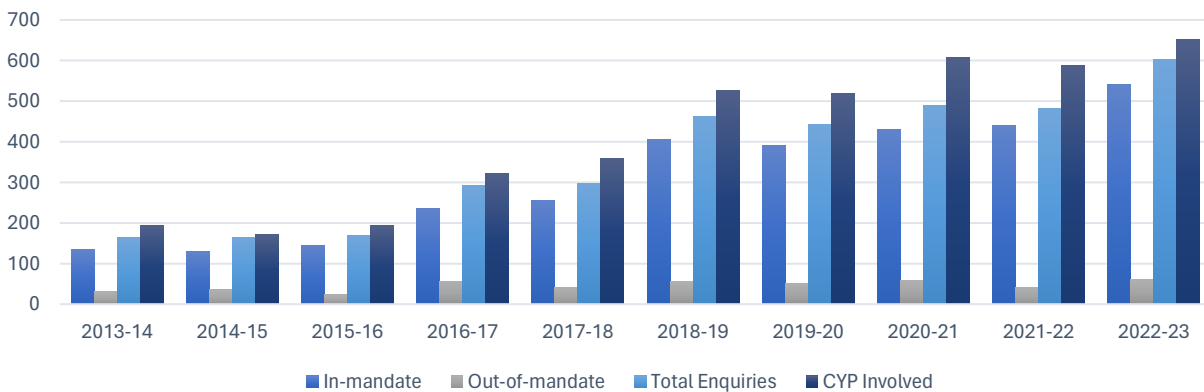
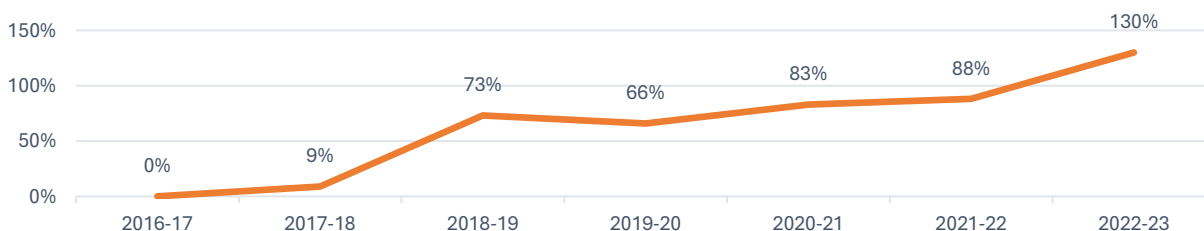


Figure 9: Overall percentage increase in ‘in-mandate’ enquiries (since last staffing increase in the Advocacy Team in 2016-17)



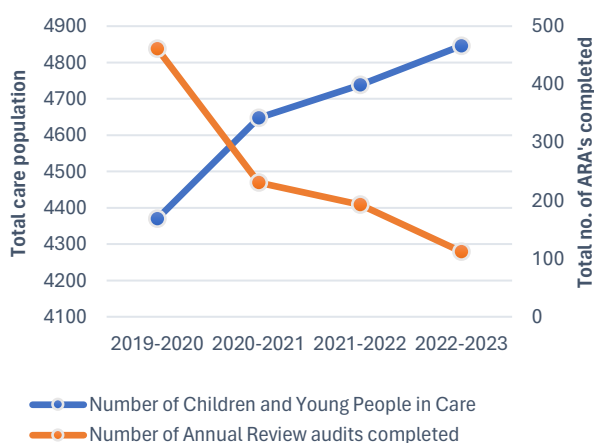
Impacts

Annual Reviews

In 2022-23, there was a significant resource-forced reduction in Annual Review Audits compared to previous years, with a downward trend over the past four years:

- 2019-2020: 461 audits = 10% of the care population
- 2020-2021: 231 audits = 5% of the care population
- 2021-22: 193 audits = 4% of the care population
- 2022-23: 112 audits = 2% of the care population

Figure 10: Number of Annual Review Audits conducted by financial year compared to the total number of children and young people in care



The Guardian's limited, and reducing capacity to conduct Annual Review audits is particularly concerning, given that these are the primary mechanism through which the Guardian can monitor the circumstances of children and young people in family-based care, noting that most enquiries received by our office pertain to children and young people living in residential care. An ideal audit target would be 10%, which is unachievable with current resources and service demands.

Auditing Annual Reviews enables the Guardian to monitor, and report on, the circumstances of children and young people in care, with the aim of ensuring that wellbeing needs, rights and best interests are being met. The auditing process also involves identifying and highlighting any practice and systemic issues, as well as sharing examples of good practice and making recommendations for quality improvement in Annual Review and case planning

processes. Case monitoring and advocacy functions are assumed for individual children and young people, where significant issues have been identified from Annual Reviews.

Having limited, and reducing capacity to perform this crucial function impacts negatively on children and young people's direct access to the Guardian and curtails the Guardian's reach and efficacy, with greater 'blind spots' created in the Guardian's oversight functions.

Systemic Review and Advocacy

The increasing volume and complexity of individual advocacy requests commands the majority of the Guardian's current resourcing. This significantly inhibits the availability of resources to inquire into the systemic reform that is necessary to improve the quality of care provided for children and young people.

No Specific Funding for Disability Expertise

When carrying out her functions, the Guardian is obliged to 'pay particular attention to the needs of children under the guardianship, or in the custody, of the Chief Executive who have a physical, psychological or intellectual disability.'⁵⁵

In 2022-23, the Guardian made a 'reasonable' bid for additional resources, including a dedicated position with a specific disability and health-related systems focus. The Guardian clearly articulated challenges she faces in meeting her legislative obligation to pay particular attention to children and young people with disability, in the absence of funding for a position to provide a specialist focus and internal advice regarding disability-related advocacy. This is inconsistent with DCP's own structures, which includes DCP's Disability and Developmental Services team. It is also inconsistent with the National Disability Advocacy Framework published during the financial year, under which the Australian government and all state and territory governments have committed to the following goal:

People with disability have access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights, enabling full community participation and inclusion.⁵⁶

For children and young people with disability in care, achieving this objective requires child-focused

⁵⁵ Children and Young People (Oversight and Advocacy Bodies) Act 2016, s 26(2)(b).

⁵⁶ Australian Government Department of Social Services, *National Disability Advocacy Framework 2023-25* (June 2023), p 3.

disability advocacy, with the expertise to navigate the complexities of the child protection system. The Guardian was disappointed that the South Australian government was unwilling to invest in ensuring this expertise is located within her advocacy service.

No Specific Funding for R20 Monitoring Function

The Guardian has a further obligation to pay particular attention to children and young people in care who are victims/survivors of sexual abuse;⁵⁷ a function which requires intensive ongoing effort.

The Guardian's 2022-23 formal budgetary bid also outlined the business case to create a dedicated position to address issues arising from the sexual exploitation of children in care. Again, the Guardian is disappointed to report that this bid was unsuccessful.

The South Australian government is legislatively bound to provide the Guardian with the resources she reasonably requires to perform her functions. In the context of increasing demand for the Guardian's advocacy service, the Guardian is placed in the untenable position of either reducing access to a specialised service for children and young people in care who are victims/survivors of sexual abuse, or meeting her legislative requirement to provide this advocacy through decreasing service availability for other children and young people in care.

In the context of these ongoing issues, the Guardian notes that there is limited government accountability for these funding decisions; effectively, this undermines the independent nature of the Guardian's role, through a budgetary decision-making process that is a 'negotiation' with the Executive arm of government – and often with the ministry and department that is subject to scrutiny – rather than an independent decision-making process applying transparent funding criteria.⁵⁸

The Guardian recently provided advice accordingly to the Minister for Education, Training and Skills⁵⁹ on the need to ensure that there is a Committee of Parliament responsible for receiving, considering

and approving budgets for the Guardian (as well as other similar independent oversight bodies).

With respect to this advice, the Minister for Education advised that government was open to further discussions on this (and other relevant matters); however, referred the Guardian to discuss the matter in the first instance with Minister Hildyard, in her capacity as the Minister for Child Protection. The Guardian notes a certain circularity in referring an independent oversight body to discuss issues of her independence in the context of ongoing funding disputes, with the Minister of the department she oversees.

Legislative Barriers

The Guardian has raised in previous reports the constraints associated with the wording of and/or inclusion of clauses in the Act to better support the Guardian to undertake her statutory responsibilities. Some of these were aired in the initial legislative process associated with the Act's development, while others were highlighted in the Guardian's input to the Richard Dennis Review and his October 2019 Report.⁶⁰

Legislative Focus on Aboriginal Children and Young People in Care

As highlighted above, the Guardian's establishing legislation requires that she pay particular attention to children and young people with disability, and those who are victims/survivors of sexual abuse. It is notable that, currently, the legislation does not require that she pay particular attention to Aboriginal children and young people in care.

This is inconsistent with the establishing legislation for each other mandate that she holds: as the Child and Young Person's Visitor, the Training Centre Visitor and the Youth Treatment Order Visitor.⁶¹

The Guardian considers that it is of vital importance for her statutory role to pay particular attention to the needs of Aboriginal children and young people, in

⁵⁷ Children and Young People (Oversight and Advocacy Bodies) Act 2016, ss. 24 and 26 (1(b)).

⁵⁸ In response to this report, the Minister for Child Protection noted that Parliament formally and robustly scrutinises funding at Estimates, hearings of the Budget and Finance Committee and through the work of the Auditor General. While this is accepted, it is relevant to note that, in practice, this scrutiny is often focused on departmental use of (substantial) resources across wide ranging program and service areas, rather than specifically reviewing whether independent statutory authorities are reasonably resourced to perform their functions. In 2022-23, the four separate government departments that fund the Guardian, TCV, CYP Visitor and YTO mandates had a combined annual budget of over six billion dollars. The Guardian is unable to comment on the internal Parliamentary processes undertaken to review her own \$2.6 million funding in that context, as well as the substance and outcomes of budgetary bids made for her various mandates. However, the observed result appears to be little independent consideration of the feasibility of performing her functions within that budget.

⁵⁹ As the Minister who holds administrative responsibility for the relevant portion of the *CYP Oversight and Advocacy Bodies Act* establishing the Guardian's statutory powers and responsibility.

⁶⁰ Richard Dennis, *The Children and Young People (Oversight and Advocacy Bodies) Act 2016 – South Australia, Section 70 – Review of Act* (October 2019).

⁶¹ Children and Young People (Safety) Act 2017, s 118(2)(b); Youth Justice Administration Act 2016, s 14(2)(b); Controlled Substances (Youth Treatment Orders) Regulations 2021, r 4(4).

keeping with international human rights principles regarding the rights of First Nations peoples. To date, this has been done with support from an Aboriginal Advocate position and in 2022-23 (for the first time since the role was established) through the Guardian's own direct lived experience. However, it is poor public policy to rely upon the personal characteristics and leadership decisions of individuals.

The Guardian considers that this legislative issue is outstanding as a matter of 'outdated' legislation, rather than a deliberate intention to preclude the Guardian from holding a legislative focus on the rights, interests and needs of the one in three young people in care who are Aboriginal.

Yet, despite the current Guardian and her predecessor raising the matter on multiple occasions, the issue remains outstanding with no indication from government of an intention to resolve – including through a minor statutory amendments bill process or other form of resolution.

Legislative Requirement to Respond to the Guardian's Recommendations

Current legislation does not require any formal written responses to the Guardian's reports or recommendations. This is inconsistent with legislation for other comparable independent oversight bodies in South Australia (with examples provided in Table 6 below), and diminishes the government's accountability; both to the Guardian's office, Parliament and the community.

The Guardian acknowledges that there may be legitimate reasons why the government chooses not to implement her recommendations; however, where this occurs, it is a reasonable expectation that the government will provide a clear rationale for this decision. In the absence of a legislative responsibility to do so, it is the Guardian's observation that this may not occur.

Table 6: Example powers for selection of independent oversight bodies in South Australia

Statutory role	Government obligation to respond
The Guardian	The Minister for Child Protection is required to table the report in Parliament, with no obligation to respond. ⁶²
Commissioner for Aboriginal Children and Young People Commissioner for Children and Young People	At the conclusion of an Inquiry, the Minister for Education, Training and Skills is required to provide a copy of the report to the Minister responsible for each area identified in the Report, and prepare and table a response to the report setting out actions in response to the report and/or reasons for the inaction. ⁶³
Official Visitor	Within six months after receiving a report from the Official Visitor, the Minister for Correctional Services must table a report giving details of any action taken or proposed to be taken in response to recommendations made. ⁶⁴
SA Ombudsman	Public authorities that receive recommendations from the Ombudsman are required to report to the Ombudsman within a specified time on what steps have been taken (if requested by the Ombudsman to do so). If no steps have been taken, they must give the reason why. ⁶⁵

A key example is the *Final Report of the South Australian Dual Involved Project*, which was published in 2022-23 by the Guardian's predecessor, Penny Wright. Led by the voices and experiences of young people, the report set out 15 recommendations intended to complement existing government reform strategies, with the goals of reducing the overrepresentation of young people in care in youth detention and improving supports available for them.

The report examined information relating to dual involved young people over the course of 11 months (1 February to 31 December 2021), with extensive interviews undertaken with one in four dual involved young people detained during that period. More information about the experiences and circumstances of dual involved children and young people is discussed later in this report.

The Guardian considers that the young people who engaged in interviews and provided their permission

⁶² Children and Young People (Oversight and Advocacy Bodies) Act, s 29.

⁶³ Ibid, ss 17-18, 200-20P, 60.

⁶⁴ Correctional Services Act 1982, s 20G.

⁶⁵ Ombudsman Act 1972, s 25.

for review of their administrative processes showed incredible bravery, wisdom and, at times, vulnerability. The final report of the project was delivered to government with the intention to honour those experiences, and with the sincere hope that it would lay the groundwork for open discussion about solutions to improve the lives and wellbeing of dual involved young people.

It is disappointing to note that more than 12 months after delivery, there has still been no formal response to the report from the South Australian government. In March 2023, the Guardian wrote to the Attorney-General, Minister for Child Protection, Minister for Human Services and Minister for Police, Emergency Services and Correctional Services, seeking a Ministerial response to the report and an update on any progress that may have been made against the recommendations in the absence of a formal response.

Between 1 May 2023 and 30 June 2023, the Guardian received a formal reply from the Attorney-General, Minister for Human Services and Minister for Police, Emergency Services and Correctional Services. It is notable that the Minister for Child Protection is the only recipient to provide no response to a formal letter from the Guardian, requesting information about systemic matters with a serious impact upon the rights and wellbeing of children in care.

This experience highlights the need to legislatively enshrine a requirement to respond to reports and recommendations made by the Guardian.

Advocacy Gaps in ‘Alternative Care’

While the majority of the Guardian’s functions relate specifically to children and young people under the guardianship or in the custody of the Chief Executive, the following function is of broader application:

to inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care provided for children in alternative care.⁶⁶

Alternative care is defined to mean care provided for a child or young person in a:

- residential basis by (or through) a government or non-government agency

- foster home (including a foster home provided by a member of the child’s family)⁶⁷
- independent living arrangements for a child under the guardianship of the Chief Executive
- detention facility for a child who is held there in lawful detention.

In the course of her individual advocacy function, the Guardian has become aware of a number of children and young people who may fall within this definition, who are not under the guardianship or custody of the Chief Executive or in youth detention. Accordingly, neither the Guardian nor the TCV have the power to provide individual advocacy services or monitor the best interests of these children and young people.

Enquiries to the Guardian regarding children and young people in care consistently relate to safety and stability of placements, and the Guardian often uses her powers to advocate for the resolution of safety issues within a placement or, where necessary, for a placement move.

There is no reason to suspect that these presenting concerns, or experiences of administrative barriers, are substantially different for children and young people in other forms of alternative care – whether via DCP or other agency channels.

Access to child-friendly advocacy systems is an essential safety mechanism to prevent and address breaches of children’s rights in alternative care. In recognition of this matter, the 2021 UN Day of General Discussion on Children’s Rights and Alternative Care recommended the development of independent monitoring systems for all children in alternative care.⁶⁸ This recommendation was not limited to children who are under guardianship of the state under child protection laws.

While children and young people may have access to mainstream quality assurance or monitoring bodies – for example, internal complaints processes, SACAT, the SA Ombudsman and the NDIS Quality Assurance child-friendly advocacy and justice systems require speciality training and services. This includes to:

- be child-safe, with child-specific measures in place to reduce the risk of child exploitation and sexual abuse
- encourage and be respectful of children’s views

66 Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA), s 26(1)(e).

67 Ibid, s 26(4).

68 UNCRC, 2021 Day of General Discussion: Children’s Rights and Alternative Care (Outcome Report), 13 June 2022, pg. 32.

- create processes and resources that are adapted to children’s needs
- accountable to evaluation and feedback from children and young people.⁶⁹

The Guardian supports efforts to respect and promote children and young people’s right to family life through exploring alternatives to coming under the custody or guardianship of the Chief Executive, where this is safe and in their overall best interests. However, the Guardian has concerns that, diverting children and young people away from the child protection system in this manner can carry unintended consequences for their access to child-friendly advocacy and natural justice systems. Children and young people living in these forms of alternative care may experience many of the same vulnerabilities as those who are in OOHC under formal guardianship orders and it is important that they can access legal, procedural and advocacy protections available under the *CYP Safety Act*, including:

- access to legal representation
- access to child-friendly advocacy services, such as the GCYP or TCV
- right to review of decisions made about their care, protection and treatment
- clear legislative responsibility for who holds a duty of care for their safety and wellbeing.

In particular, the Guardian has received enquiries, and requests for advocacy, on behalf of children and young people living in Voluntary Out-of-Home Care (VOOHC), under Long Term Guardianship (Specific Person) Orders (LTGSP Orders), or who have been removed under DCP ‘Safety Plans’. These children and young people are outside the scope of the Guardian’s individual advocacy powers, and the Guardian’s Advocates are frequently unable to source alternative specialist, child-focused advocacy referral options.

The Guardian understands that children and young people in these circumstances may be referred to the Commissioner for Children and Young People (CCYP) or the Commissioner for Aboriginal Children and Young People (CACYP). The Commissioners are playing an important role in filling this advocacy gap, in the absence of dedicated funding or a legislated ‘individual advocacy’ function. While the Guardian,

TCV and CYPV functions include to act as an advocate for individual young people in care and youth detention, the legislative functions of the CCYP and CACYP do not encompass the core business of providing information and advocacy support for individual children and young people experiencing confusion, trouble or roadblocks navigating through a system. Instead, their powers and functions are framed in broader terms with a primary focus on matters related to the ‘rights, development and wellbeing of children and young people at a systemic level’.⁷⁰ For the CCYP, this involves promoting and advocating for the rights and interests of **all children and young people in South Australia**,⁷¹ or a particular group. For the CACYP, this involves promoting and advocating for the rights and interests of **all Aboriginal children and young people in South Australia**, or a particular group.⁷²

There are a potentially significant number of children and young people in the circumstances identified by the Guardian. Information provided by DHS and DCP office suggests that, at 30 June 2022, 34 children and young people were in VOOHC and over 300 orders were in force granting long term guardianship of children and young people to approved carers.⁷³

In this context, it is problematic to rely on the organisational goodwill of services that are not established to meet the specific needs of this highly vulnerable cohort of children and young people.

Legislative Amendment Required

Legislative amendment is required to ensure all children in alternative care can access a child focussed independent advocacy body. One option is to **amend** the *Children and Young People (Oversight and Advocacy Body) Act 2017* to expand the Guardian’s advocacy function. However, this is subject to the caveat that any advocacy body, including the Guardian, is unable to perform an advocacy function for children in broader categories of alternative care without the appropriate financial and human resources.

Any legislative expansion of functions without resources will reduce the capacity of an advocacy body to perform functions for children and young people within existing mandate. For the Guardian, that would prejudice the safety, wellbeing and best interests of children and young people in care.

⁶⁹ UNCRC, General Comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12, [134].

⁷⁰ Children and Young People (Oversight and Advocacy Bodies) Act 2016, ss 14, 20I.

⁷¹ Ibid, s 14(1).

⁷² Ibid, s 20I(1).

⁷³ This includes third-party parental responsibility orders, and equivalent orders made under the *Children’s Protection Act 1993* (SA).

Information about the particular vulnerabilities of children and young people in these circumstances that may require targeted advocacy support are discussed in detail in the Guardian’s submission to the *CYP Safety Act Review*.⁷⁴

Transparency: Recommendation Implementation

As part of her statutory functions, the Guardian monitors reviews, inquiries and other formal processes through which recommendations are made to the DCP; particularly those that relate to the experiences, wellbeing and safety of children and young people in care.

Monitoring recommendations made by other bodies is essential for a sectoral independent oversight body. At the conclusion of a review, investigation or inquiry, there is often limited (or no) resourcing for ongoing recommendation monitoring. Even where there are statutory responsibilities for government to report on recommendation implementation progress, limited or no ongoing resourcing for the relevant body can impact capacity to interrogate government reporting. Sectoral oversight bodies, such as the Guardian, hold a currency of information through ongoing functions post the conclusion of the formal investigation or inquiry processes; and, as such, have an important role in assessing government reporting, including contextualising information reported and/or providing alternative perspectives about government progress.

In the context of the legislative review of the *CYP Safety Act*, the Guardian had a particular focus in 2022-23 on examining key recommendations from the 2016 *Child Protection Systems Royal Commission* (the Nyland Report). In doing so, the Guardian identified a number of matters regarding transparency of government reporting on child protection recommendation implementation.

Safe and Well Reporting

Under section 156 of the *CYP Safety Act*, the Chief Executive must report annually on the extent to which any outstanding recommendations of the Nyland Report have been implemented. The Chief Executive meets this obligation through the *Safe and well: Supporting families, protecting children* (“Safe and Well”) annual report, which includes a recommendation update.

Once a recommendation is marked as ‘complete’, it is no longer listed in subsequent reports. While the Guardian considers this to be a reasonable position in principle, this is subject to the proviso that the recorded status meaningfully matches actual implementation progress. As such, the Guardian was concerned to observe that the *Safe and Well* report for 2021-22 included the following note:

There are a number of recommendations that are reported as complete that are ongoing in nature and have been embedded into business as usual practices and subject to business as usual review and improvement processes.

Based on this, it appears that DCP will no longer be reporting on the status of a number of recommendations which have not yet been fully implemented, on the basis that implementation has been embedded into ‘business as usual’. The Guardian considers that the statutory requirement to report on progress should attach to the substance of the recommendation, not on whether the actions to progress implementation are classified as ‘projects’ or ‘business as usual’ for departmental purposes.

Reporting as such is fundamental for independent oversight bodies – including the Guardian – to maintain oversight of whether key systemic challenges Nyland identified remain outstanding, and provide advice to the Minister for Child Protection accordingly. It is also important for the South Australian government to report back to the community on what progress has been made to embed Nyland’s recommendations, in light of the strong public interest in child safety and wellbeing, and the considerable public resources spent on the Royal Commission (and subsequent reviews and inquiries) to consider and formulate reform recommendations.

It is acknowledged that the Nyland report was delivered seven years ago and there may be legitimate reasons for changing an implementation approach, or a previously accepted recommendation may no longer be accepted. This includes responding to emerging research, understandings of children and families needs and changed sectoral approaches to achieving best practice. Where such decisions have been made, this can be reflected in the government updating its position on whether previously accepted recommendations are no longer accepted, including

⁷⁴ OGCP, *A rights-based approach to safety* (n 1), pp 29 – 31.

detailing the reasons for doing so. In fact, this is required by section 156 of the *CYP Safety Act*.

Where recommendations remain ‘accepted’ but have not yet been implemented due to resourcing constraints or structural barriers, there should be transparency about these matters – so that the

appropriate questions can be raised about funding allocation and government priorities.

To illustrate the significance of this issue, Table 7 provides examples of recommendations that have been marked complete, but the Guardian does not agree with this implementation status.

Table 7: Guardian commentary on example Nyland recommendations marked complete in Safe and Well reporting

No.	Recommendation	Year	Guardian comments
109	Create a project team to address the backlog in assessments of kinship carers and comprehensively review carers whose assessment is limited to an iREG assessment where the child has been living in the placement for more than three months	2021	The Guardian notes the systemic issue underlying this recommendation was the number of children and young people who remain in placements with carers who have not undergone a full carer assessment process for longer than three months. As highlighted in Delayed Kinship and SCO Carer Assessments , 1,117 such placements in 2022-23 were extended beyond the legislatively permitted three-month period. There were children in 2022-23 who spent nearly the entire year (358 days) in placements with carers who had not been through a full carer assessment process. The substance of this recommendation is not complete.
128	Phase out the use of commercial carers in any rotational care arrangements except in genuine short-term emergencies.	2021	The Guardian observes (including in her capacity as CYP Visitor) that the use of external agency carers is widespread in DCP residential care. For example, 33.3% of houses visited by the CYP Visitor in 2022-23 used external agency carers to cover shifts more than once per week.
149	Apply the following standards across residential care: (a) no child under 10 years to be housed in a residential care facility except where necessary to keep a sibling group together; and (b) no child to be housed in a facility with more than four children, except where necessary to keep a sibling group together	2022	The Guardian observes that it is not uncommon for children under 10 to reside in residential care, and there are still a number of houses that accommodate more than four young people. ⁷⁵ At 30 June 2023, 124 children under the age of 10 were living in residential care. The Guardian does not have information about how many resided with siblings. However, the CYP Visitor observed that 66.7% of children under 10 years who were visited in 2022-23 did not live with a sibling. Further, 12.1% of children and young people visited by the CYP Visitor in 2022-23 were living in houses that accommodated more than four young people. None of these young people were living with a sibling.
150	Recruit a sufficient complement of staff to ... abandon single-handed shifts	2022	The Guardian (including in her capacity as CYP Visitor) continues to see the use of single-handed shifts in residential care. For example, 93.3% of houses visited by the CYP Visitor in 2022-23 only had one staff member on the overnight shift. This was despite the fact that, for 56.7% of houses, at least one young person had engaged in suicidal behaviour while at the placement (and, as such, could be considered to be in high risk circumstances).

⁷⁵ At the end of 2022-23, the Guardian understands that there was a total of four houses accommodating between 5-6 young people (one of which accommodates two of the young people in a wing for independent living arrangements).

The Alexander Review

The Guardian observed similar issues during the course of the independent review conducted by Kate Alexander in 2022-23 (the Alexander Review), which was commissioned by the South Australian government in response to a recommendation made by the Deputy State Coroner in April 2022.⁷⁶

The first term of reference for the Alexander Review was to review the implementation of recommendations for child protection in South Australia since 2010. Noting that 811 recommendations had been made to the Department for Child Protection in that time, the Alexander Review acknowledged that:

While the review has considered an enormous amount of material, it has not analysed every single one of the 811 previous recommendations and their implementation, progress and efficacy in minute detail. Instead it has focused on those most relevant to the quality of the system.⁷⁷

Accordingly, while the Alexander Review contains important insights, observations and findings, it did not fulfil this term of reference, which was based on the following recommendation from the Deputy Coroner:

I recommend that the Premier of South Australia, the Minister for Child Protection and the Chief Executive of Child Protection cause a review of all coronial and other recommendations relating to child protection in the State of South Australia with a view to the implementation of the same.⁷⁸

The Alexander Review concluded that 78% of recommendations made to the DCP since 2010 were complete. It is important to highlight that this was based on recommendations and implementation status recorded in internal DCP IT systems. As highlighted above, the Guardian considers that DCP recording of recommendation implementation may not be fully transparent at times.

This issue was also noted regarding information DCP provided to the Alexander Review about the Guardian's recommendations during the relevant 12-year period (2010 to 2022). Ms Alexander advised the Guardian that DCP had recorded 33 recommendations made by the Guardian,⁷⁹ all of which were marked complete. The Guardian disputed this figure and sought further information from Ms Alexander about the details of the recommendations DCP identified, and the review's process for assessing recommendations as complete; however, no response was received, and the final report of the Alexander Review published the information as provided by DCP.

As indicated to Ms Alexander, the Guardian does not agree with the proposition that only 33 recommendations have been made by her office since 2010, noting that recommendations for legislative and systems reform are made through a variety of methods including submissions, reports, individual advocacy matters, Annual Review audits and formal engagement with a range of DCP forums. The Guardian considers many of these recommendations to be outstanding.⁸⁰

⁷⁶ Findings of the Coronial Inquest into the Deaths of Amber Rose Rigney and Korey Lee Mitchell, 21 April 2022.

⁷⁷ Kate Alexander, *Trust in Culture: A Review of Child Protection in South Australia* (2022), p 6.

⁷⁸ Findings of the Coronial Inquest into the Deaths of Amber Rose Rigney and Korey Lee Mitchell, 21 April 2022 [15.11]

⁷⁹ Not including 15 recommendations made in the Final Report of the South Australian Dual Involved Project, which were not yet recorded on DCP's internal recommendation monitoring system.

⁸⁰ As an example, the Guardian's submission to the legislative review of the CYP Safety Act in November 2022 highlighted a number of recommendations the Guardian made with respect to draft bills for the CYP Safety Act in 2017 and 2021, which were not implemented.

Pay Particular Attention To

In exercising her duties, the Guardian must pay particular attention to the needs and circumstances of young people who have:

- suffered, or are alleged to have suffered, sexual abuse
- a physical, psychological, or intellectual disability.⁸¹

In keeping with this legislative responsibility, information about the Guardian's functions and observations specific to these groups of children and young people are discussed in this Part. The Guardian stresses that young people must always be seen as individuals first, not statistics or cohorts. However, understanding demographic information and experiences that are common for other children and young people with similar characteristics is key to improving services, and understanding their needs during their time in care.

Sexual Exploitation

As noted in previous Annual Reports, the Guardian remains concerned about the targeted sexual exploitation of children and young people in care by some adults in the community. This longstanding and well-documented issue was exhaustively discussed in the Children in State Care Commission of Inquiry⁸² (also known as the Mullighan Inquiry). It also was extensively discussed in a 2016 report developed for the Royal Commission into Institutional Responses to Child Sexual Abuse.⁸³

The Guardian welcomes attempts by authorities and service agencies to interrupt this targeting of vulnerable young people, especially those in the care and protection system. The increased prosecution of alleged offenders and more children and young people coming forward to talk about their experiences has demonstrated that continued efforts are needed and improvement to contemporary methods of interruptions to such explorations is required.

In responding to the needs of those exposed to such treatment, Mullighan identified a need for flexible and intensive therapeutic support for young people at risk of sexual exploitation, with his recommendation leading to the establishment of the Intensive Therapeutic Care Program (ITCP), which currently sits within the Yarrow Place Rape and Sexual Assault Service.⁸⁴ The ITCP provides clinical services for young people, aged 12-25 years and under guardianship (at the time of referral), who are running away from care and/or at risk of sexual exploitation.

Through individual advocacy, the Guardian became aware of several ITCP eligible young people who were referred but not able to be accepted due to the program operating at capacity. The Guardian is not aware of any other programs that provide commensurate specialist services for this highly vulnerable group of young people (including the opportunity to continue therapy post-care).

The Guardian has provided advice about this critical service gap to the Ministers for Health and Child Protection (and relevant Department Chief Executives), advocating that action be taken to ensure that all eligible young people can access the ITCP (or an alternate service with commensurate specialisation, and capacity for assertive outreach and flexible engagement).

The Guardian continues to receive notification of incidents of alleged sexual abuse and exploitation of children and young people, often related to young people living in residential care. Where necessary, the Guardian opens an assessment of the child or young person's best interests, with a particular focus on access to therapeutic support and intervention. The Guardian has observed examples of strong partnership between DCP, residential care staff, and SAPOL, in responding to young people who are at high, ongoing risk of sexual exploitation.

⁸¹ Children and Young People (Oversight and Advocacy) Bodies Act 2016, s 26(1)(b).

⁸² E Mullighan, Children in State Care Commission of Inquiry (2008).

⁸³ Moore, T., McArthur, M., Roche, S., Death, J., & Tilbury, C. (2016). *Safe and sound: Exploring the safety of young people in residential care*. Melbourne: Institute of Child Protection Studies, Australian Catholic University. Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney. See, for example, Part 5.3, and Key Findings (page 52).

⁸⁴ Part of the Youth and Women's Safety and Wellbeing Division of the Women's and Children's Health Network.



"I commend the cross-agency coordination in these matters and active efforts undertaken by respective agencies. This work is challenging and confronting. Significant efforts are made to attempt to keep these extremely vulnerable young people safe".

Guardian for Children and Young People, Shona Reid

The Guardian has noted instances where highly vulnerable children and young people in care have connected with each other away from placement, and they have experienced sexual exploitation in the community. Without minimising the loneliness some children and young people in care experience, some connections formed between children and young people in care can unfortunately escalate high-risk behaviour and, in some instances, increase their vulnerability to predators and other unsafe adults in the community.

The Guardian has also observed the role the internet and social media can play in the access online predators can have to children and young people in care. The use of these mediums to orchestrate face-to-face contact and groom young people is significant and difficult to manage. Whilst Mullighan's report addressed many of the dynamics that contribute to the targeted exploitation of children and young people in care, the growth of the internet and social media since this time presents an increasingly complex barrier to safeguarding.

The highly sensitive nature of these individual matters constrains the Guardian's ability to report on the issue further.

Media Reporting and Children and Young People's Privacy

A complex issue facing the child protection system is how to ensure that the system is subject to the important public accountability mechanism of media reporting, while also protecting the privacy of children and young people in care. The Guardian is concerned to note examples of inflammatory media practices in 2022 in child protection cases involving

sexual abuse, particularly those involving children in care.

In 2022-23, the Guardian raised her concerns directly with a media outlet about reporting on child sexual abuse cases involving children in care, including regarding the distressing nature of details included in reporting and information that may identify children and young people in care.

While the Guardian acknowledges the significant public interest in reporting on child sexual abuse, the best interests and safety of the individual children involved must always come first.⁸⁵ The Guardian's concerns related to the sensitive information contained in the reporting did not give sufficient consideration to the rights and best interests of the child, in breach of the following **Australian Press Council (APC) Standards:**

- **General principle 5:** Avoid intruding on a person's reasonable expectations of privacy, unless doing so is sufficiently in the public interest
- **General principle 6:** Avoid causing or contributing materially to substantial offence, distress or prejudice, or a substantial risk to health or safety unless doing so is sufficiently in the public interest.

When information is reported about child protection cases, that information is on the public record for the child or young person's whole life. Long after public interest has subsided, children and young people may experience ongoing effects of shame, stigmatisation and re-traumatisation. This may arise from accessing the information personally, the knowledge that the information is publicly available, or adverse treatment from friends, family or community members who become aware of the information.

As noted by an international study into media coverage of child abuse, media publicity has particularly negative impacts for children and young people due to their stage of development:

⁸⁵ This is consistent with best practice standards, for example, UNICEF, Guidelines for Journalists Reporting on Children, General Principle 3: '[p]rotect the best interests of each child over any other consideration, including advocacy for children's issues and the promotion of rights'. These guidelines are available at: <<https://www.unicef.org/eca/media/ethical-guidelines>>.

Other relevant best practice standards include Our Watch, How to report on violence against women and their children (2019), which articulates the first principle as 'Safety first: ...ensure that you report on the issue in a way that doesn't compromise the survivor's safety. The risk of identifying survivor/s may arise from including specific details about the survivor/s, the perpetrator, what occurred and where.'

The effects of the publicity of their victimization may ... be particularly hard on children because their self-concept is so dependent upon others, peers in particular. By middle childhood, anxiety about peer relationships intensifies and reputation becomes very important to children. Children as young as 8 years old perceive that associating with a stigmatised person may affect their own reputation. The stigma of abuse or victimisation could lead to avoidance and rejection by a child's peers, which in turn is associated with isolation, loneliness, impaired school performance and the greater likelihood of future social problems that can persist into adulthood. Furthermore, research on victimisation and bullying suggests that a past history of victimisation and a reputation as a victim sometimes causes children to be targeted for further hazing, exclusion and victimization.⁸⁶

Children and young people with child protection involvement already face significant intrusions on their privacy from the sheer number of professionals, family and community members who hold personal information about their lives, including highly sensitive details of traumas they have experienced. This pre-existing vulnerability to breaches of privacy has the potential to exacerbate the distress associated with reporting on further sensitive information about their lives and traumas.

Further, it is well established that children and young people with involvement in the child protection system are at increased risk of developing and experiencing severe mental health disorders.⁸⁷ This makes children and young people with child protection involvement especially vulnerable to experiencing serious, and even life-threatening psychological harm, associated with media coverage of child abuse. The increased risk – both in likelihood and severity of harm – requires special consideration of their circumstances. As identified by the UNICEF Guidelines for Journalists Reporting on Children:

When in doubt about whether a child is at risk, report on the general situation for children rather than on an individual child, no matter how newsworthy the story.⁸⁸

The Guardian acknowledges that information such as a child or young person's age, or a location they were at, may be important and relevant details to

report upon in child abuse cases, and may not carry a high risk in ordinary circumstances of identifying a child. However, the Guardian's experience is that additional caution is required when reporting on children and young people in state care. While the total child population in South Australia is in excess of 360,000, there are less than 5,000 children and young people in state care. As a result of this smaller population – and exacerbated by the impacts of high interest in their circumstances and prevalent stigmatisation of care status – they will often be more easily identifiable within their communities. This is even more important when reporting on (the approximately 700) children and young people living in residential care.⁸⁹

As a result, reporting information (including minimally blurred photographs, confidential information contained in DCP files 'leaked' to media outlets, age and gender, region within Adelaide or South Australia and detailed information of offending) can easily result in school friends, teachers, carers, other young people in care and other community members learning highly sensitive and distressing information about a child or young person, that they have the right to keep private.

The Guardian continues to call upon media entities to exercise discretion when publishing information. Even when such information is published in open court, APC adjudications frequently note that the APC standards impose higher responsibilities to report sensitive and distressing information in an ethical manner. These responsibilities apply even when matters are reported in open court and irrespective of whether there are legal prohibitions on publishing the information.



"We should be asking.... is this in the public interest or is this just of interest to the public?"

Guardian for Children and Young People, Shona Reid

⁸⁶ Lisa M Jones, David Kinkelhor and Kessica Beckwith, 'Protecting victims' identities in press coverage of child victimization' (2010) 11(3) Journalism 347, p. 350 (citations omitted).

⁸⁷ See, eg, Emmanuel Sumithran Gnanamanickam et al, 'Hospitalizations among children involved in the child protection system: A long-term birth cohort study from infancy to adulthood using administrative data' (2020) 107 Child Abuse & Neglect 1.

⁸⁸ UNICEF, Guidelines for Journalists Reporting on Children, Guideline 7, available at: <<https://www.unicef.org/eca/media/ethical-guidelines>>.

⁸⁹ This feature of small communities, and the additional caution required, is highlighted in the best practice guide published by Our Watch, How to report on violence against women and their children (2019), p. 4.

The Guardian also calls on media entities to reimagine what is of public interest – surely the further harm because of such reporting, to already vulnerable and abused children is not in the interest of the public.

Recommendation for Legislative Reform

In her submission to the *CYP Safety Act*, the Guardian identified that current legislative provisions are inadequate to protect children and young people in care from the consequences of public reporting on child abuse and neglect cases, which may reveal their identity in connection with highly sensitive and distressing information. The Guardian was pleased to note that the *CYP Safety Act Review Report* recommended relevant legislative reform to better protect the privacy of children and young people in care.

Children and Young People with Disability

Advocacy and Monitoring

Enquiries Received and Advocacy Undertaken

Of all in-mandate enquiries received by the Guardian in 2022-23, 20% related to children and young people reported by the enquirer to have known disabilities. For a further 3%, the enquirer believed the child or young person may have undiagnosed disabilities and/or were in the process of being assessed for disability. The most common disabilities were autism spectrum disorder, intellectual disability, and attention deficit hyperactivity disorder.

Case Study: ‘Jackson’ – Access to health and disability support

A request for advocacy was made on behalf of eight-year-old Jackson who was living in a residential care placement with no case worker allocated for the past six months. Jackson has complex health and disability needs and his NDIS funding ran out during the period of having no case worker, which impacted on his access to medical and disability support.

The Guardian advocated with case management for an application to be lodged for early review of Jackson’s NDIS funding and for DCP to fund the required medical appointments and necessary supports in the meantime. This was approved so Jackson didn’t have to miss out on any medical appointments and his NDIS funding was then reassessed and reactivated within a month.

Disability viewed through the Annual Review Audit process

Of the 112 children and young people who were subject to the Annual Review Audit process in 2022-23, 36% had a diagnosed disability, with current NDIS plans in place for 70%, noting that 30% were either assessed as ineligible for NDIS funding or had NDIS applications in train).

The Guardian observed that excellent liaison is continuing in many instances between Case Managers and DCP Lead Disability Consultants, with timely funding reviews occurring for children and young people where the need for funding increases has been identified. However, access to disability support services for these children and young people remains a key challenge, noting:

- a shortage of allied health professionals, with high turnover resulting in long waiting lists uniformly reported at Annual Reviews
- lack of service providers (particularly in regional areas)
- unspent funds in NDIS packages and, ultimately, core disability support needs not being adequately met for children and young people in care.



“He’s worked with me very hard, to get the special help I need [for] learning at school [and] to be successful for the future”.

Young Person, aged 14, talking about their allocated DCP worker.

On 1 July 2023, the eligible age range for the NDIS Early Childhood Early Intervention Plan increased from *up to 6 years* to *up to 9 years* of age. This is a welcome change in responsiveness for those aged 7-9 years who have developmental delays and disabilities, which extends the supports available through the early interventions stream for children in this age bracket who have a diagnosed disability. Increasing early intervention eligibility to 9 years will mean continuation of much needed funding and therapeutic services for children in care with disability.

Case Study: ‘Gemma’ – ‘Best Interests’ Monitoring from Annual Review

Gemma is 14 years old, and lives in family-based care. Gemma’s Annual Review was attended by members of her care team and a representative from the Guardian’s office. Gemma did not attend her own Annual Review and did not provide any feedback on what she would like considered in this review process.

Gemma and her carer had moved to South Australia from interstate, several months previously. Gemma has autism, and needed a comprehensive health assessment and a range of disability supports put into place locally, through her NDIS Plan. Gemma had previously voiced some concerns about her safety in the home, with a safety plan put into place but requiring review. As part of the Guardian’s functions, a ‘best interests’ monitoring file was opened to ensure timely actioning of the safety plan review, sourcing of a health assessment and implementing disability support services for Gemma. Further, in ensuring Gemma’s direct voice was gained, the Guardian’s representative requested that Gemma’s direct voice be sought, as a matter of priority, by her Case Manager to inform the safety plan review and Gemma’s case plan. The matter was closed once Gemma advised that she was feeling safe and secure at home and confirmation was received from case management that a reviewed safety plan was in place and disability supports were being actioned.

Lack of Transparency: Disability Data

Information that DCP publicly reports indicates that approximately 25% - 30% of children and young people in care have a disability or significant developmental delay.⁹⁰

The Guardian notes that this is broadly aligned with unpublished information DCP provided in previous years about the number of children and young people who are registered with the NDIS.⁹¹ Noting that not all children and young people with disability are eligible for NDIS services, and the Guardian’s broader sectoral and youth engagement observations, it is likely that the rate of children and young people with disability in OOH is higher than this figure.

It is acknowledged that there are significant challenges with collecting and collating national and jurisdictional data regarding children and young people with disability, which includes varying disability criteria across jurisdictions and datasets, significant underreporting and underdiagnosis of

disability for children and young people and systemic barriers to recording disability data. However, the Guardian understands that one of the most significant impediments to DCP publishing data about disability (beyond NDIS registration), is difficulties in retrieving data about disability type and placement from existing client management software. Simply put, DCP’s IT system does not have a field to register whether a child or young person has a diagnosed disability, but it does include a field to register if they have an NDIS client number. This IT systems limitation – i.e., the absence of a check-box in their client management system – significantly informs the basis for DCP’s approach to reporting on disability information for children in care.

A comprehensive systemic understanding of the prevalence of disability is a necessary ingredient to appropriately respond to the needs of children and young people in care. This is also important for the Guardian to fully perform her statutory obligation, to pay particular attention to the needs of those who have a physical, psychological or intellectual disability.⁹² The Guardian intends to work with DCP in 2023-24 to resolve the issues of required IT enhancements to adequately record and report on disability information for children and young people in care.

Undiagnosed Disabilities

The Guardian acknowledges the positive work of DCP’s Lead Disability Consultants in supporting identification and NDIS Early Intervention applications for children and young people under the age of 7 years with relevant developmental vulnerabilities, and ensuring NDIS Access applications are submitted for young people over the age of 7 years with diagnosed disabilities.

While acknowledging this work, the Guardian has observed that there remain gaps in diagnosis and assessment which impact access to disability funding and support for children in care. This may be related to matters such as:

- culturally appropriate assessment tools for Aboriginal children and young people, and/or those from culturally and linguistically diverse backgrounds
- access to assessment and diagnosis services in regional and remote areas

⁹⁰ Government of South Australia, Every effort for every child: South Australia’s strategy for children and young people in care 2020-2023 (2020), p 11.

⁹¹ See, eg, OGCYP, Guardian for Children and Young People 2022-23 Annual Report (2023), p 6.

⁹² Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA), s 26(2)(b).

- potential challenges in distinguishing between trauma-related behaviours, and psychiatric, neurodevelopmental and/or other disabilities.

In addition to mental health and trauma-related needs, the Guardian observe that undiagnosed or unconfirmed physical, intellectual and neurodevelopmental disabilities may contribute to the presentation of vulnerabilities or exceptional needs. It may also contribute to youth justice involvement, school exclusion and other barriers to participation and social inclusion.

As an example, a DHS disability screening assessment project conducted in 2019, for young people detained at the Youth Justice Centre, concluded that nine out of 10 participants had a disability-related need, with a previously unknown (and unmet) disability need identified for more than

half of participants (53%).⁹³ As a result of the project, an NDIS Access Request was initiated for nearly a quarter of participants (22%), with a third recommended for external referral to services other than NDIS (such as CAMHS, a paediatrician, or through the Department for Education).⁹⁴

With one in three in youth detention also being in care, this screening project is highly relevant to understanding unmet and undiagnosed disability needs for dual involved children and young people.

The Guardian considers that significant work remains to identify and respond to undiagnosed disability-related needs for children and young people in care in South Australia.

⁹³ Government of South Australia, DHS, Disability Screening Assessment Project Report: Identification of Population Needs at the Adelaide Youth Training Centre (Kurlana Tapa) (2020), pp. 5, 32 ('the Disability Screening Assessment Project Report')

⁹⁴ Ibid, pp. 42-43.

Systemic Advocacy and Oversight

Aboriginal Children and Young People

A key element of the Guardian's statutory functions is to monitor the circumstances of children in care, and provide advice to the Minister regarding systemic reform required to improve their quality of care.⁹⁵ In monitoring those circumstances, one of the most alarming features of South Australia's child protection system is the ongoing high rate of Aboriginal children and young people who are removed from their families, and remain in the OOHC system throughout their childhood.

Each story is unique, and it is important to highlight and celebrate the success, potential and strength that can be found in care experiences. As an office that works closely with Aboriginal children and young people in the child protection system, the Guardian engages with many who are growing up well in care, in loving homes, with valued opportunities to connect with family members and their communities. But it is equally important to confront hard truths about the child protection system, which includes that this office also engages with many Aboriginal children and young people who are struggling in care, and crying out for connection, identity, loving relationships and adults to care for and about them. In these circumstances, care experiences may instead be a story of living in very lonely places, and feeling that they have been forgotten.

We know these children have not been forgotten, that they are deeply loved by their families and communities. But there is a lasting legacy – in South Australia and across the country – of forced child removals, denial of culture and assimilationist policies, which manifests in a child protection system that struggles to meaningfully meet its responsibilities to engage with Aboriginal children, families and communities. Today, a child protection system that is intended to protect children and young people from harm, instead often acts as a

chasm between Aboriginal children and the protective factors and people in their lives.

The history of child protection policies in this country have laid a tumultuous foundation for improving practice, breaking racist and racially biased practices and unravelling a system that was fundamentally built to impede Aboriginal families, not help them. Acknowledging the truth of these foundations is vital for healing and progress; but facing the challenges does not mean accepting the inevitability of poor outcomes.

In her submission to the *CYP Safety Act Review*, the Guardian highlighted that to redress these failings, legislative and practice change is required across the sector. This includes:

- embedding 'active efforts' in legislation: purposeful, thorough, and timely efforts that are intended primarily to maintain or reunite Aboriginal children and young people with their family
- committing to self-determination and participation
- listening to Aboriginal children and young people's views about placement
- ensuring cultural safety in judicial proceedings
- embracing the ACPP in its fullness (rather than solely as a hierarchy of placement model).

The Guardian pays her respects to the Commissioner for Aboriginal Children and Young People here in South Australia, Commissioner Lawrie, and her work, particularly on the Inquiry into the Application of the Aboriginal Child Placement Principle (ACPP).⁹⁶

Whilst the Guardian does not have a specific requirement to pay particular attention to Aboriginal children and young people under the *CYP Oversight and Advocacy Bodies Act*,⁹⁷ she has been vocal about the need to ensure its inclusion as a **specific statutory obligation with respect to Aboriginal and Torres Strait Islander children and young people in care**. This major legislative omission can easily be

⁹⁵ Children and Young People (Oversight and Advocacy Bodies) Act 2016, s 26(1)(c).

⁹⁶ The ACPP is a foundational element of contemporary child protection practice in Australia. It is grounded in the international decolonisation movement, advocating for the realisation of the basic human right Aboriginal peoples hold to self-determination for their own communities. The Guardian welcomes public accountability on the States compliance with such a principle and seeks to contribute to the narrative utilising her roles as the public oversight for children in care and youth detention.

⁹⁷ The Guardian's functions are set out in section 26 of that Act.

rectified; with amendments to this Act, it will create consistency across other legislative mandates that have this obligation.

In the meantime, the Guardian utilises her generalised statutory functions that enable her to monitor the circumstances, and promote the best interests, of all children in care.⁹⁸ In performance of these functions, the Guardian collects data relevant to monitoring implementation of the ACPP, across both the youth justice and child protection spaces. Most relevantly, this includes:

- wellbeing outcomes for Aboriginal children, assessed by auditing a portion of the Annual Reviews conducted by DCP each year
- collecting and reporting on data regarding the overrepresentation of children under care and protection orders, who are also held on remand or detention at the Youth Justice Centre.

More specifically, during this reporting period, the Guardian undertook the ‘SA Aboriginal Children in Care – Annual Review Project’.⁹⁹ This project reviewed and collected data through auditing a sample of DCP’s Annual Reviews¹⁰⁰ for Aboriginal children and young people over a two-year period. This information is referred to throughout this document and in the sections below – providing insight into the DCP’s work in compliance with the Aboriginal Child Placement Principle and any active efforts undertaken to support Aboriginal children’s right to connect with the culture, community and country.

‘SA Aboriginal Children in Care – Annual Review Project’

As a contribution to Commissioner Lawrie’s Inquiry into the Application of the ACPP in South Australia, the Guardian undertook the ‘SA Aboriginal Children in Care – Annual Review Project’. This project involved review and analysis of monitoring and oversight data held by the Guardian’s office, collected in performance of the Guardian and Training Centre Visitor’s statutory functions. This includes:

- data recorded during 383 Annual Review Audits conducted between 1 January 2021 and 31 December 2022, with 149 of these for Aboriginal children and young people
- DCP datasets provided on an annual basis, commencing in the 2018-19 financial year.

The project provides a baseline analysis from which to monitor key circumstances for Aboriginal children and young people in care, and measure success and progress towards achieving better outcomes for their lives.

As discussed earlier in this report, Annual Review audits focus on monitoring individual and overall wellbeing outcomes for children and young people in care. The audit involves examining case planning processes and attending Annual Review meetings. The Guardian makes audit findings based on reviewing DCP’s file records, and participation (by either herself or her team) at Annual Review meetings.

To guide the Annual Review audit process, the Guardian’s team rely on 12 Wellbeing Statements for children and young people in care, which were developed internally to reflect the *Charter of Rights for Children and Young People in Care*.¹⁰¹ The Guardian records the total number and percentage of children and young people for whom each statement was assessed as ‘Met’ from the Annual Review audit.¹⁰²

It is important to note that the Guardian’s monitoring and participation in Annual Reviews for children in OOH is not primarily intended as a statistical measure; it also provides an opportunity for the Guardian to provide active input and advocacy support to a selection of children in care.

Accordingly, the below results are centred around, and should be interpreted in light of, the Guardian’s particular statutory functions established by the *CYP Oversight and Advocacy Bodies Act*.

⁹⁸ Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA), s 26(1).

⁹⁹ This project was in preparation for the Commissioner for Aboriginal Children and Young People’s Inquiry into the Application of the Aboriginal Child Placement Principle.

¹⁰⁰ A more in-depth explanation of the function and purpose of these audits is set out at [Annual Review Audits](#).

¹⁰¹ Section 13 of the *Children and Young People (Safety) Act 2017* (SA) provides that the GCYP must prepare and maintain a *Charter of Rights for Children and Young People in Care*. More information about the Charter, including the full text, is available on the OGCYP website, at: OGCYP, *What we do: Your rights in care* (online); <<https://gcyp.sa.gov.au/what-we-do/your-rights-in-care>>.

¹⁰² It is acknowledged that, while informative, data collected and analysed through Annual Review Audits is a sample only. Annual Reviews may be targeted around strategic priorities and intelligence collected by the Guardian, which may result in greater attention on offices with identified or suspected practice issues or particularly vulnerable population cohorts. This may result in ‘skewed’ data in some instances, that amplifies those areas of concern or challenges for vulnerable children and young people.

Below is a summary of the findings from this project (149n).

Education

- the majority of Aboriginal children and young people in OOHC were engaged in full-time education (84%)
- a small number of Aboriginal children were not enrolled in school at all (3%), at a rate three times higher than for non-Aboriginal children (1%).

Disability Supports

- the rate of children with a diagnosed disability was comparable for Aboriginal and non-Aboriginal children (34% compared to 33%)
- 29% of Aboriginal children with diagnosed disability did not have a NDIS plan or Early Intervention supports in place (compared to 14% for non-Aboriginal children and young people).¹⁰³

Placement stability

- Aboriginal children and young people were twice as likely to have experienced 10 or more placements by the time they exited care (13.1%, compared to 6.6% for non-Aboriginal children and young people)
- the gap in placement stability grows between Aboriginal and non-Aboriginal children and young people depending on the time spent in care.
- more than 1 in 3 Aboriginal children (36.4%) exiting care who had been in care for 5 years or more, had experienced 10 or more placements. This was nearly double the rate for non-Aboriginal children (17.0%).

Figure 11: Proportion of children with NDIS supports in place, by cultural background – 124 OGCYP Annual Review audits for children with disability in OOHC, 1 January 2021 to 31 December 2022

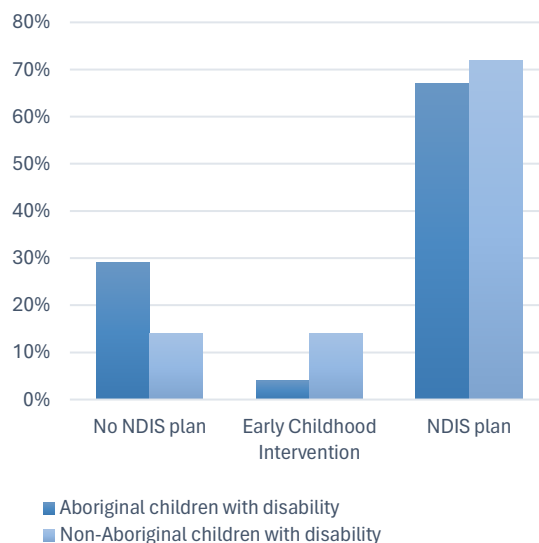


Figure 12: Proportion of children exiting care between 1 July 2017 and 30 June 2022, by number of placements and cultural background.

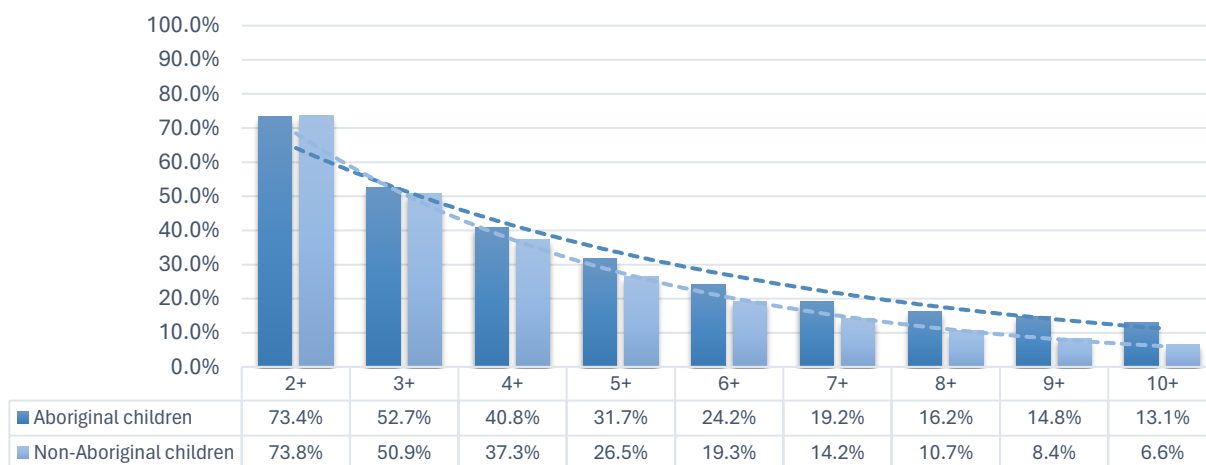
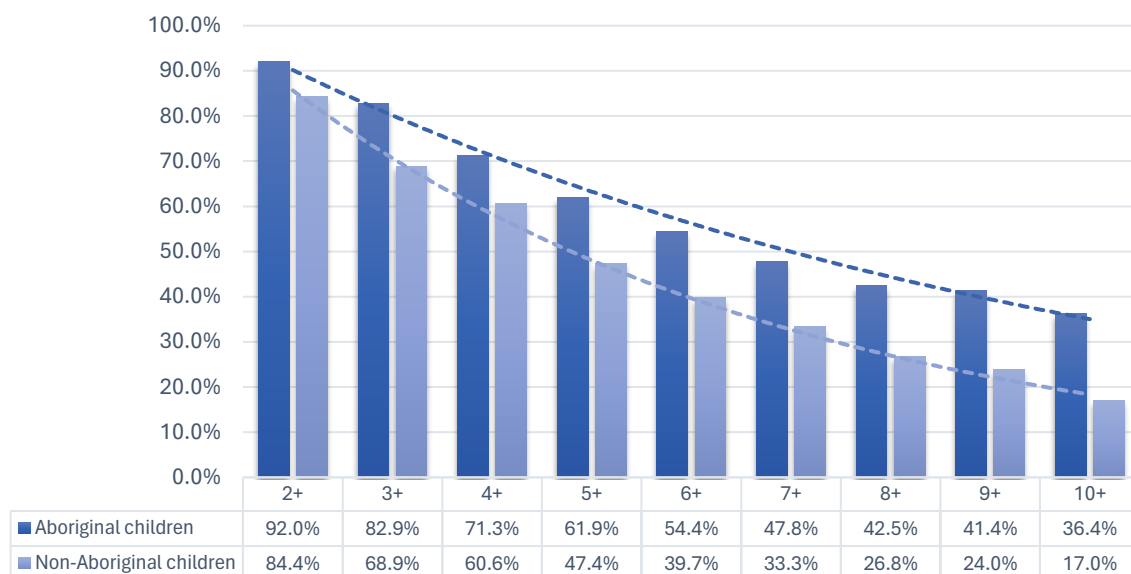


Figure 13: Proportion of children exiting care between 1 July 2017 and 30 June 2022, who spent 5 years or more in care, by cultural background and number of placements

¹⁰³ Noting that not all children with disability are eligible for NDIS supports.



The Guardian is unable to draw definitive conclusions from this data regarding the causation for the exponential nature of the divide in outcomes for Aboriginal children and young people in OOH. However, based on our experience and observations, we note that:

- placements in residential care and/or youth detention involvement are key contributors to placement instability in South Australia¹⁰⁴
- the rate of overrepresentation for Aboriginal children in residential care and youth detention is worsening.¹⁰⁵

Youth Justice

- no young people living in family-based care had current youth justice involvement at the time of the audit
- of all the Annual Reviews, 8% were where young people in residential care or other placement types had current youth justice involvement. For those with current youth justice involvement, a majority were Aboriginal (75%)
- Aboriginal young people were four times more likely to be involved in the youth justice system: 12%, compared to 3% for non-Aboriginal children and young people

- Information about youth detention involvement is discussed in detail at [Changing Population Trends: Aboriginal Dual Involved Young People](#).

Placement Type Outcomes

- large difference in outcomes for Aboriginal children and young people in family-based care, compared to residential care, across the following measures in Table 8.
- of all the Aboriginal children and young people living in residential care, the Guardian was only satisfied that 1 in 5 children had sufficient contact with their culture and community, to satisfy a baseline standard that the Wellbeing Statement was ‘Met’
- less than 1 in 2 were assessed to be and feel, culturally safe in residential care placements
- 90% of Aboriginal children and young people had access to disability services that met their needs in residential care (compared to 56% of children and young people in family-based care)
- all Aboriginal children and young people felt they had a secure personal space to which they can withdraw and where personal things are kept safe (compared to 91% in family-based care)

¹⁰⁴ A key theme that arose in interviews with children and young people for the SADI Project. See OGCYP, *The Final SADI Report* (n 5), pp 37–41.

¹⁰⁵ See [Changing Population Trends: Aboriginal Dual Involved Young People](#).

Table 8: Proportion of children for whom Wellbeing Statement is 'Met' (1, 2a, 2b, 5, 7b, 9a), by placement type - 149 OGCYP Annual Review audits for Aboriginal children in OOHC, 1 January 2021 to 31 December 2022

Wellbeing statement	Residential care	Family-based care	Diff.
This child lives in a kind and nurturing environment	73%	96%	+23 pp
This child is, and feels, physically and emotionally safe	68%	97%	+25 pp
This child is, and feels, culturally safe	45%	92%	+47 pp
This child is cared for in a placement that is stable and secure	59%	96%	+37 pp
This child has contact with their culture and community	23%	52%	+29 pp
This child is getting an education suited to their needs	68%	78%	+10 pp

Outcomes in different family-based placement types

The Guardian observed areas where there is a significant difference in outcomes for Aboriginal children and young people living in family-based care generally, compared to those specifically living in kinship care.

These results are concentrated across social and emotional indicators; namely, domains relevant to family contact, identity, cultural safety and connection.



"I don't have a mum and dad or my little brother or my siblings. So it was, it was, yeah, I just felt abandoned, I guess, felt lonely and like, like I didn't have no one".

Young Person in care

Table 9: Proportion of children for whom Wellbeing Statement is 'Met', by family-based caregiver type (2b, 7a, 7b, 10) – 149 OGCYP Annual Review Audits for Aboriginal children in OOHC, 1 January 2021 to 31 December 2022

Wellbeing statement	Family-based	Kinship	Kinship	Diff. ¹⁰⁶
	(non-relative)	(Non-Aboriginal)	(Aboriginal)	
This child/young person is, and feels, culturally safe	92%	94%	100%	8 pp
This child/young person has contact with their family and/or other significant people who provide a sense of identity and belonging	66%	87%	88%	22 pp
This child/young person has contact with their culture and community	52%	70%	86%	34 pp
This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	67%	70%	74%	7 pp

¹⁰⁶ Difference is calculated as the difference between Aboriginal children living in family-based care generally, and Aboriginal children living with Aboriginal family members, relatives and kin.

Advocacy

As with all children and young people, the Guardian acts as an advocate for the interests of Aboriginal children and young people under the guardianship or custody of the Chief Executive.¹⁰⁷ Despite not being required via legislation to pay particular attention to Aboriginal children and young people, the Guardian collects disaggregated data to ensure she is able to adequately and authoritatively speak to these matters. The following provides some general insights into these matters.

In 2022-23, 178 ‘in-mandate’ enquiries were made in relation to Aboriginal children and young people:

- 26% came directly from Aboriginal children and young people themselves, with the most frequently raised issues depicted in Table 10 below¹⁰⁸

Table 10: Top four issues raised by Aboriginal young people in 2022-23

Issue	%
1 Participation in decision-making	43%
2 Safe and stable placement (including cultural safety)	34%
3 Understanding circumstances	30%
4 Contact with significant others	26%

- 74% were made by adults, with the most prevalent issues raised depicted in Table 11 below.

Table 11: Top four issues raised by adults about Aboriginal young people in 2022-23

Issue	%
1 Safe and stable placement (including cultural safety)	36%
2 Contact with significant others, including cultural connections	31%
3 Participation in decision-making	18%
4 Understanding circumstances	13%

Participation in decision-making

The Convention on the Rights of the Child, enshrines the child’s right to express their views freely in all

matters affecting them, with their views being given due weight in accordance with their age and maturity.¹⁰⁹ In recognition of the importance of this right, the Guardian must, in carrying out her functions, encourage children and young people who are affected by issues to express their own views and give proper weight to those views.¹¹⁰

Almost half of the Aboriginal children and young people who contacted the Guardian’s office raised their worries about not being involved in decision-making, often explaining that:

- decisions are made without them
- they felt unheard
- with their views not considered, this frequently lead to frustration.



“[My worker] never asked what I would like and what would benefit me”.

Aboriginal Young Person, aged 16

Further, Aboriginal children and young people were explicitly clear that cultural considerations were not given due weight when decisions were made, and that there needed to be more cultural thought and advice when decisions were being made about them. This occurred particularly in relation to decisions such as family contact arrangements, return to country and being involved with cultural activities. This is particularly notable considering the mature and advanced nature of these requests.

Further, over the course of advocacy matters for children and young people, the Guardian has identified a number of specific areas where children and young people have expressed (or we have observed) that they were not adequately consulted in decision making, and/or their views were not given sufficient weight. These areas are discussed below.

Youth Court and SACAT proceedings

At times, young people express a view that lawyers are not listening to them or advocating for their views in Court or SACAT proceedings, or they feel they do not have a say during court proceedings.

¹⁰⁷ Children and Young People (Oversight and Advocacy Bodies) Act 2016, s 26(1)(b).

¹⁰⁸ Noting that some young people raised multiple issues

¹⁰⁹ United Nations General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol 1577, p 3 (art 12).

¹¹⁰ Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA), s 26(2)(a).

The Guardian acknowledges that child protection proceedings are complex, and there may be circumstances where it is appropriate for a lawyer's submissions to be contrary to the child's voice, or it may not be in their best interests to present their views personally (particularly for trauma-related reasons). However, it is important to ensure that these decisions are evidence-based and implement children and young people's participation rights, to the fullest extent possible.¹¹¹

Annual Reviews

The Guardian is concerned that the attendance of children and young people at their own Annual Reviews, and participation in the process, is consistently low. When children and young people are not in attendance, their 'voice' may be largely second-hand and reliant on carer or case manager feedback, which in some instances is contrary to the child or young persons perspective.

Internal reviews

Under section 157, a child or young person – or other 'person who is aggrieved by a decision of the Chief Executive or a child protection officer under this Act' – is entitled to apply for an internal review of the decision. The Chief Executive may confirm, vary or reverse the decision on review. However, section 157 does not include any express procedural right for children and young people to present their views for the purpose of the internal review.

These matters are highly significant for the day-to-day lives of children and young people. In the absence of an express right, there is a risk that internal administrative processes will not incorporate (or maintain where they exist) processes for seeking these views.



"They are not telling me anything about what is going on".

Aboriginal Young Person, aged 10

Contact Determinations

Under section 93 of the *CYP Safety Act*, the Chief Executive has the power to determine contact

arrangements in respect of a child or young person in care. The only avenue for reviewing a contact determination made by the Chief Executive is through the Contact Arrangements Review Panel (CARP). Contact determinations have expressly been excluded from both internal and SACAT reviews.¹¹²

Despite the far-reaching implications for a child and young person's wellbeing and social development, the *CYP Safety Act* and Regulations do not expressly provide a process for obtaining the views of children and young people in either the initial contact determination, or the CARP review. Further, as contact determinations are not reviewable by SACAT, children and young people are unable to access the important procedural right in section 158, which requires SACAT to provide reasonable opportunity for a child or young person to personally present their views.



"No one is listening to what I have to say".

Aboriginal Young Person, aged 10

Safe and stable placement, including cultural safety

Similar to non-Aboriginal children in care (and as discussed below at [Placement Matching, Safety and Staffing](#)), Aboriginal children and young people raised their concerns about safety in placement. Many of the same themes relating to conflictual placement matches and worker turnover were raised. In addition to this, Aboriginal children and young people reported their placements lacked representation of their culture and this contributed to them feeling a lack of belonging or sense of cultural safety.



"I go on MPR because I don't want to stay here".

Aboriginal Young Person, aged 16

¹¹¹ OGCYP's submission to the Law Society of South Australia regarding the development of guidelines for legal practitioners in child protection proceedings highlighted the need for specific guidance on this issue. This includes engaging experts to ascertain the most appropriate communication methods for a particular child or young person, utilising alternatives to direct participation where appropriate and respecting the wishes of a child or young person if they make an informed choice not to participate. See, OGCYP, *Submission to the Law Society of South Australia: Guidelines on the Legal Representation of Children in the Youth Court (Care and Protection) Jurisdiction*, 27 May 2022.

¹¹² Children and Young People (Safety) Regulations 2017, r 40; Children and Young People (Safety) Act 2017 (SA), s 158(1).

Often, Aboriginal children and young people identified the very real sense of loss of community and Country; this sense was not just an emotional response, it was also one that surfaced through physical manifestations – making them feel uncomfortable and needing to leave their place of residence.

In some instances, young people have reported not having a full understanding of their cultural and community background. This often related to intergenerational impacts of past forced removals. From discussion with Aboriginal children and young people, the Guardian is aware that many either do not know who to talk to about this part of their life, don't have a life story book to support their understanding or are unsure of the purpose of such a tool, with this history not updated and used as intended.

There are instances, where Aboriginal children and young people prefer to remain with family, with some returning to family with or without DCP consent.

Understanding circumstances

Another common theme for both Aboriginal and non-Aboriginal young people is the desire to know and understand the circumstances which led to their entry into care.

Aboriginal young people share through their contact with the Guardian and her staff that they struggled to understand how they ended up in care and were not able to follow the decision pathway made about their lives. Many sought support from the Guardian to open up a direct information path and talked about the difficulties they have experienced in seeking a rationale for DCP decision-making, adding they are often unaware of the decision until it is implemented.

Compounding this for Aboriginal children and young people was trying to come to terms with not just removal from their immediate family, but in some instances removal from their culture as well. This proved to compound a sense of dislocation and loss for many Aboriginal children and young people, and without a clear narrative or rationale from DCP, they are forced to build their own story about how they came into care. This has sometimes created additional trauma and confusion for Aboriginal children and young people. Ultimately, this impacts their ongoing willingness to connect with family and culture during their time in care.

The importance of providing clear, honest and direct information to children and young people is essential

for how a child or young person builds the story of their life. For Aboriginal children it is vital that they not only understand the personal, but also the cultural narrative that surrounds them for the immediate and longer-term connection and belonging.

Contact with significant others



"Me and my brothers have been split up by DCP".

Aboriginal Young Person, aged 13

Aboriginal children and young people frequently raise contact with family and/or significant others as something they would like to improve. For the most part, they are raising that connection and contact is simply not happening as often or as consistently as they need. This is amplified for those who have multiple siblings allocated to different DCP offices across different DCP caseworkers.

Case Study: 'Lisa' – Education and family contact

15-year-old Aboriginal young person, Lisa, contacted the Guardian requesting advocacy for a change of school and for contact with her cousin, which she had regularly sought but not received from DCP. Lisa said she needed to attend another school after being bullied and suspended. Feeling that she was not being listened to, she refused to attend a school re-entry meeting as she felt unsafe and unsupported by teachers and case managers; that she was being treated "like a number and not a human".

As a result of discussions initiated by the Guardian's office, DCP supported transfer to a school suited to Lisa's learning needs that had a safe learning environment. DCP also agreed to follow up with the school to provide at home learning support via the Aboriginal Education Unit and to explore the opportunity for contact with Lisa's cousin. The Guardian then assumed a monitoring function, seeking regular case updates. Lisa commenced at a new school, initially on a modified routine to support her transition. She also reported DCP's commitment to arrange family contact for her with her cousin, stating she now felt supported and heard.

Differing from other children and young people who raise similar concerns, Aboriginal children and young people do broaden their 'significant others' to include community Elders and community key decision makers. This broadening is a natural and learnt cultural nuance – however – it is not something

that the Guardian observes as a practice norm within DCP.

From the Guardian's perspective, inadequate contact with Elders and key decision makers can be of concern (including family members who are unwell and whom the children or young people may have never met), as this causes considerable disruption to important cultural identity foundations for Aboriginal children, young people, families and communities. The importance of nurturing positive community relationships, enabling cultural authority and cultural learnings is key to passing of cultural knowledge to children and young people. The disruption of this has significant impact in the immediate term (regarding decision making about identified children and young people) and longer term with the regression of knowledge and cultural rules for entire communities.

Case Study: 'Desiree' – Family and Community connection

The Guardian monitored the timely progress of casework actions (relating to establishing family contact, progressing community connection, and developing a social story) for 9-year-old Aboriginal child, Desiree, arising from participation in an Annual Review. Desiree has diagnosed disabilities and lives in foster care. Desiree hadn't had any contact with her birth family or cultural community since entering care as an infant.

Since the Annual Review, family contact was established with siblings and extended family, Return to Country is being explored, and work initiated with Desiree's NDIS therapists and carers to develop a social story about her journey into care and having two families. Desiree also found out that she is an aunty, with a baby nephew she enjoyed meeting.

Connecting and Reconnecting

It is important to preface discussions about placements for Aboriginal children and young people by acknowledging that individuals in care have varying experiences of their connection to culture, identity, family and community. For many children and young people, their connection is a lifeline. Others may be at an early stage of their connection journey and worry about their place within their community group, or they may not want to engage or identify with their cultural connections or ancestry at a particular stage in their life.¹¹³

Some Aboriginal children and families do not know much information about their cultural, language, familial and Country connections. The child protection system holds significant responsibility for these circumstances, which often arise as a consequence of successive generations of child removals and colonial practices which dislocated people from Country, and punished people for speaking their language and practising their culture.

The child protection system also holds considerable economic resources that can be used to help children and families uncover information about their story and restore connections to their communities. The practices that are being embedded into the child protection system to identify children and young people as Aboriginal are an important part of the healing journey for communities. These processes may identify children and young people who did not know about their Aboriginal heritage before coming into care.

But the process of introducing a child or young person to their Aboriginal connections, community and culture, is highly delicate. It is very different to helping children and young people to maintain or build upon existing connections they hold. If not handled sensitively, it has the potential to cause significant harm, and can lead to strong negative emotions such as shame, fear, instability and even resentment.

Children and families in these circumstances need to have control over their own journey of connection. If the process is rushed or forced, the distress and trauma experienced by children and young people can have the very opposite effect to the intention of the ACP: to support connection and ensure that children grow to feel safe and comfortable to move between their worlds.

The Guardian has observed practice issues in this area, where placement decisions are approached in a rigid way that does not leave children and young people with the space to express their views and be introduced to their culture and community in a culturally safe way, at their own pace. The Guardian considers that there is a need to provide decision makers and practitioners with much greater support, to assist children and young people to navigate this important area, while feeling safe and supported. This includes to understand, and explore, the reasons why children and young people with

¹¹³ This was a theme that arose in several interviews with Aboriginal children and young people for OGCYP's South Australian Dual Involved Project. See OGCYP, Six Month Snapshot of the South Australian Dual Involved Project Children and Young People in South Australia's Child Protection and Youth Justice Systems (2021), The Interim SADI Report (n 38), p 15.

Aboriginal ancestry may not identify as Aboriginal or show desire to engage with their culture. And, importantly, how identity and desire to connect with culture may change over the course of their childhood, adolescence and adulthood.

In the Guardian’s recent submission to the legislative review of the *CYP Safety Act*, she highlighted core fundamental approaches that should be utilised in supporting children and young people in these situations, such as:

- providing opportunities for children and young people to express their views
- giving due weight to these views, in accordance with trauma-informed practice and the child or young person’s age, maturity and development
- undertaking active efforts to identify key information about the child or young person’s culture and support networks, including their nation and people within their family and community who can support the child or young person
- maintaining opportunities for future engagement and connection with their family, community and culture, if these connections cannot be utilised immediately
- regularly reviewing changes in their views or circumstances throughout their time in care. It is important that review of a child or young person’s circumstances and views occurs throughout case planning processes and is not limited to transition planning when a child or young person is leaving care.¹¹⁴

Annual Review Audits

Outside of the ‘SA Aboriginal Children in Care – Annual Review Project’, Annual Reviews Audits were undertaken as a matter of course by the Guardian. In 2022-23, a total of 42 Aboriginal children and young people’s Annual Reviews were audited, with the following matters identified:

- 40 of the 42 reviews for Aboriginal children and young people (95%) had an independent Aboriginal representative on the Annual Review panel
- 14% required follow up by the Guardian (noting this percentage is consistent with last year’s

figure of 13%). Three cases (now closed) related to safety

- 83% had a Cultural Life Story book
- 31% were living with extended Aboriginal family members, with a further 14% living with non-Aboriginal extended family members
- 81% were linked to cultural activities¹¹⁵, with 33% having a cultural mentor
- return to Country trips had only occurred for 3 out of the 35 Aboriginal children and young people who were not living on Country (with barriers posed by: limited historical information regarding the child and young people’s connection to their cultural lineage; an absence of family connection and limited awareness of significant people within their own community and assessed safety risks).

Aboriginal Child Placement Principle

In exercising her functions, the Guardian is firmly committed to promoting the Aboriginal Child Placement Principle (ACPP), to guide all placement, case management and decision-making for Aboriginal young people in residential care.

The fundamental premise of the ACPP is that Aboriginal children and young people have a human right to grow up with their families. This means that governments have an obligation to provide families with the financial, social, and other supports needed to ensure children have the best possible care, without discrimination, within their families and communities. Where young people are genuinely in need of care outside of their families, the ACPP calls for policies, practices and legislation that recognises the imperative for Aboriginal young people to maintain every opportunity to stay connected with their family, culture, and community.

The ACPP requires governments to take active efforts¹¹⁶ to embed the following five elements throughout all aspects of child protection practice and the delivery of other government services:

1. **Prevention:** Protecting children’s rights to grow up in family, community, and culture by redressing the causes of child protection intervention.

¹¹⁴ OGCYP, A rights-based approach to safety (n 1), p 13.

¹¹⁵ Aboriginal children and young people were linked to cultural activities, it is noteworthy that most of the activities attended were National events, such as Sorry Day, and not ongoing activities focussed on individuals’ Nation or family/community cultural activities.

¹¹⁶ SNAICC – National Voice for our Children (SNAICC) defines ‘active efforts’ as ‘purposeful, thorough and timely efforts that are supported by legislation and policy and enable the safety and wellbeing of Aboriginal and Torres Strait Islander children’: SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation* (2019), p 4 (*A guide to support implementation*).

2. **Partnership:** Ensuring the participation of community representatives in service design, delivery, and individual case decisions.
3. **Placement:** Placing children in OOHC in accordance with the established ACPP 'placement hierarchy'.
4. **Participation:** Ensuring the participation of children, parents, and family members in decisions regarding the care and protection of their children.
5. **Connection:** Maintaining and supporting connections to family, community, culture, and country for children in OOHC.¹¹⁷

Closing the Gap

In matters relating to Aboriginal children and young people, the Guardian is guided by the *National Agreement on Closing the Gap*¹¹⁸ as a key mechanism to improve their lives, wellbeing and opportunities.

Within South Australia there are reporting mechanisms in place for assessing South Australia's performance against *Closing the Gap* targets for Aboriginal children. However, this information is not disaggregated to differentiate between children and young people in OOHC and those living outside the statutory care system. With respect to Aboriginal children in care, public reporting on *Closing the Gap* focuses strongly on **Outcome 12**: that Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system.¹¹⁹ It is the Guardian's perspective that we should be looking beyond just Outcome 12 and exploring all areas of *Closing the Gap* and put special measures in place that support children in OOHC, to:

- improve access to education, health, language and culture
- decrease engagement with youth justice system
- enable participation in life decisions.

For the large number of Aboriginal children who are (and may become) separated in the child protection system, it is important to understand where they are thriving and falling behind, so we can steer the system where it is most effective. This is an essential step to diverting the socioeconomic drivers of the intergenerational removal cycle, whereby so many

children in care grow to have their own children removed.

Through the 'SA Aboriginal Children in Care – Annual Review Project', mentioned above, the Guardian assessed that Aboriginal children in kinship care are faring better across nearly all of the substantive wellbeing outcomes we measure, compared to Aboriginal children living in other types of OOHC.

There were also some key areas identified where Aboriginal children experienced even better outcomes when living with their Aboriginal family and relatives. Significantly, the audits assessed that Aboriginal children living in kinship care were 35% more likely to have contact with their culture and community, compared to the overall rate for Aboriginal children living in family-based care. For those living with their Aboriginal family or relatives, this figure nearly doubles, to 65%.

The Guardian also notes that each of the outcomes and targets under the national agreements are intrinsically connected, and progress to reduce numbers and rates of Aboriginal children and young people in OOHC cannot be achieved within the child protection portfolio alone. Achieving this target requires simultaneous strategies to address systemic discrimination and inequality for Aboriginal young people across all social determinants of health, safety, justice and wellbeing.

Accordingly, while monitoring trends in the number and personal characteristics of Aboriginal children and young people in care is essential to properly understanding progress against Target 12 (as well as cultural support needs in care), the Guardian stresses the importance of looking beyond mere numbers about overrepresentation. It is essential to:

1. critically examine the experiences of Aboriginal children and young people in OOHC
2. understand where they are thriving and falling behind
3. steer systems and resources where they are most effective.

This should be focused not only on reducing overrepresentation in OOHC, but also improving outcomes across all life domains for Aboriginal

¹¹⁷ These definitions of the five elements are reproduced (with minor variation) as they appear in SNAICC, *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A Resource for Legislation, Policy, and Program Development* (2017), p 3 ('Understanding and applying the ACPP').

¹¹⁸ *National Agreement on Closing the Gap* (2020). The parties to the agreement are the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments, including the Commonwealth and South Australia.

¹¹⁹ With the target to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in OOHC by 45 per cent BY 2031.

children and young people who have spent time in OOHC.

In undertaking the ‘SA Aboriginal Children in Care – Annual Review Project’, and preparing the submission to the Inquiry into the Application of the ACPP in South Australia, the Guardian believes that the ACPP is critical for preventing pathways to OOHC as well as improving physical health, social and emotional wellbeing outcomes for young people who do live in care. This has flow-on effects to all areas of their lives, including the risk of youth justice involvement and detention.

From 2022-23, the Guardian is commencing annual reporting on compliance and associated matters relating to implementation of the ACPP, including:

- family scoping efforts, and supports for placements with Aboriginal family members/other carers
- reunification efforts
- qualitative information about cultural support plans, including the extent to which they plan for and achieve meaningful connection to family, culture and community
- involvement of Aboriginal children and young people in decision making about their own lives.

Strategic Focus on Aboriginal Children and Young People

Significant progress was made in 2022-23 with respect to enhancing the Guardian’s office’s capacity to engage with Aboriginal children and young people and respond to their needs. At a strategic level, this occurred due to the Guardian herself being an Eastern Arrernte woman and Aboriginal community leader, here in South Australia. The Guardian extended this strategic role through her position as co-Convenor of the national ANZCCGA group as introduced elsewhere in the Annual Report.

During 2022-23, Aboriginal staff working within the Guardian’s office continued to lead direct Advocacy for Aboriginal children and young people. They also extended engagement and collaborative activities with Aboriginal staff located in DCP offices. In June 2023, for example, meetings were held with Northern Region Aboriginal staff from the Inner North, Gawler, Playford and Elizabeth DCP offices.

As reported by one of the Guardian’s participating Advocates:



“It was a great opportunity to share insights and provide information about the role of the Guardian Advocates and programs. We learnt about an exciting program developed by dedicated DCP Aboriginal staff to have Aboriginal children and young people Return to Country at Point Pearce in Narungga country”.

Advocate, Conrad Morris

Arrangements were made to meet similarly with DCP Aboriginal staff in the Southern Region, covering Noarlunga, and the Central Region, covering Blair Athol, Woodville, and Hindmarsh.

Meetings with DCP Principal Aboriginal Consultants (PACs) resumed in 2022-23, a valuable opportunity to share information and build networks about work being done with and for Aboriginal children and young people in care.

Dual Involved Children and Young People

The operation of two simultaneous administrative orders – care and protection, and youth justice – has been a topic of interest the Guardian (including as TCV) has been monitoring for some time. In July 2022, the SADI report (detailing the experiences of ‘dual involved’ young people) was released. The overall theme of this report was that while young people’s lives were theoretically being cared for by two administrative orders, they were ultimately cared for by neither.

As discussed earlier in this report, government silence about recommendations following the tabling of the SADI report is disappointing given the focus on complementing existing government strategies and reducing the serious overrepresentation of young people involved in both care and youth detention.

Advocacy

The Guardian’s Advocacy team continues to support dual involved children and young people in the Youth Justice Centre through regular joint visits with the Training Centre Visitor (TCV) Advocate. In 2022-23, this led to 27 individual enquiries being raised in the categories identified in Table 12.

Of these 27 queries, 19 were resolved through other avenues of support, while 8 were followed up with a DCP office to address placement issues, transition from care planning and long remand periods. Outcomes were that two queries were advocated successfully, three assessed as requiring no further role for this Office, with another three moved to monitoring to ensure timely progress of agreed-upon actions.

Table 12: ‘Dual Involved’ Enquiries for 2022-23, by type

Concern Category	Percentage
Placement issues	26%
Case management issues	30%
Transition from care	22%
Admission rates/period	11%
Safety in KTYJC	4%
Sexual assault	4%
Education issues	4%

Care Criminalisation

While young people in care account for 1% of the child population, more than one in three young people held in youth justice detention on an average day were in care – a social phenomenon which is referred to as ‘care criminalisation’.¹²⁰ South Australia is not unique in this respect – care criminalisation is the subject of national and international commentary and research.



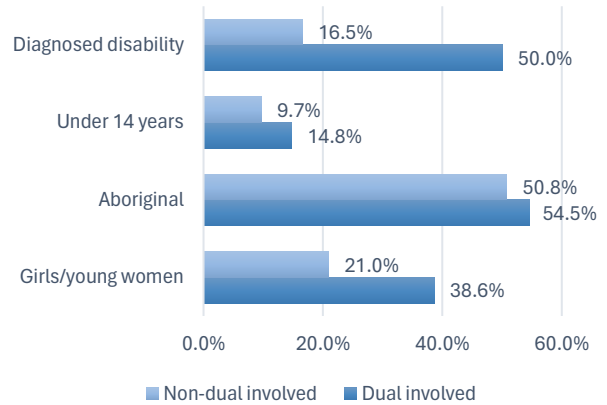
“When [the kids I live with] tell me to do something stupid...I do it because I'm scared they're going to hit me or scream at me”.

Young Person, aged 15

In 2022-23, 88 individual young people in care were detained at the Youth Justice Centre, across 254 admissions.¹²¹ Compared to young people who were not in care, dual involved young people were more

likely to be female, Aboriginal, under the age of 14 years and have a diagnosed disability (known to the TCV).¹²²

Figure 14: Demographic information for dual involved children and young people in 2022-23, compared to those who were not in care



With an average of 11.6 dual involved young people detained on any given day, young people in this cohort amounted to 35.6% of the average daily population. Compared to the previous financial year, there was a slight increase in both the number of dual involved young people admitted to detention and their proportion of the average daily population in 2022-23.¹²³

Strategies are required and a commitment made to reducing relevant risk factors, which makes significant work already underway across government welcome, such as:

- improving access to family support services
- embedding trauma-informed practice frameworks into service delivery
- expanding early assessment and service delivery for young people with disability
- improving mental health supports for children, young people, and families.

This work is acknowledged and respected – including the reality that it will take time to see the results of current efforts. However, promoting the best interests of young people does involve turning a

¹²⁰ See, eg, Susan Baidawi et al, *Research report – Care criminalisation of children with disability in child protection systems*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023).

¹²¹ Aggregate data provided by DHS at the end of the reporting period indicates that 85 young people under guardianship orders were admitted in 2022-23, across 249 admissions. The reason for the discrepancy is that the TCV adopts a different counting methodology to DHS, which includes young people on interstate orders. The TCV further identified individuals who were known through other mandates to be under South Australian guardianship orders, but not recorded as such by DHS.

¹²² This information is calculated based on a data set the Guardian compiles in her capacity as TCV, drawn from a ‘daily population list’ provided by DHS throughout 2022-23. For more information about youth detention data, see the Training Centre Visitor’s 2022-23 Annual Report. Diagnosed disability information is based on records provided by both DHS and DCP. Disability figures should be interpreted with caution, as the TCV is more likely to become aware of disability information for young people in care (due to the availability of DCP information if the Guardian provides advocacy services to the relevant young people).

¹²³ According to information provided by DHS, there was a 2.4% increase in the number of individuals admitted, and an increase of 0.7 percentage points in their proportion of the average daily population.

critical lens on features of the child protection and social services systems – both to identify ‘missed opportunities’ where practice improvement can better promote trauma recovery and diversion, and identify those features of both systems which contribute to criminogenic risks and, at times, set young people up to fail.



"I'm worried for [mysibling] because I don't wanna see [them] in... lock-up".

Young Person, aged 14

Homes should be places where young people can learn how to experience and process emotions safely, to ensure they can engage constructively and appropriately in society as they grow. Young people in residential care do not have this luxury – the moment they escalate their behaviour in their ‘home’ environment they risk contact with the youth justice system, because other young people or carers call for SAPOL attendance.

Young people’s contact with police may begin at early ages, Visiting Advocates met young people who had encountered police in the following contexts:

- **Being picked up on MPR:** although it is not a crime to run away from a property (unless there are bail arrangements in place) police may be the ones to collect a child or young person on MPR. Visiting Advocates heard young people refer to the photo which may be attached to their MPR as a **“mug shot”**.
- **Forensic interviews:** depending on the circumstances, some young people have been interviewed due to the reasons for their removal from their parents’ care.
- **Being interviewed as the victim of a crime:** sadly, this is often following sexual exploitation.
- **Police attending the house in response to another child or young person’s behaviour:** this could be complicated for young people, who may have felt scared of the other child or young person but may also find the presence of police in their house confronting.

This common interface can reinforce a criminogenic link, not just for young people but for carers. Equally,

it may shape a child or young person’s perception of themselves, and police.



"I'm destined for the adult system anyway. I was born into institutions, I'll stay in institutions my whole life".

Young Person, aged 17

In addition, policies to preserve the safety of the house, its residents, and carers, may force young people into contact with youth justice. Young people spoke of police being called when they allegedly shouted at carers, or possessed weed, or committed property damage. The SADI report provided the example of police being called when a child or young person sprayed carers with a hose while watering the front yard.¹²⁴

Young people spoke of the police being used as a behaviour management tool, often being utilised as a first response, rather than carers supporting them to navigate complex emotions and outbursts – one young person reported that they believed carers had called the police on them **“maybe 10 times”**. In addition to bringing young people into contact with youth justice, often for behaviours which would not merit the same response in family-based case, this can create friction between young people and their care teams.



"I complained about [another young person] four times. He made one complaint and [carers] told me I might go to juvie".

Young Person, aged 15

Attempting to utilise police as a warning or threat to encourage good behaviour can exacerbate this. This not only impacts a child or young persons’ relationship with police at the time but may shape their willingness to seek police support in future if the need it.

¹²⁴OGCYP, Six Month Snapshot of the South Australian Dual Involved Project Children and Young People in South Australia’s Child Protection and Youth Justice Systems (2021).

Simon*

Simon is 15 years old and has been in care since he was little. He used to run away to his mum’s house, but police would find him and bring him back. It always upset him when they turned up, not just because they’d return him to his house, but because he was worried that his Mum would be in trouble (she’s anxious around police). Simon starts to feel nervous around police, even if they seem friendly. He’s often rude to them when they pick him up on MPR, and while they didn’t care when he was small, as he grows, they seem less tolerant. Since he’s been arrested, he thinks it is getting worse. Simon doesn’t feel safe with police – they’ve only ever made him stressed. He does not think he’d call them if he was in trouble.

The Guardian acknowledges young people in residential care have varied and complex needs – some young people are already involved with youth justice at the time they are placed in residential care (in fact, youth justice involvement may bring young people to DCP’s attention). Others exhibit no risk-taking behaviours that may lead to police interaction. Most fall somewhere in between.

However, ultimately all are housed together, which can lead to developments in behaviours, both positive and negative. Young people in the child protection system are much more likely to have youth justice involvement than those not involved with the child protection system. Younger children having contact with the youth justice system for the first time are significantly more likely to be involved in the child protection system also.¹²⁵

Changing Population Trends: Aboriginal Dual Involved Young People

Considering the large intersection between OOHC and youth detention experiences it is important to consider the impact of a growing number of Aboriginal young people living in OOHC, and particularly residential care.

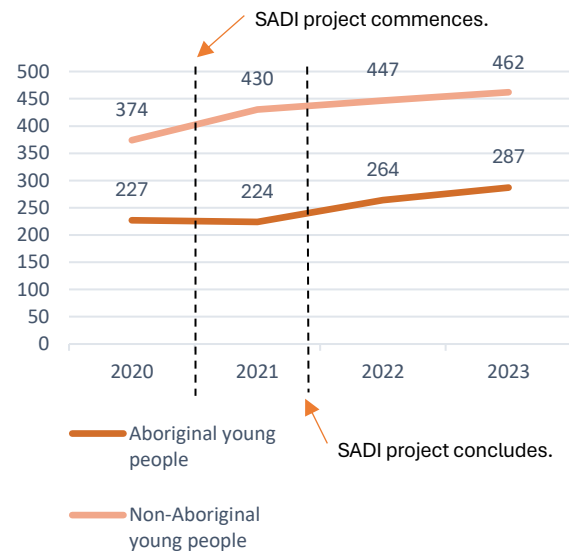
Comparison of data published in the Guardian’s SADI report and information collated during 2022-23 demonstrated a significant change in the proportion of dual involved children and young people who are Aboriginal:

- during the SADI project (spanning over the 2020-21 and 2021-22 financial years), the majority of dual involved young people were non-Aboriginal (57.7%)¹²⁶
- This trend reversed in 2022-23 – with the majority of dual involved young people being Aboriginal (54.5%).¹²⁷

The increase in Aboriginal dual involved young people reflects an overall trend of rising numbers of Aboriginal young people in detention (discussed below at [Closing the Gap](#)). While there are many complex and interconnected factors which are potentially impacting upon this trend, one potential contributor is the rising number and proportion of Aboriginal young people who are coming into care, as well as those being placed into residential care.

As highlighted in discussion above, being in care is a statistical risk factor for coming into youth detention. In this context, it is highly concerning to note that the number and proportion of Aboriginal young people in OOHC and residential care is increasing.¹²⁸ Figure 15 below depicts that, over past years, there has been significant growth in the number of Aboriginal young people in residential care: 28.1% since 30 June 2021, compared to 7.4% for non-Aboriginal young people.

Figure 15: Number of children and young people in residential care in South Australia at 30 June, by cultural background and year, 2020 to 2023¹²⁹



¹²⁵ Australian Institute of Family Studies, *Young people in child protection & youth justice in Australia* (2017).
¹²⁶ Between 1 February 2021 and 31 December 2021, a total of 71 children and young people in care were detained at the Youth Justice Centre, 30 of whom were Aboriginal: OGCYP, *The Final SADI Report* (n 5), p 90.
¹²⁷ Between 1 July 2022 and 30 June 2023, a total of 88 children and young people in care were detained during at the Youth Justice Centre, 48 of whom were Aboriginal. Data source: Government of South Australia, DHS (unpublished).
¹²⁸ Most recent figures show that, at 30 June 2022, compared to the same time the previous year the number of Aboriginal young people in OOHC increased by 4.2%, while the number of non-Aboriginal young people decreased by 0.6%. The number of Aboriginal young people in residential care increased by 18%, at nearly five times the rate of non-Aboriginal young people (4%): OGCYP, *Child Protection in South Australia from the Productivity Commission’s Report on Government Services* (2023), p 35.
¹²⁹ Data source: Government of South Australia, DCP (unpublished). These figures are inclusive of independent living.

The Guardian acknowledges there is no simplistic causative relationship between the residential care environment and a path to youth detention. Many young people living in residential care have significant pre-existing vulnerabilities for youth justice contact. There is also community stigma associated with residential care, which can impact the services young people receive – including potential discrimination or prejudice regarding access to health and mental health services, school exclusions (or engagement requirements), and police and court responses to alleged offending.

Noting the correlation between placement in residential care and youth detention, the Guardian asserts there is a need for an investment-based, broad-spectrum approach to simultaneously address the full gamut of factors that contribute to the overrepresentation of young people in residential care in youth detention. This includes:

- exhausting appropriate family-based options, before resorting to residential care placements
- understanding and addressing pre-existing vulnerabilities for youth justice involvement, and proactively targeting responses to combat these risk factors
- reducing aspects of the residential care environment that create their own risk factors for youth justice involvement.

DCP Re-alignment

DCP has gradually changed its service delivery model over several years, aiming to build a consistent approach across the State while anticipating future service demands, with these changes drawing on analysis conducted by John Lynch and the BetterStart team at the University of Adelaide.

In March and April 2023, DCP made further changes in the context of redrawn DCP office boundaries aiming to focus child protection service delivery (involving investigation, protective intervention, reunification, and case management activities) on the remaining ‘Guardianship Hubs’ (Hindmarsh, Inner South, and Salisbury); redistributed office boundaries meant realigning some case management responsibilities for children and young people with a potentially new local office.



“I guess it just hurts... they don’t mean to do these big swaps, but it hurts”.

Young Person, aged 15

The extent of the guardianship caseload realignment was significant, with relevant caseloads increasing by up to (or even over) 100% for some offices.

Table 13: Difference in Guardianship caseloads at 30 June 2022 and 2023, by metropolitan DCP office¹³⁰

Office	Difference
Blair Athol	63.6% increase
Elizabeth	99.5% increase
Far North	8.9% increase
Gawler	18.5% increase
Hindmarsh	61.6% decrease
Inner South	47.6% decrease
Noarlunga	105.7% increase
Playford	5.3% increase
Salisbury/Inner North	27.1% decrease
St Marys	33.3% increase
Woodville	97.3% increase

While DCP assured the Guardian that careful consideration would be given to each case transfer decision with minimal disruption to individual young people, the Guardian received information to the contrary from some young people and adults.

Concerns raised included that:

- realignment compounded cumulative instability arising from frequent case worker changes
- grief and distress were created by the loss of longstanding and trusted case worker relationships
- some children and young people did not know who their new case worker was and/or did not have an allocated worker during the transition
- transition from care planning was disrupted
- problems arose due to inadequate case handovers, delays with case management functions (such as contact arrangements) and, in some instances, unexpected changes in case direction

¹³⁰ In response to this report, DCP noted that the reallocation of Guardianship caseloads was accompanied, in some instances, by reallocation of resources and other DCP functions such as investigations (DCP advised that further details about relevant reallocations are not available at the time). While it is acknowledged that these matters may mitigate the impact of the realignment upon the workforce, it does not ameliorate the experience for children in care, who were most impacted by the serious (and foreseeable) consequences resulting from a significant caseload transfer over a short period of time.

- practical problems arose due to staff vacancies or staff inexperience arising from role changes.

The Guardian raised these concerns with DCP Executive and, in accordance with the views and best interests of individual children and young people, advocated on their behalf with limited success.



"In our area, every kid is losing their social worker. The weekend we were told... every kid went missing that weekend. Every kid was running away from the situation".

Young Person, aged 15

When young people contacted the Guardian to request advocacy to retain their DCP worker, many shared positive stories about these relationships.



"She understands us and our needs".

Young Person, aged 14

Annual Review audits remained a key mechanism for reviewing and, where needed, monitoring, consistency of case work practice and support provision where office and case worker changes had occurred for children and young people.

Case Study: 'Brodie' – Office transfer

13-year-old Brodie contacted the Office with concerns about limited contact with his case worker. Brodie had been living in a residential care placement in Adelaide for the past 10 months, while remaining allocated to a case worker at a regional office. He said he wanted to have a metropolitan case worker so he could feel more supported and see them more, "like the other kids in my placement do". After confirming with Brodie's regional case management team that his placement was stable and would remain in Adelaide, we advocated for a priority transfer between the regional and new local DCP office, which then occurred within 2 weeks of the Guardian's request. Brodie now sees his new case worker fortnightly and feels much more supported by DCP.

Delayed Kinship and SCO Carer Assessments

All potential kinship and SCO carers must undergo a carer application and assessment process as a threshold requirement before they can commence providing care. The extent of the application process depends on whether they are providing care in a 'temporary placement', or as an approved kinship or SCO carer.

Temporary placements

Temporary placements are intended as a short-term care option, in urgent circumstances. Under section 77 of the *CYP Safety Act*, a temporary placement may only be made if all of the following criteria are met:

1. the placement is a matter of urgency
2. it is not reasonably practicable to place the child or young person with an approved carer, or it is preferable to place them with a non-approved carer
3. the risk of harm to the child or young person if they are not placed in a temporary placement exceeds the risk of harm if the child or young person is placed with a non-approved carer.

While temporary placements play an important role in meeting urgent care needs for children and young people, it is important to note that assessment and screening for temporary carers is not equivalent to a full carer assessment. As such, there is a risk that children and young people may be placed in an environment that would otherwise be deemed unsuitable. To mitigate this risk, the *CYP Safety Act* requires that temporary placements must not exceed three months; after which the temporary carer may only continue caring for the child if they undergo a full carer assessment and are subsequently approved.¹³¹

In 2022-23, a theme that arose in a number of the Guardian's advocacy and monitoring functions (Annual Reviews and 'R20') was children and young people were remaining in temporary placements beyond three months, due to long wait-times to complete full carer assessments for kinship and SCO carers.

At times, the Guardian observed that children and young people in temporary placements experienced significant harm. It is believed that if a full carer assessment was undertaken, then this may have

¹³¹ Children and Young People (Safety) Act 2017, s 77.

identified relevant risks resulting in the carers being assessed as unsuitable and children and young people not being placed there.

The Guardian observed that the ‘triage’ approach (which prioritises temporary carers for full carer assessments) adopted by DCP may cause significant delays to those seeking other application/assessment types. Through advocacy, monitoring and R20 functions, the Guardian has observed that this may impact children and young people in the following ways:

- children living with an approved carer (and not requiring an ‘urgent’ placement move – even though it may have been in their best interest to move) may not be prioritised and left in placements that do not adequately meet their needs
- children and young people who have been placed into (or remain living in) residential care while a full carer assessment is completed may spend long periods in an institutional setting, when they otherwise could have been living in family-based care¹³²
- for young people who are approaching the age of 18 years, they may ‘age out of care’ while waiting for the assessment, with the identified carers unable to access extended supports which may be available for family-based carers.

To better understand the extent of the assessment ‘backlog’, the Guardian requested data from DCP regarding the number of kinship care and SCO applications received in 2022-23 (including those arising from temporary placements) and the average length of time to process these applications. DCP advised that this information was unavailable to provide to the Guardian. As such, it is difficult to assess the true extent of delay in kinship carer assessments; however, anecdotally and from observations during advocacy matters, the Guardian understands that these delays are potentially extensive.

DCP was able to provide the following information about temporary placements in 2022-23:

- 1,663 temporary placements were made in 2022-23
- 1,117 were extended beyond the legislated three month period
- The longest period that children and young people remained in a temporary placement was 358 days (out of 365 days for the financial year).

¹³³

The Guardian was highly concerned to learn that more than 1,000 temporary placements were extended beyond three months, without a full carer assessment occurring.¹³⁴ Further, while Aboriginal children and young people amounted to 38.3% of the care population at 30 June 2023, 54.9% of the temporary placements that were extended beyond three months were for Aboriginal children and young people. This matter requires further attention in 2023-24, including the extent to which appropriate resources are being directed towards kinship and SCO care assessments for remote and regional areas, and for Aboriginal families.

Residential Care¹³⁵

Placement Matching, Safety and Staffing

Through the Guardian’s monitoring and direct advocacy functions, children and young people in residential care consistently raise worries, concerns and ‘stressors’ that are primarily driven by the people they need/must live with.



“[Things might go better] if they also put some time and effort into thinking who they are going to pair me with”.

Young Person, aged 15, talking about residential care placement matching

¹³² This may occur if initial assessment/screening identifies issues that makes a temporary placement inappropriate, however the full assessment finds the carers suitable.

¹³³ It is important to note that this information applies to the 2022-23 financial year, and the duration of the relevant temporary placement/s may have extended beyond the financial year (either in 2021-22 or 2023-24). The Guardian intends to make further enquiries to determine the number of children and young people who have been in a temporary placement for longer than 12 months.

¹³⁴ It is noted that this is a longstanding issue, which received attention and relevant recommendations in the Nyland Report (including to create a project team to address the backlog in assessments of kinship carers and comprehensively review cares who assessment is limited to an initial registration assessment, where the child has been living in the placement for more than three months: Margaret Nyland, *The life they deserve: Child Protection Systems Royal Commission* (2016), Recommendation 109. While Safe and Well reporting has marked this recommendation complete, the Guardian considers that the substantive issues underlying the intent of the recommendation remain outstanding.

¹³⁵ Issues for children and young people in residential care are dealt with in considerable detail in the complementary *Child and Young Person Visitor Annual Report 2022-23*. Commentary made in this report relates to the information gained under this mandate. To gain a full picture of the circumstances and experiences of children and young people in the this care type, please review both annual reports in their fullness.

Children and young people in residential care have seemingly little say about where and with whom they live. Even when they do have voice in this process, it is often observed that their perspectives have limited impact on the final decision – which is made by DCP and determined by factors like bed availability, specific young people’s needs (including trauma histories and disabilities), and overall demand for placements. This causes many young people to feel apprehensive in the lead up to a placement move, which may continue as they settle in and learn about their new environment and the young people they are living with.

Where placement matching and dynamics are managed well, sibling-like bonds can develop. In some cases, young people and carers described holidays and experiences shared together as a house. The Guardian acknowledges this practice and hopes to see it in more houses.

“Placement Matching” is the process of deciding which house a young person will be placed in. It occurs when the Placement Services Unit assesses available options, with the following principles (outlined in the DCP Manual of Practice) determining a placement’s suitability:

- the young person must be placed in a safe, nurturing, stable and secure environment
- consideration should be given to culture, disability, language, and religion of the young person
- consideration to be given to the impact the placement may have on existing young people in the placement (for example, the number, ages, needs of the young people and the potential impact this may have on all young people in the house)
- whether the placement poses any risks to the safety of the young people in the household
- a young person’s personal views are not specifically required to be considered.

However, a poor match can have a serious impact upon a child or young person’s emotional wellbeing and safety. It is not uncommon for the CYP Visitor (via her Guardian mandate) to advocate for an individual or group placement change due to unsuitable placement matching and dynamics.¹³⁶



“It’s not like being around family... family feels like you belong”.

Young Person, aged 15

Placement matching, safety, and staffing in residential care continue to be of great concern and constitute a large proportion of individual advocacy matters conducted by the Guardian. Concerning information is often received about children and young people feeling unsafe in residential care, often due to the behaviour of co-residents (including threats, bullying, physical and sexual assault, self-harm, suicidal ideation, running away, and/or substance misuse). These dynamics can be exacerbated by ongoing and significant staff shortages across residential care, inconsistency of staffing and an often-associated diminished opportunity for children and young people to develop meaningful relationships with carers.

Case Study: ‘Ben’ – Placement matching and decision-making.

Ben was a 14-year-old living in residential care who had been informed that another young person would be moving into the house shortly. He was very worried about this as he was not consulted during the placement matching process and felt that his concerns were being ignored. He requested advocacy because he did not want the move to proceed as he felt unsafe with the placement match.

The Guardian advocated to DCP Executive that Ben felt unsafe about living with someone he had not had the opportunity to meet prior to the move date; that there were safety risks that needed to be mitigated; and that Ben had the right to be and feel safe and to be involved in decision-making that affects his life. The placement match did not proceed. Ben felt empowered that his voice had been listened to and he was very happy with the outcome.

Voting with their Feet

One of the concerning impacts that flow from these safety issues is children and young people going missing from residential care houses. At times, the Guardian receives contact from children and young people who are missing at the time they reach out for advocacy.¹³⁷

¹³⁶ The Guardian submitted a formal advocacy position to DCP regarding ‘safe and stable placements’ for young people in residential care on nine occasions in 2022-23.

¹³⁷ The Guardian’s Advocacy Team have a duty of care to notify DCP when contact is received from a child or young person who is missing.



"I don't feel comfortable being here tonight...[I'm going to] stay on the streets".

Young Person, aged 15

Young people in these situations may have resorted to couch-surfing or self-placing elsewhere. Where DCP is already aware of their location, young people may instead be recorded as 'Away From Placement' (AFP), as opposed to on a Missing Person Report (MPR).

MPRs or Missing Person Reports are made to SAPOL when a young person is declared missing from placement or the care team is unsure of their whereabouts. These are made by a member of the care team to enable SAPOL to search for missing young people. In some cases, photographs of the young person may be shared on social media accounts; there is always consideration of the confidentiality and privacy of the young person, weighed alongside the concerns for their safety and whereabouts.

On some occasions, DCP may have significant concerns about where a child or young person is self-placing and may take steps to return the child or young person to their DCP approved placement. Alternatively, DCP may allow the child or young person to continue self-placing, with plans in place to sight, support and safeguard the child or young person.

The Guardian's advocacy in cases where children and young people are frequently missing from placement and/or self-placing have included advocacy for:

- resolution of the safety concerns ('push' factors) within the DCP approved placement
- provision of an alternate, DCP approved placement
- expedited referral for a SILS placement
- further assessment of the child or young person's safety in self-placement
- additional safeguarding/supports in the self-placement, if DCP is not taking steps to prevent it
- DCP to keep the child or young person's approved placement 'open' for them, to ensure they have a placement to return to if they choose.

Increasing Reliance on Residential Care

In the context of ongoing safety concerns in residential care, the Guardian monitors the use of this placement type.

For many years now, the Guardian has noted an increasing reliance on residential care, and consequences for the child protection system more broadly; including the strain on child protection funding associated with the high cost of residential care as a placement option.

In 2022-23, the Guardian published a report on child protection expenditure in South Australia, which analysed drivers and cyclical impacts of a growing residential care population. Key observations from the report included:

- in 2021-22, the number of young people in residential care grew at eight times the rate of the overall OOHC population. Unlike the broader care population, growth in the residential care population is not meaningfully slowing
- often, young people seem to be placed in residential care without proper or appropriate investment in family scoping to identify alternative placements. This may lead to young people remaining in residential care placements even when suitable family members or other carers have been identified who are willing to care for them in their homes and/or are awaiting a carer assessment
- despite a significant increase in expenditure on care services over past years, this is not keeping pace with the rate of growth in the residential care population and, on average, young people in OOHC receive lower expenditure on their day-to-day care than three years earlier
- family-based care arrangements continue to be under-resourced at all stages.¹³⁸

Improved efforts and investment to build and support the family-based care sector was a feature of multiple independent reviews, inquiries, and inquests throughout 2022-23. One matter that received particular focus was appropriately remunerating and reimbursing foster and kinship carers. Tragically, this issue was a central feature of the findings from a coronial inquest into the death of a young man in residential care in 2016. In considering the young person's circumstances, including the events that led to his move from family-

¹³⁸ OGCYP, Child protection in South Australia from the ROGS 2023 (n 127), p 2.

based care to a large residential care home, the inquest highlighted the important role that carer payments play in the retention of valued living arrangements for children and young people in care – particularly where foster carers are providing therapeutic care.¹³⁹ The Coroner recommended a review of the payments made to family-based foster carers, and noted the importance of the pilot Treatment Foster Care Oregon program¹⁴⁰ for improving availability of family-based placements. Significantly, an evaluation of this program – including options to expand the program – is scheduled for 2023.

The Coroner's observations and recommendations are aligned with a focus of the 2022 *Independent Review into Foster and Kinship Care*, regarding reimbursement for the costs of caring for children and young people in care and remuneration of carers. The final recommendations of the report included that the DCP should 'implement a new system of carer payments and reimbursements that reflects the true costs of caring, provides consistency and equity'.¹⁴¹

The Guardian strongly supports the intent of recommendations aimed at increasing financial support for foster and kinship carers, to improve placement availability and flow through to the lives of children and young people in family-based care.

While considerable attention has been given to the importance of reimbursement for carers, it is also noted that these payments are not the sole – or potentially even the primary – challenge with recruitment, approval and retention of carers. In the Guardian's experience, expenditure and practice improvements also need to be directed towards matters such as reduced wait times for kinship carer assessments (discussed earlier at [Delayed Kinship and SCO Carer Assessments](#)), improved communication and relationships with carers (including through improving culturally safe practices) and approving costs for therapeutic supports for children and young people with disability or trauma-related needs.

All these matters do require an element of expenditure; but ultimately, the costs do not come close to the expenditure required to secure and maintain a property to house children in residential

care, and 24/7 rotational staff to care for children in these arrangements. As such, greater investment in the family-based care sector is not only essential for improving the lives of children and young people living in these arrangements, but also to help relieve current expenditure pressures on South Australia's child protection system.

Connections to Family and Others

A key component of a child's best interests is their social and emotional wellbeing, developed and maintained through attachments with family, siblings, friends, carers and other people who are important to them. The status of family life holds a special importance in international rights instruments, with the preamble to the CRC recognising that, the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

The importance of this issue for children and young people is reflected in requests for the Guardian's advocacy, with family contact and contact with other significant people consistently featuring among the top presenting issues. In 2022-23, 25% of enquiries directly from children and young people related to contact with significant people in their lives.

Through these requests, children and young people in care tell the Guardian that contact with the people they have connections with are highly significant to them. Despite this, the Guardian has identified serious administrative and legislative barriers to children and young people's voices being heard in contact decisions. In the Guardian's submission to the legislative review of the *CYP Safety Act*, she observed that the only avenue for children and young people to challenge contact arrangement decisions made by the Chief Executive is through the Contact Arrangements Review Panel (CARP).¹⁴² Despite the far-reaching implications for a child and young person's wellbeing and social development, the *CYP Safety Act* and Regulations do not expressly provide a process for obtaining the views of children and young people in either the initial contact determination, or the CARP review.

¹³⁹ Findings of the Coronial Inquest into the Death of Zhane Andrew Keith Chilcott, 6 April 2023, [24.10].

¹⁴⁰ For more information, see: Government of South Australia, DCP, *New foster care program being trialled* (online), 5 July 2021, available at: <<https://www.childprotection.sa.gov.au/news/dcp-news2/new-foster-care-program-being-trialled>>.

¹⁴¹ Fiona Arney, *Independent Inquiry into Foster and Kinship Care* (2022), recommendation 29.

¹⁴² See, OGCYP, *A rights-based approach to safety*, (n 1), pp 23-24.

Significantly, these decisions have been expressly excluded from both internal reviews and reviews by the South Australian Civil and Administrative Tribunal (SACAT). This means that children and young people are unable to access important procedural rights that they would have in SACAT, including the obligation to provide a reasonable opportunity for a child or young person to personally present their views. In the absence of a legal right and mechanism to provide their voice, important decisions may be made about children and young people without understanding the full impact for their holistic social, emotional, psychological, and cultural wellbeing.

The Guardian was disappointed to note that her advice and recommendation was not mentioned in the *CYP Safety Act Review Report*.

Sibling Contact

In 2022-23, the Guardian had a particular focus on the importance of sibling contact for children and young people in care, and systemic barriers impacting upon sibling relationships.

It is a sad reality that many children and young people in care reside in placements separate from their siblings. At times, this may be necessary for safety reasons or be in the children’s best interests. However, in many cases, it is driven by difficulties in finding placements where siblings can be kept together.



“I have missed half of her life”.

Young Person, aged 15, talking about lack of contact with their sister

The sibling relationship, if nurtured and maintained, can be a source of comfort and support for children and young people both while in care and into adulthood (when the majority of professional relationships cease). For some young people, their relationship with their siblings may be their only ongoing connection they have with their family.

The Guardian continues to advocate strongly for sibling connections to be nurtured and maintained, in accordance with children and young people’s wishes and best interests.

However, significantly, the **word sibling does not appear** once in the *CYP Safety Act* or Regulations. South Australia is the only Australian jurisdiction not

to make any reference to ‘siblings’ in care and protection legislation.

In 2022-23, the Guardian continued to observe sibling contact issues, including with respect to:

- lack of consensus among care team members about children’s voices, needs, and best interests in relation to sibling contact
- limited availability of carers and DCP staff to transport and facilitate contact, as well as the distance between placements and DCP offices
- conflict between carers and other care team members
- logistical and communication issues associated with planning contact for large sibling groups and/or where siblings are case managed by different DCP offices
- prioritisation of other activities and commitments above sibling contact, without sufficiently recognising the potential therapeutic benefits of sibling contact itself.

Sibling contact is the focus of an ongoing Guardian Advocacy Team strategic project which is being progressed as resources and service demands permit.

Case Study: Nick’ – Sibling contact

15-year-old Nick lived in residential care separately from his younger brother, also residing in a residential care placement and case managed by a different DCP office. Nick said it had been over a year since he had seen his brother and that “all last year I was begging for sibling contact, I got a few phone conversations but it’s hard to have phone contact with a little kid with ADHD and Autism as he can’t focus...we have always had a really close bond. He is the one thing in life that has kept me going”. The Guardian advocated to Nick’s brother’s case managers for face-to face sibling contact, in line with their right to have meaningful and regular contact with people who matter to them. Regular face-to-face sibling contact was implemented within a month of this request.

Access to Services

Cross-government Coordination: The State’s Parental Responsibility

A significant area of focus for the Guardian in 2022-23 was the important role of cross-government coordination in ensuring that children and young people in care can access the services and supports they need to grow and thrive.

From a rights-based perspective, the State bears the responsibility for the decision to remove children and young people from their families. This is a heavy responsibility that should not be taken lightly; when it is made, the State becomes the parent for that child or young person. This responsibility cannot be met by a single department but must spread right across government to provide the very best care for those children and young people. This approach is consistent with Article 20 of the *United Nations Convention on the Rights of the Child*, which provides that a child temporarily or permanently deprived of his or her family environment ‘come[s] under the direct responsibility of the State which must provide them with special protection and assistance, including by ensuring that appropriate alternative care is provided.’¹⁴³

The *CYP Safety Act* places the primary responsibility for the safety, welfare and wellbeing of children and young people in care on the Chief Executive of DCP, as their appointed guardian. However, as required by Article 20, the obligation to provide special protection and assistance is not imposed solely on DCP, but the whole of the South Australian government. As depicted in Figure 16 below, there is a wide (and non-exhaustive) range of other agencies who hold significant power to impact upon the lives of children and young people in care.

Figure 16: Relevant agencies exercising responsibilities for children and young people in care



In the Guardian’s submission to the *CYP Safety Act Review*, she noted that current legislation places limited obligations on government departments other than the DCP to support children and young people in care. While there are provisions placing some discrete obligations on other agencies¹⁴⁴ if requested or required by DCP to take particular actions, they do not provide a comprehensive articulation of the broader South Australian government responsibility to work collaboratively across departmental boundaries.

The Guardian acknowledges that there are distinct benefits to establishing a clear central point of legislative responsibility, via the Chief Executive’s guardianship. For example, it limits the potential that disputes about the roles of various agencies and services will result in no-one taking responsibility for the child or young person’s care.

Conversely, the pooling of primary legislative responsibility within a single department masks the overarching responsibility of the South Australian government for children and young people in care. It may also pose a challenge to accessing the full gamut of government services required to meet the holistic social, emotional, health, educational and developmental needs of children and young people in care.

In the Guardian’s experience, both internal and external advocacy can stall due to disputes about funding, responsibility or prioritisation of services for children and young people in care attempting to access already stretched public resources. Examples include DCP case management experiencing issues with achieving (and/or maintaining):

- school enrolments
- ‘Category 1’ status with Housing SA, for young people approaching their transition from care
- access to inpatient mental health treatment for children and young people with intensive mental health needs.

Meeting these needs for children and young people in care requires buy-in from other government agencies. In the absence of specific legislative responsibilities for children, escalation avenues for DCP case management may be limited and require disproportionate resources and collaborative efforts on their part. Ultimately, this leads to poorer

¹⁴³ UNCRC, 2021 Day of General Discussion: Children’s Rights and Alternative Care (Concept note, 2021), p. 4.

¹⁴⁴ See, eg, Children and Young People (Safety) Act 2017, ss 33, 111, 150.

outcomes, arising from bureaucratic barriers and disputes that are inconsistent with overarching policy aims for children and young people in care.

Where this occurs, it is also an example of inter-governmental barriers the DCP faces to providing fulsome care and support to help children and young people recover and heal from trauma. In addition to recommending a priority, the Guardian’s submission to the legislative review of the *CYP Safety Act* noted the importance of anti-discrimination law for protecting children and young people’s right to equality and recommended consideration be given to associated amendments to the *Equal Opportunity Act 1975*, to make a child or young person’s care status a legislative ‘attribute’ which protects them from discrimination.

The Guardian was pleased to note the recommendation in the *CYP Safety Act Review Report* to adopt a public health framework for child protection services, in addition to considering a scheme for priority access to government services for care leavers.¹⁴⁵ This was consistent with a relevant recommendation made by the Guardian.¹⁴⁶

Mental Health

Children and young people in care have often experienced significant trauma in their life. It is well established in research that adverse childhood events can exacerbate or trigger psychiatric illnesses including depression, anxiety, schizophrenia-type conditions and psychosis.¹⁴⁷ As such, it is essential to ensure that children and young people in care have access to comprehensive, wrap-around supports. Wherever possible, these should be community-based supports. However, there are times where in-patient treatment for acute mental health presentations is the most appropriate support; particularly, where children and young people would otherwise be unsafe in the context of high-risk self-harm and suicidal ideation and behaviours.



“I need [the Mallee] Ward - I need that help”.

Young Person, aged 15

Over some years, the Guardian’s office has become aware of instances where particular young people in care have experienced severe mental ill-health, such as active psychosis, accompanied by high-level risky behaviour such as self-harm, aggression and/or severe self-neglect, but there has been considerable doubt about their access to adequate assertive treatment.

The Guardian (and her predecessor) has reported on these issues in previous years. In 2022-23, these concerns continued, with relevant issues at both individual and systemic levels including:

- concerning attitudes and comments made by mental health care staff that are not consistent with trauma-informed practice
- tension between hospital and community-based mental health care staff, sometimes complicating decision-making and dynamics surrounding the care of young people
- disorganisation and a lack of care team consultation surrounding the discharge of young people, sometimes resulting in incidents and high-risk conditions upon discharge
- young people being treated for physical self-harm injuries but not assessed with relation to their mental health
- admission for in-patient mental health care treatment not being offered, with limited other assistance or alternatives provided.



“No one knows how much pain I’m in”.

Young Person, aged 15

These concerns are consistent with an investigation conducted by the Office of the Chief Psychiatrist (OCP) into the assessment, treatment, management and disposition of children and young people presenting to the Women’s and Children’s Hospital Emergency Department for mental health. The OCP’s report¹⁴⁸ indicates the complaints reviewed during the investigation were associated with:

¹⁴⁵ Government of South Australia, DCP, Review of the Children and Young People (Safety) Act 2017 Report (2023) pp 33-4.

¹⁴⁶ OGCYP, A rights-based approach to safety (n 1), p 42.

¹⁴⁷ Malvaso et al, ‘Adverse Childhood experiences and trauma among young people in the youth justice system’ (2022) 651 *Trends & issues in crime and criminal justice* 1, p 12.

¹⁴⁸ Office of the Chief Psychiatrist, Investigation by Office of the Chief Psychiatrist – Women’s and Children’s Hospital – Parents for Change Complaint Response (2022), p 11.

- early discharge and concern from parents that a ward or ED discharge occurred without clear preparation and support
- children presenting with mental health concerns were sent home via taxi, with parents concerned about safety of their children in these circumstances (two instances)
- children were not assessed with relation to their mental illness while in the emergency department (three instances)
- mental health admission for children – parents were told that the ward was not appropriate for their child, but no other assistance or alternatives were provided
- parents were distressed that those with disability and a comorbid mental illness or emotional distress were not treated with the same understanding as those who are neurotypical
- concerns that children’s self-harming or suicidality were not treated (several instances).

The OCP reported that:

- there was a lack of documentation as to why patients were declined admission
- there was no current assertive or emergency mental health service (and all patients and families reviewed as part of the report attended the WCH ED looking for assertive and urgent crisis intervention)
- the WCH EMH team (Emergency Mental Health Team) provide mental health assessments in the ED setting and they are not a service designed to offer urgent treatment for patients with highly complex needs and to then determine a comprehensive discharge plan and follow up. Their inability to refer to a more assertive team appears to block their ability to provide discharge plans that meet the need of these patients
- Mallee Ward was not at full inpatient capacity at any time during the preparation of the OCP’s report. The Mallee Ward also has a high dependency unit (HDU). This should allow the ward to admit patients who require more assertive observation, assessment, and treatment. It was unclear why this is not being used for this purpose

- in six of the six cases, it was not apparent that the expectations of care described in the WCH website had been met.

The OCP’s report was finalised in September 2022 and the Guardian supports the recommendations made.

Although the CAMHS Model of Care for the Mallee Ward¹⁴⁹ outlines children under the guardianship of the DCP CE are one of the Mallee Ward’s three priority population groups, and that they are particularly considered for inpatient care in line with their immediate acuity, this is not supported by the Guardian’s observations regarding the Mallee Ward’s response to guardianship children.

The Guardian’s concerns have been raised with the Women’s and Children’s Health Network (WCHN), and she will continue discussions with WCHN in 2023-24.

Community-based supports

As reported in previous years, the Guardian continues to note challenges in accessing community mental-health supports, primarily due to skilled shortages for child psychologists and psychiatrists (particularly in regional and remote areas).

While acknowledging these challenges and the need for broader government strategies to improve service availability, it is important not to underestimate the positive impact of engagement with more widely available services such as youth counselling and general practitioner support. The Guardian has observed, at times, that the significant challenges in putting specialist supports in place can lead to a sense of desensitisation and acceptance of highly concerning indicators of declining mental health, including suicidal ideation.

It is confronting, but essential, to acknowledge that there are children and young people in care who die by suicide. Combatting this desensitisation where it seeps into operational practices and care arrangements is essential to suicide prevention. Tragically, this was a matter highlighted in the findings of a coronial inquest published in April 2023, regarding the death of a 13-year-old young man in care in 2016. The Coroner noted that incorrect and missing information in records were contributing factors to an absence of community-based mental health supports in place at the time of his death,

¹⁴⁹ Child and Adolescent Mental Health Service, CAMHS Model of Care: Mallee Ward (2021), p 7-8.

despite a significant history of self-harm and expression of suicidal ideation. The Guardian strongly supports the Coroner’s recommendation to:

- establish a risk register which records all acts or threats of self-harm by a child under the guardianship of the Chief Executive
- with appropriate information sharing arrangements for relevant government agencies
- that is regularly reviewed by an appropriately qualified professional with the ability to assess when a child may require closer assessment of suicidality and/or more intensive therapeutic treatment.

Post-18 Housing and Support

Legislation dictates that, in most cases, young people exit care when they turn 18. Often referred to as ‘aging out’, young people are expected to rapidly leave the child protection system and navigate the adult world, often without guaranteed support. For teenagers not growing up in care, there is more often than not an option to stay under the supportive care of their parents or guardians. This can extend, in contemporary times, well into their twenties. This important time is an opportunity for young adults to learn how to navigate an adult-centric world and associated responsibilities. They do this in a supportive environment, where a mistake is neither a crisis nor a crime. This is fundamental for any person transitioning from being a highly dependent young person to a fully independent adult.

The DCP manual of practice stipulates that transition from care planning should commence at 15 years of age and be an integral part of case management until a young person turns 18 and exits care. Preparing for independent living, from age 15 or earlier, involves basic household skills, like cooking, cleaning, and hygiene. During the course of advocacy matters, the Guardian frequently observes that ‘transition from care plans’ are often not commenced at 15 years, or sometimes even in place for young people aged 17 years and about to leave care.



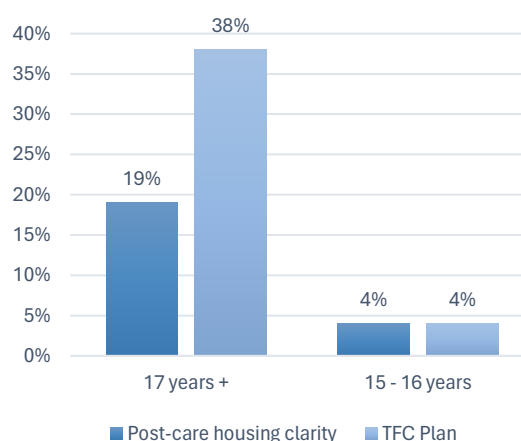
“I’ll be homeless soon”.

Young Person, aged 18

A DCP dataset provided to the Guardian indicates that, in 2022-23, there were 782 children and young

people in care aged 15 – 17 years, but only 442 (56.5%) had a Transition from Care Plan in place. Observations from the CYP Visitor’s program in 2022-23 indicates that this proportion may be lower for children and young people in residential care. As depicted in Figure 17 below, only 38% of young people visited over the age of 17 years had a Transition from Care Plan in place, and only 19% had housing clarity for where they would live after leaving care.

Figure 17: Transition from care planning and post-care housing clarity for young people visited in 2022-23, by age group



This issue was reflected in enquiries to the Guardian’s mandate. In 2022-23, the Guardian received 23 requests for advocacy specific to transition from care planning. At times, Transition from Care Plan issues also emerged during the course of advocacy matters related to other concerns.

Additionally, the Guardian received 11 ‘out-of-mandate’ enquiries from, or about, young people who were already post-care. These included situations where young people:

- were concerned about a lack of transition from care planning prior to leaving care (including reporting that they were not offered post-care accommodation options)
- were at risk of homelessness
- needed financial support (for example, for medical needs)
- needed disability supports (for example, due to depleted NDIS funds)
- had little to no post-care support
- had a pre-existing relationship with the Guardian’s staff and were seeking guidance and advice.

As the Guardian’s mandate only extends to children and young people aged 0 – 17 years, she is unable to provide ongoing advocacy in these circumstances and her services are limited to information and advice about DCP’s legislative responsibility to offer assistance to care leavers,¹⁵⁰ including how they can seek such assistance.

The Guardian notes there is continuing inequity between young people who live in family-based care when they turn 18 (with carer payments continuing to 21, or up to 25 years of age if they are engaged in full-time education), and those placed in non-family-based care to the age of 18 years. The Guardian continues to receive calls from young people living in residential care or supported independent living as they approach 18 years of age who are concerned about incipient homelessness and cessation of support once they reach that age. In some instances, post-18 housing had not been sourced at the time the young person was due to exit care due to a chronic shortage of housing options.

At the end of this reporting year, more than 40 young people remained living in residential care after turning 18 while waiting for suitable alternate housing. This impacts on overall residential care placement availability and options for other children and young people needing placements.

The Guardian has advocated successfully for post-18 placement extensions for several young people and continued provision of casework support until suitable housing and post-18 support is sourced.

An additional problem is that waiting lists for post-care support services from Relationships Australia South Australia and Centacare’s Next Steps Program (available for young people in care from the age of 17-and-a-half years to the age of 21) mean that support will not be available (due to limited program resources and functioning at capacity).



“I bet they can’t wait until I turn 18 and I’m not their problem anymore”.

Young Person, aged 16

¹⁵⁰ This obligation extends to young people between 16 and 26 years of age who were at any stage under the custody or guardianship of the DCP CE or the Minister for six months or more: *Children and Young People (Safety) Act 2017*, s 111-12.

About the Office

Finances 2022-23

Financial services are provided by the Department for Education. The financial operations of the Office of the Guardian for Children and Young People are consolidated into and audited through the Department for Education. Budget for the Training Centre Visitor and Child and Young Person's Visitor programs are also provided below.

Summary of Expenditure

Table 14: Expenditure (Project 996): Guardian for Children and Young People

Item	Budget ('000)	Actual ('000)	Variation ('00)
Salaries	1,207	1,268	-61
Goods and services	347	323	24
Total	1,554	1,591	-37

Table 16: Expenditure (Project 972): Child and Young Person's Visitor¹⁵¹

Item	Budget ('000)	Actual ('000)	Variation ('00)
Salaries	365	190	175
Goods and services	85	16	69
Total	450	206	244

Table 15: Expenditure (Project 973): Training Centre Visitor (including budget for Youth Treatment Establishment Project)

Item	Budget ('000)	Actual ('000)	Variation ('00)
Salaries	501	474	27
Goods & Services	56	46	10
Total	557	520	37
Revenue (DHS & AGD)	557	557	
Net	0	37	

Executive Employment in the Agency

Table 17: Executive employment

Executive classification	Number of executives
SAES1	1

¹⁵¹ As agreed by the Minister for Child Protection, the \$244,000 underspend will be moved to the end of the current funding, due operationalisation only occurring in the second half of financial year. See the CYP Visitor's 2022-23 Annual Report for further information.

Appendix 1

Unpacking Advocacy

The Guardian's approach to Advocacy is structured to respond to the needs of children and young people while contributing to the overall monitoring of their circumstances in care, ensuring that their voices are heard and considered in decision-making, and that their rights are upheld.



"You pick up when I need to call you".

Young Person, aged 15, talking about their GYCP Advocate

Level 1 Advocacy (Direct)

Level 1 Advocacy (Direct) seeks a quick resolution of the issue/s. Advocates typically speak or write to the relevant local DCP office, to represent and support the child or young person's direct views or request, with the aim of resolving the presenting issue/s early and avoid escalation to the next level.



"I am hoping someone can help me as I have nowhere else to go for help".

Young Person, aged 17

Level 1 Advocacy (Best Interests)

Level 1 Advocacy (Best Interests) also involves speaking or writing to the relevant DCP office, to advocate for the child or young person's best interests. 'Best interests' advocacy can occur without the involvement or consent of the child or young person and without seeking their direct voice if doing so is not possible, or not desirable in prevailing circumstances.

Level 2 Advocacy (Direct)

Level 2 Advocacy (Direct) involves a timely assessment of issues raised by the child or young person (through discussions with relevant stakeholders and access to relevant documentation) and then the development of a formal, written advocacy position that usually is submitted to DCP Executive for consideration. This generally occurs when Advocates have not been able to resolve

issues at the local office level or the matter is considered serious and/or urgent.



"I know you care about me and any other kid that's in danger".

Young Person, aged 15, talking about their GYCP Advocate

Level 2 Advocacy (Best Interests)

Level 2 Advocacy (Best Interests) may occur when either Level 1 Advocacy (Best Interests) has not achieved an appropriate outcome, or where the matter is very serious, complex and/or time sensitive, and therefore requires an immediate, high-level response. This involves the development of a formal, written advocacy position, representing the Guardian's position on the best interests of the child or young person, which is usually submitted to DCP Executive for consideration.

Monitoring (Direct)

In some cases, the Guardian adopt a monitoring role, often in conjunction with, or after, initial or more sustained advocacy. Most commonly, Advocates monitor matters where case direction aligns with the child or young person's views and there is a clear plan about how to resolve these, but there is an identified need to keep an eye on progress. Monitoring involves regular contact with the child or young person and DCP to make sure that the plan is progressed in a timely way and issues are appropriately resolved.



"My social worker has done everything that he can... but little has changed".

Young Person, aged 13

Monitoring (Best Interests)

A Monitoring (Best Interests) role is adopted if it is not possible to gain a child or young person's views, often due to their young age or disability. This form of advocacy frequently arises from Annual Review audits or in conjunction with, or after, initial or more sustained advocacy. A Monitoring (Best Interests) role is most appropriate where there is consensus between the Guardian and DCP (and sometimes other service providers) about how to meet the child or young person's needs and best interests and there is a clear plan to resolve the presenting issue/s. In

this role, Advocates maintain regular contact with DCP (and other stakeholders) to ensure that the plan is progressed in a timely way and the issues are resolved.

Intermediary

The Guardian may assume an intermediary role to facilitate and mediate communication between a child and young person and other parties (such as case managers, other DCP staff, schools or lawyers). The main aim is to build common ground and shared understanding between the child/young person and other parties so that they can work together to solve problems while keeping the focus on the child/young person, their needs and best interests. Sometimes the Guardian acts as an intermediary because the relationship between the child or young person and DCP has become fractured and is hampering communication, involvement of the child or young person in decision-making and, in the end, positive outcomes.



“DCP don’t care about me, they know I have mental health and anger problems and they make me mad on purpose”.

Young Person, aged 16

The intermediary role involves attending meetings and case conferences with, or on behalf of, children and young people to help them to successfully navigate systems in their lives to model life skills in negotiation, assertiveness, and advocacy.

Independent Observer

The South Australian Civil and Administrative Tribunal (SACAT) has jurisdiction to review some DCP decisions under section 62 of the *CYP Safety Act*. This requires that in any proceedings under that Act, a child or young person to whom the proceedings relate must be given a reasonable opportunity to personally present their views related to their ongoing care and protection to the Court. In the Independent Observer role, Advocates may provide support to children and young people to explain the SACAT process to them in a ‘child friendly’ way and to ensure their voice is heard, separate from the views of others such as carers, birth family or DCP. No matters required an Independent Observer role during the 2022-23 financial year.



Guardian
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Young People