

Chapter 11

Option 5—Broadening the Role of the Office of the Child Safety Commissioner



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Option 5—Broadening the Role of the Office of the Child Safety Commissioner

INTRODUCTION

- 11.1 This option deals with ongoing review of the child protection system and the role that the Child Safety Commissioner could play in monitoring the wellbeing of that system.
- 11.2 There was strong support in consultations and submissions for the creation of an independent Children and Young People’s Commissioner for Victoria¹ with responsibility for overseeing the child protection system. As Justice John Fogarty said of the child protection system 17 years ago, ‘[w]e cannot continue to have reviews in Victoria every few years’.²
- 11.3 An independent body with specialist expertise in child protection can play a significant role in highlighting systemic problems in this key area of governmental responsibility. This step may overcome the need for so many external reviews by independent experts and statutory authorities such as the Ombudsman and this Commission.
- 11.4 In this chapter we examine the overarching policy framework for child protection in Victoria, including the current role and functions of the Child Safety Commissioner and the functions of other bodies which have some oversight role in relation to children in the child protection system. The chapter also describes the operations of other children’s commissioners, both within Australia and internationally. Finally, the chapter contains proposals for broadening the role and strengthening the independence of the Child Safety Commissioner.

OVERARCHING POLICY FRAMEWORK

THE GROWING VICTORIA TOGETHER AND A FAIRER VICTORIA POLICY AGENDAS

- 11.5 *A Fairer Victoria*³ and its predecessor *Growing Victoria Together*⁴ are whole-of-government social policy action plans to address disadvantage and promote inclusion and participation. Protection of the state’s most vulnerable children is central to both strategies.⁵
- 11.6 Under the *Growing Victoria Together* policy agenda, the Victorian Government introduced a comprehensive reform program to children, youth and family services, including new legislation in 2005—the *Children Youth and Families Act 2005* (Vic) (CYF Act 2005) and the *Child Wellbeing and Safety Act 2005* (Vic) (CWS Act 2005).⁶ At a policy level, this reform program included the 2006 *Future Directions: An Action Agenda for Young People*⁷ and the 2008 *Vulnerable Youth Framework*.⁸
- 11.7 New service pathways and child protection processes were introduced to support earlier intervention and promote preventative measures for vulnerable children and their families.⁹ As discussed in Chapter 2, these changes were accompanied by measures to oversee administration of children’s services across government, including the establishment of the Child Safety Commissioner, the Victorian Children’s Council and Children’s Services Coordination Board.¹⁰
- 11.8 *A Fairer Victoria: Real Support – Real Gains*¹¹ outlines how recent amendments to the CWS Act 2005 have extended the powers of the Child Safety Commissioner to undertake independent reviews, with the aim of increasing scrutiny and accountability.¹²

THE STATE OF VICTORIA'S CHILDREN: 2006 AND 2008

- 11.9 In October 2006, the Victorian Government released *The State of Victoria's Children 2006*.¹³ The report is published biennially, the most recent being *The State of Victoria's Children 2008*.¹⁴ The report provides an account on how Victorian children and young people (from ages 0 to 18 years) are faring against the whole-of-government outcomes framework, focusing on their health, wellbeing, learning, safety and development.¹⁵ It aims to provide a growing evidence base to assist the Government to shape its policy and programs so that every Victorian child is afforded the opportunity to reach their full potential.¹⁶
- 11.10 *The State of Victoria's Children* draws on statistics from the Victorian Child and Adolescent Outcomes Framework.¹⁷ This framework comprises 35 outcomes of children's health, learning, development, wellbeing and safety, and 150 indicators to measure progress towards the outcomes.¹⁸

THE OFFICE OF THE CHILD SAFETY COMMISSIONER

- 11.11 The Office of the Child Safety Commissioner (OCSC) was established in 2005 by the CWS Act 2005.¹⁹ The Commissioner reports to the Minister for Community Services²⁰ who is required to table the Commissioner's annual report in parliament within 21 days of receipt.²¹
- 11.12 The Child Safety Commissioner is appointed by the Premier for a specified period and can be removed from office by the Premier.²² The current incumbent was appointed as the inaugural Commissioner in 2005 for an initial period of three years. The Commissioner was reappointed for a five-year term in May 2008.
- 11.13 Section 18 of the CWS Act 2005 stipulates that the Child Safety Commissioner is to be employed under Part 3 of the *Public Administration Act 2004* (Vic). Section 11 of Part 3 outlines the employment conditions for public employees, including those of an administrative office.²³ Unlike the heads of other statutory bodies within the Human Services and Health portfolios, such as the Health Services Commissioner²⁴, the Disability Services Commissioner,²⁵ and the President of the Mental Health Review Board,²⁶ the Child Safety Commissioner is not appointed by the Governor in Council.

- 1 Submissions 33 (Youthlaw), 36 (FLS), 38 (VALS), 41 (Australian Childhood Foundation), 43 (VCOSS & YACVic), 44 (CHP), 45 (FCLC). Some of these submissions also raised issues with regards to an advocacy role for children; we discuss this further in Chapter 3.
- 2 Justice Fogarty, *Protective Services for Children in Victoria: A Report* (1993) 4.
- 3 Relevant reports include: Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Real Support – Real Gains* (2010); Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Strong People Strong Communities* (2008); Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Progress and Next Steps* (2006); Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Creating Opportunity and Addressing Disadvantage* (2005).
- 4 Department of Premier and Cabinet (Victoria), *Growing Victoria Together: Innovative State. Caring Communities.* (2001).
- 5 Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Creating Opportunity and Addressing Disadvantage* (2005) 17–19; Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Progress and Next Steps* (2006) 14, 16, 88, 92; Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Strong People Strong Communities* (2008) 21, 23, 25, 33; Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Real Support – Real Gains* (2010) 20, 28–31; Department of Premier and Cabinet (Victoria), *Growing Victoria Together*, above n 4, 10.
- 6 This includes the White Paper which was the precursor to the 2005 legislative changes published by the Office for Children, Department of Human Services (Victoria), *Protecting Children ... The Next Steps* (2005).
- 7 Department of Planning and Community Development (Victoria), *Future Directions: An Action Agenda for Young Victorians* (2006).
- 8 Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Strong People Strong Communities*, above n 5.
- 9 The roles and responsibilities of all agencies are discussed in further detail below.
- 10 Department of Education and Early Childhood Development (Victoria), *The State of Victoria's Children 2008: Reporting on How Children and Young People are Faring* (2009) 84.
- 11 Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Real Support – Real Gains*, above n 5. An annual report assessing the achievements of *A Fairer Victoria* is published by the Department of Premier and Cabinet. See above n 3 for the names of previous relevant reports.
- 12 Department of Premier and Cabinet (Victoria), *A Fairer Victoria: Real Support – Real Gains*, above n 5, 28. See below for a description of the additional functions as provided by the *Children Legislation Amendment Act 2009* (Vic).
- 13 Department of Human Services (Victoria), *The State of Victoria's Children Report 2006: Every Child Every Chance* (2006).
- 14 *The State of Victoria's Children 2008* is published by the Department of Education and Early Childhood Development in collaboration with the Department of Human Services, the Department of Planning and Community Development, the Department of Transport, the Department of Justice (including Victoria Police). See Department of Education and Early Childhood Development (Victoria), *The State of Victoria's Children 2008*, above n 10.
- 15 Department of Education and Early Childhood Development (Victoria), *The State of Victoria's Children 2008*, above n 10, i.
- 16 Ibid.
- 17 The Victorian Child and Adolescent Outcomes Framework is monitored by the Victorian Child and Adolescent Monitoring System.
- 18 Department of Education and Early Childhood Development (Victoria), *The State of Victoria's Children 2008*, above n 10, 3.
- 19 *Child Wellbeing and Safety Act 2005* (Vic) s 18.
- 20 *Child Wellbeing and Safety Act 2005* (Vic) s 41(1).
- 21 *Child Wellbeing and Safety Act 2005* (Vic) s 41(2).
- 22 Under s 12(2) of the *Public Administration Act 2004* (Vic) the Premier, on behalf of the Crown, may employ a person as a Department Head or Administrative Office Head.
- 23 Under s 11 of the *Public Administration Act 2004* (Vic) the Office of the Child Safety Commissioner is an administrative office (there are currently 9 administrative offices in Victoria).
- 24 *Health Services (Conciliation and Review) Act 1987* (Vic) s 5(2).
- 25 *Disability Act 2006* (Vic) s 14(2).
- 26 *Mental Health Act 1986* (Vic) sch 1, cl 1(a).

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11.14 The recently published Ombudsman’s report into out-of-home care observed that ‘the Child Safety Commissioner is the only such body in Australia unable to table a special report to Parliament on issues arising from his functions’.²⁷

FUNCTIONS OF THE COMMISSIONER

11.15 The functions of the Child Safety Commissioner are listed in section 19 of the CWS Act 2005. They include:

- to provide advice and recommendations to the Minister about child safety issues, at the request of the Minister²⁸
- to promote child-friendly and child-safe practices in the Victorian community²⁹
- the functions relating to working with children³⁰
- the functions relating to the monitoring of out-of-home care services³¹
- the functions relating to inquiries into child deaths and child safety³²
- any other functions conferred on the Child Safety Commissioner under this Act or any other Act.³³

11.16 The CYF Act 2005 was amended in 2009 to add an inquiry function relating to child safety.³⁴ The Minister may recommend that an inquiry be conducted in relation to ‘a child protection client’³⁵ if the Minister believes a review will help improve child protection practices and enhance child safety.³⁶ The object of an inquiry under this section is ‘to promote continuous improvement and innovation in policies and practices relating to child protection’.³⁷

RELATIONSHIP OF OCSC WITH OTHER CHILDREN’S AGENCIES AND BODIES

VICTORIAN CHILDREN’S COUNCIL

11.17 The CWS Act 2005 also established the Victorian Children’s Council (the Council).³⁸ The Council consists of the Child Safety Commissioner and at least eight other members with expert knowledge of policies and services that enhance the health, wellbeing, development or safety of children.³⁹ Like the OCSC, the Council has a particular focus on children who are vulnerable and at risk of poor outcomes.⁴⁰ The Council also advises the government on all matters relating to children from ages 0 to 18 years.⁴¹

11.18 The Council provides the Premier, the Minister for Children and Early Childhood Development and the Minister for Community Services with independent and expert advice concerning policies and services that enhance the health, wellbeing, development and safety of children.⁴² The Council has a role in forward planning and assists departments across government ‘to build a stronger evidence base and understanding of how to improve child outcomes and opportunities’.⁴³

CHILDREN’S SERVICES COORDINATION BOARD

11.19 In addition to the OCSC and the Council, the CWS Act 2005 also established a Children’s Services Coordination Board (the Board).⁴⁴

11.20 The interdepartmental Board consists of a range of key decision makers across government to ensure the coordination of activities affecting children.⁴⁵ Members include the Chief Commissioner for Police and the Secretaries of the Departments of Premier and Cabinet, Treasury and Finance, Education and Early Childhood Development, Human Services, Planning and Community Development and Justice.⁴⁶

11.21 The Board considers the methods to deal with cross-portfolio issues influencing children’s policy.⁴⁷ This includes considering how to best deal with the coordination of different cross-government programs,⁴⁸ as well as reviewing and reporting annually to the Minister on government actions affecting children, particularly vulnerable children.⁴⁹

THE VICTORIAN CHILD AND ADOLESCENT MONITORING SYSTEM

11.22 The Victorian Child and Adolescent Monitoring System (the Monitoring System) provides a comprehensive overview of the way in which the service system, the community and the family all interact to determine the wellbeing of children.⁵⁰ The aim is to provide a sound basis for government planning and intervention in order to ensure children are consistently given a higher priority across all levels of government to improve their safety, health, development, learning and wellbeing.⁵¹

11.23 The Monitoring System was established to provide government with information through systematically monitoring how children are faring from birth to adulthood.⁵² The data is intended to inform the government on how best to prioritise issues and allocate resources.⁵³

11.24 The outcomes associated with child protection are encompassed in indicator 20, which relates to ‘The Family: Key Outcome: Free from Abuse and Neglect’⁵⁴ and specifies the requirement to monitor the rate of substantiated child abuse, rate of children on child protection orders and rate of children in out-of-home care.⁵⁵

ROLE OF VICTORIAN OMBUDSMAN IN RELATION TO CHILDREN AND CHILD PROTECTION

11.25 The Ombudsman may conduct an investigation on his own motion or following a complaint.⁵⁶ At any time, either House of Parliament or a joint committee of both Houses may refer any matter—other than a matter concerning a judicial proceeding—to the Ombudsman for investigation and report.⁵⁷ Since 2004, the Ombudsman has prepared a discussion paper and undertaken three investigations about matters relating to child protection, two of which have been ‘own motion’ inquiries into aspects of the Victorian child protection scheme.⁵⁸

27 Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection—Out of Home Care* (2010) 121.

28 *Child Wellbeing and Safety Act 2005* (Vic) s 19(a).

29 *Child Wellbeing and Safety Act 2005* (Vic) s 19(b).

30 *Child Wellbeing and Safety Act 2005* (Vic) s 19(c). See also ss 24–8.

31 *Child Wellbeing and Safety Act 2005* (Vic) s 19(d). See also ss 29–32.

32 *Child Wellbeing and Safety Act 2005* (Vic) s 19(e). See also ss 33–33A.

33 *Child Wellbeing and Safety Act 2005* (Vic) s 19(f).

34 *Children Legislation Amendment Act 2009* (Vic) s 12. Refer below for an argument provided by the Ombudsman as to why these additional functions are inadequate.

35 Under s 33A(5) of the *Child Wellbeing and Safety Act 2005* (Vic), a child is a ‘child protection client’ if the child is the subject of a report under ss 28, 33(2), 183 or 184 of the *Children, Youth and Families Act 2005* (Vic). Section 28 of the *Children, Youth and Families Act 2005* (Vic) refers to where a person has a significant concern for the wellbeing of a child and has made a report to the Secretary. Section 33(2) provides for community-based child and family services to make reports to the Secretary where it is considered that a child is in need of protection. Section 183 refers to a report to the Secretary or a member of the police force made by any person who believes on reasonable grounds that a child is in need of protection. Section 184 stipulates that a mandatory reporter must make a report to the Secretary if they form the belief on reasonable grounds that a child is in need of protection.

36 *Child Wellbeing and Safety Act 2005* (Vic) s 33A(1).

37 *Child Wellbeing and Safety Act 2005* (Vic) s 33A(3).

38 *Child Wellbeing and Safety Act 2005* (Vic) s 8.

39 *Child Wellbeing and Safety Act 2005* (Vic) s 9(3).

40 Department of Education and Early Childhood Development (Victoria), *Victorian Children’s Council* (2010) <www.education.vic.gov.au/about/directions/children/vcc.htm> at 28 June 2010.

41 *Ibid.*

42 *Child Wellbeing and Safety Act 2005* (Vic) s 10(1).

43 Department of Education and Early Childhood Development (Victoria), *Victorian Children’s Council*, above n 40.

44 *Child Wellbeing and Safety Act 2005* (Vic) s 13.

45 Department of Education and Early Childhood Development (Victoria), *Children’s Services Coordination Board* (2010) <www.education.vic.gov.au/about/directions/children/cscb.htm> at 28 June 2010.

46 *Ibid.* See also *Child Wellbeing and Safety Act 2005* (Vic) s 14. It was through the Children’s Services Board that the government departments were able to endorse 150 Victorian Child and Adolescent Monitoring System indicators.

47 Department of Education and Early Childhood Development (Victoria), *Children’s Services Coordination Board*, above n 45.

48 *Ibid.* This function is related to s 15(b) of the *Child Wellbeing and Safety Act 2005* (Vic).

49 *Child Wellbeing and Safety Act 2005* (Vic) s 15(a).

50 Department of Education and Early Childhood Development (Victoria), *Building a Monitoring System* (2010) <www.education.vic.gov.au/about/directions/children/vcams/default.htm#H2N1000B> at 28 June 2010.

51 *Ibid.*

52 *Ibid.*

53 *Ibid.*

54 Department of Education and Early Childhood Development (Victoria), *Indicators from the Victorian Child and Adolescent Monitoring System—January 2009* (2009) <www.eduweb.vic.gov.au/edulibrary/public/govrel/Policy/children/vcams150indicators.pdf> at 28 June 2010.

55 *Ibid.* 5.

56 *Ombudsman Act 1973* (Vic) s 14(1).

57 *Ombudsman Act 1973* (Vic) s 16(1).

58 These are the: Office of the Victorian Ombudsman, *Discussion Paper: Improving Responses to Sexual Abuse Allegations* (2005); Office of the Victorian Ombudsman, *Improving Responses to Allegations Involving Sexual Assault* (2006); Office of the Victorian Ombudsman, *Own Motion Investigation into the Department of Human Services Child Protection Program* (2009); Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection—Out of Home Care* (2010).

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11.26 The decision to launch an own motion investigation is generally undertaken following the identification of consistent themes in complaints lodged to the Ombudsman's office, or subsequent to findings made in an earlier investigation. The Ombudsman's reports in 2009 and 2010 are examples of this use of the own motion investigation power. Child protection matters also featured in the 2007,⁵⁹ 2008⁶⁰ and 2009⁶¹ Ombudsman's *Annual Reports*.

OMBUDSMAN'S CRITICISMS OF THE CURRENT OCSC MODEL

11.27 In the 2009, *Own Motion Investigation into the Department of Human Services Child Protection Program* (2009) the Ombudsman identified limitations to the role of the Child Safety Commissioner.⁶² The Ombudsman reiterated similar concerns in the 2010 report, *Own Motion Investigation into Child Protection: Out of Home Care* (2010) commenting that the limitations include:

- a lack of coercive powers to investigate matters, therefore relying on the cooperation of the Department and other agencies to perform functions
- the ability to table only an annual report (the Victorian Child Safety Commissioner being the only Children's Commissioner type body in Australia unable to table a 'special report')
- that the Commissioner reports directly to the responsible Minister.⁶³

11.28 The Ombudsman argued that '[s]uch limitations to the role do not provide for the necessary independent scrutiny of the out-of-home care system'.⁶⁴

11.29 Further, the Ombudsman noted that the Child Safety Commissioner does not have a role in advocating on behalf of individual children.⁶⁵ The Ombudsman did not recommend any specific changes to the Commissioner's role, but focused on 'alternative approaches'. This included recommending that the 'Minister for Community Services examines mechanisms which would provide a greater level of scrutiny and transparency to the *out-of-home care* program'.⁶⁶

11.30 The Secretary responded to this recommendation:

*The principle of appropriate scrutiny and transparency of the OOHC [out of home care system] is supported. The Minister for Community Services will consider the report in detail and the department will scope options and mechanisms for enhancing appropriate levels of scrutiny and transparency in OOHC.*⁶⁷

VIEWS IN CONSULTATIONS AND SUBMISSIONS

11.31 The third option identified in the Commission's Information Paper was the creation of an independent statutory commissioner with some of the functions currently performed by the Department. The Commission asked questions about a number of functions that could be undertaken by a new statutory commissioner, including the carriage of proceedings and responsibility for guardianship of a child or young person found to be in need of protection. This option has been refined following further research and consultation and is dealt with in Chapter 9.

11.32 Many submissions called for an independent statutory body to advocate for children and young people.⁶⁸ The Australian Childhood Foundation argued for the establishment of an independent Child Protection Inspectorate to regularly inspect, audit and review the effectiveness of all state-run children's services, child protection systems and out-of-home care.⁶⁹

- 11.33 The Youth Affairs Council of Victoria (YACVic) and the Victorian Council of Social Service (VCOSS) proposed the creation of an independent Children and Young People's Commission in Victoria.⁷⁰ YACVic and VCOSS⁷¹ said that while they welcomed the appointment of an Advocate for Children in Care in 2004 (replaced by the OCSC in 2005), 'models have fallen short of what is needed to effect systematic change to better protect the rights and interests of all children and young people in Victoria'.⁷²
- 11.34 Both the Federation of Community Legal Centres and the Council to Homeless Persons supported the establishment of an independent statutory commission with responsibility for protecting and promoting the rights of all children and young people at a state level, subject to further evidence of the effectiveness of models in other jurisdictions.⁷³
- 11.35 The Victorian Aboriginal Legal Service Cooperative Limited (VALS) submission highlighted the need for an independent statutory commissioner, but argued that this would also require an appropriately resourced Aboriginal Child Safety Commissioner.⁷⁴ VALS directed the Commission towards previous calls for an Aboriginal Social Justice Commissioner and argued that this is integral to the long-term empowerment of Aboriginal people.⁷⁵
- 11.36 Some submissions that supported a Children and Young Person's Commission did not want the commissioner to have a role in individual cases, saying that any commissioner should 'have the responsibility of promoting rights of all children and young people at state level'.⁷⁶
- 11.37 A number of submissions highlighted a lack of accountability within the current Department structure. The Federation of Community Legal Centres believed that the Department's problems were compounded by 'a lack of meaningful and independent oversight'.⁷⁷ The Federation further argued that there must be greater scope to hold the Department 'accountable for failures to provide appropriate support to families or to work in accordance with the principles outlined in the Act'.⁷⁸ Other community legal centres and agencies echoed these views.⁷⁹

- 59 Office of the Victorian Ombudsman, *Annual Report: 2007* (2007) 18–19, 33.
- 60 Office of the Victorian Ombudsman, *Annual Report: 2008* (2008) 47–9.
- 61 Office of the Victorian Ombudsman, *Annual Report: 2009* (2009) 28–32, 35–6.
- 62 Office of the Victorian Ombudsman, *Own Motion Investigation into the Department of Human Services Child Protection Program* (2009) 15, 120–1.
- 63 Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection—Out of Home Care*, above n 27, 119, 121.
- 64 Ibid 121.
- 65 Ibid. The Commission addresses this concern in Chapter 9.
- 66 Ibid 126.
- 67 Ibid.
- 68 As noted previously these were submissions 33 (Youthlaw), 36 (FLS), 38 (VALS), 41 (Australian Childhood Foundation), 43 (VCOSS & YACVic), 44 (CHP), 45 (FCLC). As also noted previously, some of these submissions raised issues with regards to an advocacy role for children. We discuss this further in Option 3.
- 69 Submission 41 (Australian Childhood Foundation).
- 70 Submission 43 (VCOSS & YACVic).

- 71 The combined submission of Victorian Council of Social Service and Youth Affairs Council of Victoria cited the model put forward in the *Are You Listening to Us?* Discussion Paper. This consisted of the following functions: involvement and engagement of young people; perform an advocacy role; monitor policies and practices; initiate and conduct inquiries; report and make recommendations to parliament; provide information referral and assistance to complaints; research critical issues; promote models of child and youth participation in decision making; apply for standing before the court in special selected cases involving the rights of children and young people; form partnerships with other statutory bodies. See submission 43 (VCOSS & YACVic).
- 72 Ibid.
- 73 Submission 44 (CHP), 45 (FCLC).
- 74 Submission 38 (VALS).
- 75 Ibid.
- 76 Submission 38 (VALS); similar claims were made in submissions 43 (VCOSS & YACVic), 45 (FCLC).
- 77 Submission 45 (FCLC).
- 78 Ibid.
- 79 Submission 38 (VALS), 26 (FVPLS Victoria), 39 (VACCA).

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PREVIOUS REVIEWS

- 11.38 Previous reviews of Victoria's child protection system have called for the establishment of a children's commissioner with statutory oversight powers.⁸⁰
- 11.39 In 2001, this idea was restated in YACVic's discussion paper, *Are You Listening to Us?*⁸¹ The paper presented a case for a Victorian Children and Young People's Commission.⁸² YACVic argued that there was a need to improve the status of children and young people in the community.⁸³ The proposal outlined the commissioner's role as having a unique ability to protect and promote the rights of children and young people at a state level, and envisaged a broad overview function.⁸⁴ The role of the new Commission, according to YACVic's model, would complement those bodies already in place, namely the Ombudsman and the Equal Opportunity Commission, but would focus on the interests of children and young people and advocate for and improve their status within the community.⁸⁵
- 11.40 Additional support for a children's commissioner came in 2003, from the former President of the Children's Court, Judge Jennifer Coate.⁸⁶ Judge Coate argued that a commissioner should report directly to parliament and be independent of government.⁸⁷ Further, Judge Coate emphasised the importance of the Commission having the power to scrutinise legislation affecting children and young people so that it complies with the *United Nations Convention on the Rights of the Child* (CROC).⁸⁸
- 11.41 In 2004, the Kirby Report suggested that a Children and Young Person's Commissioner was necessary to increase the accountability of the child protection system.⁸⁹ The establishment of the OCSC went some way to fulfilling the recommendations of the Kirby Report. The Fitzroy Legal Service submitted that the powers vested in the Child Safety Commissioner by the CWS Act 2005 were limited and did not promote the level of accountability required to achieve full independence and meaningful external review.⁹⁰

THE OFFICE OF THE PUBLIC ADVOCATE

- 11.42 When considering the establishment of a statutory authority with oversight and monitoring responsibilities, it is useful to consider existing Victorian bodies with similar functions. The Office of the Public Advocate (OPA) was established nearly a quarter of a century ago with important oversight and advocacy functions for people with a disability.⁹¹
- 11.43 OPA's functions under the *Guardianship and Administration Act 1986* (Vic) include:
- to promote, facilitate and encourage the provision, development and coordination of services and facilities provided by government, community and voluntary organisations for people with a disability⁹²
 - to support the establishment of organisations involved with people with a disability and their relatives, guardians and friends⁹³
 - to arrange, coordinate and promote informed public awareness and understanding by the dissemination of information⁹⁴
 - to investigate, report and make recommendations to the Minister on any aspect of the operation of the Act referred to OPA by the Minister.⁹⁵

11.44 OPA is a statutory body within the Attorney General's portfolio.⁹⁶ The Public Advocate is appointed by the Governor in Council and holds office for a period of seven years.⁹⁷ The Public Advocate may be removed from office by the Governor in Council only following a resolution by both Houses of Parliament that the Public Advocate be removed from office.⁹⁸

OTHER AUSTRALIAN AND INTERNATIONAL MODELS

11.45 This section contains information about children and young people's commissions in other Australian states and territories, New Zealand, Scotland, and England and Wales. There is a comparative table at Appendix S.

AUSTRALIAN CAPITAL TERRITORY—ACT CHILDREN AND YOUNG PEOPLE COMMISSIONER

11.46 The ACT Children and Young People Commissioner was established in 2006⁹⁹ and forms part of the ACT Human Rights Commission. The Commissioner's functions include:

- providing a process for resolving complaints
- contributing to the review and improvement of service quality
- identifying and reviewing inquiries into complaints under the Act
- reporting to or advising the Minister accordingly.¹⁰⁰

11.47 The Commissioner is able to investigate and decide individual complaints.¹⁰¹

11.48 The Children and Young People Commissioner is not subject to the direction of anyone in relation to the exercise of a function, except that he or she must comply with the Minister's directions to inquire into and report on a matter that is the subject of a complaint under the Act.¹⁰²

11.49 The Commissioner reports to the Minister for the Department of Justice and Community Safety¹⁰³ and is required to report annually to parliament.¹⁰⁴ The Commissioner may be appointed for a term no longer than five years and may be removed from office for reasons including misbehaviour and contravening territory law.¹⁰⁵

80 The Norgard Committee recommended the establishment of a commissioner in 1976: Committee of Enquiry into Child Care Services in Victoria, *Report* (1976) 30. See also Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No 84 (1997) 148–50. *Seen and Heard* refers to numerous submissions received by the ALRC and past literature written about the need to establish a national commissioner for children. More recent calls have been made; these include: Australian Law Reform Commission, 'Children and Young People' (2008) 92 *Reform*; Australian Human Rights Commission, 'A National Children's Commissioner would Improve Protection of Children's Rights' (Media Release, 12 May 2010) 1; Sarah Hanson-Young, Australian Greens, 'It's Time To Give Our Kids Real Protection' (Media Release, 21 April 2010) 1; Jason Silverii, 'A Voice for the Children' (2003) *Law Institute Journal* 28, 28.

81 Youth Affairs Council of Victoria, *Are You Listening to Us? The Case of a Victorian Children and Young People's Commission* (2001). YACVic is the peak body and leading policy advocate on young people's issues in Victoria.

82 At that point there were Children and Young People Commissioners/Guardians in NSW, Queensland and Tasmania.

83 Youth Affairs Council of Victoria, above n 81, 4.

84 *Ibid.*

85 The principles of the proposed model included the importance of the Commission possessing independent statutory powers, an age remit of 0–18 years, adequate resources, accessibility for children, and a broad perspective and jurisdiction, taking into account government, non-government and commercial organisations.

86 Silverii, above n 80, 28.

87 *Ibid.*

88 *Ibid.*

89 Arie Freiberg, Peter Kirby and Lisa Ward, *The Report of the Panel to Oversee the Consultation on Protecting Children: The Child Protection Outcomes Project* (2004) 30.

90 Submission 36 (FLS).

91 *Guardianship and Administration Act 1986* (Vic) s 15.

92 *Guardianship and Administration Act 1986* (Vic) s 15(a).

93 *Guardianship and Administration Act 1986* (Vic) s 15(b).

94 *Guardianship and Administration Act 1986* (Vic) s 15(c).

95 *Guardianship and Administration Act 1986* (Vic) s 15(d).

96 Office of the Public Advocate, *About Us* (2010) <www.publicadvocate.vic.gov.au/about-us/> at 28 June 2010.

97 *Guardianship and Administration Act 1986* (Vic) sch 3, cl 1(1).

98 *Guardianship and Administration Act 1986* (Vic) sch 3 cl 1.

99 *Human Rights Commission Act 2005* (ACT) s 12(1)(a).

100 *Human Rights Commission Act 2005* (ACT) s 14.

101 House of Representatives Standing Committee on Education and Training, Parliament of Australia, *Adolescent Overload? Report of the Inquiry into Combining School and Work: Supporting Successful Youth Transitions* (2009) Appendix E, 4.

102 *Human Rights Commission Act 2005* (ACT) ss 16–17.

103 *Human Rights Commission Act 2005* (ACT) s 17.

104 *Human Rights Commission Act 2005* (ACT) s 14(f).

105 *Human Rights Commission Act 2005* (ACT) s 29.

Option 5—Broadening the Role of the Office of the Child Safety Commissioner

NEW SOUTH WALES—THE NSW COMMISSION FOR CHILDREN AND YOUNG PEOPLE

- 11.50 The NSW Commission for Children and Young People was established in 1998.¹⁰⁶ The Commission is an independent statutory office and reports annually to the Presiding Officer of each House of Parliament.¹⁰⁷ The Governor appoints the Commissioner for a term not exceeding five years and the Commissioner may be removed from office for misbehaviour, incapacity or incompetence.¹⁰⁸
- 11.51 The Committee on Children and Young People is a joint parliamentary committee that monitors and reviews the work of the Commission and reports its findings and recommendations to parliament.¹⁰⁹ The Committee also reports on trends and changes in services affecting children.¹¹⁰
- 11.52 The overarching role of the Commission is to promote the safety and wellbeing of children and young people.¹¹¹ The Commission's functions include:
- monitoring complaints
 - conducting special inquiries at the request of the Commission or the Minister
 - providing information and advice to assist children and young people
 - conducting, promoting and monitoring training, public awareness and research on issues affecting children.¹¹²
- 11.53 The Commission does not deal directly with complaints or concerns about individual children.¹¹³

THE NSW CHILDREN'S GUARDIAN

- 11.54 The NSW Children's Guardian was established to promote and safeguard the best interests of all children and young people in out-of-home care.¹¹⁴ The Children's Guardian also has a role to accredit designated agencies and monitor their responsibilities under the *Children and Young Persons (Care and Protection Act) 1998 (NSW)*.¹¹⁵
- 11.55 The Children's Guardian also has the authority to remove the responsibility for daily care and control of a child or young person from an authorised person,¹¹⁶ as well as the power to apply to the Children's Court at any time for the rescission or variation of any order made under the Act by the Court.¹¹⁷ The Children's Guardian is able to investigate individual complaints that relate to protected or otherwise vulnerable children.¹¹⁸

NORTHERN TERRITORY—CHILDREN'S COMMISSIONER

- 11.56 The Children's Commissioner for the Northern Territory was established in 2008 under the *Care and Protection of Children Act 2007 (NT) (CPC Act 2007)*.¹¹⁹ The Commissioner reports to the Minister for Child Protection.¹²⁰ The Commissioner is an independent statutory officer appointed by the Administrator for a period not exceeding five years.¹²¹ The Administrator may suspend the Commissioner on the grounds of misbehaviour or physical or mental incapacity¹²² and must terminate the Commissioner's appointment for reasons including bankruptcy.¹²³
- 11.57 The functions of the Children's Commissioner include investigating complaints about services provided to protected children and monitoring the administration of the CPC Act 2007 in relation to the protection of children.¹²⁴
- 11.58 The Commissioner is not subject to the direction of anyone in relation to the way in which the functions of the Commissioner are performed or the order of priority the Commissioner gives to investigations.¹²⁵

QUEENSLAND—COMMISSION FOR CHILDREN AND YOUNG PEOPLE AND CHILD GUARDIAN

11.59 The Queensland Commission for Children and Young People and Child Guardian was established in 2000.¹²⁶ The Commissioner or Guardian is an independent statutory officer appointed by the Governor¹²⁷ for a period not exceeding five years.¹²⁸ The Minister may remove the Commissioner from office for incapacity or misbehaviour.¹²⁹

11.60 The functions of the Commissioner include:

- a broad advocacy function for all children as well as children in out-of-home care and in the juvenile system
- investigation of individual complaints and systemic concerns
- seeking judicial review of decisions made by statutory child protection decision makers
- target audits of agency and individual compliance with legislation.¹³⁰

11.61 The Commissioner is also required to keep a register of child deaths and to this end chairs the Review and Prevention Committee.¹³¹

11.62 The Commissioner is not under the control or direction of the Minister and is directed to act independently in performing the functions and exercising his or her powers in a way that promotes and protects the rights, interests and wellbeing of children.¹³²

SOUTH AUSTRALIA—GUARDIAN FOR CHILDREN AND YOUNG PEOPLE

11.63 The South Australian Guardian for Children and Young People was established in 1993¹³³ and is an independent statutory officer appointed by the Governor for a period not exceeding five years.¹³⁴ The Guardian reports to the Minister for Families and Communities.¹³⁵ The Guardian may be removed from office upon the presentation of an address from both Houses of Parliament seeking the guardian's removal.¹³⁶

106 *Commission for Children and Young People Act 1998* (NSW) s 4.

107 *Commission for Children and Young People Act 1998* (NSW) s 23(1). See also New South Wales Commission for Children and Young People, *About Us* (2010) <<http://kids.nsw.gov.au/kids/about.cfm>> at 28 June 2010.

108 *Commission for Children and Young People Act 1998* (NSW) s 5(3)–(4).

109 *Commission for Children and Young People Act 1998* (NSW) s 28(1). See also Parliament of New South Wales, *Committee on Children and Young People* (2010) <www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/9B66CAD2DD408B1ECA256996001A32B3> at 28 June 2010.

110 *Commission for Children and Young People Act 1998* (NSW) s 28(1)(d).

111 *Commission for Children and Young People Act 1998* (NSW) s 10.

112 *Commission for Children and Young People Act 1998* (NSW) s 11.

113 *Commission for Children and Young People Act 1998* (NSW) s 16(1). See also New South Wales Commission for Children and Young People, *About Us*, above n 107.

114 *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 181(b). See also New South Wales Government, *The Children's Guardian, Welcome to the Children's Guardian* (2010) <www.kidsguardian.nsw.gov.au/> at 28 June 2010.

115 *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 181(c)(e).

116 *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 182. Notice in writing given to an authorised carer is required for the Children's Guardian to carry out this function.

117 *Children and Young Persons (Care and Protection Act) 1998* (NSW) s 184.

118 House of Representatives Standing Committee on Education and Training, above n 101, 4.

119 *Care and Protection of Children Act 2007* (NT) s 259(1). The Northern Territory was the last Australian jurisdiction to establish a Children's Commissioner.

120 Office of the Children's Commissioner Northern Territory, *About Us* (2010) <<http://childrensCommissioner.nt.gov.au/aboutus.html>> at 28 June 2010.

121 *Care and Protection of Children Act 2007* (NT) s 285.

122 *Care and Protection of Children Act 2007* (NT) s 289(1). Other grounds include if the Commissioner were to claim bankruptcy and actions associated with this under s 289(6) of the Act.

123 *Care and Protection of Children Act 2007* (NT) s 289(6)(a).

124 *Care and Protection of Children Act 2007* (NT) s 260(a)(c).

125 *Care and Protection of Children Act 2007* (NT) s 262.

126 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 14.

127 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 26(1). See also House of Representatives Standing Committee on Education and Training, above n 101, 7.

128 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 27(2)–(3).

129 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 32(1)–(2).

130 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 17.

131 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) ss 143, 127(1).

132 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 22(1).

133 *Children's Protection Act 1993* (SA) s 52A(1).

134 *Children's Protection Act 1993* (SA) s 52A(3).

135 *Children's Protection Act 1993* (SA) s 52D(1)–(2). Department of Education and Children's Services (SA), *Children Under the Guardianship of the Minister* (2010) <www.decs.sa.gov.au/speced2/pages/childprotection/studentsInCare?reflag=1> at 28 June 2010.

136 *Children's Protection Act 1993* (SA) s 52A(5).

Option 5—Broadening the Role of the Office of the Child Safety Commissioner

- 11.64 The Guardian’s remit is children and young people in out-of-home care. Its functions include:
- promoting the best interests of children and young people in out-of-home care
 - acting as an advocate, particularly for those children who have suffered, or are alleged to have suffered, sexual abuse
 - monitoring systemic complaints and advising the Minister
 - advising the Minister on the quality of service provision and whether the needs of such children and young people are being met.¹³⁷
- 11.65 In the exercise of its functions, the Guardian must act independently, impartially and in the public interest.¹³⁸ The legislation expressly provides that the Minister cannot control how the Guardian is to exercise the statutory functions and cannot give any direction with respect to the content of any report prepared by the Guardian.¹³⁹

TASMANIA—COMMISSIONER FOR CHILDREN

- 11.66 The Tasmanian Commissioner for Children was established in 2000¹⁴⁰ as an independent statutory officer who reports to the Minister for Health and Human Services.¹⁴¹ The Commissioner is appointed by the Governor for a period of no longer than three years,¹⁴² and may be removed from office by the Governor on the recommendation of the Minister for any sufficient reason.¹⁴³
- 11.67 The Commissioner has responsibilities for all children and young people, with a focus on vulnerable children, particularly those in the child protection or juvenile justice system.¹⁴⁴ The functions of the Commissioner include:
- advocating to increase public awareness of matters relating to the health, welfare, care, protection and development of children
 - providing recommendations and advice to government
 - encouraging the development of services and policies within the department to promote the rights of children and young people.¹⁴⁵
- 11.68 The Commissioner can investigate individual complaints when requested by the Minister.¹⁴⁶

WESTERN AUSTRALIA—COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

- 11.69 The Western Australian Commissioner for Children and Young People was established in 2007¹⁴⁷ as an independent statutory officer.¹⁴⁸ The Commissioner is appointed by the Governor for a period no longer than five years¹⁴⁹ and may, at any time, be suspended or removed from his office by the Governor on addresses from both Houses of Parliament.¹⁵⁰
- 11.70 The Commissioner’s responsibility is for all children and young people in Western Australia, with special focus on the interests and needs of Aboriginal children and young people, and those who are vulnerable or disadvantaged.¹⁵¹ The Commissioner’s broad functions include:
- providing advocacy through policy
 - promoting participation of children and young people in matters affecting them
 - research, monitoring and special inquiries

- reviewing laws, draft laws and policies relating to children and young people
- providing recommendations to executive government and non-government organisations.¹⁵²

11.71 The Commissioner does not deal with complaints about a particular child or young person.¹⁵³ The Commissioner monitors government agencies in their own task of dealing with complaints made by children and young people and noting any trends in complaints made.¹⁵⁴

11.72 The Commissioner is not subject to direction by the Minister or any other person in the performance of his or her functions,¹⁵⁵ except that the Minister is able to give written directions about the general policy to be followed by the Commissioner when exercising his or her statutory functions.¹⁵⁶

NEW ZEALAND—CHILDREN'S COMMISSIONER

11.73 The Children's Commissioner, formerly the Commissioner for Children, was established in 1989.¹⁵⁷ The Children's Commissioner was intended to act primarily as an accountability mechanism for the Department of Child, Youth and Family Services and report to the Minister to this end.¹⁵⁸

11.74 The Commissioner is appointed by the Governor-General for a term not exceeding five years¹⁵⁹ and may be removed from office by the Governor-General on the recommendation of the responsible Minister.¹⁶⁰

11.75 The Commissioner's functions include:

- personally investigating any decision or recommendation made in relation to any child
- establishing and promoting a complaints mechanism
- raising awareness of CROC
- advocating for children's interests, rights and welfare
- promoting children's participation in decision making affecting their lives
- enquiring into and reporting on any matter relating to children's welfare.¹⁶¹

11.76 In addition to these general functions, the Commissioner has specific functions in relation to the *Children, Young Persons and Their Families Act 1989* (NZ). These functions include:

- investigating decisions or recommendations made under the Act
- monitoring and assessing the policies and practices of the department
- encouraging the department to develop policies and services that promote the welfare of children and young people
- advising the Minister on any matter relating to the administration of the Act
- making recommendations on the operation of the Act.¹⁶²

- 137 *Children's Protection Act 1993* (SA) s 52C(1).
- 138 *Children's Protection Act 1993* (SA) s 52AB(1).
- 139 *Children's Protection Act 1993* (SA) s 52AB(2).
- 140 *Children, Young Persons and Their Families Act 1997* (Tas) s 78(1).
- 141 *Children, Young Persons and Their Families Act 1997* (Tas) s 83(1).
- 142 *Children, Young Persons and Their Families Act 1997* (Tas) sch 1, cl 1A.
- 143 *Children, Young Persons and Their Families Act 1997* (Tas) sch 1, cl 6. 'Sufficient reason' is not defined in the Act. The provision appears to give the Governor the discretion to decide what is sufficient reason.
- 144 House of Representatives Standing Committee on Education and Training, above n 101, 7.
- 145 *Children, Young Persons and Their Families Act 1997* (Tas) s 79(1).
- 146 House of Representatives Standing Committee on Education and Training, above n 101, 4.
- 147 *Commissioner for Children and Young People Act 2006* (WA) s 6(1).
- 148 House of Representatives Standing Committee on Education and Training, above n 101, 1.
- 149 *Commissioner for Children and Young People Act 2006* (WA) s 9.
- 150 *Commissioner for Children and Young People Act 2006* (WA) s 8(1).
- 151 House of Representatives Standing Committee on Education and Training, above n 101, 7.
- 152 *Commissioner for Children and Young People Act 2006* (WA) s 19.
- 153 *Commissioner for Children and Young People Act 2006* (WA) s 23(1).
- 154 *Commissioner for Children and Young People Act 2006* (WA) s 19(d)(e).
- 155 *Commissioner for Children and Young People Act 2006* (WA) s 25.
- 156 *Commissioner for Children and Young People Act 2006* (WA) s 26.
- 157 The commissioner was originally established under the *Children, Young Persons and Their Families Act 1989* (NZ), but was subsequently removed and placed under the *Children's Commissioner Act 2003* (NZ).
- 158 *Crown Entities Act 2004* (NZ) s 150. See also Gubb and Partners, *Children's Commission* (2004) Ministry of Education (NZ) <www.educationalleaders.govt.nz/Problem-solving/Education-and-the-law/Quasi-judicial-officers/Children-s-Commission> at 28 June 2010.
- 159 *Crown Entities Act 2004* (NZ) ss 28(1)(b), 32(1)(b).
- 160 *Crown Entities Act 2004* (NZ) s 39(1).
- 161 *Children's Commissioner Act 2003* (NZ) s 12(1).
- 162 *Children's Commissioner Act 2003* (NZ) s 13(1).

Option 5—Broadening the Role of the Office of the Child Safety Commissioner

SCOTLAND—COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

- 11.77 Scotland's Commissioner for Children and Young People was established in 2003.¹⁶³ The Commissioner is appointed by the Queen¹⁶⁴ for a period not exceeding five years¹⁶⁵ and can be removed by a resolution of parliament if there is either a loss of confidence in the Commissioner's ability or willingness to carry out his or her role, or a breach of the terms of appointment.¹⁶⁶ The Commissioner reports annually to parliament on the exercise of his or her functions.¹⁶⁷
- 11.78 The Commissioner's primary function is to promote and safeguard the rights of children and young people.¹⁶⁸ These functions include:
- promoting awareness and understanding of children's and young people's rights
 - reviewing and assessing the law, policy and practice relating to this group
 - promoting best practice by service providers¹⁶⁹
 - publishing research on matters relating to this group.¹⁷⁰
- 11.79 The Commissioner has the power to carry out own motion investigations.¹⁷¹ This is limited to investigations into service providers to determine to what extent, and by what means, a provider considers children's rights, interests and views in making decisions that affect them.¹⁷² The Commissioner has no power to investigate individual complaints or matters 'for which there are established procedures, through existing statutory agencies and, ultimately, the Courts ... [and] matters reserved to the UK Parliament'.¹⁷³

ENGLAND—CHILDREN'S COMMISSIONER

- 11.80 The *Children Act 2004* (UK) establishes a Children's Commissioner for England.¹⁷⁴ The responsible Minister appoints the Commissioner for a period not exceeding five years.¹⁷⁵ The Children's Commissioner reports annually to parliament through the Secretary of State for Children, Schools and Families.¹⁷⁶
- 11.81 The Commissioner must promote awareness of the views and interests of children in England.¹⁷⁷ The Commissioner's functions include:
- advising the Secretary of State on the views and interests of children
 - researching the operation of complaints procedures relating to children and any other matter relating to the interests of children
 - publishing reports about any of these matters.¹⁷⁸
- 11.82 While the Commissioner is able to hold inquiries into children's individual cases if they have wider policy relevance, he or she must consult with the Secretary of State prior to commencing an inquiry.¹⁷⁹ Alternatively, the Secretary of State may direct the Commissioner to hold an inquiry into an individual case if it raises issues of relevance to other children.¹⁸⁰ The Commissioner is accountable to the Secretary of State, which has generated some concern.¹⁸¹ The lack of independence from government has resulted in questioning of the Commissioner's role in relation to the standards set out in CROC.¹⁸²

WALES—CHILDREN'S COMMISSIONER

- 11.83 The *Care Standards Act 2000* (Wales) establishes a Children's Commissioner for Wales.¹⁸³ The *Children's Commissioner for Wales Act 2001* (Wales) makes further provisions for the Children's Commissioner for Wales. The Commissioner is appointed for seven years, reports to the First Minister¹⁸⁴ and is required to table an annual report to the Welsh Assembly.¹⁸⁵

11.84 The Commissioner's principal aim is to safeguard and promote the rights and welfare of Welsh children.¹⁸⁶ The Commissioner must review and monitor the operation of regulated children's service providers.¹⁸⁷ The Commissioner also has the power to review individual cases if they have relevance to other children's rights or welfare.¹⁸⁸

11.85 The Commissioner has the authority to consider and make representations to the Assembly about any matter affecting the rights or welfare of children in Wales.¹⁸⁹

ADDITIONAL FUNCTIONS TO BE PERFORMED BY THE CHILD SAFETY COMMISSIONER

11.86 As this chapter reveals, many other communities both within and beyond Australia have established a permanent independent body with a broad oversight and monitoring role in the area of child protection. The Child Safety Commissioner is an existing statutory authority that could become the body to perform these functions in Victoria. It would be necessary to make a number of changes to the governing legislation to give the Commissioner the authority to perform this task, and to secure an appropriate level, and appearance, of independence.

11.87 The Commission is not proposing that a broad scale whole-of-government children and young person's commissioner be introduced in Victoria. Existing bodies created at the same time as the Child Safety Commissioner under the CWS Act 2005 have a whole-of-government approach to children's issues. As previously discussed in this chapter, the Council provides independent and expert advice on policies and services that enhance the health, wellbeing, development and safety of children¹⁹⁰ and has a role in forward planning to assist departments across government.¹⁹¹ The Board ensures the coordination of government activities affecting children.¹⁹² The Commission has concluded that a broad-scale children and young person's commissioner would involve significant duplication of roles in relation to Victorian children.

163 *Children and Young People (Scotland) Act 2003* (Scot) s 1(1).

164 *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) s 2(1), appointed on the nomination of parliament.

165 *Children and Young People (Scotland) Act 2003* (Scot) s 2(3).

166 *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) s 3(1)(b).

167 Under the *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) the Commissioner must report to Parliament annually on its functions (s 10) and at the conclusion of any investigations (s 11) and may lay before parliament any other reports the Commissioner considers necessary or appropriate (s 12).

168 *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) s 4(1).

169 'Service providers' are defined in s 16 of the *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) as service providers providing services for children and young people, but not including a parent or guardian.

170 *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) s 4(2).

171 *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) s 7.

172 *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) s 7(1). The Scottish Commissioner for Children and Young People can carry out investigations only if the Commissioner, on available evidence, is satisfied on reasonable grounds that the matter is of significance to children and young people or particular groups: *Commissioner for Children and Young People (Scotland) Act 2003* (Scot) s 7(2).

173 Scottish Executive, *United Nations Convention on the Rights of The Child: A Report on Implementation of the UN Convention on the Rights of the Child in Scotland 1999–2007* (2007) 9.

174 *Children Act 2004* (UK) s 1(1).

175 *Children Act 2004* (UK) sch 1, cl 3(4)–(5).

176 *Children Act 2004* (UK) s 8.

177 *Children Act 2004* (UK) s 2(1).

178 *Children Act 2004* (UK) s 2(2).

179 *Children Act 2004* (UK) s 3(3).

180 *Children Act 2004* (UK) s 4(1).

181 See Liberty (UK), *Your Rights: Rights of Children in Domestic and International Law* (2008) <www.yourrights.org.uk/yourrights/the-rights-of-children-and-young-people/rights-of-children-in-domestic-and-international-law.shtml> accessed 28 June 2010.

182 Jane Fortin, *Children's Rights and the Developing Law* (3rd ed, 2009) 53.

183 *Care Standards Act 2000* (Wales) s 72.

184 *The Children's Commissioner for Wales Regulations 2001* (Wales) r 13(4)(a).

185 *Care Standards Act 2000* (Wales) sch 2, cl 8. See also *The Children's Commissioner for Wales Regulations 2001* (Wales) r 15(1).

186 *Children's Commissioner for Wales Act 2001* (Wales) s 1(2).

187 *Children's Commissioner for Wales Act 2001* (Wales) s 4.

188 *Children's Commissioner for Wales, Annual Review 07–08* (2008) 28.

189 *Children's Commissioner for Wales Act 2001* (Wales) s 5(1).

190 *Child Wellbeing and Safety Act 2005* (Vic) s 10(1).

191 Department of Education and Early Childhood Development (Victoria), *Victorian Children's Council*, above n 40.

192 *Child Wellbeing and Safety Act 2005* (Vic) s 15(b).

Option 5—Broadening the Role of the Office of the Child Safety Commissioner

OVERSIGHT AND REVIEW OF THE CHILD PROTECTION SYSTEM

- 11.88 The Commission proposes that the Child Safety Commissioner should have additional responsibility for oversight and review of the child protection system. Oversight and review is fundamental to guaranteeing transparency and accountability of the child protection system.
- 11.89 The Child Safety Commissioner's current role is limited to specific areas of responsibility for children in the child protection system including child safety issues, monitoring of out-of-home care services and child deaths.¹⁹³ As discussed earlier, the Ombudsman has commented upon the limitations of the Child Safety Commissioner's role.¹⁹⁴ Some submissions received by the Commission suggested the need for a body with powers to audit and review the effectiveness of Victoria's child protection system and state-run children's services.¹⁹⁵ One submission argued that the limited nature of the powers vested in the Child Safety Commissioner under the CWS Act 2005 did not permit the Commissioner to exercise meaningful powers of review.¹⁹⁶ Further, the Kirby Report called for the introduction of a Children and Young Person's Commissioner to increase the accountability of the child protection system.¹⁹⁷
- 11.90 Children's commissioners in other Australian jurisdictions have a range of broad monitoring powers relating to the protection of children and their rights. The Commissioner for Children and Young People in Queensland monitors and reviews laws, policies and practices that relate to the delivery of services to children¹⁹⁸ or services that otherwise affect children.¹⁹⁹ The Commissioner for Children and Young People in Western Australia has a similar role, reviewing and monitoring practices and services affecting children's and young people's wellbeing.²⁰⁰ The Children's Commissioner in the Northern Territory has a role to monitor the administration of the legislative scheme that governs the protection of children.²⁰¹ In NSW, the Commissioner makes recommendations to government and non-government agencies on legislation, policies, practices and services affecting children.²⁰²
- 11.91 In Victoria, there is a strong argument for giving a permanent independent body a broad oversight and monitoring role in the area of child protection. While caring for vulnerable children is a core state responsibility, it can involve compulsory state intervention in the fundamental unit of society—the family. As we have indicated elsewhere in this report, it is a challenging task to respect and balance the rights and responsibilities in section 17 of the Charter.²⁰³ Informed and independent oversight of the child protection system, coupled with ongoing advice to parliament about the system's strengths and weaknesses, are effective means of maintaining community confidence that an appropriate balance is being struck.
- 11.92 The Commission believes that in line with other jurisdictions in Australia, the Child Safety Commissioner's powers under the CWS Act 2005 should be broadened to include review and oversight of all aspects of the child protection system.

INVESTIGATION AND REPORTING ON THE *CHILDREN, YOUTH AND FAMILIES ACT 2005 (VIC)*

- 11.93 The Commission proposes that the government consider giving the Child Safety Commissioner statutory authority to investigate and report to the responsible Minister about the operation of the CYF Act 2005. This proposal is closely linked to the previous proposal relating to a broad oversight role for the Victorian child protection system. The Commission further proposes below that reports of this nature should be tabled in parliament.

- 11.94 Under current arrangements, the Child Safety Commissioner reports annually to the Minister, who must table the report within 21 sitting days.²⁰⁴ The Child Safety Commissioner does not have broad powers of investigation and reporting into any aspect of the operation of the CYF Act 2005 but only in relation to specific aspects of the Act or other functions conferred on the Child Safety Commissioner under legislation.²⁰⁵ At present, there is no institution with responsibility for systematic review of this important piece of legislation.
- 11.95 In 2003, the then President of the Children’s Court of Victoria, Judge Jennifer Coate, called for the creation of a children’s commissioner with the power to scrutinise legislation affecting children and young people so that it complies with CROC.²⁰⁶
- 11.96 The Commission believes that it would be beneficial for the Child Safety Commissioner to have broad powers to both investigate and make reports into the operation of the CYF Act 2005. This Act is central to the smooth operation of Victoria’s child protection system and to governing the relationship between the key institutions within the system. Victoria’s recent history suggests that unless an expert standing body has responsibility for oversight and review of the child protection system, including the operation of the Act, further reviews of the child protection system will probably continue to be necessary.

ADVOCACY FOR CHILDREN AND YOUNG PEOPLE

- 11.97 The Commission proposes that the Child Safety Commissioner should have the power to advocate for children and young people across government and throughout the community.
- 11.98 As presently expressed, the advocacy functions given to the Child Safety Commissioner relate to promoting child safe practices and providing services for children living in out-of-home care.²⁰⁷ Other Victorian bodies which have responsibility for children, such as the Council, the Board and the Ombudsman, do not have a broadly-stated advocacy power for children and young people across government and throughout the community.²⁰⁸
- 11.99 In May 2010 the Ombudsman noted that the Child Safety Commissioner does not have a role in advocating for individual children.²⁰⁹ However, some of the submissions received by the Commission suggested that a children and young person’s commission should not have a role in individual cases, saying that any commissioner should ‘have the responsibility of promoting rights of all children and young people at state level’.²¹⁰
- 11.100 Children’s commissioners in other jurisdictions have a much broader advocacy function. Commissioners in NSW,²¹¹ Queensland²¹² and Western Australia²¹³ have a role to advocate for the wellbeing of all children and young people. The significance of this function is enhanced by the power of those commissioners to report directly to a joint parliamentary committee.²¹⁴
- 11.101 In response, the Commission proposes that the Child Safety Commissioner should have the power to advocate for children and young people across government and throughout the community. To be effective, that role should not be limited to the child protection system and should cover all children and young people in Victoria within and outside the child protection area. The breadth of this function will enable the Child Safety Commissioner to link child protection-related issues to other matters in the Victorian community and across government policy which impact upon children, such as the criminal justice system, education and health issues. The Child Safety Commissioner’s role should not be to advocate on behalf of individual children but instead to focus on broader cohorts of Victorian children.

- 193 The functions of the Child Safety Commissioner have previously been outlined in this chapter under the heading ‘The Office of the Child Safety Commissioner’.
- 194 Office of the Victorian Ombudsman, *Own Motion Investigation into the Department of Human Services Child Protection Program*, above n 62, 15, 120–1; Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection—Out of Home Care*, above n 27, 21, 119, 121.
- 195 Submissions 36 (FLS), 41 (Australian Childhood Foundation), 45 (FCLC).
- 196 Submission 36 (FLS).
- 197 Freiberg, Kirby and Ward, above n 89, 30.
- 198 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 17(1)(i).
- 199 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 17(1)(ii).
- 200 *Commissioner for Children and Young People Act 2006* (WA) s 19(g).
- 201 *Care and Protection of Children Act 2007* (NT) s 260(c).
- 202 *Commission for Children and Young People Act 1998* (NSW) s 11(d).
- 203 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 17(1) recognises that ‘families are the fundamental group unit of society and are entitled to be protected by society and the State’.
- 204 *Child Wellbeing and Safety Act 2005* (Vic) s 41.
- 205 *Child Wellbeing and Safety Act 2005* (Vic) s 19(f).
- 206 Silverii, above n 80, 28.
- 207 The functions of the Child Safety Commissioner have previously been outlined in this chapter under the heading ‘The Office of the Child Safety Commissioner’.
- 208 The functions of these agencies and bodies were discussed previously in this chapter under the heading ‘Relationship of OCSC with other children’s agencies and bodies’.
- 209 Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection—Out of Home Care*, above n 27, 121.
- 210 Submission 38 (VALS); similar claims were made in submissions 43 (VCOSS & YACVic), 45 (FCLC).
- 211 *Commission for Children and Young People Act 1998* (NSW) s 11(b).
- 212 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 17(g).
- 213 *Commissioner for Children and Young People Act 2006* (WA) s 19(a).
- 214 *Commission for Children and Young People Act 1998* (NSW) s 23(1); *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 83; *Commissioner for Children and Young People Act 2006* (WA) ss 48(4)(b), 49(1).

Option 5—Broadening the Role of the Office of the Child Safety Commissioner

LIAISON WITH ABORIGINAL COMMUNITIES

- 11.102 The Commission proposes that the Child Safety Commissioner should have the power to liaise with Victorian Aboriginal communities in order to ensure that the Commissioner is able to effectively advocate for Aboriginal children. Section 12 of the CYF Act 2005 emphasises the importance of liaising with the Aboriginal community when making decisions or taking actions in relation to Aboriginal children.
- 11.103 In Western Australia, the Commissioner for Children and Young People must give priority to, and have special regard to, the interests and needs of Aboriginal children and young people.²¹⁵ Submissions supported this idea, and further suggested the creation of a separate Aboriginal Social Justice Commissioner²¹⁶ or a similarly resourced Aboriginal Safety Commissioner within the OCSC.²¹⁷ The Commission recognises the significance of consulting with Aboriginal agencies and representatives, and suggests that liaison with those key parties could be an explicit function of the Child Safety Commissioner. It seems desirable that a children's commissioner have the responsibility to advocate for all Victorian children.
- 11.104 The Commission believes that the Children's Koori Family Support Program is the appropriate vehicle for identifying the specific needs of Aboriginal communities in Victoria in relation to processes in the child protection system.²¹⁸ If the Child Safety Commissioner's role is broadened, the Commissioner should liaise with Victorian Aboriginal communities to ensure that he or she is able to effectively advocate for Aboriginal children.

PROMOTION OF CHILDREN'S AND YOUNG PEOPLE'S RIGHTS

- 11.105 The Commission proposes that the Child Safety Commissioner should have the additional responsibility to promote awareness of children's and young people's rights. That is not currently part of the role of the OCSC.
- 11.106 As discussed earlier in this chapter (see 'Previous reviews'), YACVic proposed the creation of a Victorian Children and Young People's Commission to protect and promote the rights of children and young people.²¹⁹
- 11.107 Submissions from both the Federation of Community Legal Centres and the Council to Homeless Persons supported the establishment of an independent statutory commission to advocate for and protect the rights of all children and young people at a state level.²²⁰

REPORTING TO PARLIAMENT ON THE *CHILDREN, YOUTH AND FAMILIES ACT 2005 (VIC)*

- 11.108 The Commission proposes that the Child Safety Commissioner should have the power to report to parliament on an annual basis and, additionally, to report to parliament when reporting to the Minister about the operation of the CYF Act 2005. This power would enable the Child Safety Commissioner to make both annual and special reports to parliament on the Victoria's child protection system. This power would bring the Victorian Commissioner in line with other jurisdictions in Australia.
- 11.109 The Commission does not propose that the Child Safety Commissioner have own motion investigative powers. The Child Safety Commissioner's existing powers of investigation make the additional coercive powers which accompany own motion investigations unnecessary. Under the CWS Act 2005 the Secretary of the Department and the person in charge of out-of-home care must provide the Child Safety Commissioner with assistance in the reasonable exercise of the OCSC's functions²²¹ and further, the Child Safety Commissioner is entitled to access records relating to investigations into out-of-home care.²²²

CONSULTATION WITH CHILDREN AND YOUNG PEOPLE

- 11.110 The Commission proposes that the Child Safety Commissioner should be required to consult children and young people about the performance of the Commissioner's functions. There is no existing requirement in the CWS Act 2005 for the Child Safety Commissioner to do this.
- 11.111 The children and young people consulted by CREATE Foundation on behalf of the Commission felt that their views were not always heard or appropriately represented within the child protection system.²²³ Involving children in matters that affect their wellbeing is an important development which helps to ensure children's self-determination in a manner consistent with article 12 of CROC. Article 12 provides that where a child is capable of forming his or her own views, states parties shall allow the child to express those views freely in all matters affecting him or her.²²⁴ These views are to be given due weight in accordance with the age and maturity of the child.²²⁵
- 11.112 The Commissioner in Western Australia is directed to consult children and young people from a broad range of socio-economic backgrounds and age groups,²²⁶ as well as encourage children and young people to participate in the Commissioner's decision making.²²⁷ In Queensland, the Commissioner must also consult children in ways that promote their participation in the Commissioner's decision making.²²⁸
- 11.113 The Children's Commissioners in South Australia,²²⁹ Tasmania²³⁰ and Western Australia²³¹ are required to establish advisory committees comprising children and young people to assist in the exercise of their various functions. In the ACT²³² and Queensland,²³³ the Commissioners have discretionary powers to establish Advisory Committees comprising children and young people.
- 11.114 The Commission proposes that consultation with children and young people should be incorporated into the structure of the Child Safety Commissioner. This may be through the creation of a standing advisory committee comprising children and young people as in South Australia, Tasmania and Western Australia or through regular consultation with children and young people as in Queensland and Western Australia. The requirement to consult children and young people should be included in the CWS Act 2005.

Proposal 5.1 The Child Safety Commissioner should have the following additional functions:

- a) to oversee and review the child protection system
- b) to investigate and report to the Minister about the operation of the *Children, Youth and Families Act 2005* (Vic)
- c) to advocate for children across government and throughout the community
- d) to liaise with the Aboriginal community in order to ensure that the Commissioner is able to effectively advocate for Aboriginal children
- e) to promote awareness of children's and young people's rights
- f) to report to Parliament on an annual basis and when reporting to the Minister about the operation of the *Children, Youth and Families Act 2005* (Vic)
- g) to consult children about the performance of the Commissioner's functions.

- 215 *Commissioner for Children and Young People Act 2006* (WA) s 20(1)(a)(i).
- 216 Submission 38 (VALS).
- 217 Submission 39 (VACCA).
- 218 See Chapter 7 under the heading 'Work of the Children's Court (Family Division) Koori Family Support Program'.
- 219 Youth Affairs Council of Victoria, above n 81, 4.
- 220 Submissions 44 (CHP), 39 (VACCA), 43 (VCOS & YACVic), 45 (FCLC).
- 221 *Child Wellbeing and Safety Act 2005* (Vic) s 21.
- 222 *Child Wellbeing and Safety Act 2005* (Vic) s 30.
- 223 CREATE Foundation, *Children and Young People in Care Consultation for the Victorian Law Reform Commission* (2010) 8.
- 224 *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, art 12(1) (entered into force 2 September 1990).
- 225 *Ibid.*
- 226 *Commissioner for Children and Young People Act 2006* (WA) s 19(n).
- 227 *Commissioner for Children and Young People Act 2006* (WA) s 20(e)(ii).
- 228 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) s 23(1)(a).
- 229 *Children's Protection Act 1993* (SA) s 52EA(3).
- 230 *Children, Young Persons and Their Families Act 1997* (Tas) s 81(1).
- 231 *Commissioner for Children and Young People Act 2006* (WA) s 52(2).
- 232 *Human Rights Commission Act 2005* (ACT) s 19C(2).
- 233 *Commission for Children and Young People and Child Guardian Act 2000* (Qld) ss 150(1)(b), 151(1)(b).

Option 5—Broadening the Role of the Office of the Child Safety Commissioner

STRENGTHENING THE INDEPENDENCE OF THE CHILD SAFETY COMMISSIONER

- 11.115 A statutory commissioner who monitors the operations of the child protection system should have, and should be seen to have, an appropriate level of independence.
- 11.116 In 2009 and 2010 the Ombudsman identified limitations to the role of the Child Safety Commissioner which it stated ‘do not provide for the necessary independent scrutiny of the out-of-home care system’.²³⁴ The Ombudsman proposed a range of measures to increase the level of scrutiny and transparency in the out-of-home care system, the subject of his 2010 report.²³⁵ The principle of appropriate transparency and scrutiny of the out-of-home care system was supported by the Department in the Secretary’s response to the report.²³⁶
- 11.117 In 2004, the Kirby Report suggested that a Children and Young Person’s Commissioner was necessary to increase the accountability of the child protection system.²³⁷ As previously explained, a number of submissions to the Commission highlighted a lack of accountability within the current Department structure. The Federation of Community Legal Services focused on ‘a lack of meaningful and independent oversight’ of the Department²³⁸ and a lack of accountability ‘for failures to provide appropriate support to families or to work in accordance with the principles outlined in the Act’.²³⁹ Other community legal centres echoed these views.²⁴⁰
- 11.118 The additional functions proposed for the Child Safety Commissioner will require independence from the Department of Human Services. Increased independence would complement the oversight provisions proposed previously in this chapter. In order to undertake oversight and review of the child protection system and review the operation of the CYF Act 2005, the OCSC must be at arm’s length from the Department responsible for the daily operation of the system.

APPOINTMENT BY THE GOVERNOR IN COUNCIL

- 11.119 The Commission proposes that the Child Safety Commissioner should be appointed by the Governor in Council which reflects the appointment process for other heads of statutory bodies in this field.
- 11.120 At present, the Child Safety Commissioner is appointed and can be removed by the Premier.²⁴¹ Unlike the heads of other statutory bodies within the Human Services and Health portfolios, such as the Health Services Commissioner,²⁴² the Disability Services Commissioner,²⁴³ and the President of the Mental Health Review Board,²⁴⁴ the appointment is not made by the Governor in Council. The Public Advocate is also appointed by the Governor in Council.²⁴⁵ Children’s Commissioners in every other Australian jurisdiction (except the Australian Capital Territory) and in New Zealand are appointed by the head of state in that jurisdiction.²⁴⁶

PERIOD OF APPOINTMENT

- 11.121 The Commission proposes that the Child Safety Commissioner should hold office for a period not exceeding five years.
- 11.122 Children’s Commissioners in Western Australia, South Australia, Queensland, the Australian Capital Territory, New South Wales, the Northern Territory and New Zealand are appointed for terms not exceeding five years.²⁴⁷ The Victorian Public Advocate is appointed for a fixed term of seven years.²⁴⁸

11.123 The Commission proposes that the period of appointment for the Child Safety Commissioner should be fixed in the CWS Act 2005 at five years. That period is consistent with the period of appointment for Children’s Commissioners in almost all other Australasian jurisdictions. This period of tenure will give the Commissioner a level of autonomy that promotes independent monitoring of Victoria’s child protection system.

OTHER TERMS SIMILAR TO THOSE THAT APPLY TO THE PUBLIC ADVOCATE

11.124 The Commission proposes that the Child Safety Commissioner should be appointed and hold office on terms similar to those that apply to the Public Advocate with the exception of the term of appointment. The Office of the Public Advocate is a statutory body within the Attorney General’s portfolio with oversight and advocacy functions for people with a disability.

11.125 The Commission proposes that the provisions in schedule 3 of the *Guardianship and Administration Act 1986* (Vic) concerning the Public Advocate’s appointment, tenure (other than the term of office) and removal from office are an appropriate broad model for a Child Safety Commissioner with the additional functions outlined in this chapter.

REPORTING TO PARLIAMENT ON ACTIVITIES AND FINANCIAL OPERATIONS

11.126 The Commission proposes that the Child Safety Commissioner should be required to report to parliament on an annual basis about the Commissioner’s activities and financial operations.

ATTORNEY-GENERAL IS THE RESPONSIBLE MINISTER

11.127 The Commission proposes that the Attorney-General should be the Minister responsible for the Child Safety Commissioner.

11.128 Currently, the Child Safety Commissioner reports to the Minister for Community Services.²⁴⁹ In May 2010, the Ombudsman identified this function as one of the limitations of the OCSC’s current role.²⁵⁰ The Ombudsman argued that these limitations compromise the Child Safety Commissioner’s ability to provide independent scrutiny of the child protection system.

11.129 The Commission proposes that in order to maintain an arms-length relationship from the Department of Human Services, the Attorney-General would be the most appropriate Minister to have responsibility for the Commissioner.

Proposal 5.2: The Child Safety Commissioner should:

- a) be appointed by the Governor in Council
- b) hold office for a period not exceeding five years
- c) be otherwise appointed and hold office on terms similar to those that apply to the Public Advocate
- d) be required to report to Parliament on an annual basis about the Commissioner’s activities and financial operations.

Proposal 5.3: The Attorney-General should be the Minister responsible for the Child Safety Commissioner.

234 Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection—Out of Home Care*, above n 27, 121.

235 *Ibid* 125.

236 *Ibid* 126.

237 Freiberg, Kirby and Ward, above n 89, 30.

238 Submission 45 (FCLC).

239 *Ibid*.

240 Submission 38 (VALS), 26 (FVPLS Victoria), 39 (VACCA).

241 Section 18 of the *Child Wellbeing and Safety Act 2005* (Vic) stipulates that the Child Safety Commissioner is to be employed under part 3 of the *Public Administration Act 2004* (Vic). Under s 12(2) of the *Public Administration Act 2004* (Vic) the Premier, on behalf of the Crown, may employ a person as a Department Head or Administrative Office Head.

242 *Health Services (Conciliation and Review) Act 1987* (Vic) s 5(2).

243 *Disability Act 2006* (Vic) s 14(2).

244 *Mental Health Act 1986* (Vic) sch 1, cl 1(a).

245 *Guardianship and Administration Act 1986* (Vic) sch 3, cl 1(1).

246 See discussion of each jurisdiction earlier in this chapter.

247 See discussion of each jurisdiction earlier in this chapter.

248 *Guardianship and Administration Act 1986* (Vic) sch 3, cl 1(1).

249 *Child Wellbeing and Safety Act 2005* (Vic) s 41(1).

250 Office of the Victorian Ombudsman, *Own Motion Investigation into Child Protection—Out of Home Care*, above n 27, 121.

