

## In conversation with the Child Advocate: Out of Home Care, Sonya Pringle Jones with Kate Mooney and Letitia Fox



**Congratulations on your appointment as Tasmania's first Child Advocate: Out of Home Care (OoHC). How did that role come about, where are you based structurally and how long has it been operating?**

The position of the Commissioner for Children & Young People was originally established by the provision of Part 9 of the *Children, Young Persons & their Families Act 1997* (CYPF Act). In late 2015, the Hodgman Government<sup>1</sup> moved

<sup>1</sup> See second reading speech of *Commissioner for Children and Young People bill* here: <http://www.parliament.tas.gov.au/ParliamentSear>

to clarify and expand the Commissioner's role. The Commissioner's role and functions are now contained in specific legislation in the form of the *Commissioner for Children and Young People Act 2016*. However, a limitation of that role is that it does not allow for the provision of support in addressing concerns, or the power to provide individual advocacy service for children in OoHC<sup>2</sup>. The inability to directly advocate in individual cases was often a surprise to children in out of home care and those people supporting them, as alternatives to seek support or resolution of issues has historically meant formal complaints to the Deputy Secretary, Office of the Ombudsman, or constituent complaints to the Minister.

In late 2013, a Report<sup>3</sup> by the *Advocacy for Children in Tasmania* Committee included a suggestion that consideration be given to establishing a position of an independent child advocate, situated within the Department but reportable directly to the Secretary and separate from major departmental activities, as exists in Western Australia. In an early 2017 report *Children and Young People in Out of Home Care in Tasmania* the then Commissioner for Children and Young People argued for the establishment of mechanisms which would give children in OoHC access to individual advocacy assistance and allow them to express their views about issues affecting them. The Commissioner recommended the establishment of a visiting program, incorporating an individual advocacy component, for children in OoHC, Such a visiting program has not been set up, however the Commissioner did also suggest that ,at the very least, an advocate for children in OoHC, as was recommended in the 2013 Report, be established.

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<sup>2</sup> The Commissioner does, however, have the power to act as "an advocate for a detainee under the *Youth Justice Act 1997*" – s.8 *Commissioner for Children and Young People Act 2016*.

<sup>3</sup> Adjunct Professor Maria Harries, *Advocacy for Children in Tasmania*, November 2013, 5

I was appointed as the first Child Advocate: OoHC in June 2018. It is a statewide role, with both individual and systemic advocacy functions. As a state servant, my position is not recognised in, defined or limited by statute. I report directly to the Secretary of the Department of Communities Tasmania, Ginna Webster, who, as the legal guardian for children and young people on most child protection orders, has someone who is able to provide independent advice around the expressed views and needs of children and young people in the Secretary's care. The direct reporting role provides a degree of autonomy, separate to, and independent of the usual reporting processes of Child Safety Services.

**You have a background in child protection jurisdictions here and overseas, and worked at the Tasmanian branch of the Australian Childhood Foundation for almost a decade. What skill set do you bring to the position?**

I began with a degree in Psychology, worked "on the floor" in residential units in the UK, and on returning to Tasmania, commenced work in frontline Child Safety as a Child Safety Officer in 2004.

Many of your readers would be aware of the Australian Childhood Foundation (ACF), most relevantly as a Therapeutic Service provider for children who have experienced interpersonal trauma. Since the ACF began in Tasmania in 2009, I have worked as a Senior Child & Family Counsellor, Team Leader and in the last 2 years, Statewide Manager in the Therapeutic Services Program prior to my appointment as Child Advocate. Aligned with this has been a significant amount of work establishing a footprint of therapeutic care practices in Tasmania, as well as the delivery of training in increasing the understanding of trauma-informed care for carers and professionals.

Supporting, guiding and facilitating effective collaborative practice is the area

of my work in the past 15-20 years where I have seen some of the most successful outcomes realised for children and young people in OoHC. Bringing the knowledge and skills I have acquired working directly with children, both in government and non-government services, identifying and understanding the unique needs and views of each child, and then finding solutions within the complexities of the service system to help meet these needs, is incredibly rewarding.

**Do you have the capacity to engage with cases in the north and north west as well as the south?**

Yes indeed; my position is a statewide one. I have already had significant involvement in individual matters for children in all regions of the state who are in OoHC.

**As we understand it, the position is underpinned by the Charter of Rights for Tasmania Children and Young People in Out of Home Care. This enables you to advocate for a child whose rights may not be upheld. The Child Advocate can then raise awareness, provide advice and recommendations regarding children in out of home care, both at a systemic level and for individual cases. Is that right, and how does that role differ from the Commissioner for Children's role?**

As we discussed earlier, The Commissioner's role does not extend to individual advocacy for children living in foster or kinship placements, or residential care.<sup>4</sup> A critical aspect of my role is the capacity to engage with and consider individual cases brought to my attention,

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<sup>4</sup> In 2017-18 the daily average of numbers of children in out of home care was 1237.1 – see DHHS Annual Report 2017-18 here [https://www.dhhs.tas.gov.au/\\_\\_data/assets/pdf\\_file/0005/355577/DHHS\\_Annual\\_Report\\_2017-18.pdf](https://www.dhhs.tas.gov.au/__data/assets/pdf_file/0005/355577/DHHS_Annual_Report_2017-18.pdf)

either by the child contacting me or anyone else on their behalf who may know the child (professional or family/carer). These adults may hold concerns that the rights of the child are not being upheld or may be worried that the decision making processes or competing agendas are overshadowing the child's views or needs. A key difference with the Commissioner's role, is that I am able to immediately access the file information relating to a child, and directly engage with them.

I can, and do, provide advice and recommendations to Child Safety officers who may contact me to discuss a family on their case load. When you have worked with a family for a long time, maybe had several applications before the Court, it can be beneficial to discuss the child's situation and future options with an independent person who may bring fresh ideas to the table.

Within the privacy constraints of the legislation, I can provide clarification and feedback to worried carers or parents. I can contact the Child Safety team involved with the child and discuss their decisions around case management, court applications, access, placements, schooling, reunification, or other issues arising.

I can and do meet with children individually or I can convene meetings between any of these stakeholders in an attempt to resolve arising issues. The advocacy I provide is based not only on the expressed views of the child, but also on Best Interest principles according to the CYPF Act.

I am also tasked with providing awareness raising, advice and strategic direction regarding children and young people in out of home care at the systemic policy and strategic level. When children's worlds are significantly altered by them moving into alternative care, it is helpful that they and others know exactly what their rights and responsibilities are. From my prior work with children in out of home care, and as I see trends emerge in the issues and problems being brought to my

attention, I can provide evidence-based advice as to what areas need the attention and how things can be improved. So far, the main themes common to all matters relate to ensuring that children are always consulted on matters that affect them, and that all the key adults in the child's life are communicating effectively. Reflecting this in changes to practice advice, policies and procedures is integral to effecting systemic changes.

At a systemic level, the role is responsible for acting as a conduit so that children can directly have input into shaping the Child Safety Service via consultation on policy and practice, as well as service system design.

**We understand that your role extends far beyond those cases which are currently before the Court, but for lawyers operating in the child protection jurisdiction, that is what we are mostly interested in. Can you get personally involved in cases what are currently before the Magistrates Court (Children's Division) where applications for care orders are brought pursuant to the *Children, Young Persons and their Families Act* and if so, in what capacity?**

I certainly can. However it's important to remember that there are already many provisions in the *Children, Young Persons and their Families Act 1997* which allow children's voices to be heard. Children who are the subject of Court applications usually have a Separate Representative appointed to facilitate their involvement in the process, act as honest broker between the parties and advise the Court on what is in the child's best interests. Older children are sometimes directly represented by a legal practitioner, who they can instruct in the usual fashion. Usually children end up speaking with and giving their views to a Psychologist who is retained to provide a Report for the Court, or a conference facilitator who may be

convening a family conference. And of course many children choose to meet directly with the Magistrate hearing their case.

However I do foresee instances where the Child Advocate becomes involved in individual court cases. This is primarily in the instances whereby the above mentioned processes are experiencing issues or challenges. The Child Advocate can be contacted by any of the parties involved, and the advice and input of the Child Advocate sought to help privilege the child's needs and views, without any other agendas impacting on these recommendations. Many agendas abound in these processes, such as administrative, competing roles, the different caregiver relationships to the child, time, legislative etc. To be in a position to put these to the side for a moment, and reflect on the situation purely through the experiences of the child, often the most accurate understandings and solutions can arise.

**If Separate Representatives appointed to act for children in current litigation want to approach you to discuss their matter, or seek to involve you in the matter, is that something your role extends to? Are notes of those discussions made available to Child Safety? For example, if Separate Representatives ask you to be involved in them meeting with children, or participating in pre-trial settlement events, or liaising with parents, Child Safety or foster carers, can you get involved?**

Absolutely. For example, if a Separate Representative is having some concerns about the case direction adopted by Child Safety in a particular case, with the consent of the enquirer, I can discuss those concerns with Child Safety staff, undertake my own investigations, speak with other people important to the child

and see if I can help to encourage child-centred decision making. If deemed necessary given particular challenges, I can assist Separate Representatives in meeting with children, facilitating information flow between case worker, foster carer and Separate Representative, or convene meetings between these stakeholders. Again, as mentioned previously, this is most likely to occur due to the usual processes not having been successful to date, or particular challenges having been encountered.

**Can you give us some examples of the nature of the issues being brought to your attention that you have worked with to date?**

All are so varied and unique, and in the first 9 months I have had over 75 matters come to my attention, relating to 101 children. Interestingly, common to almost all of them when they first come to me, is that the adults aren't communicating effectively and the child can get lost in that.

I have helped disrupt decisions considered to not be in the child's best interests; secure changes or permanency in placements for children; re-established contact between children and family members; advocated for creative placement solutions; ensured that stressful situations for children are ameliorated; helped access resources where there are systemic gaps in service provision; and helped privilege understanding of the child's needs in decision making, even if the child is not able to communicate this in tidy adult-articulate language!

**Based on the work you've already done, together with your long experience in the jurisdiction, what do you see as the major challenges facing litigants in child protection proceedings currently before the Court?**

I'm not sure I'll be saying anything here that many others don't already see...I would concur that there is an appetite for legislative change. Given the almost 20 years since the current CYPF Act began, it is no longer as reflective of contemporary understanding relating to trauma, risk, attachment, early intervention and maximising the imperative to consult with children. Sadly, in practice, it lends itself to often quite adversarial processes unfolding in the legal space, which is rarely helpful for children and families needing to repair, as well as maximise success in working with the services designed to help them.

**It sounds like you have already hit the ground running. What can we expect to see from the office of the Child Advocate in the months to come?**

Work is almost complete to produce a brochure for children and young people to know how to access the Child Advocate directly, and explain to children what the complaint pathway is if they feel something is not OK. This is particularly important given the recommendations of the Royal Commission into Institutionalised Abuse.

I'm also integral to a project involved in redesigning the Care Planning processes and documentation for children in care. My particular role is responsible for overseeing the development of an IT based platform so that children can directly participate, and ideally take the lead, in the creation and decision making of their own Care Plan.

A couple of other early-stage projects are the establishment of a Child Safety Service Youth Panel, to be created to embed a process of consultation from young people into evolving policy, practice and procedures. And finally, creating a Child Advocate webpage on the Communities Tasmania website so that we can maximise the avenues through which children and young people can

contact the Child Advocate, as well as find out information about being in care.

### **Where can we find you?**

I am located at Level 5 Marine Board Building, 1 Franklin Wharf Hobart, GPO Box 65 HOBART 7001. Or can be contacted via:

- o Mobile/Text: 0419 970 181
- o Freecall: 1800 549 725
- o Phone: 03 6165 6945
- o Email:  
[child.advocate@communities.tas.gov.au](mailto:child.advocate@communities.tas.gov.au)

**Thank you for talking to us Sonya: we look forward to a productive working relationship developing between the profession and your office to enhance the experience of children living in out of home care in Tasmania.**

*Kate Mooney is a barrister who has experience in acting for parents and children, and as Separate Representative, in proceedings brought pursuant to the Children, Young Persons & their Families Act 1997. She has also been a foster carer. Letitia Fox is Crown Counsel for Child Safety located in the Office of the Director of Public Prosecutions.*