

Role of Australian Commissioners for Children and Child Guardians – Updated as at August 2014

Functions	Federal	ACT	NSW	NT	Queensland	SA	Tasmania	Victoria	WA	
Name	National Children's Commissioner Australian Human Rights Commission	ACT Children and Young People Commissioner ACT Human Rights Commission	NSW Commission for Children and Young People. To be replaced with a new statutory office of Advocate for Children and Young People	The Children's Guardian	Children's Commissioner	Queensland Family and Child Commission	Guardian for Children and Young People	Commissioner for Children Tasmania	Commission for Children and Young People	WA Commissioner for Children and Young People
Legislative base	Australian Human Rights Commission Act 1986 (Cth)	Human Rights Commission Act 2005 Human Rights Act 2004	Advocate for Children and Young People Act 2014 received assent on 24 June 2014. A commencement date is yet to be determined.	Children and Young Persons (Care and Protection Act) 1998 Child Protection (Working With Children) Act 2012 Child Protection (Working with Children) Regulation 2013	Children's Commissioner Act 2013	Family and Child Commission Act 2014	Children's Protection Act 1993	Children, Young Persons and Their Families Act 1997	Commission for Children and Young People Act 2012	Commissioner for Children and Young People Act 2006
Independence	The Commission is an accredited 'A status' national human rights institution. Reports to the Minister each year. ¹	Reports to the Minister	Reports to a Parliamentary Joint Committee. Does not operate under the direction and control of a Minister.	Reports to the Minister Committee on Children and Young People is a current joint statutory committee which oversees WWCC functions	Reports to Minister	Reports to the Minister (Premier). Annual Report to Parliament.	Reports to the Minister Annual Report to Parliament	Reports to Parliament-independent of Government Annual Report to Parliament	Independent statutory office,. Reports to the WA Parliament, which has established a Standing Committee which meets regularly with the Commissioner.	

¹ Australian Human Rights Commission Act 1986 (Cth), s 46MB(1)(a).

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Reporting to Parliament	The Minister must table each report before the Parliament of Australia. ²	Required to table an annual report to Parliament. Can table special reports to Parliament.	Required to table an annual report to Parliament. Can table special reports to Parliament.	Required to table an annual report to Parliament. Can table special reports to Parliament.	Required to table an annual report to Parliament. Can table special reports to Parliament.	Required to table an annual report to Parliament.	Required to table an annual report to Parliament. Can table special reports to Parliament.	Required to table an annual report to Parliament.	Required to table an annual report to Parliament. Can table special reports to Parliament.	Required to table an annual report to Parliament. Required to table reports to Parliament on special inquiries and other matters arising from the Commissioner's functions.
Appointment	The Commissioner is appointed by the Commonwealth Governor-General. ³	The Commissioner is an independent statutory officer appointed by the Executive	Independent statutory officer appointed by the NSW Governor	The Children's Guardian is an independent statutory officer appointed by the NSW Governor	The Commissioner is an independent statutory officer appointed by the Administrator	The Principal Commissioner and the Commissioner are appointed by the Governor in Council on the recommendation of the Minister. At least one Commissioner must be an Aboriginal person or a Torres Strait Islander.	The Guardian is an independent person appointed by the Governor of South Australia	The Commissioner is an independent statutory officer appointed by the Governor of Tasmania	The Commissioners are appointed by the Governor in Council	The Commissioner is an independent statutory officer appointed by the Governor of Western Australia

² Australian Human Rights Commission Act 1986 (Cth), s 46MN.

³ Australian Human Rights Commission Act 1986 (Cth), s 46MC(1).

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Grounds for dismissal and who can dismiss	The Commissioner's appointment may be terminated by the Commonwealth Governor-General for misbehavior, physical or mental incapacity, bankruptcy, 14 consecutive days of absence or 28 days of absence in any 12 months, except on leave of absence, outside employment. ⁴	The Commissioner may be removed from office by the Executive for contravening a law, misbehaviour, bankruptcy or conviction of certain offences.	May be removed from office by the Governor for misbehaviour, incapacity or incompetence	The Children's Guardian may be removed from office by the Governor, for misbehaviour, incapacity or incompetence.	The Commissioner can be removed by resolution of Parliament on grounds of misbehaviour or incapacity. Requires 2/3 of votes in Parliament.	The Principal Commissioner and the Commissioner are appointed by the Governor in Council on the recommendation of the Minister. At least one Commissioner must be an Aboriginal person or a Torres Strait Islander.	The Guardian may be removed from office by the Governor for neglect of duty, incapacity or any other sufficient reason. They must be removed if convicted of an indictable offence	The Commissioner may be removed from office by the Governor on the recommendation of the Minister for any sufficient reason	The Commissioners may be removed from office by the Governor for misconduct, neglect of duty, inability to perform duties or engagement in paid employment outside the duties of their office.	The Commissioner may be suspended or removed from office by the Governor on addresses from both Houses of Parliament; suspension is dependent on incompetence, misconduct etc.
Advisory Committees	No, but Commissioner may consult children. ⁵	May establish advisory committees pursuant to the <i>Human Rights Commission Act 2005</i>	Youth Advisory Council will provide advice to the Advocate and directly to the Minister. Advocate can establish other advisory committees as needed.	The Children's Guardian may appoint advisory Committees	No	The Principal Commissioner may establish one or more advisory councils to advise on matters relating to the commission's functions.	Required under the Act to have a Youth Advisory Committee	Required under the Act: Children and Young Persons Consultative Council Children and Young Persons Advisory Council	NO	Must establish advisory committees consisting of children and young people and may establish other advisory committees under the Act

⁴ Australian Human Rights Commission Act 1986 (Cth), s 46MJ.

⁵ Australian Human Rights Commission Act 1986 (Cth), s 46MB(5)(a).

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Role	<p>Commissioner functions are:</p> <p>to submit a report to the Minister each year⁶</p> <p>to promote discussion and awareness about Australian children's rights⁷</p> <p>to undertake research or other programs to promote Australian children's rights⁸</p> <p>to examine whether Commonwealth legislation recognises and protect Australian children's rights.⁹</p>	<p>Mandate to:</p> <p>Provide advice to government and community agencies about how to improve services for children and young people;</p> <p>Resolve complaints and concerns about services for children and young people; and</p> <p>Consult with children and young people.</p> <p>.</p>	<p>To advocate for and promote the safety, well-being and welfare of children and young people aged 0-24 years.</p>	<p>Mandate to:</p> <p>to promote the best interests and safeguard the rights of all children and young persons in out-of-home care (OOHC)</p> <p>Accredit and monitor designated agencies providing statutory care & domestic adoption</p> <p>Establish and maintain a register for the purpose of the authorisation of individuals as authorised carers</p> <p>Register & monitor organisations that provide or arrange voluntary out-of-home care</p> <p>To exercise functions relating</p>	<p>Mandate to ensure the wellbeing of NT "vulnerable" children</p>	<p>Broad mandate to promote the safety, wellbeing and best interests of children and young people, promote and advocate the responsibility of families and communities to protect and care for children and young people, and to improve the child protection system.</p>	<p>Legal mandate limited to well-being of children in out-of-home care</p>	<p>Broad mandate to promote the well-being of all children and young people</p>	<p>Broad mandate to promote continuous improvement and innovation in policies and practices relating to the safety and wellbeing of children and young people, especially vulnerable children and young people, and in relation to the OOHC sector.</p>	<p>Broad mandate to promote the well-being of all children and young people</p>

⁶ Australian Human Rights Commission Act 1986 (Cth), s 46MB(1)(a).

⁷ Australian Human Rights Commission Act 1986 (Cth), s 46MB(1)(b).

⁸ Australian Human Rights Commission Act 1986 (Cth), s 46MB(1)(c).

⁹ Australian Human Rights Commission Act 1986 (Cth), s 46MB(1)(d).

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			<p>to the employment of children</p> <p>To exercise functions relating to persons engaged in child-related work, including working with children check clearances, under the <i>Child Protection (Working With Children) Act 2012</i> and the <i>Child Protection (Working with Children) Regulation 2013</i></p> <p>To encourage organisations to develop their capacity to be safe for children</p> <p>Administer a voluntary accreditation scheme for offender persons and programs working with persons who have committed sexual offences against children</p>						

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Advocacy	Advocates for children's rights through reports to the Minister, promoting discussion and awareness about children's rights, undertaking research, educational and other programs to promote respect for children's rights, examining Commonwealth enactments to ascertain whether they recognize and protect children's rights and consulting with children, Commonwealth, State and Territory governments and other appropriate organisations, agencies or persons.	Provides advice to government and community agencies about how to improve services for children and young people.	Broad role to advocate for and promote safety, welfare and well-being of children and young people. Supporting functions are policy-relevant research, community engagement, conducting special inquiries and making recommendations to Parliament, NSW Government agencies, and non-government organisations.	Contributes to the development of policy and legislation relating to OOHC, adoption services and prescribed children's employment by providing advice to Executive Govt and NGOs.	No specific provision for advocacy but they do advocate through advice to Executive government and educative function	Broad advocacy functions for all children through research, policy advice, community education and public reports to Parliament. Individual advocacy for children in the child protection system is provided by the Office of the Public Guardian.	Advocates for children and young people through policy, inquiries and advice to Government. Also some advocacy for individual children.	Broad advocacy functions through policy, raising public awareness, recommendations and advice to Government	Broad advocacy provided through comment on policy and practice, monitoring and promoting the safety of children and young people.	Broad advocacy functions through policy, research, special inquiries, public awareness and recommendations to governments

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Complaints	<p>Commissioner has no complaint handling function.</p> <p>The Australian Human Rights Commission's Investigation and Conciliation Section may investigate and attempt to conciliate complaints alleging discrimination¹⁰</p> <p>The Commission can also investigate and attempt to resolve complaints about alleged breaches of human rights against the Commonwealth and its agencies. If the complaint is not resolved and the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human rights, it must report to Parliament¹¹</p>	Can investigate and decide on individual complaints	Has no specific complaints monitoring function.	Cannot act on individual complaints	<p>Can investigate individual complaints relating to "vulnerable children" regarding the provision of services by service providers.</p> <p>Also has own initiative complaints investigative powers.</p>	<p>No.</p> <p>Ombudsman responsible for oversight of complaints handling by agencies involved in the child protection system.</p>	Monitors systemic complaints	Can only investigate individual complaints when requested by Minister	<p>Does not have a legislative role to deal with complaints, but responds to a range of enquiries raised by the community.</p> <p>Cannot act on individual complaints, but is not prevented from investigating or dealing with any matter affecting the wellbeing of children and young people generally which arises through a matter relating to an individual. Monitors trends in complaints</p>

¹⁰ Australian Human Rights Commission Act 1986 (Cth), s 11(1)(aa)

¹¹ Australian Human Rights Commission Act 1986 (Cth), s 11(1)(f) and s 20

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Working with Children	No	No	No	<p>Exercises functions relating to persons engaged in child-related work, including working with children check clearances, under the <i>Child Protection (Working With Children) Act 2012</i> and the <i>Child Protection (Working With Children)Regulation 2013</i></p> <p>Encourages organisations to develop their capacity to be safe for children</p>	<p>No-this function is conducted by the NT police's SAFE NT unit, which conducts and monitors employment screening for volunteers and paid staff in child related employment and those carrying on a regulated business.</p>	<p>No.</p> <p>This function is provided by the Public Safety Business Agency.</p>	No	No	<p>Promotes the WWCC</p> <p>Undertakes an annual review of the administration of the Working with Children Check and reports on it.</p> <p>Educates and informs the community about the WWCC, in consultation with the Department of Justice.</p>	No
Child death reviews	No	Is a committee member of the ACT Children and Young People Death Review Committee.	Member of the Child Death Review Team convened by the NSW Ombudsman. The team registers all deaths and analyses data and makes recommendations	Convenor of the Child Death Prevention Committee – who look at thematic issues – not case specific	<p>No</p> <p>Maintain the child death register to record all child deaths in Queensland. Analyse, research and report on all child deaths to monitor trends and reduce the likelihood of child deaths.</p>	<p>No</p> <p>(Separate child death review committee established in the Children's Protection Act)</p>	No	<p>Conducts inquiries into the deaths of children known to the child protection system at the time of their death, or within 12 months of their death. Can conduct an inquiry into the safety and wellbeing of a vulnerable child or a group of children.</p>	No. Child death reviews fall under the Ombudsman WA.	

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Accreditation	No	No	<p>Accredits: statutory out of home care service providers adoption service providers registers agencies who provide voluntary OOHC registers organisations that provide or arrange voluntary out-of-home care administers a voluntary accreditation scheme for offender persons and programs working with persons who have committed sexual offences against children.</p>	No	No	No	No	No	No

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Other	The Commission has a function to, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve human rights issues. ¹²	Has own motion powers to conduct 'Commission Initiated Consideration s' into services for children and young people.	The Minister may require the Advocate to conduct a special inquiry into a specific issue affecting children and young people, either at the request of the Advocate or on the Minister's own initiative.	Monitor the accreditation of out-of-home care and adoption service providers Monitors organisations that provide or arrange voluntary out-of-home care Regulates prescribed children's employment	Monitor admin of the child protection legislation as it relates to vulnerable children. Undertaking inquiries related to the care/protection of vulnerable children. Monitoring the implementation of any government decisions arising from an inquiry conducted by the Commissioner or any other inquiry relating to the care and protection of vulnerable children. Monitoring the Dept of Children and Families (DCF) response to abuse allegations of children while they are in out-of-home care. Promoting an understanding and inform public discussion about the rights, interests and wellbeing of vulnerable children.	To develop and review workforce planning and development strategies for the child protection system by collaborating with relevant agencies, the private sector and education providers. To develop and coordinate a multidisciplinary research program to inform policies and practices, in consultation, with stakeholders and relevant agencies.	Advocates and monitors conditions in youth detention centres.	Advocate for young people detained under Youth Justice Act 1997.	Monitors OOHC including by advising Minister and Secretary on the performance of OOHC services (and on Minister request, investigating and reporting on an OOHC service). Broad inquiry powers-own motion and /or in response to a recommendation by the Minister	On own motion or at request of Minister conduct a special inquiry; monitor certain aspects of complaint handling , conduct inquiries into legislation etc.

¹² Australian Human Rights Commission Act 1986 (Cth), s 11(1)(o).

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Age	Means people under the age of 18. ¹³	0-17 years	0-24 years	0-17 years	0-17 years (can also receive complaints from young people aged up to 25 regarding leaving care services).	0-17 years	0-17 years	0-17 years	0-17 years (but u21 if they have left or are about to leave the custody / guardianship of the Secretary to live independently, or a youth justice client).
Target Group	All Australian children and young people but the Commissioner may give particular attention to children who are at risk or vulnerable. ¹⁴	All children and young people	All children and young people with priority given to the interests and needs of vulnerable and disadvantaged young people.	Children and young people in out of home care/ awaiting adoption. Children and young people under 15 employed in entertainment, exhibition, still photography, door-to-door sales, and modelling if u16.	All vulnerable children and young people- children involved with child protection, disability services, mental health services youth justice system, child-related services such as social services and volatile substance programs.	All children and young people.	Children and young people in out-of-home care Aboriginal children and young people.	All children and young people, with a focus on those who are most vulnerable	All children and young people, with particular regard to Aboriginal and Torres Strait Islander children and young people, and children and young people who are vulnerable or disadvantaged.
Year established	2012 ¹⁵	2006	Commission established in 1998	1998	2008	2014	2006	2000	2013 – replaces Child Safety Commissioner - established in 2005
Commissioner/ Guardian	Megan Mitchell	Alasdair Roy	Kerryn Boland - Acting	Kerryn Boland	Howard Bath	Steve Armitage Principal Commissioner	Pam Simmons	Vacant	Bernie Geary OAM – Principal Commissioner Andrew Jackomos – Commissioner for Aboriginal CYP
Website	www.humanrights.gov.au	www.ACTkids.act.gov.au	www.kids.nsw.gov.au	www.kidsguardian.nsw.gov.au/	www.childrenscommissioner.nt.gov.au/aboutus.html	www.qfcc.qld.gov.au	www.gcyp.sa.gov.au/	www.childcomm.tas.gov.au/	www.ccyp.vic.gov.au

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¹³ Australian Human Rights Commission Act 1986 (Cth), s 3.

¹⁴ Australian Human Rights Commission Act 1986 (Cth), s 46MB(4).

¹⁵ Australian Human Rights Commission Amendment (National Children's Commissioner) Bill 2012 (Cth), s 2.