



# ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

## STATEMENT OF WITNESS

**Statement of:** Caroline MEALOR

**Occupation:** Acting Chief Executive, Attorney-General's Department

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This statement, consisting of 19 pages signed by me is true to the best of my knowledge and belief.

1. I have been employed as the Acting Chief Executive, Attorney-General's Department since 27 June 2016. Prior to my role as Acting Chief Executive, I was the Deputy Chief Executive, Attorney-General's Department which position I have held since September 2012.
2. I provide this statement in response to a letter of request from the Commonwealth Royal Commission to the Premier of South Australia dated 6 July 2016.
3. This statement constitutes the State of South Australia's response to the items set out in Annexure A to the Commonwealth Royal Commission's letter dated 6 July 2016.

### **Item 1 - The consideration the South Australian Government has given to the Royal Commission's Report on working with children checks**

4. The Government of South Australia has considered the Commonwealth Royal Commission's *Working with Children Checks Report* in conjunction with the recommendations made by Royal Commissioner Margaret Nyland AM in her report delivered on 5 August 2015 in the South Australian Child Protection Systems Royal Commission ('the Nyland Report').

**Item 2 - The steps, if any, the South Australian Government has taken in relation to the recommendations concerning:**

**a. general matters (recommendations 1 and 4)**

5. Following the release of the Nyland Report, a draft of the *Child Safety (Prohibited Persons) Bill 2016* was released for consultation on 22 August 2016. The *Child Safety (Prohibited Persons) Bill 2016* ("CSPP Bill") was introduced into Parliament on 20 September 2016. If passed, will be the first legislative instrument in South Australia dedicated to Working with Children Checks ('WWCCs').
6. The CSPP Bill adopts the approach recommended by the Commonwealth Royal Commission (see response to Item 2(b) below), but is adapted to meet the relevant recommendations of the Nyland Report relating to WWCCs.
7. The CSPP Bill proposes a number of changes to the current screening processes for people who wish to volunteer or work with children. The most significant change is the establishment of a central assessment unit as the sole agency in South Australia responsible for conducting WWCCs and determining whether a person will be prohibited from working or volunteering with children.
8. A prohibition notice is issued if the central assessment unit determines that a person is to be prohibited from engaging in child related work (section 32 of the CSPP Bill).

**b. standards (recommendations 5 to 36)**

Child-related work

9. The definition of child-related work is contained in s 6 of the CSPP Bill, and is consistent with the definition provided in recommendation 12 of the Commonwealth Royal Commission's *Working with Children Checks Report*.
10. S 6(o) of the CSPP Bill specifies that child-related work does not include any other service in the course of which contact with children occurs incidentally. This is consistent with recommendation 8(a) of the Commonwealth Royal Commission's *Working with Children Checks Report*.

11. The CSPP Bill contains no distinction between supervised or unsupervised contact with children in the context of the definition of child-related work. This is consistent with recommendations 5 and 9 of the Commonwealth Royal Commission's *Working with Children Checks Report*.
12. The CSPP Bill contains no distinction between child-related work for reward and child-related work in any other capacity. This is consistent with recommendation 10 of the Commonwealth Royal Commission's *Working with Children Checks Report*.
13. Pursuant to s 6(n) of the CSPP Bill, services or activities that are provided under an arrangement for a person or domestic purpose do not constitute child-related work. This is consistent with recommendation 11 of the Commonwealth Royal Commission's *Working with Children Checks Report*.

#### Exemptions

14. 'Excluded persons' are exempt from obtaining a WWCC under s 16 of the CSPP Bill. The definition of 'excluded person' can be found in s 9 of the CSPP Bill. 'Excluded persons' include the following:
  - a. a person who undertakes child-related work in the same capacity as the child or children to whom the work relates (consistent with recommendation 14(a)(iv) of the Commonwealth Royal Commission's *Working with Children Checks Report*).
  - b. a person who employs a child, or who supervises an employed child, where the work undertaken by the child is not child-related work (consistent with recommendation 14(a)(ii) of the Commonwealth Royal Commission's *Working with Children Checks Report*).
  - c. a member of the South Australian Police or the Australian Federal Police Force (consistent with recommendation 14(a)(v) of the Commonwealth Royal Commission's *Working with Children Checks Report*). Police officers are currently exempt from a relevant history assessment under regulation 14(e) of the Children's Protection Regulations.

- d. a person to whom subsection 9(3) of the CSPP Bill applies, namely a person who believes on reasonable grounds that they will not work with children on more than 7 days (whether consecutive or not) in a calendar year or a person who, at the time of engaging in particular child-related work on a particular day in a calendar year, had worked with children on less than 7 days (whether consecutive or not) in that year is excluded (consistent with recommendation 14(a)(iii) of the Commonwealth Royal Commission's *Working with Children Checks Report*).
15. Pursuant to section 9(2) of the CSPP Bill, 'prohibited persons' do not constitute 'excluded persons' and as a consequence cannot rely on any of the above exemptions. This is consistent with recommendation 14(c) of the Commonwealth Royal Commission's *Working with Children Checks Report*.
16. Pursuant to section 15 of the CSPP Bill, a 'prohibited person' is defined as follows:
- a. a person to whom a prohibition notice has been issued;
  - b. a person who, under a law of the Commonwealth, or of another State or Territory, is prohibited from working with children (however described);
  - c. a person who has been found guilty of a prescribed offence committed as an adult.

### Offences

17. Pursuant to section 16 of the CSPP Bill a person must not work with children unless a WWCC has been conducted in relation to the person within the preceding 5 years. This is consistent with recommendation 16(a) of the Commonwealth Royal Commission's *Working with Children Checks Report*.
18. Pursuant to 17(1), an employer must not employ a person in a 'prescribed position' unless the employer has obtained from the person their full name, address, date of birth and 'unique identifier' and verified that a working with children check has been conducted in relation to the person within the preceding 5 years and the person is not prohibited from working with children. Further, the employer must provide the name, address, telephone number and email address of the business at which the person is to

be employed and the name and contact details of the person who verified the WWCC. This is consistent with recommendation 16(b) of the Commonwealth Royal Commission's *Working with Children Checks Report*.

- a. A 'prescribed position' is defined in section 5 as a position in which a person works, or is likely to work, with children, or any other position, or a position of a class prescribed by the regulations for the purposes of this definition.
  - b. A 'unique identifier' is defined in sections 5 and 29 of the CSPP Bill. The central assessment unit must issue a unique identifier to each applicant for a working with children check and each person to whom a prohibition notice has been issued, and such other persons as the central assessment unit deems appropriate. The central assessment unit is to issue a unique identifier to a person by assigning a unique number to the person by which the person can be identified and with which the records management system can be interrogated.
19. Pursuant to section 45 of the CSPP Bill, a person must not falsely represent that a WWCC has been conducted in relation to the person within the preceding 5 years or the person is not prohibited from working with children. Further, a person must not falsely represent that a WWCC has or has not been conducted in relation to a specified person within the preceding 5 years that or a specified person is, or is not, prohibited from working with children. Section 45 provides that a person must not make a statement knowing that it is false or misleading in a material matter in information provided under the CSPP Bill. This is consistent with recommendation 16(c) of the Commonwealth Royal Commission's *Working with Children Checks Report*.
20. Pursuant to section 40 of the CSPP Bill, a person to whom a unique identifier has been issued must notify the central assessment unit if any of the various changes in circumstances listed in section 40(1) occur. These changes include:
- a. if the person is prohibited from working with children under a law of the Commonwealth, or of another State or Territory;
  - b. the person becomes a registrable offender under the Child Sex Offenders Registration Act 2006;

- c. the person makes a disclosure to their employer under s 66 of the Child Sex Offenders Registration Act 2006;
- d. there is a change in the assessable information relating to the person;
- e. the person changes their name, or uses another name.

These provisions are consistent with recommendation 16(d) of the Commonwealth Royal Commission's *Working with Children Checks Report*. Assessable information is defined in section 8 of the CSPP Bill.

21. Pursuant to section 49 of the CSPP Bill, a person must not, directly or indirectly, disclose information obtained in the course of the administration or operation of the CSPP Bill except in certain circumstances. This is consistent with recommendation 16(e) of the Commonwealth Royal Commission's *Working with Children Checks Report*.

#### Criminal history information

22. Pursuant to section 26(1), a WWCC in respect of a person consists of the central assessment unit assessing 'assessable information' relating to a person against the prescribed risk assessment criteria to determine whether or not the person poses an unacceptable risk to children. Assessable information includes information that relates to offences of which the person has been found guilty (section 8(1)(a)) or with which the person has been charged (section 8(1)(b)), and section 8(1) applies to information whether the relevant conviction, offence or conduct occurred before or after the commencement of this section, regardless of the outcome of the charges or any proceedings, action or appeal to which the information relates. This is consistent with recommendation 17 of the Commonwealth Royal Commission's *Working with Children Checks Report*.
23. Section 39 of the CSPP Bill provides that the Commissioner of Police must ensure that, if a police officer lays a charge of a prescribed offence against a person, the prescribed information relating to the charge is provided to the central assessment unit as soon as is reasonably practicable after the person is charged, and may disclose to the central assessment unit any information on any matter relevant to the operation of the CSPP Bill. This is consistent with recommendation 18 of the Commonwealth Royal Commission's *Working with Children Checks Report*.

### Disciplinary or misconduct information

24. Pursuant to section 8 of the CSPP Bill, information that relates to disciplinary proceedings in which the person was a defendant or respondent, information that relates to disciplinary action taken against the person and information that relates to findings of misconduct made against the person constitutes 'assessable information'. This is consistent with recommendation 19(a) of the Commonwealth Royal Commission's *Working with Children Checks Report*.
25. Section 40(1)(d) of the CSPP Bill provides that a person to whom a unique identifier has been issued must notify the central assessment unit if there is a change in the assessable information relating to the person. Further, section 19(1)(a) requires employers of a person in a prescribed position to notify the central assessment unit if the employer becomes aware of any assessable information in relation to the person. As noted above, 'assessable information' includes information that relates to disciplinary proceedings in which the person was a defendant or respondent (section 8(c)), information that relates to disciplinary action taken against the person (section 8(d)) and information that relates to findings of misconduct made against the person (section 8(f)). This is consistent with recommendation 19(c) of the Commonwealth Royal Commission's *Working with Children Checks Report*.

### Response to records returned

26. Pursuant to section 15(1)(c) of the CSPP Bill, a person who has been found guilty of a 'prescribed offence' committed as an adult is automatically prohibited from working with children. As previously stated, the definition of 'prescribed offence' can be found in section 5 of the CSPP Bill. This is consistent with recommendation 20(b) of the Commonwealth Royal Commission's *Working with Children Checks Report*.
27. In relation to recommendations 20(c) and 21 of the Commonwealth Royal Commission's *Working with Children Checks Report*, the definition of 'assessable information' in section 8 of the CSPP Bill includes information that relates to offences of which the person has been found guilty or with which a person has been charged. All other relevant criminal, disciplinary or misconduct information would be captured by this definition, and would be taken into consideration as assessable information in the WWCC application process.

### Assessing risk

28. Pursuant to section 4 of the CSPP Bill, the Minister has the power to publish or adopt guidelines for the purposes of the Bill. Guidelines may be published or adopted in relation to the standards to be applied by the central assessment unit when determining the weight to be given to evidence of a specified kind. This would likely involve a consideration of the criteria for assessing risks to children and include factors similar to those referenced in recommendation 23 of the Commonwealth Royal Commission's *Working with Children Checks Report*.
29. Section 3(3) of the CSPP Bill provides that the paramount consideration in respect of the administration, operation and enforcement of this Act must always be the best interests of children, having regard to their safety and protection. This is consistent with recommendation 24 of the Commonwealth Royal Commission's *Working with Children Checks Report*.

### Eligibility to work while an application is assessed

30. Section 16 of the CSPP Bill provides that a person must not work with children unless a WWCC has been conducted in relation to the person within the preceding 5 years. Pursuant to section 28 of the CSPP Bill, the central assessment unit must conduct a WWCC whether or not the person subsequently withdraws their application. This is consistent with recommendation 25(a) of the Commonwealth Royal Commission's *Working with Children Checks Report* (except the fact that there is not an obligation on the applicant to not withdraw the application, rather there is an obligation on the central assessment unit to continue assessing the person).
31. As previously stated, pursuant to section 17 of the CSPP Bill an employer must not employ a person in a prescribed position unless the employer has obtained from the person their full name, address, date of birth and unique identifier and verified various facts with the central assessment unit. In effect, if enacted this provision implements recommendation 25(b) of the Commonwealth Royal Commission's *Working with Children Checks Report*, as applicants must provide their unique identifier rather than an application receipt to their employers before beginning child-related work, and recommendation 25(c) as employers must verify applications with the central assessment unit.



32. Pursuant to section 4(2)(c) of the CSPP Bill, guidelines may be published or adopted in relation to benchmarks for the period within which certain applications for WWCCs are to be processed by the central assessment unit. This leaves scope for recommendation 27 of the Commonwealth Royal Commission's *Working with Children Checks Report* relating to the time frames for processing WWCCs to be implemented provided the legislation is enacted.

#### Clearance types

33. Pursuant to section 26(1) of the CSPP Bill the WWCC is based on an assessment of assessable information which is defined in section 8 and does not include information about the prospective employer or organisation the person is seeking to work for. This is consistent with recommendation 28(a) of the Commonwealth Royal Commission's *Working with Children Check Report*.
34. Pursuant to section 26(5) of the CSPP Bill the outcome of the WWCC is that the person is, or is not, prohibited from working with children. This is consistent with recommendation 28(b) of the Commonwealth Royal Commission's *Working with Children Checks Report*.
35. Pursuant to section 8B(1) of the CPA, the responsible authority for an organisation must ensure that, before a person is appointed to, or engaged to act in, a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in the organisation, an assessment of the person's relevant history is undertaken. Similarly, under the proposed new central assessment unit model in the CSPP Bill, section 7 provides that volunteers are defined as employed persons, and as a consequence would be subject to the same screening checks as employees. This is consistent with recommendation 28(c) of the Commonwealth Royal Commission's *Working with Children Checks Report*.
36. Pursuant to section 43 of the CSPP Bill, a decision made by the central assessment unit to issue or revoke a prohibition notice or any other decision under this Act declared by the regulations to be included under the ambit of this definition ('a reviewable decision') may be reviewed by the South Australian Civil and Administrative Tribunal ('SACAT'). Section 42(2) of the CSPP Bill states that an application for review of a reviewable decision may be made to SACAT within 14 days after the applicant receives notice of the relevant decision. In conjunction with section 15, which prohibits persons from

working with children if they have committed a prescribed offence defined in section 5, this section is consistent with recommendation 29 of the Commonwealth Royal Commission's *Working with Children Checks Report*.

#### Duration and continuous monitoring

37. Pursuant to section 16 of the CSPP Bill, a person must not work with children unless a working with children check has been conducted in relation to the person within the preceding 5 years. Further, section 18 states that an employer must ensure that a working with children check is conducted at least every 5 years. This is consistent with recommendation 31(a) of the Commonwealth Royal Commission's *Working with Children Check Report*.
38. Pursuant to section 19 of the CSPP Bill, an employer of a person employed in a prescribed position must notify the central assessment unit if the employer becomes aware of any assessable information in relation to the person. Assessable information includes information provided by the person for the purposes of a WWCC. Pursuant to section 17(c), an employer must also provide the name, address, telephone number and email address of the business at which the person is to be employed. This is consistent with recommendation 31(b) of the Commonwealth Royal Commission's *Working with Children Checks Report*.
39. Pursuant to section 41 of the CSPP Bill, the central assessment unit must take reasonable steps to notify each known employer of a person if the person is prohibited from working with children, more than 5 years has passed since the person's most recent WWCC was conducted or the person's unique identifier has changed. This is consistent with recommendation 31(c) of the Commonwealth Royal Commission's *Working with Children Checks Report*.

#### **Item 3 - The consideration the South Australian Government has given to the Royal Commission's *Report on redress and civil litigation*.**

40. The Government of South Australia is considering the recommendations made by the Commonwealth Royal Commission in the *Redress and Civil Litigation Report*.

41. Cabinet was notified of the release of the *Redress and Civil Litigation Report* and its findings. The discussions that were had in Cabinet about the report are subject to the usual rules of Cabinet confidentiality.

**Item 4 - The steps, if any, the South Australian Government has taken in relation to the recommendations concerning:**

**a. redress scheme structure (recommendations 26 to 33); and**

**b. redress scheme funding (recommendations 34 to 39).**

42. As previously stated in South Australia's response to the Commonwealth Royal Commission's consultation paper in relation to redress and civil litigation, the State has an *ex gratia* payments scheme for child sexual abuse victims who were in State care. Payments are made at the discretion of the Attorney-General pursuant to s 31 of the *Victims of Crime Act 2001 (SA)* (VOC Act).

43. The *ex gratia* payments scheme provides for payments of up to \$50,000, and the average payment is approximately \$14,500. The scheme is an alternative to civil litigation, and the maximum payment reflects the lower burden of proof that is required. The average payment reflects the strengths and merits of the claims under this scheme in contradistinction to those who pursue common law claims.

44. This *ex gratia* payments scheme has been in place since January 2010 and applies to past and future sexual abuse of children in State care. It was established as a consequence of the recommendations made as part of the Children in State Care Inquiry (CISC Inquiry) conducted by Commissioner Mullighan.

45. The maximum level of compensation payable under the VOC Act increased from \$50,000 to \$100,000 in March 2016. This increase applies to new claims arising from offences that occurred on or after 1 July 2005. As a consequence, this increase has not been reflected in amendment to the *ex gratia* scheme guidelines.

46. The State in principle supports the adoption of nationally 'consistent principles' for application to State redress schemes. However, the State does not support a single redress scheme or the creation of a further State scheme to be utilised by both government and non-government institutions.

47. The State is not in a position to become a funder of last resort in respect of non-government institutions not in a position to meet their liability to victims under a redress scheme.
48. South Australia's position on a national redress scheme was put to COAG in December 2015. The Commonwealth Government has not yet implemented a national redress scheme.

**Item 5 - The steps, if any, the South Australian Government and/or South Australian Government-run institutions have taken in relation to the recommendations concerning:**

- a. direct personal response (recommendations 5 to 8); and**  
**b. interim arrangements (recommendations 76 to 84).**

49. In South Australia, many of the institutions that provided State care no longer exist and the personnel who were employed at those institutions would likely have left State employment many years ago and in many instances may be deceased. As such, it is often not possible for institutions to re-engage with survivors. However, if the relevant institution exists, it is a matter for the survivor (subject to consideration of appropriate medical/counselling advice received by the survivor) to decide whether they wish to have contact with the institution.
50. The Government of South Australia notes the recommendation of the Commonwealth Royal Commission that an apology should be provided from the institution responsible for the abuse. On 17 June 2008, Premier Mike Rann, on behalf of the Government of South Australia apologised in Parliament to children who were abused in care.
51. With regards to the Commonwealth Royal Commission's recommendation to provide counselling and psychological care, South Australia has already put measures in place to provide for the psychological care of those who were in out-of-home care or under the Guardianship of the Minister as children.
52. Post Care Support Services in South Australia are funded by the Department of Education and Child Development (DECD) and are provided through Relationships Australia South Australia Health Promotion Services. Post Care Support Services

provide information, advocacy and referral for adults who were in out of home care as children. Post Care Services can help adults who meet the service eligibility criteria, to access community services such as counselling and therapeutic services and programs focused on life skills and relationships. These counselling and support services are provided on an 'as needs' basis and are not subject to limits. Information about Post Care Services can be found at: <http://www.respondsa.org.au/services/post-care-support-services>.

53. Referrals to Post Care Support Services can also be made by the Commissioner for Victims' Rights who, on request, can also assist victims to make a claim under the *ex gratia* scheme.

54. In terms of common law claims, the State has formally adopted a policy of dealing with common law claims compassionately.

**Item 6 - The steps, if any, the South Australian Government has taken in relation to the recommendations concerning:**

- a. limitation periods (recommendations 85-88);**
- b. duty of institutions (recommendations 89-93);**
- c. identifying a proper defendant (recommendations 94 and 95).**

55. In South Australia, an action for damages which includes damages for personal injury must be commenced within three years after the cause of action accrued pursuant to s 36 of the *Limitation of Actions Act 1936 (SA)*. As a result, most claims for historical child sexual abuse are out of time and the plaintiff must seek an extension of time pursuant to s 48 of the *Limitation of Actions Act 1936 (SA)*.

56. S 48 of the *Limitation of Actions Act 1936 (SA)* confers on a Court a discretion to extend the time for bringing a claim if the plaintiff ascertained a fact material to the proceedings in the 12 months prior to issuing the proceedings or the failure to institute proceedings resulted from representations or conduct of the defendant, and if 'in all the circumstances of the case it is just to grant the extension of time'.

57. South Australia has not removed the limitation period for bringing an action involving historical institutionalised child sexual abuse for two reasons:
- a. South Australian courts will normally consider an application for an extension of the limitation period as part of the trial of the matter, and so the Court's examination of the merits of the case is not deferred until the extension of time issue has been resolved. The position in South Australia in this regard differs from some other States.
  - b. South Australia has formally adopted a policy to deal with child sexual abuse claims compassionately, and not to rely upon limitation periods unless there is 'insurmountable prejudice to the State'. In excess of 160 common law claims have been received and most of these have been resolved.
58. With regards to the recommendation of the Royal Commission to impose a non-delegable duty on certain institutions, South Australia's position is that this matter is best left to the normal development of the common law. South Australia's current position is consistent with the decision of the High Court in *New South Wales v Lepore* (2003) 212 CLR 511.
59. South Australia has not considered the issue of whether it is appropriate to impose a reverse onus of proof on institutions in civil matters involving child sexual abuse.
60. With regards to the Commonwealth Royal Commission's recommendations relating to identifying a proper defendant, the State is not aware of any instances in which plaintiffs have been unable to sue a State-run entity because it is unincorporated or has ceased to exist.
61. As identified in South Australia's response to the Redress and Civil Litigation Consultation Paper, it is acknowledged that in some instances plaintiffs have found it difficult to identify a non-government entity which can be sued.

**Item 7 - The steps, if any, the South Australian Government and/or South Australian Government-run institutions have taken in relation to the recommendations concerning the model litigant approaches (recommendations 96-99).**

62. In South Australia, there are Model Litigant Guidelines which describe the scope of the obligation that the State of South Australia, State Ministers, and incorporated State agencies and instrumentalities have to act as model litigants. These guidelines are set out in Legal Bulletin No. 2 issued on 10 June 2011. Prior to this, South Australia practiced model litigant principles informally. Legal Bulletins are issued by the Crown Solicitor for the information and benefit of public sector agencies. These guidelines are publicly available on the Crown Solicitor's Office website and the Law Society of South Australia's website.
63. The Model Litigant Guidelines not only require honesty and compliance with the law, court rules, ethical obligations and the rules of professional conduct, but also require propriety, fairness and compliance with the highest professional standards.
64. There are no model litigant guidelines which apply specifically to child sexual abuse claims. The South Australian Model Litigant Guidelines apply to all types of litigation, and do not contain specific guidelines for different types of claims.
65. South Australia's Model Litigant Guidelines nevertheless meet the Commonwealth Royal Commission's recommendation that they 'be designed...to avoid unnecessarily adversarial responses to claims' as they include guidelines that the Crown should 'pay...legitimate claims without litigation', 'endeavour...to avoid litigation, wherever reasonably possible' and 'not rely on technical defences unless the Crown's interests would be prejudiced by the failure to comply with a particular requirement'.
66. In addition, South Australia has a policy adopted by Cabinet resolution to deal with claims of historical child sexual abuse compassionately as previously mentioned.
67. South Australia is in the process of reviewing its Model Litigant Guidelines including whether it is appropriate for a new section specifically dealing with child sexual abuse claims to be included in the Guidelines.

**Item 8 - The steps, if any, the South Australian Government has taken in response to evidence given in the Royal Commission's public hearings and the findings of case study reports (where published), including concerning State institutions:**

68. With the exception of Case Study 24 (Out-of-Home Care) the State of South Australia was not involved in the Case Studies referred to in Appendix A.
69. The Nyland Report was presented by Commissioner Nyland to the Governor of South Australia on 5 August 2016. The State of South Australia has established a Nyland Royal Commission Response Unit within the Attorney-General's Department to advise on the recommendations made by Commissioner Nyland.
70. Recommendations 75 to 96 of the report relate to out-of-home care and are being considered as part of the State's response to all of the recommendations made by Commissioner Nyland. Recommendations 76 (reinstate the inter-departmental committee overseeing Rapid Response to review its operation), 81 (annual reviews to be chaired by a suitably qualified person who is independent of the case), 90 (review and promote Education policies regarding school suspension, exclusion and expulsion) and 92 (require Education to fund any in-school support needed by children in care) have been accepted and are being actioned by the Government.
71. Other recommendations made by Commissioner Nyland are also important for children in out-of-home care including the establishment of a Commissioner for Children and Young People. The *Children and Young People (Oversight and Advocacy Bodies) Bill 2016* was passed by the House of Assembly and read for the first time in the Legislative Council on 20 September 2016. Further information in relation to this is provided below.
72. Cognisant of the issues raised generally at the Commonwealth Royal Commission and not solely with respect to Case Study 17, the South Australian Office of the Director of Public Prosecutions ('ODPP') has reviewed its practices and procedures with respect to decision making, record keeping and consultation with victims and investigators. This has included the publication of new written policies. Part of this review has been to introduce a procedure by which compliance with the policies and practices is the subject of an annual audit process and report to the Executive. The first such audit is being conducted in 2016.



**Item 9 - Any other action taken in response to the work of the Royal Commission about which the South Australian Government wishes to advise the Royal Commission.**

73. As mentioned above, Commissioner Nyland delivered her report on 5 August 2016. The Government is moving promptly, but in a calm and considered way.

74. A number of the recommendations in the Nyland Report that address issues raised in the Commonwealth Royal Commission have been accepted and are being actioned. A full and detailed response to the Nyland Royal Commission's 260 recommendations will be presented before the end of year.

Children and Young People (Oversight and Advocacy Bodies) Bill 2016

75. As mentioned above, the *Children and Young People (Oversight and Advocacy Bodies) Bill 2016* passed the House of Assembly on 20 September 2016. The Bill aims to strengthen the oversight of child protection matters in South Australia and ensure greater advocacy for the rights and wellbeing of children.

76. The Bill establishes the independent Commissioner for Children and Young People, in addition to the Child Development Council. It also consolidates the work of the Guardian for Children and Young People and the Child Death and Serious Injury Committee into a single legislative instrument.

77. The Children's Commissioner will be independent of Ministerial direction, and will be encouraged to engage children in the process of making decisions affecting their lives, as well as undertake research and publish reports.

78. The Children's Commissioner will have the power to hold state authorities to account, if the agencies do not comply with the recommendations made by the Children's Commissioner, or those made by the Guardian for Children and Young People or the Child Death and Serious Injury Review Committee and referred to the Commissioner, where the recommendation has been accepted but not implemented.

79. This Bill seeks to implement recommendations 245-248 and 250-253 of the Nyland Report.

#### Public Sector (Data Sharing) Bill 2016

80. The *Public Sector (Data Sharing) Bill 2016* was passed by the House of Assembly and read for the first time in the Legislative Council on 21 September 2016, with the aim of extending the reach of data sharing by enabling the Government to work with the Commonwealth, other states or territories, local councils and the non-Government sector. This Bill also seeks to establish a new data analytics office to coordinate data storage, sharing and analysis.

81. This Bill addresses concerns raised by Commissioner Nyland in her report at page 575, where it is noted that there has been a failure on the part of agencies to share information despite the existence of the Information Sharing Guidelines.

#### Child wellbeing practitioners

82. The Government of South Australia has implemented recommendation 52 of the Nyland Report, which states that the Department of Education and Child Development should 'employ qualified child wellbeing practitioners (CWPs) accessible to all staff in the Department, but focusing on locations of greatest need, to consult with staff and to work directly with vulnerable families'.

83. Following a successful trial in the northern suburbs in 2015, child wellbeing practitioners began working with South Australian public schools on 15 August 2016. The practitioners will be assigned between 5 and 6 schools and will work with school counsellors, leadership staff, teachers and support staff to learn about the vulnerable families already identified in the school. Approximately 60 people will be employed in the program, working across 300 schools.

#### Youth Justice Administration Act 2016

84. The new *Youth Justice Administration Act 2016 (SA)* (YJAA) is due to commence on 1 December 2016. This legislation sets out a range of principles, including clear provisions on the appropriate and limited use of resident isolation and restraint procedures. The Guardian for Children and Young People has also been appointed as the Training Centre Visitor, formalising the important monitoring and advocacy role the Guardian currently provides for the Adelaide Youth Training Centre. In addition, Youth Justice as part of DCSI is undertaking a review of all operational policies and procedures to ensure that all practice complies with the new legislation.



**CAROLINE MEALOR**

**Acting Chief Executive, Attorney-General's Department, South Australia**

**26 October 2016**