

Review and Analysis

*Children and Young People
(Oversight and Advocacy Bodies) Act 2016 (SA)*

and

*Children and Young People
(Oversight and Advocacy Bodies) Regulations 2017 (SA)*

18 April 2018 (updated 26 July 2023)



Government of
South Australia



Child
Development
Council

This document was originally published on 18 April 2018. It was updated in July 2023 to reflect the 2021 amendments to the governing legislation, which paved the way for the establishment of a Commissioner for Aboriginal Children and Young People.

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Contents

1. Introduction	4
2. Purpose.....	4
3. Legislative Background	4
4. Discussion.....	6
<i>a. Summary of statutory provisions</i>	6
<i>b. Scope of powers</i>	10
Overarching scope	10
Individual statutory requirements.....	11
Child Development Council.....	11
Commissioner for Children and Young People	14
Commissioner for Aboriginal Children and Young People	15
Guardian for Children and Young People	15
Child Death and Serious Injury Review Committee.....	16
<i>c. Opportunities for collaboration</i>	20
<i>d. Operational challenges arising from the legislation</i>	20
Giving effect to the Framework.....	21
Consultation	21
Governance.....	22
Delegation and use of staff.....	24
5. Summary.....	24

1. Introduction

The *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (OAB Act) establishes three new oversight and advocacy bodies – a Commissioner for Children and Young People (CCYP); a Commissioner for Aboriginal Children and Young People (CACYP); and a Child Development Council (Council). It also continues two existing bodies – the Guardian for Children and Young People (Guardian) and the Child Death and Serious Injury Review Committee (Committee).

2. Purpose

This document presents the findings of a detailed review and analysis of the OAB Act and accompanying *Children and Young People (Oversight and Advocacy Bodies) Regulations 2017* (OAB Regulations).

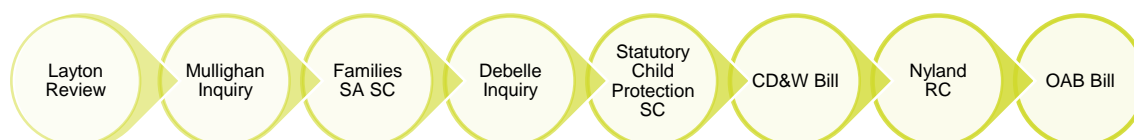
It aims to help newly appointed members of the Council become familiar with their statutory obligations by:

1. summarising the provisions contained in the OAB Act and OAB Regulations
2. explaining the scope of powers provided to the five oversight and advocacy bodies and detailing the individual statutory requirements for each body
3. identifying opportunities for collaboration
4. highlighting the operational challenges arising from the legislation.

3. Legislative Background

The process leading to the introduction of the OAB Act was a long one, beginning in 2002 with a review into South Australia's child protection system by the Hon Justice Robyn Layton QC.¹

Figure 1: A long road to the OAB Act 2016



¹ When referencing an older inquiry or review conducted by an individual who held the title of QC at that time, it is generally more appropriate to refer to them as QC in the context of the historical period being discussed. This is because the title of the QC is a specific professional designation that reflects their status and qualifications at the time of the inquiry.

Layton's report, *Our Best Investment: A State Plan to Protect and Advance the Interests of Children* was handed down in 2003 and recommended, amongst other things, that South Australia introduce a Commissioner for Children and Young Persons.²

A host of other reviews into the State's child protection system occurred over the next decade, including an inquiry into children in state care in 2008, conducted by the Hon Ted Mullighan QC;³ the appointment of a Select Committee on Families SA in 2007;⁴ the Independent Education Inquiry conducted by the Hon Bruce DeBelle AO QC in 2013;⁵ and the 2014 Legislative Council Select Committee into Statutory Child Protection and Care in South Australia.⁶

In 2014, the Government introduced the Child Development and Wellbeing (CD&W) Bill 2014, which sought to appoint a commissioner. The Bill was passed by the House of Assembly (without amendment) but did not progress through the Legislative Council in early 2015, partly because the Government wanted to first consider any recommendations to emerge from the Child Protection Systems Royal Commission.

In 2016, the Hon Justice Margaret Nyland submitted the *Child Protection Systems Royal Commission report: The Life They Deserve* (Royal Commission Report), which again called for the introduction of a commissioner (Recommendation 245).

In response, the Government introduced the Children and Young People (Oversight and Advocacy Bodies) Bill 2016, which passed through both Houses of Parliament in late 2016.

The OAB Act came into effect on 10 November 2016,⁷ paving the way for the appointment of South Australia's first CCYP. However, operation of the provisions relating to the CCYP's functions and powers (pt 2 div 2) and reporting obligations (pt 2 div 3) was suspended until 18 December 2017.

² South Australia, Child Protection Review, *Our Best Investment: A State Plan to Protect and Advance the Interests of Children* (2003) 1.3.

³ <https://www.childabuseroyalcommission.gov.au/sites/default/files/WEB.0198.001.0001.pdf>

⁴ <https://www.parliament.sa.gov.au/en/Committees/Committees-Detail>

⁵ <http://www.saasso.asn.au/wp-content/uploads/2013/11/DebelleInquiry.pdf>

⁶ <https://www.parliament.sa.gov.au/en/Committees/Committees-Detail>

⁷ South Australia, *South Australian Government Gazette*, No 72, 10 November 2016, 4391.

Commencement of the transitional provisions and related amendments detailed in Schedule 1 was also deferred until 18 December 2017, at which time the Act was fully proclaimed.

It was on this date that the provisions enabling the establishment of the Council (pt 6); the continuation of the Guardian (pt 3) and Committee (pt 4); and the requirement for State authorities to give effect to relevant human rights instruments (s 5) commenced.

Likewise, the provisions defining the meaning of 'rights', 'development' and 'wellbeing', as well as those allowing for the referral of matters affecting children and young people (pt 5); those relating to obstruction (s 64); false or misleading statements (s 65); victimisation (s 67); service (s 69) and review of the Act (s 70) also came into effect.

The OAB Regulations commenced on 5 December 2017.

A 2021 amendment to the OAB Act established a CACYP.⁸ South Australia's first CACYP commenced in the role on 3 December 2018.

4. Discussion

a. Summary of statutory provisions

The OAB Act is divided into eight main parts.

Part 1 contains preliminary provisions about commencement (s 2) and interpretation (s 3). Importantly, it also defines the meaning of rights, development and wellbeing (s 4); three concepts that are critical to the underlying sentiment of the OAB Act. In addition, this part emphasises the expectation that, in carrying out their functions, prescribed people or bodies will seek to give effect to internationally recognised human rights instruments, such as the *United Nations Convention on the Rights of the Child* (s 5).

Part 2 provides the legislative basis for the establishment of the CCYP, while **Part 2A** establishes the CACYP.

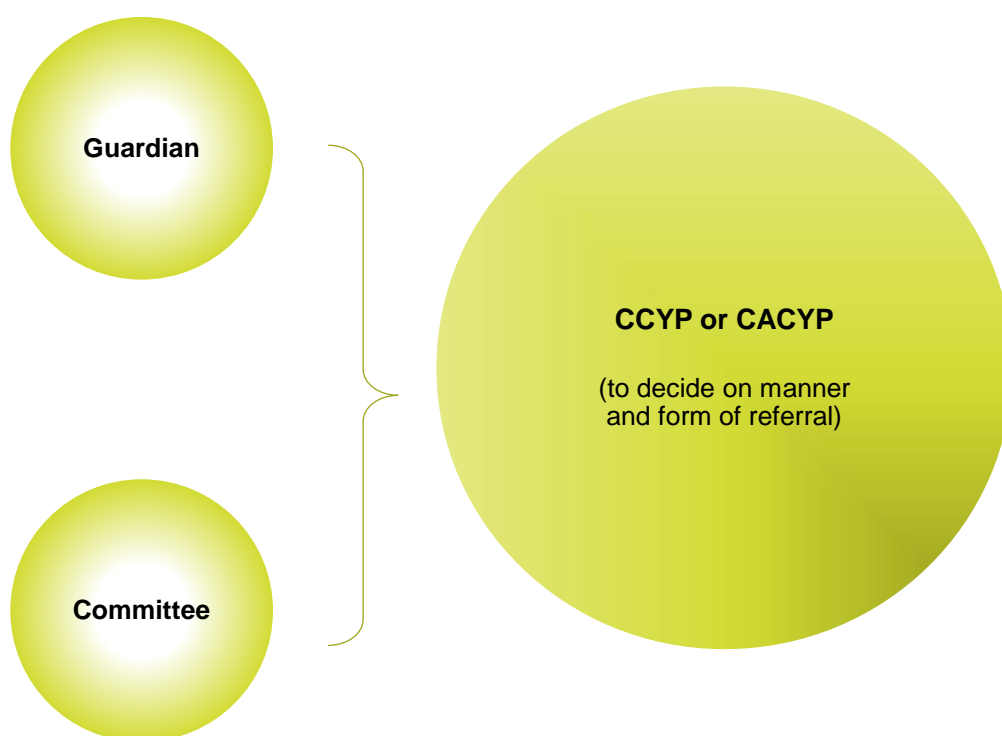
⁸ By way of the *Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal children and Young People) Amendment Act 2021*.

Parts 3 and 4 continue the existence of the Guardian and Committee, respectively.

Part 5 sets out the available processes for escalating or referring matters affecting children and young people to the CCYP or the CACYP (s 40); inquiry agencies (s 45)⁹ or other appropriate bodies (s 41); the Ombudsman (s 42); the Health and Community Services Complaints Commissioner (s 43); or even Parliament (s 44). This part aims to enhance the prospect of recommendations being implemented, as intended, by the relevant agencies,¹⁰ arguably strengthening¹¹ the abilities of the Guardian and Committee to perform their existing duties.

Figure 2: Ability to escalate or refer matters

Figure 2A: Referrals to CCYP and CACYP



⁹ Inquiry bodies are defined in the legislation to include the South Australia Police; the Ombudsman; the State Coroner; the Independent Commissioner Against Corruption; the Commissioner for Public Sector Employment; the Health and Community Services Complaints Commissioner; and the Guardian.

¹⁰ South Australia, Child Protection Systems Royal Commission, *The life they deserve* (2016) 600.

¹¹ South Australia, *Parliamentary Debates*, Legislative Council, 20 September 2016 (The Hon. P. Malinauskas, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety).

Figure 2B: Referrals to appropriate bodies

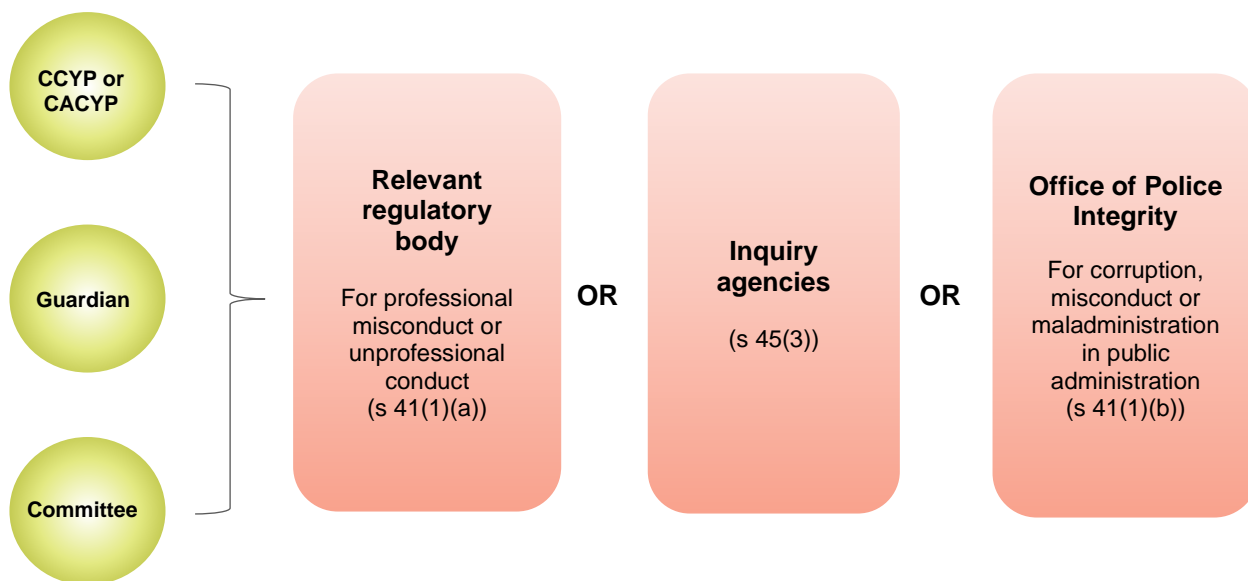
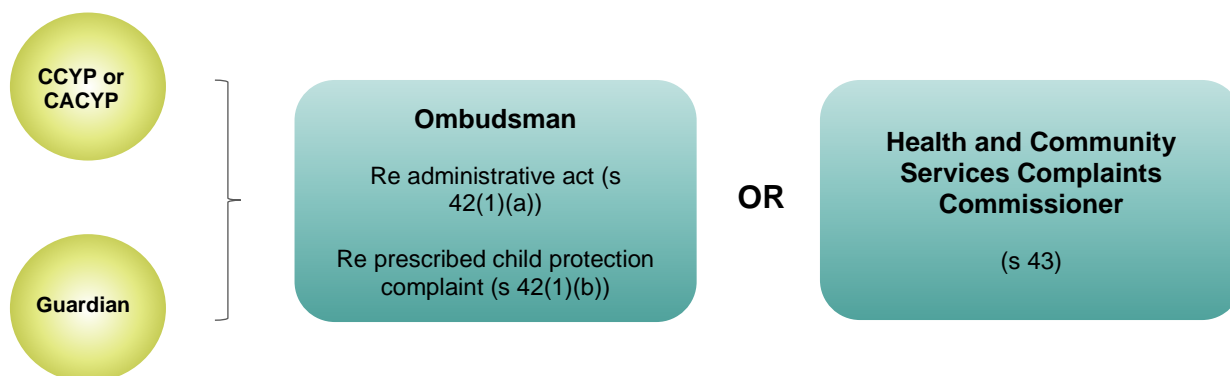
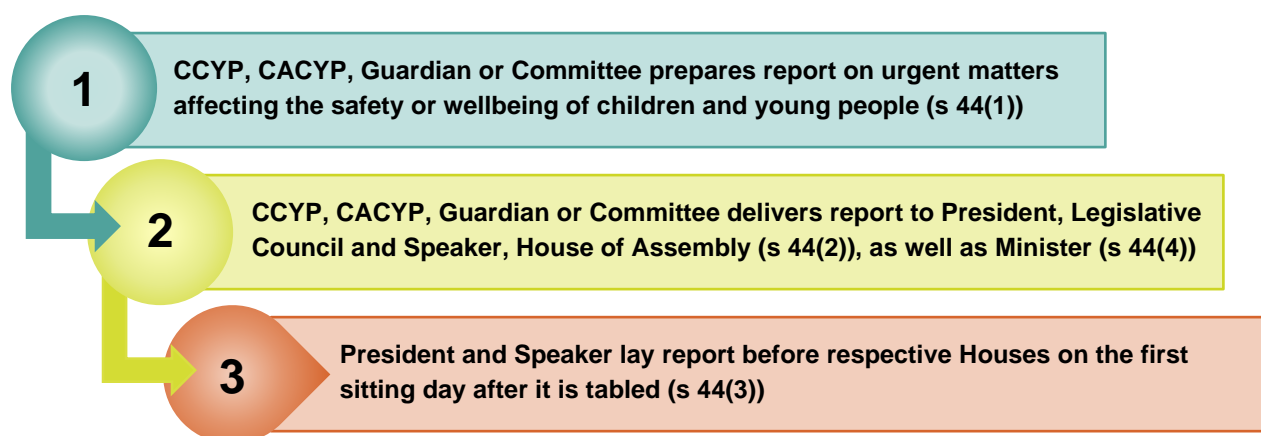


Figure 2C: Complaints to Ombudsman or Health and Community Services Complaints Commissioner¹²



¹² Complaints can be made on behalf of a child or young person or on behalf of a class of children and young people.

Figure 2D: Immediate reports to Parliament



Part 6 establishes the Council and offers some guidance about the preparation of the Outcomes Framework for Children and Young People (Framework). Additional guidance about the development, maintenance and promotion of the Framework are contained in the OAB Regulations (reg 12).

Part 7 prescribes the requirements around information sharing. Enabling the sharing of de-identified data amongst the oversight and advocacy bodies was one of the recommendations made in the Royal Commission Report (Recommendation 250) and subsequently accepted by Government, thus making it an important part of the legislative framework.

Part 8 contains standard provisions relating to confidentiality (s 66); victimisation (s 67); and the making of accompanying regulations (s 71). It also prescribes the penalties associated with obstructing (s 64) the functions of the oversight and advocacy bodies or providing false or misleading information (s 65).

Schedule 1 contains the transitional provisions and related amendments to support the commencement of the OAB Act.

The OAB Regulations provide additional detail about the operation of the OAB Act, including details about the recruitment scheme for the Commissioner (reg 6); the database maintained by the Committee (reg 10); the consultation requirements imposed on the Council in relation to the Framework (reg 12(1)); and the requirements relating to the provision and sharing of information (reg 14).

b. Scope of powers

Overarching scope

Although the primary purpose of the OAB Act is to establish the three new oversight and advocacy bodies and to continue the functions of the existing bodies, its broader objective appears to be about creating a 'legislative framework [that focuses] on the rights, development and wellbeing of children and young people'.¹³

As a signatory to the *United Nations Convention on the Rights of the Child*, Australia has agreed to be bound by the 54 articles that set out the civil, political, economic, social and cultural rights of children and young people. This means that Australia has an obligation to meet the basic needs of children and young people and to support them to grow and develop in a way that allows them to reach their full potential.

In 2016, it was acknowledged in the Legislative Council that a specific focus on the rights, development and wellbeing of children and young people had historically been absent in South Australia, noting that previous legislation was geared more towards regulating and directing 'service provision for children and young people in specific settings and circumstances, such as in relation to education, care, health and child safety'.¹⁴

The introduction of the OAB Act requires all State authorities, as defined in section 3(1), to proactively consider the rights of children and young people and to carry out their functions in a way that will support the development and wellbeing of this cohort.

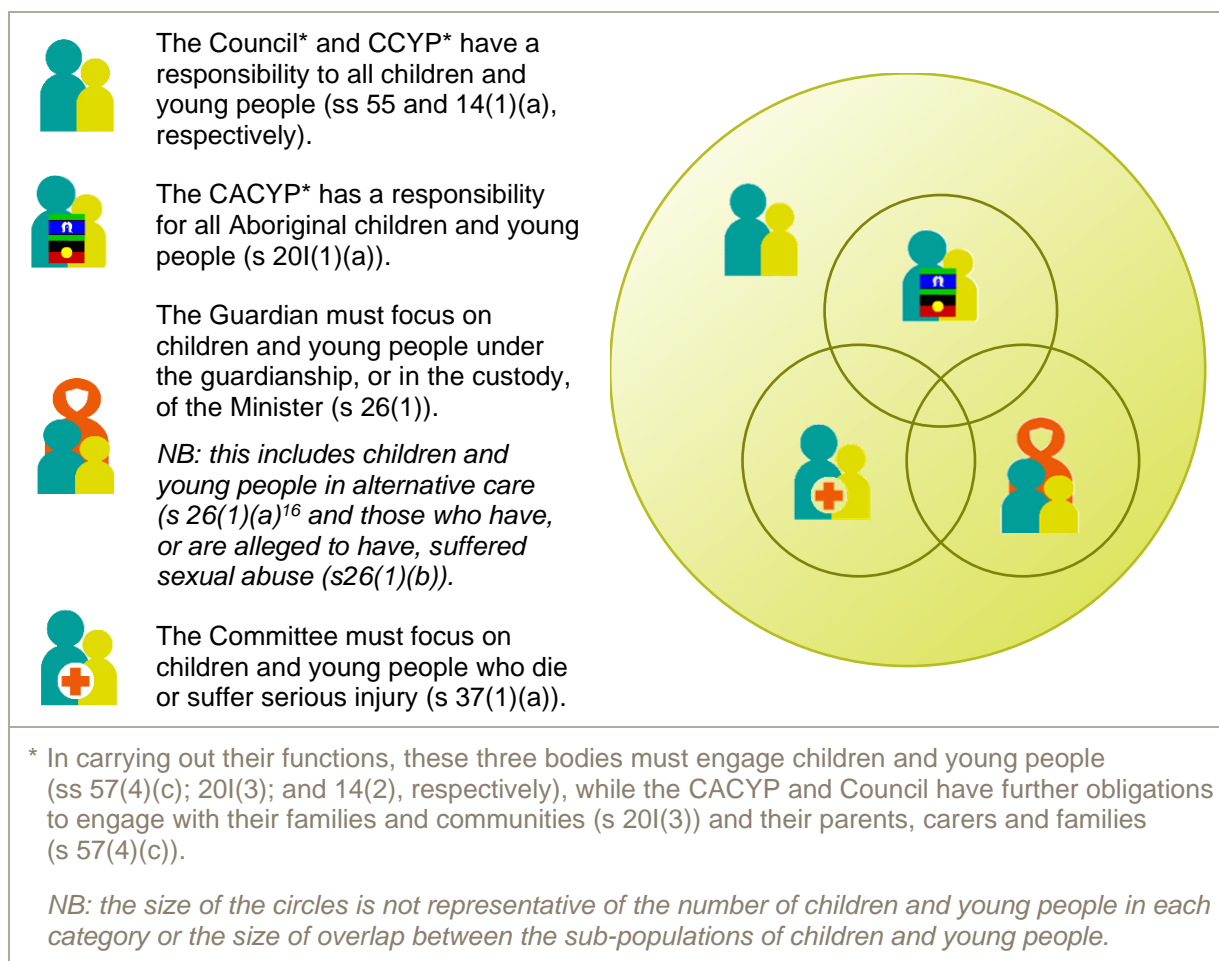
As depicted in Figure 3, all five oversight and advocacy bodies have a unique, yet critical, role to play in helping to achieve this broader objective and, arguably, to accomplish 'a more complete, cohesive and accessible network for review and oversight',¹⁵ as envisaged by Commissioner Nyland.

¹³ South Australia, *Parliamentary Debates*, Legislative Council, 20 September 2016 (The Hon. P. Malinauskas, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety)

¹⁴ South Australia, *Parliamentary Debates*, Legislative Council, 20 September 2016 (The Hon. P. Malinauskas, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety)

¹⁵ South Australia, Child Protection Systems Royal Commission, *The Life They Deserve* (2016) 582.

Figure 3: The unique, yet critical, roles of the oversight and advocacy bodies



Individual statutory requirements

Child Development Council

The legislation intends for the Council to guide ‘the Government’s work for children and young people’¹⁷ across South Australia.

Primary function

As depicted in Figure 4, the Council’s primary function is to ‘prepare and maintain the Framework for children and young people’ (s 55(1)).

¹⁶ Alternative care is defined in s 26(4) as being ‘care provided for a child on a residential basis (a) by, or through, a government agency; or (b) in a foster home (including a foster home provided by a member of the child’s family); and includes care provided in a detention facility for a child who is held there in lawful detention and care provided under independent living arrangements made for a child under the Minister’s guardianship’.

¹⁷ South Australia, *Parliamentary Debates*, Legislative Council, 20 September 2016 (The Hon. P. Malinauskas, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety).

In doing so, the Council has a statutory obligation to act in accordance with the Minister's instructions (s 57(4)(a)); consult with prescribed or other appropriate bodies and people (s 57(4)(b)); engage with children and young people (s 57(4)(c)); and ensure the needs of priority population groups receive an appropriate level of focus (s 57(4)(d)).

The Council is also required to develop performance indicators that will allow the development and wellbeing of children and young people across South Australia to be tracked over time (s 57(4)(e)).

While the OAB Act explicitly requires the Council to include a 'Charter for Children and Young People' (s 57(2)) in the Framework, it falls short of dictating what else must be included.

The OAB Regulations are more prescriptive.

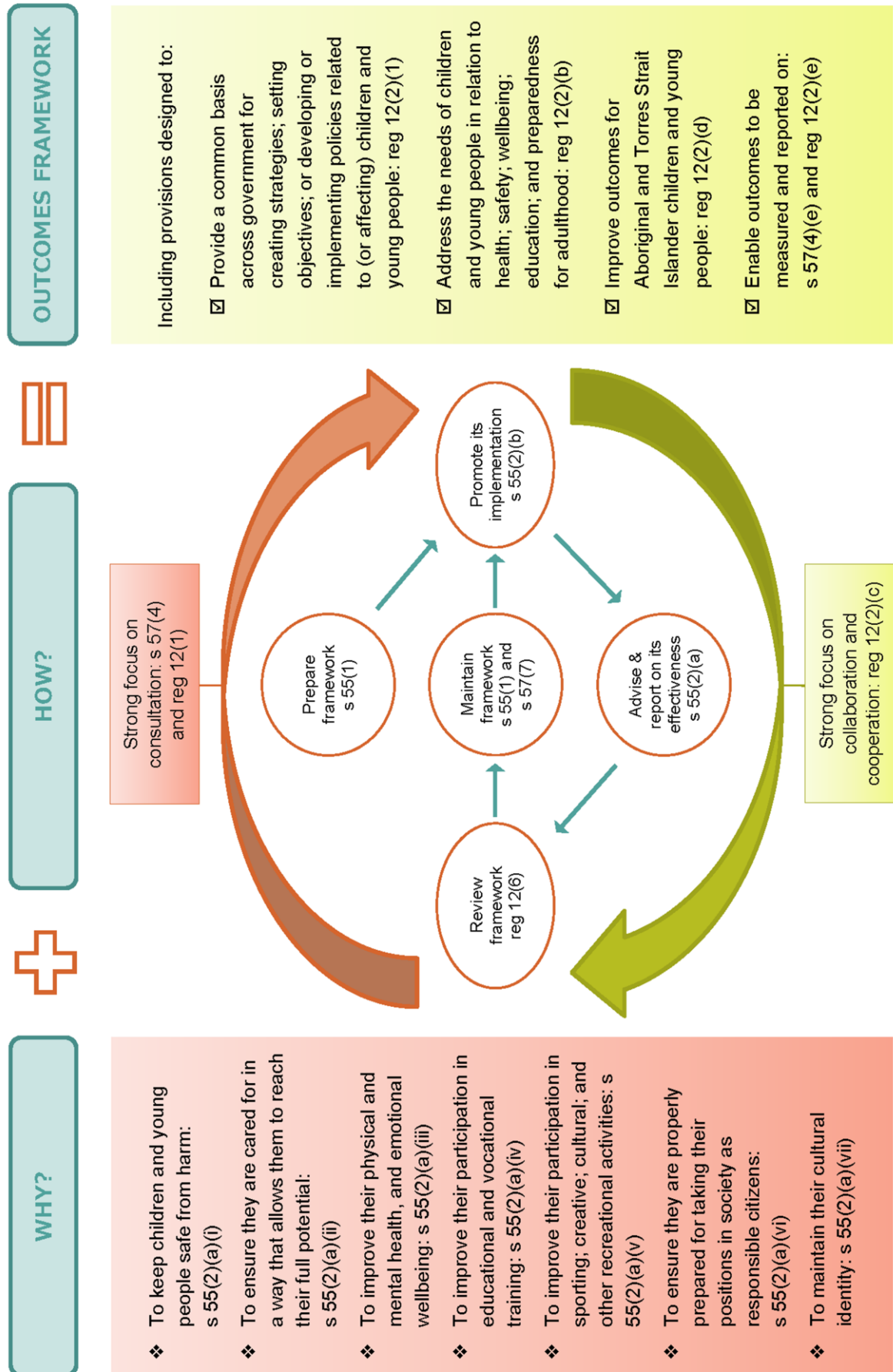
They require the Council to develop a Framework that provides a cooperative (reg 12(2)(c)), whole of government approach by (State and Local Government) to the setting of objectives or to the development and implementation of policies relating to, or affecting, children and young people (reg 12(2)(a)) in the areas of health; safety; wellbeing; education; and preparedness for adulthood (reg 12(2)(b)).

They further state that a special focus needs to apply in the case of Aboriginal and Torres Strait Islander children and young people (reg 12(2)(d)).

In addition, the OAB Regulations require the Council to proactively consult with prescribed persons and bodies (reg 12(1)), as well as persons or bodies specified (reg 12(3)(a)), or otherwise directed (reg 12(3)(b)), by the Minister when preparing and maintaining the Framework.

Figure 4 maps the process to be followed by the Council in carrying out its functions.

Figure 4: Preparing and maintaining the Outcomes Framework for Children and Young People



Additional functions

The Council must also 'advise and report [...] on the effectiveness of the Framework' (s 55(2)(a)); a view reiterated by regulation 12(2)(e), which requires the Framework to incorporate provisions that allow for specified data to be collected so that it can inform how the development and wellbeing of children and young people is tracking over time (s 57(4)(e)).

Furthermore, it needs to promote the implementation of the Framework across the state (s 55(2)(b)).

Possible functions

The Council may also be assigned other functions by the Minister or in accordance with the provisions of any relevant legislation (s 55(2)(c)).

Commissioner for Children and Young People

The CCYP has a crucial role to play in advocating for, and promoting the rights and interests of, all children and young people across South Australia.

The CCYP's functions can be grouped into five main categories:

- promotion and advocacy (ss 14(1)(a) and (b))
- provision of advice and making of recommendations (ss 14(1)(c) and 17))
- inquiring into matters affecting children and young people at a systemic level (ss 14(1)(d) and 15)
- reporting (ss 14(1)(g), 18, 19 and 20)
- research (s 14(1)(f)).

In carrying out these functions, the OAB Act expressly requires the CCYP to consult with and engage children and young people, particularly those whose ability to make their views known may be limited for any reason (s 14(2)).

Commissioner for Aboriginal Children and Young People

The CACYP was established to advocate for, and promote the rights and interests of, all Aboriginal children and young people across South Australia.

Like the CCYP, the CACYP's functions can be grouped into five main categories:

- promotion and advocacy (ss 20I(1)(a) and (b))
- provision of advice and making of recommendations (ss 20I(1)(c) and 20O))
- inquiring into matters affecting Aboriginal children and young people at a systemic level (ss 20I(1)(d) and 20M)
- reporting (ss 20I(1)(g), 20P, 20Q and 20R)
- research (s 20I(1)(f)).

In carrying out these functions, the OAB Act expressly requires the CACYP to consult with and engage Aboriginal children and young people, and their families and communities, particularly those whose ability to make their views known may be limited for any reason (s 20I(3)).

The Act requires the CCYP and CACYP to 'collaborate on matters of common interest [...] to such extent as is reasonably practicable' (ss 14A and 20J). It also establishes a process for managing jurisdictional disputes between the two bodies, where one body may be inquiring into a matter that appears to fall within the other body's jurisdiction (ss 14C and 20L).

Guardian for Children and Young People

The Guardian has a specific mandate to focus only on children and young people under the guardianship, or in the custody, of the Minister, particularly those in alternative care or who have suffered (or allegedly suffered) sexual abuse.

This is done through five main functions, including promotion and advocacy (s 26(1)(a) and (b)); monitoring (s 26(1)(c)); provision of advice (s 26(1)(d)); inquiring into whether systemic reform is necessary to improve the quality of care provided to children and young people in alternative care (s 26(1)(e)); and investigating and reporting (ss 26(1)(f), 28 and 29).

The OAB Act requires the Guardian to ensure children and young people participate in 'strategic, policy or systemic practice development or review processes' (s 27).

Child Death and Serious Injury Review Committee

The Committee also has a specific focus, having been tasked with reviewing the deaths of children and young people or cases of serious injury cases, with a view to preventing similar cases in the future (s 37(1)(a)).

Additionally, the Committee is responsible for:

- making recommendations about ways to avoid preventable deaths of children and young people, and serious injury to children and young people (s 37(1)(b))
- maintaining a database of deaths and serious injury cases that encapsulates the associated circumstances and causes (s 37(1)(c)).

The OAB Act is very explicit about when, and under what circumstances, the Committee can review a death or serious injury (ss 37(2)-(7)).

Table 1: Summary of functions

	Council	CCYP	CACYP	Guardian	Committee
Promote	The implementation of the Framework: s 55(2)(b)	The rights and interests of all children and young people in South Australia: s 14(1)(a)	The rights and interests of Aboriginal children and young people: s 20I(1)(a)	The best interests of children under guardianship or in custody of the Minister, especially those in alternative care: s 26(1)(a)	
		Participation by children and young people in the making of decisions that affect their lives: s 14(1)(b)	Participation by Aboriginal children and young people in the making of decisions that affect their lives: s 20I(1)(b)		
Advocate		For the rights and interests of all children and young people: s 14(1)(a)	The rights and interests of Aboriginal children and young people: s 20I(1)(a)	For the interests of children under guardianship or in custody of the Minister, especially those who have suffered or allegedly suffered sexual abuse: s 26(1)(b)	
Review					Cases in which children die or suffer serious injury: s 37(1)(a)
Prepare and maintain	The Framework: s 55(1). <i>NB: this must occur in accordance with any instructions of the Minister: s 57(4)(a)</i>				A database of child deaths and serious injuries, along with associated circumstances and causes: s 37(1)(c)
Advise	The Government on the effectiveness of the Framework: s 55(2)(a)	Ministers, State authorities and other bodies about matters relating to the rights, development and wellbeing of children and young people: s 14(1)(c)	Ministers, State authorities and other bodies about matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level: s 20I(1)(c)	The Minister on the quality of care for children under guardianship or in custody of the Minister, especially as to whether their needs are being met: s 26(1)(d)	
				The Minister on ways to improve the quality of care provided for children in alternative care at a systemic level: s 26(1)(e)	
Recommend		Ways for State authorities to achieve specified outcomes: s 17	Ways for State authorities to achieve specified outcomes: s 20O		Ways to avoid preventable child death or serious injury: s 37(1)(b)
Monitor				The circumstances of children under guardianship or in custody of the Minister: s 26(1)(c)	Implementation of its own recommendations: s 37(1)(b)

	Council [^]	CCYP [^]	CACYP [^]	Guardian	Committee
Inquire		Into matters affecting the rights, development and wellbeing of children and young people at a systemic level: s 14(1)(d) and s 15 ^{^^}	Into matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level: s 20I(1)(d) and s 20M ^{^^}	Into whether systemic reform is necessary to improve the quality of care provided for children in alternative care: s 26(1)(e)	
Investigate				Matters referred to the Guardian by the Minister: s 26(1)(f)	
Report	To the Minister on the performance of its functions during the preceding financial year: s 56(2)	To the Minister on the performance of its functions during the preceding financial year: s 13A	To the Minister on the performance of its functions during the preceding financial year: s 20H	To the Minister on the performance of its functions during the preceding financial year: s 28(2)	To the Minister on the performance of its functions during the preceding financial year: s 39(2)
	On the performance of its functions or on any other matter specified by the Minister: s 56(1)	On the CCYP's views about the failure or refusal of a State authority to implement a recommendation: s 17(4) ^{^^^}	On the CACYP's views about the failure or refusal of a State authority to implement a recommendation: s 20O(4) ^{^^^}	On the performance of its functions or on any other matter specified by the Minister: s 28(1)	On the performance of its functions or on any other matter specified by the Minister: s 39(1)
		On any 'own motion' inquiry conducted pursuant to s 15: s 18	On any 'own motion' inquiry conducted pursuant to s 20M: s 20P(1)	On matters referred to the Guardian by the Minister: s 26(1)(f)	
		On other matters relating to the rights, development and wellbeing of children and young people at a systemic level: s 14(1)(g) and s 19 ^{^^^}	On other matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level: s 20Q(1) and s 20I(g) ^{^^^}		
		On any matter related to the CCYP's function that raises issues of such importance to the safety or wellbeing of children and young people that the Parliament should be made aware of the matter as a matter of urgency: s 44(1) ^{^^^}	On any matter related to the CACYP's function that raised issues of such importance to the safety or wellbeing of children and young people that the Parliament should be made aware of the matter as a matter of urgency: s 44(1) ^{^^^}	On any matter related to its function(s) that raises issues of such importance to the safety or wellbeing of children and young people that the Parliament should be made aware of the matter as a matter of urgency: s 44(1) ^{^^^}	On any matter related to its function(s) that raises issues of such importance to the safety or wellbeing of children and young people that the Parliament should be made aware of the matter as a matter of urgency: s 44(1) ^{^^^}
Research		Topics related to children and young people: s 14(1)(f)	Topics related to Aboriginal children and young people: s 20I(1)(f)		
Support		South Australia's achievement of international obligations relating to children and young people: s 14(1)(e)	South Australia's achievement of international obligations in respect of Aboriginal children and young people: s 20I(1)(e)		

- ^ The OAB Act allows for other functions to be assigned to the Council by this or any other Act: s 55(2)(c); or conferred upon the CCYP and CACYP by this or any other Act: s 14(1)(h) and s 20I(1)(h), respectively.
- ^^ Inquiries undertaken by the CCYP or CACYP pursuant to ss 15 and 20M, respectively, cannot be directed or controlled by the Crown or any Minister or officer of the Crown, per ss 7(2) and 20A(2), respectively. Further, the CCYP and CACYP must not inquire into matters that would impede an investigation or proposed investigation: ss 15(4) and 20M(4), respectively.
- ^^ Submitting these reports is optional.

c. Opportunities for collaboration

The five oversight and advocacy bodies all have individual statutory obligations to fulfil, as summarised in Table 1.

While there are some synergies in the functions to be performed by each body, there are few obvious crossovers in the operationalisation of those functions. This is primarily because the Council and CCYP have a broad responsibility to all children and young people in South Australia, while the CACYP, the Guardian and the Committee have a narrower focus.

Nonetheless, there is both an explicit and implied expectation within the OAB Act and OAB Regulations that the five bodies lead State authorities in working collaboratively to improve outcomes for children and young people in South Australia.

Some collaboration opportunities are mandated,¹⁸ while other non-mandated collaboration opportunities would fit with the spirit of the legislation. For example, a renewed focus could be given to advocating for the co-location of the bodies and further encouraging the sharing of some administrative functions. Both items were recommended by the Hon Justice Margaret Nyland (Recommendation 249) and accepted by the government but are yet to be implemented.

Capitalising on such opportunities, and making them the norm, is likely to magnify the effect and reach that each individual oversight and advocacy body will have on improving outcomes for South Australia's children and young people.

d. Operational challenges arising from the legislation

Since the Council's establishment, it has become obvious that the OAB Act has triggered some operational challenges. Despite ongoing efforts to surmount these challenges, they do influence the Council's current operating environment, as well as its ability to properly discharge the legislated mandate.

¹⁸ For example, s 52 allows for the CCYP or CACYP, or a person authorised by the CCYP or CACYP, to attend Council meetings and/or have access to any meeting papers.

Giving effect to the Framework

The Council was tasked with developing a Framework that provides a whole of government approach to the setting of objectives or to the development and implementation of policies relating to, or affecting, children and young people (reg 12(2)(a)).

It has sought the cooperation of State authorities and other relevant persons or bodies and, whenever possible, aims to collaborate whilst performing any functions or duties that relate to, or affect, children and young people (reg 12(2)(c)).

Every State authority must have regard to, and seek to give effect to, the Framework 'in carrying out its functions or exercising its powers' (s 58(1)), however, there is little incentive for State authorities to do so.¹⁹ There are also no provisions for the Council to compel State authorities and other relevant persons or bodies to engage with the Framework.

Building strong relationships and developing persuasive, consistent messaging that encourages State authorities to actively support the Framework continues to be crucial. Without a 'compliance regime' in place, the Council has found it difficult to promote effective implementation (s 55(2)(b)) when State authorities have chosen not to become involved, of their own accord.

Consultation

There was a very clear requirement for the Council to consult when developing the Framework (ss 57(4)(b) and 57(5)(e), as well as regs 12(1) and 12(3)).

Both the OAB Act and the OAB Regulations made it apparent that the Minister could also specify who should be consulted during the development of the Framework. There was an explicit requirement for the Council to consult with the Ministers responsible for the education, child protection and health portfolios, as well as their respective departments (reg 12(1)). The CCYP, CACYP and Guardian were also to be consulted, as well as any other person or body directed by the Minister.

¹⁹ See, for example, s 58(3): a failure to comply will not automatically give rise to any civil liability against the Crown, the State authority or any other person.

Although s 57(4)(b) allowed the Council to consult with any other person or body it thought appropriate, the stringent consultation requirements were challenging within the context of the Council's limited resources.

Nonetheless, the Council consulted widely during the development of the inaugural Framework, which was approved and gazetted on 14 November 2019.

Subsequent consultations have occurred, most notably as part of the 2022 Framework review process.²⁰ As part of the process, the Council sought to proactively consult with Aboriginal stakeholders across the state.²¹ This was important considering the specific requirement that the Council works to improve outcomes for Aboriginal children and young people (reg 12(2)(d)).

Two of the key messages arising from the community consultation process with Aboriginal people and communities were that:

- the Framework was not well understood and therefore was not being used to inform the work being done on the ground and
- engagement with the Framework (in those communities) would be unlikely without ongoing outreach and engagement.

Having an appropriate consultation regime is a legislative requirement. However, for the Council to properly promote implementation of the Framework and continue to strive for improved outcomes for South Australia's youngest citizens, adequate resourcing is required.

Governance

Despite the Council and Committee having been established under similar 'committee structure' arrangements, there are some obvious differences in how the governance arrangements for the two bodies have been drafted.

For example, the Council is required to meet a minimum of six times per calendar year (s 51(2)), while the Committee has a requirement to meet at least five times per calendar year (s 33(2)).

²⁰ The OAB Regulations stipulate that the Framework must be reviewed 'at least once in each 3-year period' (reg 12(6)).

²¹ This was made possible by the provision of one-off discretionary funding to employ a contracted Community Engagement Policy Officer.

Furthermore, section 32 requires the Minister to appoint a Committee member as the presiding member of the Committee. In contrast, section 48 requires the Minister to appoint one Council member as the presiding member of the Council and another member as the deputy presiding member of the Council.²²

By way of further example, Committee members and Council members present at a meeting are all entitled to one vote per question arising (ss 33(5) and 51(5), respectively). However, the Committee's Chair is to have the casting vote in situations where votes are tied but the Council's Presiding Member has explicitly been denied a casting vote (s 51(5)).

Finally, section 50 is very prescriptive about the way in which the Council can establish and use sub-committees, while no requirements have been prescribed for how the Committee's sub-committees should function.

The different arrangements for the two bodies have meant that Council members (unlike Committee members) are not currently remunerated for their sub-committee work. They also volunteer their time to attend external meetings; attend, or contribute to, Council-sponsored events; and prepare, or provide advice about, Council submissions and publications. Additionally, the Council's Presiding Member does not receive a retention allowance, whereas the Committee's Chair does.

These differences are problematic because they are hampering the Council's ability to fully carry out its functions. In turn, a significant key person risk has been identified in terms of the:

- loss of corporate knowledge and relationships, particularly with the departure of many inaugural members and the secretariat staff
- increasing stakeholder expectations, which current members and secretariat staff are working hard to absorb, despite there being no corresponding increase in resourcing. This is posing a work health and safety risk to the individuals who are under an increasing strain to perform the requisite Council duties.

²² Interestingly, the OAB Act allows for the Minister to appoint deputy members to the Council (s 46(4)), yet the same provision does not apply to the Committee.

Delegation and use of staff

The delegation provisions differ across the oversight and advocacy bodies, as demonstrated in Table 2.

Table 2: Delegation provisions

Council	The Council may delegate a function or power under this Act (other than a prescribed body or power): (a) To a member of the Council or (b) To a committee established by the Council or (c) To a specified body or person (including a person for the time being holding or acting in a specified office or position): s 49
CCYP	Subject to this section, the CCYP may delegate a function or power under this Act (other than a prescribed function or power) to any person or body that is, in the CCYP's opinion, competent to perform or exercise the relevant function or power: s 10(1)
CACYP	Subject to this section, the CACYP may delegate a function or power under this Act (other than a prescribed function or power) to any person or body that is, in the CACYP's opinion, competent to perform or exercise the relevant function or power: s 20D(1)
Guardian	The Guardian may delegate a function or power under this Act (other than a prescribed function or power) to a specified body or person (including a person for the time being holding or acting in a specified office or position): s 23(1)
Committee	The Committee may delegate to a member, or a sub-committee of its members, any of its powers or functions under this Act: s 34(1)

The Committee's delegation provision is the most restrictive, as it prevents any power or function from being delegated beyond the Committee structure.

However, the ability for the Council to establish committees (s 50(1)) that 'may, but need not, consist of, or include, members of the Council' (s 50(2)) provides an opportunity for the Council to explore the introduction of new, external sub-committee members to support its work.

5. Summary

This review of the OAB Act and OAB Regulations confirms that the five bodies (the Council, the CCYP, the CACYP, the Guardian and the Committee) all have very individualised statutory obligations to fulfil. This results partially from their differing mandates.

Nonetheless, the OAB Act lays the foundations for the five bodies to work together and, working together in line with the spirit of the legislation, will maximise the ability for the five bodies to improve outcomes for children and young people in South Australia.