28 October 2020

The Secretary
Office of the Secretary
Department of Communities Tasmania
Email: ctecc@communities.tas.gov.au

Dear Secretary

Re: Draft Children, Young Person and Their Families (Amendment) Bill 2020

I refer to Deputy Secretary Clarke's letter of 24 September 2020, and subsequent email of 9 October 2020 attaching Version 5 of the Children, Young Persons and Their Families (Amendment) Bill 2020 ('draft Bill') for my consideration and feedback. I appreciate the opportunity to provide comment in relation to the proposed amendments. I am very grateful for the extension of time in which to comment.

Role of the Commissioner for Children and Young People

As you are aware, the Commissioner for Children and Young People is an independent statutory office established under Tasmania's *Commissioner for Children and Young People Act 2016.* My functions and powers, and the principles to which I must have regard in carrying out these functions and exercising these powers, are set out in that Act.

Consistent with my statutory functions, my comments below focus on matters relevant to promoting and protecting the rights, wellbeing and best interests of children and young people in Tasmania.

Background

According to the explanatory material provided by the Deputy Secretary, I understand the following:

- The purpose of the proposed amendments is to allow the Crown (through your Department's Children, Youth and Families) to participate in a national child protection information sharing system known as *Connect for Safety* or 'C4S'.
- This initiative is being developed in response to the collective recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse ('Royal Commission') in relation to record keeping and information sharing.
- An independent body has prepared a national Privacy Impact Assessment for the Children and Families Secretaries (CAFS) which considers the legislative enablers and barriers to participation of jurisdictions in the initiative. Key recommendations include that the privacy impacts are justified by the benefits in terms of child safety.
- The system is designed to dramatically streamline the process of interjurisdictional data sharing on client children who may be known to more than one jurisdiction, both creating service efficiencies and improving safety to vulnerable children and young people.
- The current information sharing provisions in the *Children, Young Persons and their Families Act 1997* are no longer contemporary, only allowing for the provision of information relating to the safety and wellbeing of children and young people from one person to another person

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across jurisdictions (rather than enabling information sharing between state and territory child protection agencies through direct system access under defined arrangements).

Comment

I can indicate that I support the overarching policy intention of the draft Bill which is to allow the Crown to participate in the national child protection information system *Connect for Safety*. In expressing this opinion, I note that I have not been privy to the discussions that have been occurring at the national level and in particular I have not been provided with a copy of the national Privacy Impact Assessment.

Participation in a national child protection information sharing system is consistent with the Third Action Plan of the National Framework for Protecting Australia's Children and responds to recommendations of the Royal Commission in relation to record keeping and information sharing.

I acknowledge the importance of providing clarity regarding the type of information or class of information that can be recorded or stored in the national data base. In this regard, I note that proposed section 111C(4) provides that:

> *(4) The Secretary may specify the information, or class of information, that is to be recorded and stored in the national database in respect of a child, and each relevant person in respect of the child, if –*
>
> *(a) the Secretary is satisfied that the recording of such information in the national database is necessary to enable a person in a participating jurisdiction to perform duties or exercise powers under a child welfare law, or an interstate law, within the meaning of Part 8; and*
>
> *(b) the information has been collected under the authority of, or provided for the purposes of, this Act.*

Further, proposed section 111C (5) provides that:

> *(5) For the avoidance of doubt, information may be recorded and stored in the national database under subsection (4) in respect of a person if –*
>
> *(a) the person –*
> *(i) was a child at the time the information was collected, regardless of whether the person has since attained the age of 18 years; or*
>
> *(ii) was a relevant person in respect of a child at the time the information was collected, regardless of whether the child has since attained the age of 18 years; and*
>
> *(b) the information was collected under the authority of, or provided for the purposes of, this Act, the Child Protection Act 1974 or the Child Welfare Act 1960.*

The term 'relevant person' is defined in proposed section 111C(1) as follows:

> ***relevant person**, in relation to a child, means a person who is, has been or is likely to be –*
> *(a) a parent, or guardian, of the child; or*
> *(b) a sibling of the child; or*
> *(c) a carer of the child; or*
> *(d) a person who has lived in the same household as the child; or*

(e) a relative of the child, whether or not that relative is a biological relative; or
(f) a member of the family of the child; or
(g) a significant person in respect of the child; or
(h) a person who has been alleged, assessed or convicted of causing harm to the child; or
(i) a prescribed person, or a member of a class of prescribed persons, in respect of the child.

I note that the term 'significant person' is defined in section 3 of the CYPTFA to mean a person who is considered significant in the life of a child by –

(a) the Secretary or his or her nominee; or
(b) the guardian of the child.

My main comment is that I find the inclusion of the words 'or is likely to be' in the above definition of 'relevant person' somewhat ambiguous and confusing.

It may be the case, for example that the words 'or is likely to be' have been included to ensure appropriate information is made available in relation to a person who is a potential future carer of a child. However, if this is the intention, then establishment of a carer's register would, in my view, be a more appropriate way to ensure that relevant information is available in relation to potential carers (see Recommendation 8.17- 8.23 of the Royal Commission).

Another possible reading of 'or is likely to be' is that it relates directly to the category of persons listed in the definition. However, if this is the case, I am not sure how one could determine whether a person is likely to be a person who has been convicted of causing harm to the child (see proposed section 111C(1)(h)).

Given the above, I respectfully recommend further consideration is given to the definition of 'relevant person' to ensure the proposed amendments operate as intended.

Finally, leaving aside my comments in relation to the application of the words 'or is likely to be', there is a need to clarify what is intended by the language used in paragraph (h). As discussed at officer level, this appears to be a minor drafting matter which I understand is being addressed.

Aside from the above, I have no further comments on the draft Bill.

Conclusion

Thank you for the opportunity to comment on the draft Bill. I would be very pleased to discuss my comments in more detail if this would be of assistance.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

cc *The Hon Elise Archer MP, Attorney General, Minister for Justice*
The Hon Roger Jaensch MP, Minister for Human Services
Mandy Clarke, Deputy Secretary, Department of Communities Tasmania