Your Ref:
Our Ref:

21 October 2022

Ginna Webster
Secretary
Department of Justice

By email to: secretary@justice.tas.gov.au

Dear Secretary

Re: Child and Youth Safe Organisations Bill 2022

Thank you for the opportunity to comment on the Child and Youth Safe Organisations Bill 2022 (the draft Bill).

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) found that strengthened approaches to preventing, identifying, and responding to child sexual abuse and other forms of abuse in organisations will ultimately reduce the risk of child abuse occurring.

All children in Tasmania deserve to grow up being and feeling safe in their home, in their community, and in the organisations they interact with, and we all have a responsibility to ensure this future is realised. I therefore welcome the Tasmanian Government's commitment to introducing a new legislative framework to guide and regulate child safe practice and responses to inappropriate conduct towards children in Tasmanian organisations.

As I said in my submission to the draft Child Safe Organisations Bill 2020, the development and implementation of a child safe legislative framework and associated reforms is fundamental to our efforts to promote and protect the safety and wellbeing of all children and young people in Tasmania. Actions we take now, including through much needed investment in education and support to drive changes in organisational culture, will have long lasting consequences for children and young people in Tasmania.

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Background

According to the information accompanying the request for comment, the reforms proposed by the draft Bill:

- Establish an Independent Regulator responsible for administering the Child and Youth Safe Standards and Reportable Conduct Scheme
- Adopt the 10 National Principles for Child Safe Organisations as the Child and Youth Safe Standards and a universal principle embedding Aboriginal Cultural Safety
- Require compliance with the Child and Youth Safe Standards by 13 classes of institutions, expected to cover around 8000 organisations
- Require 9 classes of high-risk institutions to report to the Independent Regulator on their investigation of Reportable Conduct that is alleged to have been committed by an employee or volunteer
- Provide powers to the Independent Regulator to ensure compliance with the Child and Youth Safe Standards and Reportable Conduct Scheme
- Allow for the flow of information between the Independent Regulator and other relevant parties

At the outset, I note that it is especially pleasing to see that the draft Bill reflects, to a large degree, the feedback I provided on the Child Safe Organisations Bill 2020 in March 2021. This feedback included, among other things, that the government should commit to developing a framework for the independent oversight of the child safe standards, that the standards should reflect the National Principles for Child Safe Organisations, and that the framework should include a reportable conduct scheme. Together, the child safe standards and the reportable conduct scheme will strengthen the capacity of organisations to prevent and respond properly to allegations and incidents of child abuse.

I draw to your attention my written contributions to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings which include a written submission and witness statement. My contributions to the Commission provide additional detail about my views on the need for comprehensive legislative reform to provide a co-ordinated and integrated child safe system for Tasmania and assist to provide context for my comments on the draft Bill.

Role of the Commissioner

My role as Commissioner for Children and Young People is governed by the *Commissioner for Children and Young People Act 2016* (CCYP Act).

Section 8 of the CCYP Act outlines, *inter alia*, my functions as follows:

(a) advocating for all children and young people in the State generally;

(c) researching, investigating and influencing policy development into matters relating to children and young people generally;

(d) promoting, monitoring and reviewing the wellbeing of children and young people generally;

(e) promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives;

(f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally; and

(g) encouraging and promoting the establishment by organisations of appropriate and accessible mechanisms for the participation of children and young people in matters that may affect them.

In performing my functions, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount;
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child;* and
- give special regard to the needs of children and young people who are disadvantaged or vulnerable.

Legislation to progress recommendations of the Royal Commission relating to the promotion of child safety in institutions and organisations in Tasmania is clearly a matter relevant to my functions as Commissioner.

Comment

My more detailed comments on the draft Bill are enclosed in an Appendix (Appendix A - Child and Youth Safe Organisations Bill 2022). The commentary is laid out according to the clause provisions and sets out any concerns or issues with relevant provisions, asks questions about the interpretation of the relevant provision, and, from time to time, notes other or preferable legislative formulations or considerations.

Please note, the Appendix should not be read as an exhaustive commentary on the draft Bill. I would greatly welcome the opportunity to engage in further discussion on the matters that I have raised, or indeed on matters that may be raised by other stakeholders through the public consultation process.

Some of the key features of the attached commentary are as follows:

- The lack of “Purposes” or “Objectives” provisions and the lack of “Principles” provisions in the Bill is a clear oversight. Fundamental principles ought to be enshrined in the legislation, reflecting the UN Convention on the Rights of the Child and the Royal Commission recommendations.[1]

[1] Recommendation 6.4 of the Royal Commission states: “All institutions should uphold the rights of the child. Consistent with Article 3 of the United Nations Convention on the Rights of the Child, all institutions should act with the best interests of the child as a primary consideration. In order to achieve this, institutions should implement the Child Safe Standards identified by the Royal Commission.” The Royal Commission’s work on child safe institutions was underpinned by the United Nations *Convention on the Rights of the Child* and guided by the child’s rights to:

- have their best interests as a primary concern in decisions affecting them
- non-discrimination

- As has been done in both New South Wales and Victoria, the Tasmanian legislative child safe framework should provide that the same independent oversight entity has responsibility for the administration of both the child safe standards and a reportable conduct scheme. It is therefore pleasing to see that the draft Bill provides for this arrangement. However, the policy decision reflected in clause 7(1) of the draft Bill appears to be that the functions and powers of the proposed Independent Regulator will be vested in a "person" appointed by the Governor, rather than in a statutory body, differently constituted. There has been no explicit public consultation on or communication regarding who the Independent Regulator will be. Noting the importance of this public policy decision, it would be appropriate for the legislation to also enable appointment of a 'body' as the Independent Regulator. I would encourage further thorough consideration of the best and most effective model for independent child-centred oversight, regulation, and education for Tasmania's framework.

- The enforcement powers of the Independent Regulator regarding both the Child and Youth Safe Standards (Part 3) and the Reportable Conduct Scheme (Part 4) could be significantly strengthened (see clauses 12,13,14,15, 18, 19, 20, 21, and 22). The draft Bill currently offers no or limited guidance on how the powers and functions of the Regulator are to be enforced. For example, what recourse does the Regulator have to enforce their powers, apart from via the offence provisions? Can the Regulator, in the context of the child safe standards, refer information about a non-compliant entity to a relevant authority, or request an authority to take action to promote and require compliance by an entity?

- Related to the above, there appears to be a lack of legislative guidance on how offences under the draft Bill (some of which are included in Part 6) are to be prosecuted and who is to do bring the prosecution. How will charges under the Act be laid and what is the role of the Regulator, if any, in taking a matter to Court? It is recommended that any laying of charges and prosecutions under the Act be independent of Government. Further consideration should be given to this and related issues (eg in the event of an administrative appeal of an internal review).

- At various points in the draft Bill the term "best interests of children" test is used rather than a "public interest" test in the context of the performance of a function or the exercise of a power (see for example clauses 24 and 26 of the draft Bill). The "best interests of children" test is unnecessarily limiting in certain situations and the broader and inclusive "public interest" test ought to be used where relevant in the Act.

- It is my view that a stronger formulation on the co-regulation of entities between the Regulator and existing regulatory bodies than is currently presented in clause 25 of the draft Bill ("Liaison with entity regulators") is required. The importance of clear legislative provisions outlining how co-regulation is to work in practice was noted in a recent review of the equivalent Victorian legislation. A co-regulation model in Tasmania needs to be more clearly articulated than is currently the case in the draft Bill.

  - have the responsibilities of parents or carers respected
  - participate in decisions affecting them
  - be protected from all forms of violence, including all forms of sexual exploitation and sexual abuse, including while in the care of parents, guardians or other carers
  - special protection for children with disability.

Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Volume 6: Making Institutions Child Safe,* p. 136.

- Likewise, Part 3 should include a provision providing for or permitting a framework for co-regulation of the child safe standards. The child safe model in Victoria enables this and it would appear pragmatic to avoid duplication with industry regulators, especially in a small state like Tasmania, with the Independent Regulator taking a higher-level oversight role where relevant/appropriate. [2]

- The information sharing provisions contained in Part 5 of the draft Bill, whilst broad in scope, appear to be vague and uncertain. While I welcome the provision in the draft Bill that the *Right to Information Act 2009* and *Personal Information Protection Act 2004* do not apply in certain circumstances, the Victorian legislation appears to be more detailed in its approach.[3]

- I am also encouraging of additions to the range of entities (organisations) that should be considered for inclusion in Schedule 3 (Relevant entities to which Reportable Conduct Scheme applies). Some entities that are not currently within scope exercise a high degree of responsibility for children and/or engage in activities that involve a heightened risk of child sexual abuse due to institutional characteristics, the nature of the activities involving children, or the additional vulnerability of the children with whom the entity engages. The current review of the scope of the Victorian reportable conduct scheme will no doubt assist in deciding the right approach for Tasmania.

Additional detail on these matters as well as a range of other matters contained or reflected in the draft Bill are outlined in the Appendix.

Conclusion

I thank you for the opportunity to comment on this important draft Bill. I am available to discuss my comments if that would be of assistance.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

cc Hon Jeremy Rockliff MP, Premier of Tasmania
cc Hon Elise Archer MP, Attorney-General and Minister for Justice
cc Hon Roger Jaensch MP, Minister for Education, Children and Youth

Encl. APPENDIX A – Commentary on Child and Youth Safe Organisations Bill 2022

[2] Recommendation 6.10(b) of the Royal Commission provides that state and territory governments should ensure that "the independent oversight body is able to delegate responsibility for monitoring and enforcing the Child Safe Standards to another state or territory body, such as a sector regulator".

[3] See the *Child Wellbeing and Safety Act 2005* (Vic):
ss 41A (Disclosures made in good faith), 41B (Disclosure of information by relevant person prohibited), 41C (Disclosure to other relevant persons permitted), 41D (Disclosure to report concerns permitted), 41E (Disclosure to protect child permitted), 41F (Disclosure to court or tribunal permitted), 41G (Disclosure to obtain legal advice permitted), 41H (Disclosing information to other authorities).

Clause	Issue/comment	Examples in other legislation
Part 1 - Preliminary	The draft Bill does not include any "purposes" or "objectives" provisions. The draft Bill does not include any "principles" provisions. Paradigm-setting legislation such as this would be significantly strengthened by adopting a scene-setting approach. The inclusion of Purposes/Objectives/Principles provisions would also be a useful aid to statutory interpretation. Fundamental principles, purposes and objectives should reflect the UN Convention on the Rights of the Child and relevant recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.	See for example: • Sections 1 & 5A of the *Child Wellbeing and Safety Act 2005* (Vic). • Section 16B (Principles of the Reportable Conduct Scheme) of the *Child Wellbeing and Safety Act 2005* (Vic). • Part 3 (Objects and principles) of the *Children's Guardian Act 2019* (NSW) • S 8A (Objects of Part), s8AA (Consistency with Royal Commission report recommending the Child Safe Standards) and s9 (Objects of Part) of the *Children's Guardian Act 2019* (NSW) See also *Work, Health and Safety Act 2012* (Tas), s. 3.
3	This clause provides that "***reportable allegation*** means any information that leads a person to form a reasonable belief that an employee of an entity has committed reportable conduct, whether or not the conduct is alleged to have occurred within the course of the employee's duties in respect of the entity." The clause as drafted includes no reference to "misconduct that may involve reportable conduct" which may mean that the definition is not as effective is it could be, and certain behaviour may not be captured.	Cf. s 3 of the *Child Wellbeing and Safety Act 2005* (Vic): *"reportable allegation* means any information that leads a person to form a reasonable belief that an employee has committed— (a) reportable conduct; or (b) misconduct that may involve reportable conduct— whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment;"

5(1)	Among other things, this clause provides that "***grooming*** means conduct, intended to establish trust with the aim of normalising sexually harmful behaviour towards, or allowing a person to engage in an unlawful act, sexual offence or sexual misconduct against, a child, that – (a) forms part of a pattern of manipulative or controlling techniques against the child, or in relation to the child's family or friends, or both; and (b) may take place in a range of interpersonal and social settings; and (c) may employ a variety of forms of communication;" The requirement for patterned behaviour may miss behaviour that is beginning to form a pattern but does not yet constitute patterned behaviour. Waiting for a pattern to be established should not be constitutive of the definition.	Cf. *Criminal Code 1924 (Tas),* s 125D.
5(2)	This clause provides that: "For the purposes of this Act, ***reportable conduct*** is – (a) a relevant offence committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded; or (b) sexual misconduct, that does not form part of a sexual offence, against, with or in the presence of a child; or (c) physical violence against a child; or (d) grooming of a child; or (e) emotional or psychological harm to a child; or (f) significant neglect of a child; or (g) conduct prescribed for the purposes of this section – whether or not the conduct is alleged to have occurred within the course of an employee's duties in respect of an entity." Clause 5(2)(c) provides for a narrower criterion than is the case in the Victorian legislation – i.e., it does not include physical violence *with* or *in* the presence of a child. It is not entirely clear, for example, whether the definition of "reportable conduct" captures the situation where an interim	See s 3(1) of the *Child Wellbeing and Safety Act 2005* (Vic): "***reportable conduct*** means—… (c) physical violence committed against, <u>with or in the presence of</u>, a child;…"

	FVO has been filed/made because a perpetrator parent has allegedly assaulted a partner in the presence of a child/ren.	
Part 2 – Independent Regulator	There is no reference to Objectives/Functions of Regulator under this Part. (See also above re Part 1)	See ss. 16D – 16H of *the Child Wellbeing and Safety Act 2005* (Vic)
7(1)	This clause provides that "The Governor is to appoint a person as the Independent Regulator." The concept that the same regulator has independent oversight and responsibility for the administration of both the child safe standards and reportable conduct scheme is supported. However there has been no explicit public consultation on or communication regarding who the Independent Regulator will be. The draft Bill vests the powers and functions of the Independent Regulator in a "person" rather than in a statutory body differently constituted. Noting the importance of this public policy decision, it would be appropriate for the legislation to also enable appointment of a 'body' as the Independent Regulator. For further discussion, see the Submission and Witness Statement of the Commissioner for Children and Young People (Tas) to the Commission of Inquiry into the Tasmanian Government's Reponses to Child Sexual Abuse in Institutional Settings.	See, for example, the *Child Wellbeing and Safety Act 2005* (Vic) which provides for the oversight and enforcement by the Victorian Commission for Children and Young People of compliance by certain entities with standards in relation to child safety, and for a scheme for the reporting to the Commission for Children and Young People of allegations of reportable conduct or misconduct. See also s 6 (Establishment of Commission) of the *Commission for Children and Young People Act 2012* (Vic).
Part 3- Child and Youth Safe Standards	Recommendation 6.10(b) of the Royal Commission provides that state and territory governments should ensure that "the independent oversight body is able to delegate responsibility for monitoring and enforcing the Child Safe Standards to another state or territory body, such as a sector regulator". This Part could include a provision providing for or permitting a framework for co-regulation of child safe standards. The child safe model in Victoria	See ss 5A (Principles for compliance with Child Safe Standards) and 25(2) (set out below) of the Child Wellbeing and Safety Act 2005 (Vic). See also the Commission for Children and Young People (Vic) website: **CCYP | Enforcing the Standards**

	enables this and it would appear pragmatic to avoid duplication with industry regulators, especially in a small state like Tasmania, with the Independent Regulator taking a higher-level oversight role where relevant/appropriate. The draft Bill also lacks an Objectives clause with respect to the role of the Regulator in relation to Child Safe Standards.	
10(c)	This clause provides for the functions of the Independent Regulator in relation to child and youth safe standards. The functions included in clause 10 appear to be narrower than those recommended by the Royal Commission (see Recommendation 6.11). For example, in addition to monitoring and enforcing the standards, the Royal Commission recommended the oversight body have additional functions, including: b. collect, analyse and publish data on the child safe approach in that jurisdiction and provide that data to the proposed National Office for Child Safety c. partner with peak bodies, professional standards bodies and/or sector leaders to work with institutions to enhance the safety of children e. coordinate ongoing information exchange between oversight bodies relating to institutions' compliance with the Child Safe Standards. Further, in relation to the function relating to "(c) oversight of, and enforcement of compliance with, each of the standards by entities", it is not entirely clear from the draft Bill how the Regulator is to enforce compliance (See further details below).	See also the *Child Wellbeing and Safety Act 2005* (Vic) which promote liaison with relevant authorities: S 25(1) The Commission has the following functions in relation to the oversight and enforcement of compliance with the Child Safe Standards— (a) to educate and provide advice to relevant authorities to promote compliance by relevant entities with the Child Safe Standards; (b) to educate and provide advice to relevant entities to ensure, in their operations— (i) the safety of children is promoted; and (ii) child abuse is prevented; and (iii) allegations of child abuse are properly responded to; (c) to oversee and enforce compliance by relevant entities with the Child Safe Standards; (d) to perform any other functions conferred under this Part or exercise any powers specified under this Part. (2) In exercising its functions under this Part in respect of a relevant entity, the Commission must—

		(a) consider the most effective means of promoting compliance by the relevant entity with the Child Safe Standards; and (b) liaise with each relevant authority (if any) of the relevant entity in relation to promoting compliance by the relevant entity with the Child Safe Standards.
14, 15	Cl 14 gives the Independent Regulator the power to issue a written notice to an entity/person to produce document or information if they believe the entity is not complying, or is not reasonably likely to comply, with one or more of the standards. Cl 14 gives the Independent Regulator the power to issue a written notice to an entity requiring that the entity comply with one or more of the standards. The draft Bill provides that it is an offence to fail to comply with a notice under clause 14 or 15, and enables a court to, in addition to any penalty imposed on a person, require them to produce information, answer questions or produce documents to the Regulator (cl 38 and cl 42). However, the draft Bill does not appear to provide any mechanisms to promote or require compliance with a notice other than through prosecution for an offence. For example, could the Regulator provide information to a relevant authority about the entity's failure to comply? Could the Regulator request a relevant authority to take action to promote or require compliance? Could the Regulator seek to achieve compliance via civil action? These issues should be resolved by the legislation.	See for example, the *Child Wellbeing and Safety Act 2005* (Vic) which enables the Commission to provide information to a relevant authority, and to request it to take action: 32 Non-compliance with notice to produce or notice to comply (1) If a relevant entity fails to comply with a notice to produce or a notice to comply by the date specified in the notice, the Commission may give each relevant authority (if any) of the relevant entity any information about the relevant entity's failure to comply with the notice. (2) The Commission may request a relevant authority to take any action that is available to the relevant authority under any applicable law, contract or agreement to promote and require compliance by the relevant entity with the Child Safe Standards. See also, s 33 which enables the Commission to make an application to the Court seeking a declaration that the relevant entity has failed to comply and seeking an order for pecuniary damages.

Part 4 – Reportable Conduct Scheme	No “principles” or “objectives” provisions are included in this Part. Consideration should be given to including something similar to the Victorian provisions. See also comments related to Part 1 above.	See for example, the *Child Wellbeing and Safety Act 2005* (Vic): 16B Principles (1) The reportable conduct scheme is based on the fundamental principles that— (a) the protection of children is the paramount consideration in the context of child abuse or employee misconduct involving a child; (b) criminal conduct or suspected criminal conduct should be reported to the police; (c) a police investigation into the subject matter of a reportable allegation has priority and, unless the investigation may otherwise be conducted under any other Act, an investigation under the reportable conduct scheme must be suspended or must not be commenced until the police advise or agree that it may proceed; (d) the Commission and others involved in the reportable conduct scheme should work in collaboration to ensure the fair, effective and timely investigation of reportable allegations; (e) employees who are the subject of reportable allegations are entitled to receive natural justice in investigations into their conduct; (f) regulators have specific knowledge of the roles of the entities or the professional responsibilities of the employees they regulate and, if their functions permit, play an important role in the investigation of reportable allegations;

		(g) information should be shared during and after the conclusion of an investigation into a reportable allegation; (h) after the conclusion of an investigation into a reportable allegation, the Commission may share information with the Department of Justice and Community Safety for the purpose of a WWC check. (2) The Commission should educate and guide— (a) entities in order to improve their ability to identify reportable conduct and to report and investigate reportable allegations; and (b) regulators in order to promote compliance by entities with the reportable conduct scheme.
17	Cl. 17 sets out the powers of the Regulator in relation to the reportable conduct scheme. These are: (a) to require any person to provide information, answer questions, or produce documents, so far as may be relevant to the performance of the functions, or the exercise of the powers, of the Regulator or the administration of this Act; (b) to inspect premises in accordance with section 18; (c) to enter premises to conduct an interview in accordance with section 19, 20 or 21; (d) to issue a notice to a relevant entity or entity regulator to produce a document in accordance with section 22; (e) to issue a notice to an entity regulatory to investigate or give information in accordance with section 23;	See for example, s 16ZH of the *Child Wellbeing and Safety Act 2005* (Vic) which enables the Commission to seek a declaration and civil penalty.

	(f) to share information in accordance with Part 5. The draft Bill provides that it is an offence to fail to comply with a notice under 22 or 23, and enables a court to, in addition to any penalty imposed require them to produce information, answer questions or product documents to the Regulator (cl 39 and cl 42). However, the draft Bill does not appear to provide any mechanisms to promote or require compliance with a notice other than through prosecution for an offence. What happens if a recalcitrant or non-compliant entity refuses or frustrates the Regulator's powers? What recourse does the Regulator have to enforce their powers? How and who prosecutes a non-compliant entity, or entity regulator? These issues should be resolved by the legislation.	
18(2)(b)	This clause provides that the head of a relevant entity must consent to an inspection by the Regulator. This clause may constrain the power of the Regulator unreasonably and seems inconsistent with the policy objectives of the legislation to enable appropriate investigations. The clause, in practice could enable relevant entity to fetter the Regulator's inspection powers. It appears there is no similar consent provision/fetter in the context of the Victorian reportable conduct scheme.	
24	This clause provides that the "Regulator may monitor the progress of an investigation of a reportable allegation or reportable conviction" by the head of an entity or entity regulator. The clause refers to the "best interests of children" test rather than "public interest" test.	See s 16W of *Child Wellbeing and Safety Act 2005* (Vic) - Commission may monitor regulator's investigation The Commission may monitor the progress of an investigation by a regulator of a reportable allegation

	In this context, a "public interest" test may be preferable to a "best interests of children" test. The "public interest" is broader and involves considerations over and above, but inclusive of the best interests of children. For example, a "relevant entity" may opt out or cease the provision of child-related services, which may indicate that an investigation is no longer strictly in the interests of a child or children connected with the entity. But there would nevertheless remain significant public interest considerations in continuing the investigation and oversight of that investigation, such as transparency, accountability and corporate governance in the sector. The inclusion of guiding principles which include reference to the promoting the best interests of children in the performance of a function or the exercise of a power would be appropriate.	if the Commission considers it is "in the public interest" to do so. See also, s43 of the *Children's Guardian Act 2019* (NSW): 43 Children's Guardian may monitor relevant entity's investigation or determination (1) The Children's Guardian may, on the Children's Guardian's own initiative or because of a complaint, monitor the progress of an investigation or determination by the head of a relevant entity into a report if the Children's Guardian considers the monitoring is in the public interest. See also, s46 of the *Children's Guardian Act 2019* (NSW): 46 Children's Guardian may investigate or determine (1) The Children's Guardian may, if the Children's Guardian reasonably believes it is in the public interest— (a) investigate a reportable allegation, or (b) make a determination about a conviction considered to be a reportable conviction, or (c) investigate the way in which a relevant entity has dealt with, or is dealing with, a report, complaint or notification.

25	Clause 25 sets out that the Regulator "must liaise with entity regulators". It is not entirely clear what "liaise" mean in this context. What if the Regulator thinks the oversight is insufficient and thinks it is in the best interests of children/public interest to duplicate "the oversight of the investigation of reportable allegations"? How does this link with cl. 26? A stronger formulation on the co-regulation of entities between the Regulator and existing regulatory bodies would be beneficial. A co-regulation model in Tasmanian should be clearly articulated. The importance of clear legislative provisions outlining how co-regulation is to work in practice was noted in a review of the equivalent Victorian legislation where, '[i]n many instances there were multiple regulatory authorities involved, and time was wasted with coordination of compliance activities and deciding which agency would lead the response… [which] created inefficiency, uncertainty, and delays, and in some cases, reluctance on the part of relevant authorities to take compliance action.'[1]	It is noted that in response to concerns raised in the context of a review of the *Child Wellbeing and Safety Act 2005* (Vic), new legislation has passed in Victoria to clearly identify the relevant regulator for each sector.[2] This legislation is due to commence from January 2023.
26(1)(c)	Clause 26 sets out that the Regulator may undertake "own motion" investigations into reportable allegations or reportable convictions. Sub-clause (1)(c) refers to the "best interests of children" test. However, the "public interest" test may be the preferable test to apply. (See note above re cl. 24).	See ss. 16G, 16O and16W of the *Child Wellbeing and Safety Act 2005* (Vic).

[1] Commissioner for Children and Young People Tasmania, 'Submission to the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings' (29 July 2021), 21.

[2] The *Child Wellbeing and Safety (Child Safe Standards Compliance and Enforcement) Amendment Act 2021* (Vic).

29	This clause provides that a reportable allegation under the Act involving criminal conduct must be reported to Tasmania Police. The draft Bill provides no guidance on how to "report the matter to Tasmania Police" or what constitutes a report. The draft Bill may benefit from further clarification, for the avoidance of doubt, to specify to whom to report, e.g., the Commissioner of Police or another specific person. Also, the draft Bill would benefit from the inclusion of provisions regarding the obtaining of information from police, and clarity around the priority or otherwise of a police investigation.	Under the *Child Wellbeing and Safety Act 2005* (Vic), the Commission may obtain information from Victoria Police (s 16T) and a Victoria Police investigation has priority (s 16U). 16T Commission may obtain information from Victoria Police (1) The Commission may request the Chief Commissioner of Police to provide the following information in relation to an employee of an entity who is the subject of a reportable allegation— (a) whether Victoria Police is investigating the reportable allegation; (b) the result of the investigation as soon as practicable after its completion. (2) The Chief Commissioner of Police must comply with a request under subsection (1) unless providing the information would be reasonably likely to prejudice— (a) the investigation of a breach or possible breach of the law; or (b) the enforcement or proper administration of the law in a particular instance. 16U(2) On becoming aware that Victoria Police is investigating a reportable allegation, the Commission, an entity, a regulator or an independent investigator must not commence or continue to investigate the reportable allegation under this Part until the Chief Commissioner of Police— (a) advises that the police investigation has been completed; or (b) agrees that the investigation under this Part may proceed in consultation with Victoria Police.

30	It would be useful for the draft Bill to clarify how cl. 30 (Head of relevant entity to notify Regulator of reportable allegation or reportable conviction) relates to cl. 29. One provides for an offence (with a penalty provision) and the other does not. It would also be useful to clarify what "whether Tasmania Police has been **contacted** about the reportable allegation" means in practice. Further, it appears the language in cl 30(1)(a)(iii) should reflect the language of "reporting" in cl 29 and this is currently not the case.	
31	This clause requires the head of a relevant entity to investigate reportable allegation or a reportable conviction. This section does not contain a clause equivalent to s 16N(2) of the Victorian legislation. The Regulator should be permitted to request information or documents about the investigation and the head of the entity should be required to comply at any time during the investigation.	See the *Child Wellbeing and Safety Act 2005* (Vic), 16N(2): If the Commission requests in writing that the head of the entity provide to the Commission information or documents relating to a reportable allegation or an investigation, the head of the entity must comply with the request.
Part 5 – Information sharing Cl. 32	This information sharing provision, whilst broad in scope, appears vague and uncertain. The Victorian formulation appears to strike a better balance.	See the *Child Wellbeing and Safety Act 2005* (Vic): ss 41A (Disclosures made in good faith), 41B (Disclosure of information by relevant person prohibited), 41C (Disclosure to other relevant persons permitted), 41D (Disclosure to report concerns permitted), 41E (Disclosure to protect child permitted), 41F (Disclosure to court or tribunal permitted), 41G (Disclosure to obtain legal advice permitted), 41H (Disclosing information to other authorities).
	There is no provision in the draft Bill relating to the provision of information to a person about whom allegations/reports have been made. This appears to be a significant oversight and it is recommended that the Bill include relevant provisions.	The Royal Commission recommendations include, inter alia, the need "to provide adversely affected persons with an opportunity to respond to untested or unsubstantiated allegations, where such information is received under the information exchange scheme, prior to taking adverse action

		against such persons, except where to do so could place another person at risk of harm".[3]
35(2)	This clause permits the disclosure of information regarding the progress, outcomes or actions arising from an investigation. The meaning of subclause (c) is unclear – "a person who has daily care and control of the child referred to in paragraph (a), whether or not that care involves custody of the child". This should be clarified. The draft Bill should include matters relevant to a decision to disclose information to ensure the decision is consistent with the objectives and principles of the legislation.	
37	Prohibition on disclosing identifying information – on the use of the word 'disclosing' is a very high bar – Scenarios may emerge where "information that would enable the identification" of relevant person could be disclosed inadvertently during or in the course of the independent Regulator's administration, training, supervision of staff that may be construed as breaching this prohibition. Perhaps 'publishing' would be an appropriate alternative to 'disclosing'.	See s 16ZE (Prohibition on publishing certain information) of *Child Wellbeing and Safety Act 2005* (Vic).
Part 6 - Offences	This part requires further consideration to clarify the following • who enforces and prosecutes the offences listed in Part 6 • who lays the charges for the offences (eg would they be like WorkSafe prosecutions, in that they are regulatory breaches?) • the process of bringing an offence to Court • whether a Court Attendance Notice setting out the particulars of the offence be issued, or will some other process originate criminal proceedings. It is recommended that any prosecutorial office is independent of the Tasmanian Government.	See also *Work, Health and Safety Act 2012* (Tas), ss. 230-233.

[3] Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report: Recommendations', Recommendation 8.7

42	Court may make order: This clause provides that, "In addition to any penalty imposed on a person for an offence under this Act, a court may make an order requiring the person to provide information, answer questions, or produce documents, to the Regulator in accordance with the order." It is assumed that this reference is to the Magistrates Court (Criminal and General Division) – the term "court" should be defined to avoid doubt. Further, it is not clear how the Court comes to adjudicate this matter. For example, is an application brought by the Regulator, or another party? It is also not clear how the application process will be framed to enable natural justice to be served. For example, who pays costs (if the Regulator brings an action)? Also, given the prohibition on disclosures of information under this Act, will the Court proceedings be opened or closed? If there are criminal proceedings, there is likely to be a strong public interest in open and transparent proceedings. The draft Bill should be amended to clarify these matters.	See ss 16ZH, 33, and 41ZL of *Child Wellbeing and Safety Act 2005* (Vic).
Part 7 – Review of Decisions Cl. 43(2)(d)	This sub-clause is missing the word "to" following the word "relation".	
43(4)	This clause refers to a "process specified in subsection (1)", but no process is specified in that subsection.	
44(3)	Review by the Magistrates Court: Consider replacing "in private" with "in closed court".	
44	External review: It is not clear whether there is intended to be a time limit by which applications to review a reviewable decision must be lodged. This should be clarified (eg 28 days).	
51	Service of documents: The draft Bill ought to clarify whether the original document is served or a copy e.g., does the Regulator serve a copy of the notice to comply (as a	

	process possibly originating a court proceeding)? Also, it should include a provision detailing what constitutes evidence of service, e.g., memorandum/affidavit of service, receipt of some kind, etc. to avoid unnecessary evidential disputes in court.	
Schedule 3 – Relevant entities to which Reportable Conduct Scheme applies	The list of relevant entities to which the reportable conduct scheme applies is more limited in scope than those entities required to comply with the child safe standards. For example, clubs, commercial services and coaching/tuition services are not relevant entities for the purposes of the scheme. While this approach is consistent with Recommendation 7.12 of the Royal Commission, it also recommended in Recommendation 7.11 that states and territories periodically review the options of reportable conduct schemes, and in that review determine whether the schemes should cover additional institutions that exercise a high degree of responsibility for children and involve a heightened risk of child sexual abuse. It is noted that the scope of the Victorian scheme is currently the subject of review, and the outcome of that review may assist to inform the scope of the scheme adopted for Tasmania. The Bill should enable an iterative approach (e.g. enable the inclusion of additional relevant entities that involve heightened risk for child sexual abuse).	