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Dear Commissioner

**Re: Consultation on the draft Tasmanian Community Protection (Offender Reporting) Amendment Bill 2023**

Thank you for the opportunity to make a submission on the draft Community Protection (Offender Reporting) Amendment Bill 2023 (the Bill).


**Background**

According to the correspondence received from you on 10 January 2024, the “main purpose of the Bill is to re-focus the operation of the act to ensure that children and the community are protected from the harms of sexual offending.” The key changes to be brought about by the amendments include:

- Information on the register will be made freely available to agencies involved in monitoring offenders and/or involved in child protection to better support the prevention of child sex abuse.
- A new disclosure scheme will allow parents and guardians to apply for information about whether a person who has regular unsupervised contact with their child is a registered sex offender.
- New offences for breaches of confidentiality and vigilantism towards registered sex offenders will balance the disclosure of information from the register.
- New provisions to ensure that youthful offenders are not unnecessarily exposed to the criminal justice system through registration as a sex offender.
- New provisions to ensure that persons convicted of minor sexual offences are not recorded on the register in circumstances where they are assessed as posing little or no risk to children or the community.

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- Strengthened wording to ensure the court is able to consider the safety and protection of children and the community as paramount in deciding whether or not to make an order of registration for a convicted sex offender.
- Additional provisions to prevent reportable offenders from working in child related areas of employment.
- Additional provisions to allow police to notify an employer or prospective employer, that an employee or prospective employee has been charged with a reportable offence, allowing the employer to understand and manage any associated risk to assist in maintaining a safe workplace.
- Additional provisions to assist with the investigation and prosecution of recidivist sex offenders.
- Additional reporting provisions aimed at deterring re-offending.
- Stronger penalties for non-compliance with the Act.

As a general comment, I welcome the policy intent of the proposed reforms to re-focus the operation of the legislation so that children and the community are better protected from sexual abuse. I support giving improved access to information to relevant agencies, and the proposal to enable parents and guardians to apply for information about persons in regular contact with their children. I am also pleased to see that the proposed amendments recognise the importance of considering the unique situation of children who come into contact with the criminal justice system as a consequence of their behaviour.

### **Role of the Commissioner for Children and Young People**

My analysis of and views on the Bill are guided and governed by a child-rights framework and the United Nations Convention on the Rights of the Child. The *Commissioner for Children and Young People Act 2016* (CCYP Act) provides that my general functions include:

- (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, which may affect their lives; and
- (f) assisting in ensuring the State satisfies its national and international obligations in respect to children and young people generally.<sup>1</sup>

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<sup>1</sup> Section 8(1) of the *Commissioner for Children and Young People Act 2016* (Tas)



In performing these and other functions under the CCYP Act, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount, and
- observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (CRC).<sup>2</sup>

Further, the Commissioner must give special regard to the needs of children and young people who are vulnerable or disadvantaged.<sup>3</sup> Relevantly, this is defined under the CCYP Act to include a child or young person who is *at risk* within the meaning of the *Children, Young Persons and Their Families Act 1997*. This is pertinent to the issue of law reform concerning the Community Offender Protection Register (Register) *and* access to the Register, because I am under a statutory duty to give special regard to children who have been, are being or are likely to be, abused or neglected.

In this regard, I am also guided by empirical data. The Australian Bureau of Statistics, *Recorded Crime – Victims* data shows reporting of sexual assault by age at incident. Based on national data on crimes reported to police, most recorded sexual assault victims (59%, or about 18,900 victims) in 2022 had an age at incident of under 18 years. Of these victims:

- 71% (or about 13,400) were aged 10–17 years.
- about 5 in 6 were female (79%, or about 15,000).<sup>4</sup>

For each year between 2014 and 2022, the most common age at incident for victims of sexual assault was 10–17 years.<sup>5</sup>

### **Relevant child rights provisions**

The human rights of children likely to be advanced or restricted by the proposed amendments include those articulated by the following articles of the Convention on the Rights of the Child (CRC):

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<sup>2</sup> Section 3(1) of the *Commissioner for Children and Young People Act 2016* (Tas)

<sup>3</sup> Section 3(2)(b) of the *Commissioner for Children and Young People Act 2016* (Tas)

<sup>4</sup> Australian Institute of Health and Welfare, 'Family, domestic and sexual violence' webpage <https://www.aihw.gov.au/family-domestic-and-sexual-violence/types-of-violence/child-sexual-abuse#police> referencing Australian Bureau of Statistics, [Recorded Crime – Victims, 2022- external site opens in new window](#), (AIHW website, accessed 1 March 2024).

<sup>5</sup> Australian Bureau of Statistics, [Recorded Crime – Victims, 2022- external site opens in new window](#), (ABS website, accessed 1 March 2024).



Art 3(1). The best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.

Art 16(1). No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honour and reputation.

Art 19(1). States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

### **Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings**

While this legislative reform is not a priority reform arising from the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (CoI), I note the intention of the draft Bill is to improve purposeful and proactive information sharing between agencies and relevant individuals engaged in keeping children safe.

Sadly, the CoI report reflects on far too many occasions where information sharing was not enabled, sufficient or systematic, or was impeded by legislative or bureaucratic structures and culture, leading to considerable harm or risk of harm for children and young people. The CoI has recommended the government develop 'child safety information sharing, coordination and response guidelines to use across government and government funded agencies, supported by investment in cultural change work that promotes good information-sharing practices and reinforces the need to respond appropriately to any information received' (see Recommendation 19.8). The CoI also recommended that the government 'review confidentiality or secrecy provisions across Tasmanian legislation to identify and remove any legislative barriers to sharing information in the interests of protecting the safety and wellbeing of children and young people' (see Recommendation 19.7).

The former Commissioner of Police, Darren Hine, in his statement to the CoI, in fact forecast the need for legislative reform in respect to the Register to improve information sharing between agencies "Australia wide":



Legislative reform relating to the provision of information to prescribed entities would enhance the supervision of reportable offenders. Currently section 44B is prescriptive to the Commissioner providing information from the register relating to reportable offenders. The Community Protection (Offender Reporting) Regulations 2016 only enable the Commissioner to provide information to the Department of Education, the Department of Communities Tasmania, and the Department of Justice in Tasmania (Prescribed Entities). Reform allowing information sharing between prescribed entities to and from other jurisdictions will enhance supervision of reportable offenders Australia wide.<sup>6</sup>

Commissioner Hine's statement also indicated that information sharing relating to the Register is facilitated by a "Keeping Children Safe" Memorandum of Understanding (MoU) between the Department of Police, Fire and Emergency Management (Tasmania Police) and Department of Communities Tasmania (Children and Family Services) (the agency then responsible for child safety services). The MoU, dated 29 July 2021, provides for limited information sharing under the Community Protection Offender Register when a recorded interaction involves "reportable contact". I look forward to a far more effective, purposeful, and proactive information sharing MoU being developed in the wake of the Col and in keeping with the reforms outlined in the Bill.

As highlighted by the Col, having effective information sharing systems between all agencies is a fundamental part of keeping children safe. The conclusions expressed by the Col regarding the lack of a cohesive service system, including coordinated information sharing approach, outlined below, reflects the current state of play and the need for urgent reform:

Our overall conclusion after reviewing the responses is that the Government could not clearly articulate a cohesive system for preventing, identifying, reporting, and responding to allegations and incidents of child sexual abuse in institutions. Instead, it described elements of a service system without setting out how the system is intended to operate across the whole of government and intersect with other service systems, recognising the issues affecting children and young people do not occur in a silo and often cut across several portfolios. We acknowledge that many of the policies Tasmanian Government departments initially produced to our Commission of Inquiry have since been or are being updated.

Leanne McLean, Commissioner for Children and Young People, expressed a similar view to ours, describing the features of Tasmania's current system response to institutional child sexual abuse as:

... a disconnected patchwork of systems and processes which, despite their good intent, fail to provide an integrated and systemic approach to keeping children

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<sup>6</sup> Witness Statement of Commissioner Darren Leigh Hine, Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, para 415. ([SKM\\_C360i22061417590 \(commissionofinquiry.tas.gov.au\)](https://www.commissionofinquiry.tas.gov.au)).



safer from abuse in institutional settings. The flow on effects of the current system is that navigation by the public and agencies is difficult, there is little to no coordination or communication between regulatory agencies and there is no central body with responsibility for systemic oversight.

Similarly, in consultations where we asked what was working well in the system that responds to child sexual abuse, participants expressed frustration that there was no system, or that the system was not well coordinated.<sup>7</sup>

The commitment to cultural change by Government in the wake of the Col's Final Report and recommendations has been made loud and clear. It is my hope that this Bill is the first of many concrete steps in improving information sharing systems and processes between Tasmania Police and all agencies involved in child protection, to prevent child sex abuse and keep children safer.

### **Comment on the draft Bill**

As indicated above, I welcome the legislative reforms introduced by the Bill, although there are some areas of the Bill that I believe can be strengthened. My commentary on several provisions of the Bill is not intended to be considered as exhaustive. I should note that reading the Bill in tandem with the Principal Act been quite challenging and it would have been beneficial to have received explanatory notes with the Bill.

### **Specific guidance to inform decision making regarding children sentenced for a reportable offence**

The amendments proposed by clause 8 of the Bill (Section 6 amended - Order requiring registration of offender) provide improved clarity over the discretion to register a person. They also provide specific guidance with respect to children (i.e. persons who are under 18 years of age) who are sentenced for a reportable offence.

This is undoubtedly a complex area and, noting that children as young as ten may be subject to the Principal Act, I believe that further guidance for decision making regarding children sentenced for reportable offences is warranted.

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<sup>7</sup> Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings Report (August 2023), Volume 8: Chapter 19 – A coordinated approach, p. 97 - [https://www.commissionofinquiry.tas.gov.au/\\_data/assets/file/0011/724439/COI\\_Full-Report.pdf](https://www.commissionofinquiry.tas.gov.au/_data/assets/file/0011/724439/COI_Full-Report.pdf)



Currently, section 6(1) of the Principal Act states that a court is to make an order that a person sentenced for a reportable offence be named on the Register and comply with reporting obligations under the Act 'unless the court is satisfied that the person does not pose a risk of committing a reportable offence in the future'. This is a crude and unsophisticated formulation that fails to consider the complexity of the application of the law as it applies to children who are sentenced for a relevant offence. As it stands, the law may lead to perverse outcomes for children as young as ten.

The proposed amendments expressly state that 'if the person is a child, the court may omit to make such an order if the court is satisfied that the child does not pose an unreasonable risk of committing a reportable offence against another child, an adult or the community' (section 6(1A) of the proposed Act). I also note the inclusion of the proposed s. 6(1B) which provides a discretion based on severity of offence and the proposed s. 6(1C) which provides the grounds upon which exceptional circumstances are to be determined.

I very much welcome the intent to distinguish children from adult offenders in the decision-making process. However, noting that children as young as ten can be subject to this law, it may be appropriate for there to be a presumption that a child is not named on the register unless the court is satisfied that the child poses an unreasonable risk of committing a reportable offence.

Regardless, the inclusion of a 'best interests' consideration in section 10 (or a cognate provision) to guide decision making regarding children sentenced for a relevant offence would afford greater scope for an individualised approach and better reflect the requirements of article 3 of the CRC (set out above).

For context, it is important to consider the data from the recent Australian Childhood Maltreatment Study (ACMS) which has shown that 14% of Australians report child sexual abuse perpetrated by an adolescent. Overall, known adolescents (excluding current or former romantic partners) are most reported as offenders of childhood sexual abuse (10%), followed by parents or caregivers in the home (8%), other known adults (8%), unknown adults (5%), adolescents who were current or former romantic partners (3%), institutional caregivers (2%), siblings (2%) and unknown adolescents (1%). Girls were more likely than boys to experience child sexual abuse by all classes of perpetrator except for institutional caregivers. Data from the ACMS also shows that there has been a significant increase in child sexual abuse perpetrated by adolescents who are current or former romantic partners (6% of 16-24-year-



olds report sexual abuse perpetrated by an adolescent partner compared with 3% of 25-44-year-olds).<sup>8</sup>

### **Access to the Register**

The Bill intends to extend access to information on the Register to a wider group of persons. Under the amended section 44 of the Principal Act the Register “is only to be accessed by”:

- The Registrar and their staff,
- A police officer,
- An employee within the meaning of the *State Service Act 2000* who accesses the Register during the employee’s duties for specific named purposes,
- A person authorised by the Commissioner.

Clause 33 of the Bill also intends to amend section 44 of the Principal Act by omitting the definition of “*law enforcement agency*” from s 44(4) of the Principal Act and substituting the following definition:

“*relevant agency means –*

- (a) the Commissioner of the Australian Federal Police; or
- (b) the Commissioner (however designated) of the police force of another State, or a Territory, or another country; or
- (c) the Australian Criminal Intelligence Commission; or
- (d) the Australian Transaction Reports and Analysis Centre (AUSTRAC) continued in existence by the Anti-Money Laundering and Counterterrorism Financing Act 2006 of the Commonwealth;
- (e) any other government authority of the Commonwealth or of this or any other State, or of a Territory, responsible for the protection of children or reportable offender management.”

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<sup>8</sup> See Australian Child Maltreatment Study generally at <https://www.acms.au/> and Mathews, B., Finkelhor, D., Pacella, R., Scott, J. G., Higgins, D. J., Meinck, F., Erskine, H. E., Thomas, H. J., Lawrence, D., Malacova, E., Haslam, D. M., & Collin-Vézina, D. (2024). Child sexual abuse by different classes and types of perpetrator: Prevalence and trends from an Australian national survey. *Child Abuse & Neglect*, 147, 106562. <https://doi.org/10.1016/j.chiabu.2023.106562>.





The inclusion of category (e) above as a relevant agency is welcomed. It is still unclear to me, however, how the proposed section 44 of the Principal Act (Access to Register to be restricted) will work from a practical child safety perspective. Based on the new law, will the Child Safety Service receive all the information they need from the Register in a timely manner to promote the safety of children?

Under the amended s 44(1A) of the Principal Act, I note that the Commissioner is to “develop guidelines” that are not yet known, making it difficult to consider the implications of the wider access to the Register applicable to relevant agencies. I would welcome the opportunity to be consulted on the development of these guidelines.

The proposed amendments to section 44B of the Principal Act are welcomed. Based on the proposed amendments, information in the Register “must” be provided under s 44B (1) for the purposes of “the protection of children, adults and the community, the management of reportable offenders” (proposed to be inserted), law enforcement, judicial functions, or activities. Broadening the stated purpose in s.44B(2) (a) by explicitly including a reference to “*the protection of children, adults and the community*”, is an important step that recognises the cultural change recommended in the wake of the Col.

### **Children and young people as applicants for disclosure under clause 36**

A new section 44CA is proposed by the Bill to allow for application by a parent, guardian, or carer for disclosure of information about whether or not a *specified person* is a reportable offender (excluding children) on the Register. For the purposes of this section, a person does not have regular unsupervised contact with a child unless the person has unsupervised contact with the child for at least 3 days (whether consecutive or not) in any period of 12 months.

It is both curious and unacceptable that children and young people are not included in the group of persons capable of making application for disclosure. I have experience and knowledge of young people living independently, often in caring roles for younger siblings or friends, or who are in employment working alongside adults, who should benefit from this new legislative entitlement granted to parents, guardians, or carers. I respectfully suggest that the new law affords to children and young people the ability to apply for disclosure.

Furthermore, it is not clear to me whether a parent, guardian, or carer (or indeed child) who makes an application for disclosure will be advised if there are offender reporting requirements in another state or territory. That is, will an application for information include a search via the National Child Offender System (NCOS)? Is there a plan to develop a strategy around the



Register to, in the words of Commissioner Hine, 'enhance supervision of reportable offenders Australia wide'?

I very much look forward to the continued development of the Bill and hope that the submissions and propositions outlined above are considered in a positive manner. I would be very happy to engage in further discussions in order to achieve meaningful reform in this area.

Yours sincerely

**Leanne McLean**

Commissioner for Children and Young People

*cc: Secretary, Department for Education, Children and Young People*