

Your Ref:
Our Ref:

19 December 2024

Acting Secretary
Office of the Secretary
Department of Justice

By email: haveyoursay@justice.tas.gov.au

Dear Acting Secretary

Re: Commission for Children and Young People Bill 2024

Thank you for the opportunity to provide feedback on the Consultation Draft of the Commission for Children and Young People Bill 2024 (draft Bill). Thank you also for the short extension of time in which to provide feedback.

In line with the recommendations of the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings* (Commission of Inquiry), the Tasmanian Government has committed to establishing a new Commission for Children and Young People (proposed Commission). This proposed Commission is intended to serve as a strong, independent advocate for children's rights and to oversee child-safe practices within organisations.

This Office has consistently advocated for the establishment of a new Commission that enhances the functions, powers, and independence of the existing Commissioner for Children and Young People. The proposed Commission represents a vital step forward in meeting community expectations, streamlining oversight, and incorporating responsibilities under the *Child and Youth Safe Organisations Act 2023*. I welcome the Government's consultation on this draft Bill as an opportunity to ensure these reforms meet the expectations of and are informed by the Tasmanian community.

Building on the advocacy of former Commissioner for Children and Young People, Leanne McLean, I make the following points:

- Deliberative establishment and adequate resourcing of the proposed Commission will send a clear message to Tasmanians—particularly children and young people—that the rights, safety, and interests of young Tasmanians are a top priority for the Tasmanian Government.
- While the Government intends to implement the Commission in stages, it is crucial to approach each phase with clarity, precision, and a long-term vision.
- The Commission of Inquiry highlighted the need for a more cohesive and transparent oversight system for children's safety. This draft Bill must respond to that call by addressing the complexity and fragmentation in the current oversight framework and without adding to it.



There remains considerable work to ensure the aspirations outlined in the final report of the Commission of Inquiry are fully realised and that Tasmanian children and young people are delivered an appropriately resourced Commission underpinned by contemporary and effective legislation that delivers on the promise of ‘a trusted and powerful organisation to champion their rights’.¹

I am pleased to note the Government’s engagement in targeted consultations, including with children and young people through the Create Foundation and Youth Network of Tasmania. I have no doubt the insights shared by the young Tasmanians consulted will provide valuable input for refining the draft Bill.

It is reassuring to hear that many stakeholders of this Office are providing feedback on the draft Bill, drawing on their own subject-matter expertise. However, it is important to recognise that feedback from other interested parties may be limited due to the complexity of the draft Bill and delays in providing accessible information about the proposed reforms.²

Further, I reiterate my previous advocacy for the Government’s legislative development process to uphold the principle of self-determination when it comes to establishing Tasmania’s first Commissioner for Aboriginal Children and Young People (a role advocating for Aboriginal children and young people in out-of-home care and youth justice systems, and more broadly). The framing of this role is critical to the new system of oversight and to ensuring the trust and confidence of the Aboriginal communities it will serve and must be guided by a transparent self-determination approach.

Background

For ease of reference, I have set out key background information accompanying the Government’s call for submissions on the draft Bill:

It is proposed that the Commission will bring together the existing functions of the current Commissioner for Children and Young People and the Independent Regulator of the Child and Youth Safe Organisations Framework.

The draft Bill establishes the following roles in the Commission:

- Commissioner for Children and Young People;
- Commissioner for Aboriginal Children and Young People; and
- Child Advocate.

The Independent Regulator and Deputy Regulator under the *Child and Youth Safe Organisations Act 2023* will also form part of the Commission.

The key functions of the new Commission will include:

- advocating for individual children in the out-of-home care and youth detention systems (performed by the Child Advocate and Commissioner for Aboriginal Children and Young People);

¹ Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 1: Executive Summary), 2023, p 11 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).

² Plain-English Fact Sheets and an easy-read Fact Sheet were not published on the Department’s website until 6 December.



- administering the Reportable Conduct Scheme (this being the existing role of the Independent Regulator);
- administering an independent community visitor scheme for children in out-of-home care and youth detention (a role for the new Child Advocate);
- monitoring the operation of the out-of-home care and youth justice systems;
- conducting inquiries into the out-of-home care and youth justice systems and the services provided to children in those systems;
- educating organisations on the Child and Youth Safe Standards and enforcing compliance with those Standards (the existing Independent Regulator's role);
- promoting the participation of children in out-of-home care and youth justice in decision-making that affects their lives; and
- making recommendations to Government on system improvements.

The draft Bill establishes the Commission as independent from Government; and separately and directly funded, with the power to control its own budget and staffing.

The draft Bill has been developed to include all roles and functions recommended by the Commission of Inquiry. However, not all of the provisions in the Bill will commence at the same time. Consistent with the Government response to the Commission of Inquiry, commencement dates will be staged to align with the timeframes outlined in the [\[draft\] *Change for Children Strategy and Action Plan*](#).

The first phase will create the Commission for Children and Young People, including a new statutory office of Commissioner for Children and Young People having expanded functions compared to the current legislation, which will be repealed (the *Commissioner for Children and Young People Act 2016*).

Later phases will include the commencement of the new roles of Commissioner for Aboriginal Children and Young People and the Child Advocate, which are medium term recommendations to be implemented by July 2026. Another is establishing the independent community visitor scheme, a long-term recommendation to be implemented by 1 July 2029. The Government will bring forward commencement of the later phase reforms if possible.

Based on the above, it appears that the draft Bill will extinguish one statutory officer (the current Commissioner) and replace it with a proposed Commission made up of up to five statutory officers, installed over time.

Role of the Commissioner for Children and Young People

The *Commissioner for Children and Young People Act 2016* (CCYP Act), which establishes the Office of the Commissioner for Children and Young People, provides that the Commissioner's general functions include:

- (a) advocating for all children and young people in the State generally;
- (b) advocating for individual children and young people detained under the *Youth Justice Act 1997*
- (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; and
- (f) assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.
- (g) encouraging organisations to establish child friendly mechanisms to assist children and young people to participate in matters that affect them.³

In performing these and other functions under the CCYP Act, the Commissioner is 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 (UNCRC).⁴

Approach to this submission

In accordance with the provisions of the CCYP Act, I have adopted a child-rights based approach in my examination of the draft Bill. My approach has involved engaging with children and young people to understand their hopes and aspirations for their new Commission for Children and Young People. I have been informed also by the many engagement activities this Office has undertaken over many years with children and young people on the range of issues that affect them.

I have also benefited from conversations with multiple stakeholders with significant interest in this legislative development process. I am pleased to note many of these stakeholders are providing their own feedback on the draft Bill based on their own specific areas of interest and subject-matter expertise.

My own feedback on the draft Bill is set out in two parts. The first part describes the recent engagement processes that I have undertaken with children and young people to help inform my feedback.

The second part deals with issues and opportunities to strengthen the draft Bill. See also Appendix A which sets out additional matters for consideration. The views of children and young people have informed and guided my submission generally. Where appropriate I have also included thematic summaries of what I have heard from children and young people relevant to the specific issues raised.

What is abundantly clear is that this legislative process involves developing a Bill with many interrelated parts, where changes to one section may require adjustments elsewhere. The draft Bill is also part of a broader reform package within the Government's timetable for complex legislative and administrative changes over the next decade. Some aspects have yet to crystallise and may influence the final shape of the Bill.

What is also clear is that this cannot be a simple 'set and forget' consultation process. It will require ongoing feedback, dialogue, and iteration before the Bill is tabled. It is essential then for the Government to commit to sustained community engagement to meet the aspirations of the Commission of Inquiry and, most importantly, those of Tasmania's children for the proposed Commission.

³ Section 8(1) of the *Commissioner for Children and Young People Act 2016* (Tas).

⁴ Section 3(1) of the *Commissioner for Children and Young People Act 2016* (Tas).



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Part 1 - Engaging with children and young people

Between 22 October and 6 November 2024, I engaged with almost 700 children and young people to hear their views and ideas about the new Commission, and to ensure my submission took those views and ideas into account.

My engagement had two parts including a postcard activity (either hardcopy or digital) facilitated through schools and youth organisations, and small focus groups held in Hobart, Launceston and online.

Upon request, I sent hard copy postcards to 39 organisations around Tasmania including schools, non-government organisations (including those who support youth advisory groups) and others. A digital version of the postcard was also made available through my website. The postcard asked children and young people to:

Imagine it's your job to stand up for children and young people like you in Tasmania. What do you need to know and do to make sure they have a good life? Write or draw your ideas below—there are no wrong answers!

Many children and young people from across Tasmania shared their views and ideas with me through the postcard activity. This included 679 children and young people aged between 3 and 21 years,⁵ who lived in the south (n=300), north/north-west (n=357) and elsewhere (n=22).⁶

Children and young people chose to respond in a variety of ways including in writing (n=493), drawing (n=154), or a mix of both (n=32).

I heard a lot from children and young people about the topics they think matter to ensure that children and young people like them have a good life. I also heard about what children and young people think they/the new Commission would need to “know” and “do” to make sure children and young people like them have a good life.

In addition to the postcard activity, I facilitated three focus groups—in Hobart, Launceston and online—with groups of 3-5 young people aged up to 21. The focus groups explored key topics relating to the new Commission including who should be defined as a ‘child’ and ‘young person’ for the purpose of the Commission’s work, the principles to guide how the Commission goes about its work, the participation of children and young people in the establishment and work of the Commission, and the functions of the Commission including individual advocacy. Privacy and confidentiality were also discussed, including consideration of when and how the Commission should share private or confidential information about children and young people, with whom, and for what purpose.

Many of the views and ideas shared with me by children and young people through the postcards and focus groups, are summarised at relevant points throughout my comments below. Given the care and time required to plan, design, and deliver engagement activities of this quality and to comprehensively analyse the volume of rich data received, I anticipate releasing a further publication in early 2025. This will offer further insights into and about the views and ideas of children and young people about the future they want for themselves, and other Tasmanian children and young people and may inform the further development of the Bill.

⁵ Age ranges: 2-5 years n=52; 6-9 n=122; 10-12 n=229; 13-15 n=229; 16-17 n=15; 18-21 n=15; illegible/indecipherable/no data n=16.

⁶ Further demographic detail will be provided in future publications.



Part 2 - Comment

Noting my comments above, my feedback is not intended to be exhaustive, and the absence of commentary on any aspect of the draft Bill should not be taken as an indication of agreement. I reserve the right to provide further comment as the draft legislation evolves. I have chosen to focus this submission on the key areas of:

- matters of interpretation;
- principles;
- governance;
- functions;
- information management; and
- resourcing of the proposed Commission

Other matters for consideration are included in a table set out in Appendix A.

1. Interpretation

The draft Bill proposes that the proposed Commission will have three primary 'constituencies' as its jurisdictional subject matter for the performance of its functions and the exercise of its powers. They are:

1. children and young people *generally*;
2. children and young people in *out-of-home care* and those receiving *out-of-home services*; and
3. children and young people in *youth detention* and *other residential youth justice facilities* and those receiving *youth justice services*.

I note also that the independent community visitor scheme described in clause 30 would involve visits to children and young people in youth detention, out of home care and *other prescribed facilities*.

The definition of a child and young person

Children and young people told me that the definition of a 'young person' in the Bill should include the capacity to advocate for the rights of young people aged 18 and above.

I heard that while it is important for the Commission to focus on children and young people under 18 years, young people who have recently become adults can share important views about what they needed to thrive as children and teenagers.

"Well, I think they should be allowed to have older, probably up to 25, 28, because they are experts on young people, what they need because they were our age once."

"I think maybe it includes more of that group after 21...cos I know that from an out of home care, foster care perspective, that a lot of kids aren't ready when they turn 18..."

I also heard that children and young people think that older young people go through significant life changes, which can be challenging, such as entering university or the workforce, and



managing health and financial issues. Children and young people emphasised that growing up continues beyond 18.

"Like once you finish...like you don't learn anything about how to be an adult at school. And once you leave school, you have to figure that all out on your own."

Children and young people want the Commission to take a broad and inclusive approach, that includes a focus on young children through to older young people.

"I think it's awesome that we're making a Commission (theoretically) that includes them, but we need to make sure that it's tailored for the upper end and younger end. Not everything that works for 4-year-olds is going to work for 21-year-olds."

I heard that this is about ensuring that the Commission can advocate for a future where all children and young people thrive as they move through childhood, adolescence, and into adulthood.

In the Commission of Inquiry's final report, it was noted that:

Increasingly, child protection departments across Australia are recognising that their obligations to support and care for children in care do not end when the child turns 18, with several states announcing extensions of support to the age of 21.⁷

Commensurate with this principle, clauses 3 and 4 of the draft Bill provide:

3. Interpretation

(1) In this Act, unless the contrary intention appears –

(...)

child means a person who has not attained the age of 18 years;

(...)

young person means –

(a) in relation to a function performed, or power exercised, under this Act in relation to a detention facility – a person who has not attained the age of 21 years; and

(b) in relation to any other function or power – see section 4; (...)

4. Meaning of young person

(1) For the purposes of a function or power under this Act that is to be performed or exercised by a single Commissioner, that Commissioner is to determine the age when a person, who has not attained the age of 21 years –

(a) is first considered a young person for the purpose of the function or power; and

(b) ceases to be a young person for the purpose of the function or power.

(2) For the purposes of a function or power that is to be performed or exercised by the Commission or more than one Commissioner, the Commission or those

⁷ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 4, Chapter 7), 2023, p. 7 (URL: <https://www.commissionofinquiry.tas.gov.au/report>). Footnote omitted.



Commissioners are to determine the age when a person, who has not attained the age of 21 years –

- (a) is first considered a young person for the purpose of the function or power; and
 - (b) ceases to be a young person for the purpose of the function or power.
- (3) This section does not apply to a function or power that is to be performed or exercised under this Act in respect of a detention facility.

Accordingly, these definitions of the term *young person* provide at least three differently defined age groups for the term across three different domains:

- (a) Youth detention (age range: up to 21 years) (cl 3)
- (b) Out-of-home care (age range: up to 21 years) (cl 4)
- (c) Other domains where the proposed Commission might perform functions or exercise powers (e.g. education, housing and homelessness, policing and justice, health, transport, employment etc) (age range: up to such age below 21 years that the Commission or a Commissioner or two Commissioners may in their discretion determine) (cl 4)

This type of prescriptive but ‘ambulatory’ definition that changes depending on the context may cause unnecessary confusion. As it stands, any reference to *young person* in the draft Bill must be read in the context of the functions to be performed or powers exercised (i.e. whether the young person is in youth detention, out-of-home care or the any other domain) as this will provide the age-limit or point to the need to look at the discretionary considerations alluded to in cl 4.

While it is relatively clear the Commission or its Commissioners would benefit by having the discretionary power to determine when a young person *ceases to be a young person* for the purpose of the Act, it is not clear why clauses 4(1)(a) and 4(2)(a) provide that they should have the discretion to determine when a young person up to the age of 21 years ‘*is first considered a young person* for the purpose of the function or power’. Definitionally, the term *young person* is not used anywhere in the draft Bill separately from the term *child* and little seems to be achieved by identifying when a child commences being a *young person*. Unlike the term *child*, *young person* is not used as a stand-alone term. Communication of a clear policy statement about the significance of this issue would further inform my view on this aspect of the draft Bill.

Definition - Children and young people ‘in out-of-home care’

The draft Bill uses the phrase *out-of-home care*, as a key operating term to define a significant part of the proposed Commission’s subject matter jurisdiction and one of the core constituencies for the organisation. However, the term *out-of-home care* itself is not defined in the draft Bill. One might assume that it describes care for children and young people consistent with the key features identified in similar legislation in Australian states or perhaps the nationally consistent definition implemented in 2018-2019.⁸

The question is whether the use of this phrase is sufficient or appropriate to describe the proposed Commission’s jurisdiction with respect to many of its functions and powers including (a) its independent community visitor program and (b) its advocacy program.

⁸ Commissioner for Children and Young People (Tas) 2023, *Monitoring Report No. 2: Key data on Tasmania’s out-of-home care system, 2020-2022 (2nd Ed.)*, p. 8. 9URL: <https://childcomm.tas.gov.au/resource/out-of-home-care-monitoring-report-no-2-second-edition/>



Clearly, the proposed Commission should have a focus on the rights, safety and wellbeing of children and young people living other than with their family of origin and who are the subject of on-going administrative decision-making by departmental officers in relation to their care arrangements under the authority of court orders or statutory agreements.⁹ The quality and standards of care that such children and young people receive under arrangements overseen by departmental decision-makers (including key decisions concerning *placement* and *family contact*) should properly be monitored by independent community visitors and this system needs to be backed up by advocates who can assist children and young people to raise concerns or seek reviews of decisions where required.

However, the category of *out-of-home care* does not necessarily exhaust the population of children who have experience of the child safety system and may otherwise benefit from the strong, independent advocacy functions proposed for the new Commission.

In Tasmania, children who are subject to that species of a Care and Protection Order known as a *supervision order*¹⁰ may live *at home*, as do those children in respect of whom the Secretary has custody or guardianship powers but where the child or young person has been deliberately placed back at home (e.g. most commonly as part of a reunification program).¹¹ The Secretary or delegate may still have decision-making powers in relation to such children and young people. Further, the Commission of Inquiry considered that children subject to *third-party guardianship orders* should also be part of the community visitor scheme when it noted (footnotes omitted):

Since 2018, for data collection purposes, the nationally agreed definition of out of home care has not formally included children on third-party guardianship orders. However, we consider that the Department still owes these children protection from abuse in care because the Department is the entity that statutorily intervened to remove the child from their family of origin and assigned guardianship or custody to a third party.¹²

⁹ Pursuant to s 69 of the *Children, Young Persons and Their Families Act 1997* (Tas), the Secretary is vested with a range of decision-making powers as indicated below. These decision-making discretions vested in the Secretary have been delegated by a written instrument dated 4 January 2024 to numerous departmental officers (many with reservations or exclusions). Section 69 provides:

69. Powers and duties of Secretary in relation to children under guardianship or in custody of Secretary generally

- (1) Subject to this Act, the Secretary may provide for the care of a child who is under the guardianship, or in the custody, of the Secretary under this Act or any other enactment in any one or more of the following ways:
- (a) by placing the child, or permitting the child to remain, in the care of a guardian of the child or a member of the child's family;
 - (b) by placing the child in the care of any person or any body of persons, corporate or unincorporate, the Secretary considers suitable;
 - (c) by giving such directions as to the care of the child in the place in which the child resides as the Secretary considers appropriate;
 - (d) by making arrangements for the education of the child;
 - (e) by making arrangements (including admission to hospital) for the medical or dental examination or treatment of the child or for such other professional examination or treatment as may be necessary or desirable;
 - (f) by making such other provision for the care of the child (including financial assistance) as the Secretary considers appropriate.(...)

¹⁰ Supervision orders are made pursuant to ss 42(4)(a) and 42A of the *Children, Young Persons and Their Families Act 1997* (Tas). Although the Act does not use the term, a *supervision order* also effectively includes a *directive order* allowing the Secretary to direct the guardians or parents and the child to do, or refrain from doing, any specified thing (s 42(3)(b)(c)).

¹¹ The Secretary or their delegate has the power to place a children or young person with their guardian or a family member pursuant to s 69(1)(a) of the *Children, Young Persons and Their Families Act 1997* (Tas).

¹² Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 4, Chapter 7), 2023, p 6 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).



Simply stated, the population of children and young people in *out-of-home care* as defined by the draft Bill does not necessarily correspond with the population of children and young people who either have or have had experience of the child protection system who may need assistance or who may benefit from a community visitor scheme or advocacy program. Nor does the current legislative formulation clearly include children and young people on third party guardianship orders as recommended by the Commission of Inquiry (see Recommendation 9.21).

The adequacy of a jurisdictional category like *out-of-home care*, is important because any issues with the definition will have consequential effects not just on the performance of functions, but also on the scope of the proposed Commission's powers (including its power to compel information) since the scope of these powers is made directly referable to the stated functions in cl 9 of the Bill.

One option would be to more simply refer to those children and young people who have been made the subject of any form of statutory intervention under the *Children, Young Persons and Their Families Act 1997* (Tas), including but not limited to care agreements, assessment orders (both interim and final), care and protection orders (both interim and final), supervision orders, and any orders extending or varying any of these orders or any agreement (under ss 11, 22, 26, 42, 42A, 44, 46 and 48 of that Act). A provision having similar effect is contained in s 52 of the Queensland *Public Guardian Act 2014* (Qld) with respect to the special category of *relevant child* which has been given a technical definition.

Furthermore, the rights and interests of young people aged 18 or above who were previously in care but who have transitioned to independence should not be inadvertently excluded from the jurisdiction of the proposed Commission.¹³

In addition to considering the definitional use of the term *out-of-home care* in the Bill, I would encourage reconsideration of all other incidental uses of the phrase. See for example, clauses 8 ('Functions of Commission'), 9 ('Powers of Commission'), 12 ('Child Advocate'), 13 ('Commissioner for Aboriginal Children and Young People') and 30 ('Independent community visitor scheme'). While I have not evaluated all the possible consequential effects of the limitations of the phrase *out-of-home care* and *out-of-home care services* throughout the draft Bill, I would encourage the Government to scrutinise how these key operating terms may have flow-on effects that might impair, diminish or narrow the functions or powers of the proposed Commission.

I note also the potential for overlap with existing functions of the National Preventive Mechanism established under the *OPCAT Implementation Act 2021* (Tas) and the Disability Commissioner

¹³ On the question of how the limitations of the term *out-of-home care* can be avoided, consider how the corresponding New Zealand legislation defines *young person*. Section 7 of the *Children and Young Peoples Commission Act 2022* (NZ) provides:

- 7 Interpretation**
In this Act, unless the context otherwise requires,—
(...)
child means a person under the age of 14 years (...)
young person means—
(a) a person aged 14 years or over but under 18 years; and
(b) a person aged 18 years or over but under 25 years if they are, or have been, in care or custody.

See also s 16 of the *Scottish Commissioner for Children and Young People (Scotland) Act 2003* which provides:

- 16 Interpretation**
(1) In this Act, unless the context otherwise requires—
(...)
"children and young people" means natural persons in Scotland who are under the age of 18 years or, if they have at any time been in the care of, or looked after by, a local authority or Northern Ireland authority, under the age of 21 years; and related expressions have corresponding meanings; (...)



established by the *Disability Rights, Inclusion and Safeguarding Act 2024* (Tas). This complexity warrants further discussion and consideration.

Definition – children and young people ‘in youth detention’

Similar issues affect the use of the phrase, *children and young people in youth detention*, which is another key constituency for the jurisdiction of the proposed Commission.

This term is used to describe several of the Commission’s functions and powers in clauses 8 (Functions of Commission), 12 (Child Advocate), 13 (Commissioner for Aboriginal Children and Young People) and 30 (Independent community visitor scheme).

The term, *youth detention* is defined in cl 3 of the Bill as follows:

3. Interpretation

- (1) In this Act, unless the contrary intention appears –
(...)

youth detention means the detention of a person in a detention centre, within the meaning of the *Youth Justice Act 1997*.

Under the *Youth Justice Act*, the term *detention* and the related term, *detention centre*, are defined in s 3 as follows:

3. Interpretation

- (1) In this Act, unless the contrary intention appears –
(...)

detention, in the case of a sentence of detention, means detention in a detention centre;

detention centre means a detention centre established under section 123.¹⁴

I am concerned the phrase *youth detention* could inadvertently restrict the application of the functions and powers of the proposed Commission for children and young people in custody or in residential youth justice facilities. For example, while it is rare for a child or young person to be held in an adult correctional facility for any significant length of time, children and young people who are detained following arrest by Tasmania Police are routinely held in watchhouses or reception prisons managed by the Tasmania Prison Service (TPS) pending interview/investigation or court.¹⁵ These facilities are neither child-centred nor therapeutic environments in which to hold a child even for a short period of time. While the functions of Tasmania’s National Preventive Mechanism would apply to these places of detention, as would the functions of the Custodial Inspector (to the extent that these places are ‘custodial centres’), individual children and young people deprived of their liberty in these places should also have access to independent rights-based advocacy (as distinct from legal representation).

I note also the Commission of Inquiry’s recommendation that the visitor scheme apply to children and young people in ‘other residential youth justice facilities’ (see Recommendation 9.34). Further, the Commission of Inquiry encouraged the Government to consider its recommendations broadly

¹⁴ See s 123 of the *Youth Justice Act*, which provides:

123. Establishment or abolition of detention centre

By notice published in the Gazette, the Minister may establish or abolish detention centres, or declare premises to be or not be detention centres, for the detention of –

- (a) youths sentenced to a period of detention; and
- (b) youths remanded in custody while awaiting the determination of proceedings for an offence; and
- (c) persons in the process of being transferred to another State under this Act.

¹⁵ See *Criminal Law (Detention and Interrogation) Act 1995*; *Youth Justice Act 1997*.



and 'approach implementation consistently in relation to children and young people in all custodial settings in Tasmania'.¹⁶

Any issues affecting the adequacy of the term *youth detention* will have consequential effects on the scope of the proposed Commission's powers (including its power to compel information) because the scope of these powers is made directly referable to the stated functions in cl 9 of the Bill and the term is used to define one of the functions.

I note again the potential for overlap with existing functions of other statutory officers including the National Preventive Mechanism and the Custodial Inspector. This complexity warrants further discussion and consideration.

2. Principles

The principles section of legislation should outline the core values, intentions, and goals of a law, serving as a guiding framework for its implementation and interpretation. It should clarify the law's purpose and assist policy-makers and others to understand and apply the law.

Children and young people told me that they imagine a world where the decisions of governments that shape their lives protect, respect and fulfill their rights. I heard that children and young people envision a future where no child is treated less favourably because of their gender, race, ability, or background, ensuring that every child and young person thrives.

"I need to know that everyone gets treated the same no matter who they are. Everyone is equal no matter what."

I heard that the decisions made by decision-makers including parents, policymakers, and other adults should always keep a child's best interests at heart, acknowledging that children themselves are experts in their own lives and have views and ideas about what will help them thrive.

"First give kids of not just Australia but the whole world what they should deserve. Secondly make sure kids don't get hurt by anyone because even kids have human rights, everyone does. ..."

"Not making decisions that largely impact and change a person's future ... without the young person's knowledge of the potential decisions."

"Knowing what children think or feel needs to be a priority."

Children and young people emphasised that they want to be active participants in their lives, and for adults to recognise that childhood is a journey, and that as they learn, grow, and develop, the guidance they receive from adults should evolve too.

The current principles clause of the draft Bill largely reflects s 3 of the current CCYP Act. Although the language of the clause has been slightly rearranged, the changes largely involve minor matters of emphasis. This re-arrangement does not address a more general concern about this section, that it is conceptually unclear. For example, the section provides that the 'paramount consideration when performing the function, or exercising the power, is the wellbeing and best interests of children and

¹⁶ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 5 (Book 3), Chapter 12), 2023, p. 197 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).



young people’ and then goes on to identify the principles that are to also be applied in the performance of a function – notably, principles that overlap explicitly with the wellbeing and best interests of children and young people.

It would be much neater, comprehensive and clear, if this section was revised to simply reference the UNCRC which provides a comprehensive set of child rights-based principles and already includes all the concepts currently referenced in the section (see Table 1 below).

Table 1

Bill clause(s)	Relevant UNCRC Articles
(a) The paramount consideration is the wellbeing and best interests of children and young people.	Article 3: Best interests of the child as a primary consideration. Article 6: Right to life, survival, and development.
(b)(i) Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.	Article 19: Protection from violence and abuse. Article 20: Special protection for children without adequate care. Article 27: Adequate standard of living. Article 34: Protection from sexual exploitation. Article 36: Protection from all exploitation.
(b)(ii) The interests and needs of disadvantaged or vulnerable children and young people are to be given special regard and consideration.	Article 2: Non-discrimination. Article 23: Rights of children with disabilities. Article 26: Right to social security. Article 28: Equal access to education.
(b)(iii) Contributions made by children and young people to the community are to be recognised for their value and merit.	Article 12: Right to express views and have them respected. Article 13: Freedom of expression. Article 15: Freedom of association. Article 29: Education for active participation in society.
(b)(iv) The views of children and young people on matters affecting them are to be taken into account and given serious consideration.	Article 12: Right to express views and have them respected. Article 13: Right to seek, receive, and share information.
(b)(v) Parents, families, caregivers, and communities – (A) Have a significant role in safeguarding and promoting wellbeing.	Article 5: Role of parents and caregivers in guiding children. Article 18: Shared parental responsibility for upbringing and development.
(b)(v) Parents, families, caregivers, and communities – (B) Are to be supported while carrying out that role.	Article 18(2): Governments provide support to parents. Article 27(3): Parental responsibility for living conditions, with government assistance when needed.

I would suggest that consideration be given to including as the overarching principle that in the performance of a function or the exercise of a power under this Act, a person must take account of



and ensure consistency with the rights under the UNCRC, and other relevant legal instruments.¹⁷ Further consideration could be given to the appropriateness of then providing a non-exhaustive list of child rights principles for emphasis. For example, this could include the ‘core principles’ of the UNCRC including the right to non-discrimination, best interests of the child¹⁸, the right to life, survival and development and the right to participate.¹⁹

Article 2 *Right to non-discrimination*

All rights in the UNCRC apply to every child without discrimination of any kind, regardless of race, gender, disability, religion, or any other status. Non-discrimination ensures that children’s rights are upheld equally.

Article 3 *Best interests of the child*

The best interests of the child must be a primary consideration in all actions concerning them, whether taken by public institutions, private sector, or within the family. This principle helps guide decisions and policies, ensuring they are made with children’s well-being and optimal development as priorities.

Article 6 *Right to life, survival and development*

A child’s inherent right to life obliges the government to fully ensure their survival and development possible. This principle supports an environment that fosters both immediate and long-term developmental needs, physical, emotional, social, and intellectual needs.

¹⁷ Other relevant legal instrument may include the UN Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities.

¹⁸ See also *Children, Young Persons and Their Families Act 1997* (Tas), s. 10E:

10E. Best interests of child

- (1) In performing functions or exercising powers under this Act, the best interests of the child must be the paramount consideration.
- (2) Without limiting the matters that may be taken into account in determining the best interests of a child, the following matters are to be taken into account for that purpose:
 - (a) the need to protect the child from physical, psychological and other harm and from exploitation;
 - (b) the views of the child, having regard to the maturity and understanding of the child;
 - (c) the capacity and willingness of the child’s parents or other family members to care for the child;
 - (d) the nature of the child’s relationships with his or her parents, other family members and other persons who are significant in the child’s life, including siblings;
 - (e) the child’s need for stable and nurturing relationships with his or her parents, other family members, other persons who are significant in the child’s life and the community;
 - (f) the child’s need for stability in living arrangements;
 - (g) the child’s physical, emotional, intellectual, spiritual, developmental and educational needs;
 - (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child’s guardians;
 - (i) the need to provide opportunities for the child to achieve his or her full potential;
 - (j) the child’s age, maturity, sex, sexuality and cultural, ethnic and religious backgrounds;
 - (k) any other special characteristics of the child;
 - (l) the likely effect on the child of any changes in the child’s circumstances;
 - (m) the least intrusive intervention possible in all the circumstances;
 - (n) the opportunities available for assisting the child to recover from any trauma experienced –
 - (i) in relation to being separated from his or her parents, family and community; or
 - (ii) as a result of abuse or neglect;
 - (o) any persuasive reports of the child being harmed or at risk of harm and the cumulative effects of such harm or risk.

¹⁹ Committee on the Rights of the Child, *General Comment No 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*. CRC/GC/2003/5 (27 November 2003) (‘General Comment 5’).



Article 12: *Right to participate*

This principle recognises the child’s right to express their views freely in matters affecting them, with their views given due weight according to their age and maturity. It underscores the importance of respecting children as active participants in their own lives and in society.

Note, in addition to the ‘core principles’ summarised above, Article 5 provides that the rights of children under the UNCRC are enabled when parents and caregivers are supported by governments to create environments that reflect the child’s evolving capacities to realise their rights.²⁰

Other jurisdictions provide examples of the way in which the UNCRC can be used to provide a framework for the performance of functions and exercise of powers. For example, see sections 4 and 5 of the *Commissioner for Children and Young People (Scotland) Act 2003*, which provide:

4 Promoting and safeguarding rights

- (1) The general function of the Commissioner is to promote and safeguard the rights of children and young people.
- (2) In exercising that general function the Commissioner is, in particular, to—
 - (a) promote awareness and understanding of the rights of children and young people;
 - (b) keep under review the law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice;
 - (c) promote best practice by service providers; and
 - (d) promote, commission, undertake and publish research on matters relating to the rights of children and young people.
- (2A) In exercising that general function the Commissioner may—
 - (a) bring proceedings under section 7(1)(a) of the *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*,
 - (b) intervene in proceedings in which a person claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) of that Act.

5 United Nations Convention and equal opportunities

- (1) In exercising functions under this Act, the Commissioner must comply with subsections (2) to (4).
- (2) The Commissioner must have regard to any relevant provisions of the United Nations Convention on the Rights of the Child.
- (3) The Commissioner must, in particular—

²⁰ Article 5 of the UNCRC states:

States Parties shall respect the responsibilities, rights and duties of parents, or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention’.

United Nations Convention on the Rights of the Child, 1989 (URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>).



- (a) regard, and encourage others to regard, the best interests of children and young people as a primary consideration; and
 - (b) have regard to, and encourage others to have regard to, the views of children and young people on all matters affecting them, due allowance being made for age and maturity.
- (4) The Commissioner must act in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.

It should also be noted that, in its current formulation, the principles section of the Bill limits this statutory duty to a person performing a function or exercising a power under the Act itself and not across other agencies and organisations delivering services to children and young people. I have welcomed the Tasmanian Government's recent and unequivocal policy commitments to upholding the rights of children.²¹ In my view, it is now time to elevate this commitment to a statutory duty.

Other jurisdictions offer examples of the broader application of the principles in this context. For example, in South Australia, ss 4 and 5 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) include references to the UNCRC and to their binding general effect *on state authorities* when carrying out functions and exercising powers. This means child rights are effectively incorporated into South Australian law at large and correspondingly, State authorities (as defined in s 3 of the Act²²) have a statutory duty to give effect to these rights. These sections provide:

4 — Meaning of rights, development and wellbeing

- (1) For the purposes of this Act, a reference to the rights of children and young people will be taken to include a reference to rights recognised in accordance with statutory and common law, rights set out from time to time in the *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples* and rights set out in any other relevant international human rights instruments.

5 — State authorities to seek to give effect to United Nations Convention on the Rights of the Child etc

Each State authority must, in carrying out its functions or exercising its powers, protect, respect and seek to give effect to the rights set out from time to time in the *United Nations*

²¹ For example, see: Tasmanian Government (Keeping Children Safe), *Change for Children Strategy and Action Plan* (URL: <https://keepingchildrensafe.tas.gov.au/change-for-children-strategy-and-action-plan>); Tasmanian Government, *Youth Justice Blueprint 2022-2032*, (URL:

<https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Youth-Justice-Blueprint.pdf>); and Tasmanian Government, *Youth Justice Model of Care*, (URL: https://assets.keepingchildrensafe.tas.gov.au/media/documents/Youth_Justice_Model_of_Care.pdf).

²² The definition of **State authority** in s 3 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) provides:

State authority means—

- (a) a person who holds an office established by an Act; or
- (b) a public sector agency; or
- (c) South Australia Police; or
- (d) a local council constituted under the Local Government Act 1999; or
- (e) any incorporated or unincorporated body—
 - (i) established for a public purpose by an Act; or
 - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
 - (iii) established, or subject to control or direction, by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a local council (whether or not established by or under an Act or an enactment); or
- (f) any other person or body declared by the regulations to be a State authority, but does not include a person or body declared by the regulations to be excluded from the ambit of this definition;



Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples and any other relevant international human rights instruments affecting children and young people.

Consistent with the expectations of children and young people set out in Part 1 of this submission, the establishment of the new Commission provides a unique opportunity for the Tasmanian Government to further strengthen its commitments to children and young people in this State. As leading international child rights expert John Tobin remarks, “under a rights-based approach, a wide range of interests such as life, liberty, health and education are elevated to the status of a right, which in turn creates an obligation to respect, protect and fulfil these rights for children.”²³

The proposed Commission will be well placed to assist the Government in realising its commitment to progressively realising the rights of children in Tasmania through the provision of rights-based advice, monitoring and evaluation, and advocacy.

Spotlight – Participation

It will come as no surprise given my functions under the existing CCYP Act that this submission should include a specific focus on the participation of children and young people not only in the establishment of the proposed Commission but also in the implementation and ongoing operations of the new Commission.

Children and young people told me that it is important that they participate in the new Commission.

“Knowing what children think or feel needs to be a priority.”

This is because they want to have a direct say in policies that affect their lives, such as housing, education, and overall well-being, to ensure decisions genuinely reflect their interests and needs.

“Ensure young people have a direct say in the policies that affect their housing and well-being, so their needs are genuinely reflected in government decisions”.

Children and young people know their views are valuable and can lead to better outcomes for children and young people.

“Young people have valuable insights that can improve conversations and decision-making. This is very important so children can learn about their own lives.”

Many suggested creating structured opportunities for participation, that include all demographics, including rural communities, minorities, and those often overlooked. Ensuring that all children and young person have opportunities to participate, was emphasised.

“Reach out to children and young people of all demographics and especially minorities, make sure to listen to people living in more rural areas.”

A key part of their vision for participation is being taken seriously and respected. Children and young people expressed frustration with being dismissed or underestimated and want adults to listen to them carefully.

“Listen to children. It doesn't matter how young or old they are. Listen to what they have to say and take actions when necessary.”

“All children deserve to have a voice as much as adults do.”

²³ John Tobin, “Children’s Rights: Shifting Conceptions, Exploring Possibilities and Honouring Obligations”, *Court of Conscience*, Issue 14, 202, p. 11 (URL: <https://classic.austlii.edu.au/au/journals/UNSWLawSocCConsc/2020/3.pdf>.)



“Being respectful to children's decisions and let them speak before you cut them off and automatically say no. Let them have a say and talk to you.”

“Every child should have a voice and be able to speak up to their government.”

I heard very clearly that children and young people want to be actively included in these kinds of important conversations, seeing themselves as contributors to change rather than passive recipients of decisions made by adults.

It will be important then that the proposed Commission, Commissioners, and Commission staff demonstrate, exemplify and model how to enable and meaningfully support the participation of children and young people across the various domains of the Commission's jurisdictions and the performance of functions and powers.

The draft Bill refers to the views of children and young people and the statutory duty to listen and take account of those views in clauses 5(1)(b)(iv), 12(3) and Schedule 1 (cl 1). The Bill also refers to the Commission's functions with reference to the principle of participation in cl 8(g) and (n) – note participation as it relates to functions is discussed below. I will briefly describe the other participation provisions in turn.

Clause 5(1)(b)(iv) requires that the views of children and young people on all matters affecting them are to be taken into account and given serious consideration.

Clause 12(3) states that, when acting as an advocate for a detainee, the Child Advocate has an additional function that requires they ‘listen to, and give voice to, the concerns and grievances of the detainee and facilitate the resolution of those concerns and grievances’. Additionally, cl 12(3) provides that the Child Advocate must ‘seek and take into account the views and wishes of the detainee before (...) asking a staff member of the detention centre (...), a question about the detainee’.

Finally, cl 1 to Schedule 1 to the draft Bill (Appointment of Commissioners) provides that the selection process for a new Commissioner is to ‘ensure that, as part of the process, the views and opinions of a panel of children and young people – (i) are sought in respect of the selection of the Commissioner; and (ii) are taken into account as part of the selection process for that Commissioner.’

Despite this, nowhere does the draft Bill contain a descriptive statement in relation to how the authentic and meaningful participation of children and young people is to be facilitated and achieved, measured and evaluated across the work of the Commission. By way of comparison, see s 5E of the *Child Protection Act 1999* (Qld) which contains a detailed legislative statement of what the participatory principle means and the specific concrete mechanisms by which compliance with the principle is to be measured. However, an alternative approach, as I suggest above, would be to simply reference the UNCRC which provides a comprehensive set of mutually reinforcing and indivisible child rights-based principles, including the right to participate, to guide the work of the new Commission.

3. Governance

I would strongly encourage further deliberation on the optimal governance model for the proposed Commission informed by further research, consultation and jurisdictional analysis. In terms of governance, cl 7 of the draft Bill establishes the Commission, which is stated to include the following key roles:

- (a) the Commissioner for Children and Young People;
- (b) the Child Advocate;



- (c) the Commissioner for Aboriginal Children and Young People; and
- (d) the Independent Regulator and the Deputy Regulator, if the person appointed to that office is not a Commissioner.

The draft Bill includes provisions that allow each Commissioner²⁴ to perform the functions and exercise the powers of the Commission (cl 10), makes each Commissioner independent of the other (in terms of direction and control) (cl 14) and allows for the delegation of the powers of the Commission and the Commissioners in certain circumstances (cl 19 and cl 20).

In addition to these five statutory roles contemplated by the draft Bill, the Commission too has its own status as an entity and cl 7(3) describes it as a body corporate with perpetual succession, that it may have a seal, that it may sue and be sued and is an instrumentality of the Crown.

This 'joined-up' model of a single Commission leads to some curious results as a consequence of having multiple Commissioners who can perform functions and exercise powers with absolute independence of each other, all the while working under the banner of a single Commission. This is nowhere more apparent than in cl 16 of the draft Bill which provides:

16. Commission to vote to perform function or exercise power

- (1) If the Commission intends to perform a function, or exercise a power, under this Act –
 - (a) each Commissioner has a vote in respect of the performance of the function or the exercise of the power; and
 - (b) the function or power is only to be performed or exercised by the Commission if the majority of Commissioners vote to perform the function or exercise the power.
- (2) Nothing in subsection (1) prevents a Commissioner from performing a function, or exercising a power, that the Commission has voted not to perform or exercise.

This clause arguably suggests that despite the multitude of functions (cl 8) and powers (cl 9) given to the proposed Commission, it is considered that the optimal and most effective governance arrangement for performance of the Commission's functions should involve a kind of ballot process where each of the Commissioners is required to engage in deliberating on the performance of each statutory function and exercise of each power.

This potentially inefficient and resource-intensive management process²⁵ is then subverted by cl 16(2), which allows any individual Commissioner to act and perform a function or exercise a power without regard to decisions of the collective Commission.

This suggests a potential hierarchy of decisions, with actions endorsed by the full Commission potentially holding greater authority than those of a single Commissioner. This structure could undermine the authority of individual Commissioners and make their decisions less influential.

Further, it is important for the Bill to consider how participation of children and young people in the governance of the proposed Commission (see also my comments on *Participation* above) is to be realised. I heard from children and young people that there is enormous value to be gained from including children and young people in the governance structure of the proposed Commission in a

²⁴ The term *Commissioner* is defined in cl 3 of the draft Bill to include the Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People, and the Child Advocate.

²⁵ Which raises questions including: how are meetings convened? how are decisions recorded? are proxies allowed and if so, how? can decisions be challenged? etc.



non-prescriptive, remunerated and respectful manner and would be delighted to explore this theme further with Government.

".. young people, they have great ideas and future plans that can be a great value to your team."

"Don't underestimate the power and brains that children and young people have and how they are the future. By having children and young people on your team, they can help connect with other people their age and get messages across, as they are more reliable than adults."

Aside from the clear administrative and governance issues noted above, there appear to be some internal contradictions caused by the apparent departure from the principle of self-determination for Aboriginal peoples.

The Commission of Inquiry stated (my emphasis):

In Section 5, we also outline the basis for, and recommend establishing, a Tasmanian Commissioner for Aboriginal Children and Young People who has the statutory powers and functions to monitor the experiences of Aboriginal children in out of home care (refer to Recommendation 9.14). We envisage this role *functioning alongside and in partnership* with the Commissioner for Children and Young People.²⁶

The Commission of Inquiry described in detail the Aboriginal and Torres Strait Islander Child Placement Principle, laying considerable emphasis on the principle of self-determination and the urgent need to fully implement this principle in Tasmania.²⁷ The Commission of Inquiry alluded to other oversight models, including that in South Australia. However, the Commission of Inquiry did not recommend a separate Commission for Aboriginal Children and Young People.

By comparison, in South Australia, the model established by the *Children and Young People (Oversight and Advocacy) Act 2016 (SA)* creates separate roles and offices for the Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People, and the Guardian for Children and Young People. That legislation creates three independent roles but includes provisions encouraging mutual collaboration where appropriate (ss 14A and 20J) and reciprocal procedures for the transfer from one Commissioner to the other of matters involving children wrongly assessed to be within a Commissioner's jurisdiction (ss 14B and 20K). Additionally, conflict resolution provisions (such as ss 14C and 20L) exist to determine who is to conduct an inquiry in circumstances where two Commissioners may have expressed an interest. In the South Australian model the Commissioners and Guardian act totally independently of one another.

I note also that the draft Bill contains no statement of principle that recognises the right to self-determination for Aboriginal people (see commentary above). This is a peculiar omission given the proposal to establish a new Commissioner for Aboriginal Children and Young People with specific functions pertaining to Aboriginal children and young people.

²⁶ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 4, Chapter 9), 2023, p. 248 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).

²⁷ The Aboriginal and Torres Strait Islander Child Placement Principle aims to: • embed an understanding that culture is integral to safety and wellbeing for Aboriginal and Torres Strait Islander children and young people and is embedded in policy and practice • recognise and protect the rights of Aboriginal and Torres Strait Islander children, family members and communities in child safety matters • support self-determination of Aboriginal and Torres Strait Islander people in child safety matters • reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care systems. Source: *Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031* (p.31).



The Tasmanian Government has made national commitments under the *National Agreement on Closing the Gap*, and *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031* (the National Framework) relevant to the establishment of the new Commissioner for Aboriginal Children and Young People.

While the obvious shortcomings in the draft Bill may be overcome partially through reference to the principles of the *United Nations Declaration on the Rights of Indigenous Peoples*, the Bill ought to demonstrate an understanding and commitment to nationally endorsed values of self-determination. Under Action 7(a) of *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023-2026*, Australian governments have committed to:

Establish and strengthen advocacy, engagement and accountability roles in all jurisdictions, which will support the achievement of outcomes under *Safe and Supported*, and efforts to achieve Target 12 of *Closing the Gap*. This includes *developing agreed minimum requirements for Aboriginal and Torres Strait Islander Children's Commissioner roles in partnership with Aboriginal and Torres Strait Islander people; establishing such roles where they do not exist; or reviewing and strengthening existing roles against those minimum requirements for independent, effective and empowered Commissioners.*²⁸

I am advised that work is well underway to develop the Minimum Requirements with further consultation being undertaken prior to their adoption.

I encourage the Tasmanian Government to engage in genuine partnership with Tasmanian Aboriginal people and organisations in considering options for a governance model which positively and deliberately respects and upholds the principle of self-determination.

4. Functions

Participation related functions

As noted above, cl 8 of the draft Bill contains two provisions in relation to participation, vesting the Commission with the following functions:

8. Functions of Commission

In addition to any other functions and powers under this Act or any other Act, the Commission has the following functions:

(...)

- (g) to promote and empower the participation of children and young people in making decisions, and expressing opinions on matters, that affect their lives or the lives of children and young people generally;

(...)

- (n) to encourage and assist organisations to establish appropriate and accessible mechanisms for the participation of children and young people in matters that may affect their lives or the lives of children and young people generally;

Of note, and setting aside the Child Advocate's advocacy function for individual children (which does at least require the Child Advocate to 'seek and take into account the views and wishes of (a) detainee'), there is no other clear provision in either cl 12 (Child Advocate) or cl 13 (Commissioner for Aboriginal Children and Young People) that requires either the Child Advocate or the

²⁸ Commonwealth of Australia, *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023-2026*.



Commissioner for Aboriginal Children and Young People to promote and empower participation, even though some degree of participation would necessarily be preliminary to any form of advocacy. While it is noted that cl 10 vests in each of these Commissioners the ability to perform the functions and exercise the powers of the Commission as a whole (which would include the functions described in cl 8(g) quoted above), this is framed in *discretionary rather than mandatory terms*. Clause 10(1) provides (emphasis added):

10. Commissioners may use powers and functions of Commission

- (1) For the purposes of this Act, each Commissioner *may perform the functions, and exercise the powers*, of the Commission. (...)

The statutory duty or obligation to promote, facilitate and empower the participation of children and young people should not be a discretionary function of the Commission or each Commissioner. My concern would in large part be resolved if, as I suggest above, the UNCRC is fully realised through and embedded in guiding principles. This would mean that in the performance of any function or the exercise of any power under the new Act, a person must take account of and ensure consistency with the comprehensive framework of participatory rights as articulated under the UNCRC.

Monitoring and reviewing serious and adverse incidents

I note the proposal to include in the expanded functions of the new Commission a function to monitor and review data in relation to serious and adverse incidents relating to, or involving, children and young people (cl 8(j)(iii)). Clearly, Tasmania has established mechanisms for reviewing the deaths of children in Tasmania, including the Coroners' Court and the Council of Obstetric and Paediatric Mortality and Morbidity (COPMM) of which I am a member. However, Tasmania lacks an appropriately resourced and comprehensive framework for the systemic investigation and review of deaths and serious injuries of children, especially those known to Child Safety Services.²⁹

Serious and adverse incident review mechanisms, including child death review mechanisms, are articulated in a variety of ways across other Australian jurisdictions.³⁰ Further consideration and discussion of the role that the proposed Commission could have in this regard would be welcomed.

Commission's ability to assist children and young people in Tasmanian Civil and Administrative Tribunal (TASCAT) proceedings

In its final report, the Commission of Inquiry stated (emphasis added):

In our view, the Tasmanian Civil and Administrative Tribunal should be given jurisdiction to review departmental decisions affecting a child's experiences in out of home care based on

²⁹ See for example the model introduced by the *Child Death Review Legislation Amendment Act 2020*, and Part 3A of the *Family and Child Commission Act 2014* (QLD).

³⁰ For Queensland, see Chapter 7A of the *Child Protection Act 1999* (Qld) (ss 245-245W) and Part 3A (ss 29A-29ZK) of the *Family and Child Commission Act 2014* (Qld) which makes provision for the Child Death Review Board. For New South Wales, see Part 5A (ss 34A-34P) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) which makes provision for the NSW Child Death Review Team and Part 6 (ss 35-43) of that Act. For the A.C.T., see Chapter 19A (ss 727A-727T) of the *Children and Young People Act 2008* (ACT) which makes provision for the A.C.T. Children & Young People Death Review Committee. For Victoria, see Part 5, Division 2 (ss 34-36) of the *Commission for Children and Young People Act 2012* (Vic). For South Australia, see Part 4 (ss 30-39) of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA) which makes provision for the Child Death and Serious Injury Review Committee. For Western Australia, see s 242A of the *Children and Community Services Act 2004* (WA) and Division 3A of Part III (ss 19A-19B) of the *Parliamentary Commissioner Act 1971* (WA) which makes provision for the investigation by the Ombudsman (also known as the Parliamentary Commissioner for Administrative Investigations) of certain deaths. For the Northern Territory, see Part 3.3 (ss 207-222) of the *Care and Protection of Children Act 2007* (NT) for the establishment and operation of the Child Deaths Review and Prevention Committee.



the model established for the Queensland Civil and Administrative Tribunal by the Queensland *Child Protection Act* and the Queensland *Public Guardian Act*. This should occur without delay.

Reviewable decisions should include decisions the Department makes about a child's care arrangements following an allegation of child sexual abuse in relation to that child. (...)

As an extension of the individual advocacy functions of the new Commission for Children and Young People (Recommendation 9.38), the new Child Advocate should be given the power to apply to the Tasmanian Civil and Administrative Tribunal for review of an out of home care *decision on behalf of a child, or on the Child Advocate's own initiative*.³¹

Having outlined that foundation, the Commission of Inquiry framed its Recommendation in relation to reviewable decisions as follows (emphasis added):

Recommendation 9.36

1. The Tasmanian Government should introduce legislation to:
 - a. expand the jurisdiction of the Tasmanian Civil and Administrative Tribunal to include review of decisions of the Department for Education, Children and Young People in exercising its custody or guardianship powers— including decisions about where a child should live and arrangements for the child's care
 - b. ensure children whose cases are subject to review have the right to express their views and participate in Tribunal proceedings
 - c. *give the Child Advocate the power to apply for a Tribunal review of a decision about the care arrangements for a child on behalf of the child, or on the Child Advocate's own initiative*
 - d. grant parties, such as parents or carers, the right to apply for a Tribunal review depending on the nature of the decision.
2. To support their understanding of the experiences of children in out of home care, Tribunal members should be specifically trained in the nature and effects of trauma and child sexual abuse³²

This recommendation, which reflects recommendations made by former Commissioners for Children and Young People from as early as 2017³³ was accepted by the Tasmanian Government with an implementation timeline of July 2029.³⁴

I note that the draft Bill purports to give effect to the Tasmanian Government's commitment to implement the Commission's recommendation by way of two separate mechanisms.

Firstly, sub-clauses 12(4) and 13(4) of the Bill vest in the Child Advocate and the Commissioner for Aboriginal Children and Young People the ability to apply to TASCAT to be *joined as a party* to

³¹ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 4: Chapter 9), pp 241-242 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).

³² *ibid.*, p 242.

³³ See for example, CCYP, *Monitoring Report No. 1 – The Tasmanian Out-of-Home Care System and "Being Healthy"*, 2019 (URL: <https://childcomm.tas.gov.au/resource/monitoring-report-no-1-the-tasmanian-out-of-home-care-system-and-being-healthy/>) and others.

³⁴ Tasmanian Government, *Keeping Children Safe and Rebuilding Trust: Government Response to the Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*, 2023, pp. 208-209 (URL: https://assets.keepingchildrensafe.tas.gov.au/media/documents/Keeping-children-safe-and-rebuilding-trust_final-WEB.pdf).



proceedings pursuant to s 96 of the *Tasmanian Civil and Administrative Tribunal Act 2020*. These two sub-clauses of the Bill provide:

12. Child Advocate

(...)

(4) In addition to any other power under this Act or any other Act, the Child Advocate may apply to TASCAT to be joined as a party to proceedings, in accordance with section 96 of the *Tasmanian Civil and Administrative Tribunal Act 2020*, if those proceedings –

- (a) relate to a child or young person; and
- (b) are relevant to the functions and powers of the Child Advocate.

13. Commissioner for Aboriginal Children and Young People

(...)

(4) In addition to any other power under this Act or any other Act, the Commissioner for Aboriginal Children and Young People may apply to TASCAT to be joined as a party to proceedings, in accordance with section 96 of the *Tasmanian Civil and Administrative Tribunal Act 2020*, if those proceedings –

- (a) relate to an Aboriginal child or Aboriginal young person; and
- (b) are relevant to the functions and powers of the Commissioner for Aboriginal Children and Young People.

Secondly, cl 53 and Schedule 5 of the Bill, which deal with consequential amendments, include an additional proposal to amend s 97 of the *Tasmanian Civil and Administrative Tribunal Act 2020* to give the Child Advocate and the Commissioner for Aboriginal Children and Young People *the power to intervene* in TASCAT proceedings. The proposed amendment to s 97 of the TASCAT Act would read (with proposed additions underlined):

97. Intervention in proceedings

The following persons may intervene and be heard in proceedings to which they are not already parties:

- (a) the Attorney-General;
- (b) a Minister who administers the relevant Act under which is conferred or imposed a function or power, the performance or exercise of which, or purported performance or purported exercise of which, is in issue in the proceedings;
- (ba) if the proceedings relate to a child or person who has not attained the age of 21 years, the Child Advocate within the meaning of the *Commission for Children and Young People Act 2024*;
- (bb) if the proceedings relate to an Aboriginal child or an Aboriginal person who has not attained the age of 21 years, the Commissioner for Aboriginal Children and Young People within the meaning of the *Commission for Children and Young People Act 2024*;
- (c) any other person who is authorised by a relevant Act, or the Tribunal rules, to intervene in proceedings.

These provisions represent a diluted version of what the Commission of Inquiry recommended. In Recommendation 9.36, the Commission of Inquiry was clear in proposing that the Child Advocate be given the power to apply to the Tribunal for a review of a decision either (a) on behalf of a child



or (b) on the Child Advocate's own initiative. To apply on behalf of a child is to apply in a representative capacity. To apply on the Child Advocate's own initiative is to apply as of right with an initiating application as an applicant party. In neither of these cases, is the leave of the Tribunal required, although both would be subject to the discretion vested in the Tribunal Registrar to refuse to accept an application on any of the established grounds.³⁵ However, requiring the Child Advocate or the Commissioner for Aboriginal Children and Young People to seek to enliven the Tribunal's jurisdiction by way of time-consuming preliminary application seeking leave to be joined to an existing proceeding pursuant to s 96 of the TASCAT Act is inconsistent with the Commission of Inquiry's recommendation.

Currently, TASCAT has no jurisdiction to conduct merits review of administrative decisions ('reviewable decisions') with respect to administrative child safety decisions in Tasmania.³⁶ No particular decisions have yet been ear-marked to become 'reviewable decisions' that can be reviewed by TASCAT, but the Commission of Inquiry itself suggested in Recommendation 9.36 that the Government consider giving TASCAT jurisdiction to entertain certain 'reviewable decisions' in child protection, in particular 'decisions about where a child should live and arrangements for the child's care'.³⁷ The former are commonly called placement decisions and the latter include a number of decisions, but in particular, family contact decisions.

To reiterate, Recommendation 9.36(1)(c) of the Commission of Inquiry stated that the Tasmanian Government should introduce legislation to, inter alia:

Recommendation 9.36

1. The Tasmanian Government should introduce legislation to:
 - (...)
 - c. give the Child Advocate the power to apply for a Tribunal review of a decision about the care arrangements for a child *on behalf of the child*, or *on the Child Advocate's own initiative*.³⁸

It is arguable that the reason why the Commission of Inquiry chose those words was because it had earlier stated (emphasis added):

In our view, the Tasmanian Civil and Administrative Tribunal should be given jurisdiction to review departmental decisions affecting a child's experiences in out of home care *based on the model* established for the Queensland Civil and Administrative Tribunal by the Queensland *Child Protection Act* and the Queensland *Public Guardian Act*.³⁹

See also the wording found in s 133 of the *Public Guardian Act 2014* (Qld), which is one part of the model that the Commission of Inquiry recommended as the model for Tasmania.⁴⁰ The Commission

³⁵ Such as non-compliance with the TASCAT Rules 2021 (e.g. due to incomplete documents), or where is no clear reviewable decision, or where it is determined that an applicant isn't an aggrieved or interested person and so on.

³⁶ Progress has been slow. I note that in 2020, the then Attorney-General advised that the Tasmanian Government would consider the former Commissioner's recommendation as part of the third stage of TASCAT's establishment in later 2021 (letter from the Hon Elise Archer MP, Attorney General, dated 16 July 2020).

³⁷ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 1, Recommendations), 2023, p. 111 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).

³⁸ *Ibid.*, p. 242.

³⁹ *Ibid.*, p. 241.

⁴⁰ Section 133 of the *Public Guardian Act 2014* (Qld) provides (emphasis added):

133 Public guardian may apply for review of reviewable decisions



of Inquiry was unequivocal in proposing that the Child Advocate and the Commissioner for Aboriginal Children and Young People be given the power to apply to the Tribunal for a review of a decision as *an applicant party*.

It would defeat the intention of the Commission of Inquiry for the draft Bill to require that each time the Child Advocate or the Commissioner for Aboriginal Children and Young People sought to apply to TASCAT, it had to proceed by way of the cumbersome and time-consuming procedure of seeking to persuade the Tribunal in accordance with s 96(2) of the TASCAT Act.

Finally, it is regrettable that the draft Bill raises an expectation among children and young people that their independent advocate has the right to challenge on their behalf the merits of departmental decision-making, when in fact, the process it requires to get in front of the Tribunal as a party involves a complicated ‘back and forth’ series of steps to set the stage for the child or young person to apply as primary applicant and then for the Child Advocate or Commissioner for Aboriginal Children and Young People to apply to join or seek to intervene as a secondary party.

A solution to this difficulty is to preserve the capacity of a child or young person, the Child Advocate and the Commissioner for Aboriginal Children and Young People to use the joinder provision in sub-clause 12(4) to join proceedings commenced by other types of applicants (e.g. parents and carers), but insert a new set of provisions having a similar effect as ss 130 – 133 of the *Public Guardian Act 2014* (Qld) to allow them to apply as primary applicants. In summary, the new provisions would need to make provision for:

1. the Child Advocate and the Commissioner for Aboriginal Children and Young People’s right to apply either:
 - (i) on behalf of a child; or
 - (ii) on the Child Advocate or the Commissioner for Aboriginal Children and Young People’s own initiative;
2. the Child Advocate and the Commissioner for Aboriginal Children and Young People’s right to appear to advocate for a child or young person; and
3. the Child Advocate and the Commissioner for Aboriginal Children and Young People’s right to make submissions, call witnesses, file evidence and cross-examine witnesses.

Commission’s ability to assist children and young people to make complaints

Clauses 12(2)(b)(iii)-(v) and 13(3)(b)-(d) each deal with the functions and powers of the Child Advocate and the Commissioner for Aboriginal Children and Young People to variously assist and support a child or young person to make a complaint to the Ombudsman. Those sub-clauses provide (emphasis added):

-
- (1) This section applies if, in performing the public guardian’s child advocate functions in relation to a relevant child, the public guardian—
 - (a) is dissatisfied with a reviewable decision; and
 - (b) has been unable to resolve the matter with the chief executive (child safety) to the public guardian’s satisfaction.
 - (2) *The public guardian may apply, on behalf of the child or on the public guardian’s own initiative, to the tribunal to have the reviewable decision reviewed.*
 - (3) The public guardian may apply to the tribunal only if the public guardian is satisfied that to do so would be in the child’s best interests.
 - (4) Before the public guardian may apply to the tribunal to have the reviewable decision reviewed, the public guardian must give the chief executive (child safety) a written notice stating—
 - (a) the public guardian is dissatisfied with the decision; and
 - (b) the reasons the public guardian is dissatisfied with the decision; and
 - (c) the matter has not been resolved to the public guardian’s satisfaction; and
 - (d) the public guardian intends to apply to the tribunal for a review of the decision.



12. Child Advocate

(...)

(2) The Child Advocate –

(...)

(b) has the functions and powers necessary to –

(...)

(iii) assist and support children and young people to *make a complaint to the Ombudsman*; and

(iv) with the consent of an individual child or the child's guardian, *make a complaint to the Ombudsman* on behalf of the individual child; and

(v) *make a complaint to the Ombudsman* on behalf of a class of children or young people generally; (...)

13. Commissioner for Aboriginal Children and Young People

(...)

(3) The Commissioner for Aboriginal Children and Young People has all the functions and powers necessary to –

(...)

(b) assist and support Aboriginal children and Aboriginal young people to *make a complaint to the Ombudsman*;

(c) with the consent of an individual Aboriginal child or Aboriginal young person or the child's or young persons' guardian, *make a complaint to the Ombudsman* on behalf of the individual Aboriginal child or Aboriginal young person;

(d) *make a complaint to the Ombudsman* on behalf of a class of Aboriginal children or Aboriginal young persons generally; (...)

Given that there are other bodies and agencies to whom a child or young person may appropriately make a complaint, the language of the provision of the draft Bill may unreasonably limit the functions of both the Child Advocate and the Commissioner for Aboriginal Children and Young People and fetter the exercise of their discretion to refer a child or young person to the *most appropriate complaint entity*.

Other bodies with complaints investigation functions include but are not necessarily limited to the Integrity Commission, the Health Complaints Commissioner, the new Disability Commissioner and the Anti-Discrimination Commissioner.

This is curious because the Commission of Inquiry noted:

Oversight bodies such as the Ombudsman, Integrity Commission, Commissioner for Children and Young People, Health Complaints Commissioner and Custodial Inspector are important in making sure government agencies act ethically and in line with their statutory obligations. They need strong powers and proper funding to do this well. Bodies that regulate professions, such as the Teachers Registration Board and the Australian Health Practitioner Regulation



Agency, play a critical role in ensuring people working in trusted professions are suitable to do so and meet their professional obligations.⁴¹

In addition to those of independent oversight bodies, there are also numerous complaints mechanisms internal to government agencies that a child or young person has a right use (see for example the right to complain to the Secretary under the *Youth Justice Act 1997*) or may wish to use (or indeed, may need to exhaust before another body will fully investigate a complaint).

For example, a child or young person may wish to seek a Commissioner's assistance to lodge a complaint using the process available within DECYP with respect to an issue concerning child safety, youth justice or education. Alternatively, a child or young person may wish to lodge a complaint using the complaints process internal to Tasmania Police.

By way of comparison, it is useful to consider the language employed in s 13(1)(h) of the *Public Guardian Act 2014* (Qld), which rather more simply and flexibly provides (emphasis added):

13 Functions—relevant child, etc.

- (1) The public guardian has the following functions in relation to a relevant child (**child advocate functions**)—
(...)
 - (h) *helping the child to make an official complaint about a matter to someone;*
(...)

Finally on this note, I flag some internal contradictions in the draft Bill. In this regard, it seems that clauses 12(2)(b) and 13(3) of the Bill, which limit all referrals only to the Ombudsman, have not been harmonised with cl 45 of the Bill which seems to expand the referral power to include a range of other agencies. Clause 45 provides:

45. Commission not required to divulge information

- (1) Unless otherwise specified, the Commission or a Commissioner may divulge to a relevant authority all, or any part of, information provided to the Commission or a Commissioner –
 - (a) if the Commission or Commissioner is satisfied that it is appropriate in the circumstances; and
 - (b) if to do so would be lawful in the circumstances.
- (2) The Commission or a Commissioner may refer any matter to the Ombudsman, or the Custodial Inspector appointed under section 5 of the *Custodial Inspector Act 2016*, if the Commission thinks it appropriate to do so.(...)

It appears that cl 45 contains more widely stated discretions and expressly provides that the Commission or a Commissioner may share information to any *relevant authority*. Clause 41 defines *relevant authority* to include (a) the Independent Regulator and the Deputy Regulator, (b) the Police Service or a police service of another State or a Territory, (c) the Integrity Commission, (d) the Ombudsman, (e) the Registrar of the Registration to Work with Vulnerable People scheme, and (f) a Government entity (which is also defined in cl 41). Accordingly, while clauses 12 and 13 of the Bill limit the Child Advocate and the Commissioner for Aboriginal Children and Young People to making complaints only to the Ombudsman, cl 45 gives the Commission and any Commissioner (and the

⁴¹ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 1, Executive Summary), 2023, p. 46 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).



Child Advocate) the ability to disclose any information to the full gamut of oversight bodies and Government departments defined as *relevant authorities*. Additionally, to the extent that the Custodial Inspector is not included in the definition of *relevant authority* in cl 41, the power to refer a matter to that agency is expressly preserved by cl 45(2).⁴² I would encourage resolution of these tensions and contradictions in the Bill.

National Preventive Mechanism and Custodial Inspections

The Commission of Inquiry has recommended that the new Commission be appointed as a child-specific National Preventive Mechanism (NPM). See Recommendation 12.39 of the Commission of Inquiry's final report.

In her May 2024 submission to the Tasmanian National Preventive Mechanism (NPM) regarding its draft "Expectations on the treatment of Children and Young People deprived of their liberty", Commissioner McLean observed that the Commission of Inquiry's recommendation with respect to the appointment of a child-specific NPM within the proposed Commission for Children and Young People differed from the model envisaged by the Report to the Tasmanian Government on the Implementation of the Tasmanian National Preventive Mechanism under the OPCAT Implementation Act 2021 (November 2023) (NPM implementation report).⁴³

The NPM implementation report made eight recommendations to establish an independent Tasmanian NPM framework that complements existing oversight bodies. There are several key differences between the final report of the Commission of Inquiry and the implementation report of the Tasmanian NPM, including whether the Commissioner for Children and Young People (and its projected successor, the new Commission for Children and Young People) ought to be appointed as a child-specific NPM as part of a multi-NPM model, or whether it should be delegated authority via a "joint process agreement" with a single designated NPM.

The draft Bill fails to address or resolve the place of the NPM and how it relates to the proposed Commission, constituting a major gap in the formulation of the legislation. I take this opportunity to reiterate the statement of the former Commissioner and urge the Tasmanian Government of the need to consider and reconcile the differing options presented to it by the Commission of Inquiry and the Tasmanian NPM, so that appropriate powers and functions in the legislation to establish the proposed Commission may be put in place. As stated in the submission from earlier this year, I would appreciate being involved in any discussions regarding the relative merits of the different options to assist the Government to arrive at a favoured position for the purposes of the final Act.

Similarly, the relationship between the role and functions of the Custodial Inspector established under the *Custodial Inspector Act 2016* and the proposed Commission requires further consideration and clarification. The demarcation and linkages between these oversight bodies and their roles with respect to children and young people in custody requires a clearly defined and cogent policy response regarding the relative roles of the Commission, the Custodial Inspector and the Tasmanian NPM that can be incorporated into the draft Bill or elsewhere.

Currently, the draft Bill is deficient in this regard. Again, I would appreciate discussing the preferred legislative architecture to most effectively protect the rights of children and young people in custodial facilities without inadvertently adding to the complexity and fragmentation in the current oversight framework that this Bill intends to overcome.

⁴² It is noted that the Custodial Inspector does not have a complaint-handling function. It is limited to monitoring and reporting functions under the *Custodial Inspector Act 2016*.

⁴³ Commissioner for Children and Young People, Submission on the 'Draft Tasmanian National Preventive Mechanism Expectations on the treatment of Children and Young People deprived of their liberty' (6 May 2024) available at [2024-05-06-Tasmanian-NPM-CYP-expectations.pdf](#).



5. Information management

Children and young people told me that *how* the new Commission shares information about children and young people matters and should involve consideration of their best interests, which must include consideration of their views and wishes.

“...ask the person if it's OK. Can we share this information? Just making sure that it's OK.”

“It depends on the person...”

I heard that children and young people want to be consulted before any personal details are shared, particularly with parents, and stressed that their views must be given due weight.

“... not contacting parents without the child consent, especially when they have problems with their parents.”

Children and young people also made it clear that age and maturity matter. While younger children may need extra support understanding the implications of sharing their information, older young people may want more agency to decide who has access to information about them.

“If they're quite young, they might not be able to really make that decision... also making sure that they feel like they are actually in a position where they can say no.”

In all cases, children and young people emphasised that communication about information sharing must be clear, and the process must respect their rights (including their right to participate and their right to information).

I also heard that it matters to children and young people that information sharing has a clear purpose, such as improving their situation, or the situation of others.

“Someone might tell you something confidential and would be quite happy for you to share it if it's going to help other people.”

Children and young people want to know that their privacy will be protected—that if details are shared, they will be accurate, relevant, and carefully handled.

“Not sharing the right details... kind of muddling the story up.”

This includes using de-identified data when possible.

“Some people might not feel comfortable with it being shared or sharing it, but like taking out names and stuff.”

Children and young people also expect strong safeguards to prevent their information from making things worse for them.

“People are afraid to talk about family violence because they fear that they might not be safe if they talk about it..”



Part 5 of the draft Bill is intended to establish an information-management scheme and includes key definitions of operating terms. This part presents an opportunity to create a clear, well-structured framework. However, in their current form, the provisions draw largely on multiple existing sources without a cohesive integration strategy, resulting in potential confusion about their combined application and underlying policy rationale. It appears that the current drafting in Part 5 integrates elements from the *Commissioner for Children and Young People Act 2016* (Tas), the *Child and Youth Safe Organisations Act 2023* (Tas), and the *Children, Young Persons and Their Families Act 1997* (Tas).

Once the purpose and principles, functions and powers, and governance arrangements of the new Commission are settled, these inherited provisions could be harmonised to create a more cohesive, purpose-driven, user-friendly and rights-compliant information-sharing scheme.

Rather than conducting an exhaustive, highly detailed examination of the current draft provisions — which may not be the most effective approach at this stage — I would encourage a more strategic review to identify where Part 5 could be aligned with established good practices from other information-sharing frameworks. Legislation governing information-sharing by Commissions and Commissioners for Children and Young People in Australia commonly includes:

1. A clear statement of purpose, explaining when, why and how information may be requested, stored, used and shared;
2. Definitions prescribing the *information-sharing entities* included in the scheme. This usually includes definitions of both the entity vested with the power to request information and those entities that may or must comply with information requests;
3. Distinctions between *types of information* (e.g., identifying vs. non-identifying, confidential) and how they may be handled;
4. The types of *defences or privileges* that a prescribed entity may rely upon to refuse to disclose information requested from it;
5. Specified legal consequences for non-compliance; and
6. Guidance on how the information-sharing scheme interacts with other legal frameworks relating to privacy and right to information laws.

In reviewing the draft Bill, relevant provisions appear in clauses 9(2)(a), (b), and (e), 9(3)(a) and (b), 17(a), and Part 5 (Information Management), including clauses 41–45. Clauses 9 and 17 restate powers outlined in Part 5, which may unintentionally create complexity. A more streamlined approach would consolidate these provisions so that anyone administering the final Act can readily locate and understand the relevant authority for requesting and sharing (or indeed, not sharing) information and *how* this might appropriately be achieved.

I look forward to the prospect of participating in further discussions regarding how Part 5 can be strengthened, drawing on best-practice principles from established legislation. I also suggest that the Department consult with other children’s oversight bodies and relevant stakeholders to arrive at a fully harmonised, cohesive and contemporary scheme.

6. Resourcing the proposed Commission

Recurring themes in the Commission of Inquiry’s final report include the historical failure of successive governments in Tasmania to adequately resource institutions servicing the needs of children and young people. Correspondingly, the Commission of Inquiry made repeated recommendations for the Government to ensure that this did not continue in the future.



Indeed, it seems that the historical narrative of chronic under-investment in Tasmania partly led the Commission of Inquiry to recommend the establishment of the proposed Commission. It noted:

There has been a neglect of some public institutions serving children and young people in Tasmania, leaving those institutions to flounder in key areas and putting children at increased risk. (...)

We consider these failings in the core functions of institutions to reflect the value respective governments have given to these institutions. Public-serving institutions need to be resourced and valued for their key role in society, and need to be healthy and functional to properly protect children from harm, including child sexual abuse.

Recommendations to address underperforming institutions include: (...)

- establishing a new statutory Commission for Children and Young People, with separate funding and reporting obligations to Parliament (Recommendations 18.6, 18.8 and 18.9).⁴⁴

Moreover, in the Commission of Inquiry's incisive analysis, the very existence of an oversight body established by legislation but, in reality severely under-resourced, may heighten the risks to children and young people by creating and maintaining the illusion in the community that the system is working to protect the people it is ostensibly designed to protect. For example, in the area of out-of-home care, the Commission of Inquiry noted:

There are risks associated with establishing a monitoring role that is not structured or resourced to perform effectively. (...)

A monitoring role that is not performed effectively risks creating the illusion that the out of home care system is operating without major problems. This means that serious flaws in the out of home care system are likely to go unaddressed, and that children will continue to be unacceptably exposed to the risks of sexual abuse.⁴⁵

Additionally, the Commission of Inquiry was able to identify more far-reaching conclusions from this situation which it considered had the ability to ripple outwards, negatively impacting the very capacity of children and young people to participate. For example, in the context of youth detention, it noted (footnotes omitted, my emphasis):

Children must also be empowered to engage with and participate in complaints and monitoring mechanisms while in detention. They should feel confident to raise concerns with an oversight body and to make a formal complaint where necessary. This requires oversight bodies to be reliable, trustworthy *and adequately resourced*, and to communicate effectively with each other so children and young people in detention get useful responses to complaints, without negative repercussions.⁴⁶

These findings account for the robust language used in the Commission of Inquiry's Recommendations 9.38 and 12.38 in relation to the proposed Commission's functions in the areas of out-of-home care and youth detention, respectively. In relation to its functions in out-of-home care, Recommendation 9.38(2) states that *'the Commission should be fully resourced on an ongoing basis*

⁴⁴ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 1: Executive Summary), 2023, pp. 36-37 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).

⁴⁵ *Ibid.*, (Volume 4: Chapter 9), pp. 247-248.

⁴⁶ *Ibid.*, (Volume 5: Book 3: Chapter 12), p. 256.



to perform (its) functions.’⁴⁷ Recommendation 12.38, which deals with the monitoring of youth detention centres and residential youth justice facilities, inspections of custodial facilities, and own-motion systemic inquiries into issues concerning youth justice, is also identified as an area that the “*Tasmanian Government should ensure (...) is adequately resourced on an ongoing basis to fulfil its systemic monitoring functions.*”⁴⁸

In its Response to the Commission of Inquiry’s final report, the Government accepted both Recommendations 9.38 and 12.38 without qualification. The Government’s responses in relation to both Recommendation were framed identically. It stated:

The Government accepts this recommendation. Funding will be considered through State Budget processes.⁴⁹

The implementation of Recommendations 9.38 and 12.38 is due to be completed by July 2029 and July 2026 respectively. The draft Bill itself contains no provisions that are specifically adapted to give statutory recognition to the Commission of Inquiry’s recommendations about funding and resourcing the proposed Commission. This means that the Commission would likely need to rely on conventional budgetary processes to procure its funding. It is possible that clauses 38 (‘Joint Standing Committee on the Commission for Children and Young People’) and 39 (‘Functions and powers of Joint Committee’) in the draft Bill could provide a means by which resourcing issues could be examined in a public space. However, these clauses speak in very general terms about the monitoring and review functions of the Joint Committee.

Given the chronic nature of the issue of under-investment as noted by the Commission of Inquiry, I would prefer that a mechanism to deal with any issues that may emerge regarding resourcing the Commission to fulfil its extensive functions is given a more concrete statutory presence in the draft Bill. I note that the Commission of Inquiry also observed (footnote omitted):

According to the Paris Principles, a national human rights organisation must have adequate funding to enable it to have its own staff and premises, and not be ‘subject to financial control which might affect its independence’. It is essential that the new Commission for Children and Young People receives enough funding to enable it to perform its various functions.⁵⁰

I once again thank you for the opportunity to provide feedback on the draft Bill. As is apparent from my comments, I look forward to further discussions and engagement to inform further iterations of the draft Bill.

Yours sincerely

Isabelle Crompton
Interim Commissioner for Children and Young People

⁴⁷ Ibid., (Volume 4: Chapter 9), pp. 248-249.

⁴⁸ Ibid., (Volume 5: Book 3: Chapter 12), p. 280.

⁴⁹ Tasmanian Government, *Keeping Children Safe and Rebuilding Trust: Government Response to the Report of the Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings*, 2023, p. 109 and 152 (URL: https://assets.keepingchildrensafe.tas.gov.au/media/documents/Keeping-children-safe-and-rebuilding-trust_final-WEB.pdf),.

⁵⁰ Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 8: Chapter 18), 2023, pp. 64 (URL: <https://www.commissionofinquiry.tas.gov.au/report>).



cc Hon. Jeremy Rockliff, Premier
cc. Hon. Guy Barnett, Attorney-General, Minister for Justice
cc. Hon. Roger Jaensch, Minister for Children and Youth
cc: Robert Benjamin AM SC, Implementation Monitor

Attachment – Appendix A



Appendix A – Other matters

<p>Omission of definition of ‘identifying details’</p>	<p>In the current CCYP Act 2016, a definition of this term was included in s 4 as follows:</p> <p>4. Interpretation In this Act, unless the contrary intention appears –</p> <p>– (...) identifying details includes name, date of birth, street address, contact details, photographs and other prescribed information⁵¹ but does not include any information that is subject to any lawful claim or right of privilege</p> <p>The draft Bill makes reference to <i>identifying details</i> in the text of cl 43 (‘Power to compel information’) and the Bill even contains a definition of <i>non-identifying information</i> in cl 41 which itself uses the term, <i>identifying details</i> even though the Bill contains no definition of <i>identifying details</i>. Clause 41 defines <i>non-identifying information</i> as follows:</p> <p>41. Interpretation of Part In this Part –</p> <p>non-identifying information means information in relation to a person that does not –</p> <p>(a) contain identifying details of the person; or (b) enable the identity of the person be ascertained or discovered;</p> <p>Given that cl 43 of the Bill is actually a penalising provision, it is desirable that a definition of <i>identifying details</i> is included in the Bill.</p> <p>As to how the term, <i>identifying details</i>, should be defined, it is possible that the current definition in the CCYP Act 2016 is deficient to the extent that it fails to capture some of the obvious ways in which the identity of a child or young person might be ascertained or triangulated from other, sometimes quite insignificant information. See for example, the definition in ss 193(6) and 194(4) of the <i>Child Protection Act 1999</i> (Qld) which include references to a ‘school or place of employment’. Those definitions provide:</p> <p>identifying information, about a child—</p> <p>(a) means information that identifies, or is likely to lead to the identification of, him or her as a witness in a proceeding for an offence or a person in relation to whom an offence was committed or is alleged to have been committed; and</p> <p>(b) includes—</p> <p>(i) the child’s name, age, address, school or place of employment; and</p>
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⁵¹ There has never been any subordinate legislation made under the CCYP Act 2016 and as such there is no other ‘prescribed information’.



	<p>(ii) a photograph or film of the child or of someone else that is likely to lead to the child's identification.</p>
<p>Omission of definition of 'vulnerable'</p>	<p>The current CCYP defines the term 'vulnerable' as follows:</p> <p>4. Interpretation In this Act, unless the contrary intention appears –</p> <p>(...)</p> <p>vulnerable, in relation to a child or young person, includes –</p> <p>(a) a child or young person who is the subject of proceedings under the <i>Youth Justice Act 1997</i>; and</p> <p>(b) a child or young person who is, or was, the subject of a care and protection order under the <i>Children, Young Persons and Their Families Act 1997</i>; and</p> <p>(c) a child or young person who is at risk within the meaning of the <i>Children, Young Persons and Their Families Act 1997</i>; and</p> <p>(d) a child or young person who is receiving, or has received, services under the <i>Youth Justice Act 1997</i> or Part 5 of the <i>Children, Young Persons and Their Families Act 1997</i>;</p> <p>(...)</p> <p>The omission of this term from the draft Bill is curious. It is doubtful that a plain English interpretation of the word, <i>vulnerable</i>, would capture the technical references to the pieces of legislation referred to (non-exhaustively) in the current definition.</p> <p>The omission of a definition for the word, <i>vulnerable</i>, is made yet more problematic because cl 2 of Schedule 1 of the draft Bill stipulates the eligibility criteria for persons to be appointed as a Commissioner, one of which is 'relevant experience, knowledge or qualifications, in relation to children or young people, including, but not limited to, <i>vulnerable children</i> and <i>vulnerable young people</i> (...)'. As this effectively amounts to capability against which candidates for the role of Commissioner will be assessed in the selection process, it may be desirable to include a definition to assist interview panels. There may be another way of achieving the desired outcome.</p>
<p>Clause 8 - Meaning of "Minister"</p>	<p>Clause 8 provides for the Commission to perform functions referable to "the Minister" and clause 50 provides that administration of the Act will be assigned to the Minister for Justice.</p> <p>The Commission should be duly authorised to provide advice and recommendations to <i>other</i> Ministers with portfolio responsibilities in respect of children and young people.</p>



<p>Duplicated functions in cl 8(f) and 8(h) of the draft Bill</p>	<p>Sub-clauses 8(f) and 8(h) of the CCYP Bill 2024 are, for all intents and purposes, indistinguishable. They provide:</p> <p>8. Functions of Commission</p> <p>In addition to any other functions and powers under this Act or any other Act, the Commission has the following functions:</p> <p>(...)</p> <p>(f) to promote and uphold the rights of children and young people in out-of-home care services and youth justice services;</p> <p>(...)</p> <p>(h) to uphold and promote the rights of children and young people receiving out-of-home care services or youth justice services;⁵²</p> <p>The duplication of the functions in cl 8 should be clarified.</p>
<p>Omission of definition for ‘out-of-home care services’ and ‘out-of-home system’</p>	<p>The lack of any definitional clarity for the phrase <i>out-of-home care</i> discussed in the body of my submission is repeated by the lack of a definition for <i>out-of-home care services</i>.</p>
<p>Meaning of ‘residential youth justice facilities’</p>	<p>The term <i>residential youth justice facilities</i> is not defined in the draft Bill. The term is sourced from the Commission of Inquiry’s Final Report where it is said to reference the Government’s proposed assisted bail and supported residential facilities.⁵³ The term ‘facilities’ warrants further consideration noting the Tasmanian Government’s commitment to implementing a range of intensive case management, assisted bail and transition from detention options, including safe housing. (See <i>Youth Justice Model of Care: Implementation Plan</i>).</p>
<p>Clause 3 - Limiting definition of ‘detainee’ to those ‘lawfully detained’</p>	<p>Clause 3 provides:</p> <p>3. Interpretation</p> <p>(1) In this Act, unless the contrary intention appears –</p> <p>(...)</p> <p>detainee means a person who is being lawfully detained in a detention centre within the meaning of the Youth Justice Act 1997; (...)</p> <p>The use of the word, <i>lawfully</i>, before the word <i>detained</i> in this definition, serves no meaningful purpose and may inadvertently limit the ability to advocate on behalf of individual children and young people who are <i>unlawfully detained</i>.⁵⁴</p>

⁵² This duplicated function in cl 8 is also repeated in cl 12(2)(b)(vi) (Child Advocate) and in cl 13(3)(e) (Commissioner for Aboriginal Children and Young People).

⁵³ Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings, *Who was looking after me? Prioritising the safety of Tasmanian children*, (Volume 4: Chapter 9), 2023, p. 235 (URL: https://www.commissionofinquiry.tas.gov.au/data/assets/file/0011/724439/COI_Full-Report.pdf).

⁵⁴ For an example of a young person unlawfully detained in Tasmania as a result of failings by both Tasmanian Police and the then Department of Health and Human Services (of which Youth Justice Services was a part), see the report of the Office of the Ombudsman and Health Complaints Commissioner, *Investigation into the unlawful detention of a young person following the contravention of a supervised release order*, 3 March 2014 (URL: https://www.ombudsman.tas.gov.au/data/assets/pdf_file/0006/279798/Investigation_into_the_unlawful_detention_of_a_young_person_March_2014.pdf).



<p>Clauses 12 and 13 - Limiting words – complaint by ‘child’ or ‘child’s guardian’</p>	<p>Clauses 12(2)(b)(ii) and 13(2)(d) describe one of the functions/powers of the Child Advocate and the Commissioner for Aboriginal Children and Young People by reference to <i>the child’s guardian</i> as follows (emphasis added):</p> <p>12. Child Advocate (...) <ul style="list-style-type: none"> (2) The Child Advocate – <ul style="list-style-type: none"> (...) <ul style="list-style-type: none"> (b) has the functions and powers necessary to – <ul style="list-style-type: none"> (...) <ul style="list-style-type: none"> (ii) inquire into youth justice services or out-of-home care services, if a complaint is made by an individual child, or <i>the child’s guardian</i>, in relation to those services as provided to the child; (...) </p> <p>13. Commissioner for Aboriginal Children and Young People (...) <ul style="list-style-type: none"> (2) The Commissioner for Aboriginal Children and Young People has the following functions and powers: <ul style="list-style-type: none"> (...) <ul style="list-style-type: none"> (d) to inquire into youth justice services or out-of-home care services, if a complaint is made by an individual Aboriginal child, or <i>the child’s guardian</i>, in relation to those services as provided to the child; <p>I question whether this drafting imposes an unnecessary restriction on the functions/powers of the Child Advocate and the Commissioner for Aboriginal Children and Young People. It is not uncommon for persons proximate to a child or within the child’s network to raise concerns on behalf of a child or young person. Use of the term ‘guardian’ is also questionable in a context where the guardian may in fact be the Secretary responsible for delivering or engaging the service that is the subject of concern.</p> </p>
<p>Clause 30 - Omission – request by child or young person for visit by community visitor</p>	<p>Clause 30 acts as ‘a placeholder’ for future Regulations to be made establishing a community visitor program. While I acknowledge that Regulations are yet to be drafted, cl 30 of the draft Bill fails to note that one of the triggers for a visit will be if the child or young person requests a visit. Recommendation 9.34(3) states:</p> <p>Recommendation 9.34 (...) <ul style="list-style-type: none"> 3. The scheme should be funded to enable every child in care, youth detention or another residential youth justice facility to receive regular and frequent visits, and children in family-based care to be visited regularly or <i>when they request a visit</i>. Resourcing </p>



	<p>should also enable community visitors to undertake advocacy on behalf of the children they visit.</p>
<p>Co-ordinating functions of Child Advocate and Commissioner for Aboriginal Children and Young People</p>	<p>The provisions carried over from s 10 of the <i>Commissioner for Children and Young People Act 2016</i> into cl 12(3) of the draft Bill comprise a repetition of the current detainee advocacy program as follows:</p> <p>12. Child Advocate (...) (3) The Child Advocate, when acting as an advocate for a detainee –</p> <ul style="list-style-type: none"> (a) has the following additional functions: <ul style="list-style-type: none"> (i) to listen to, and give voice to, the concerns and grievances of the detainee and facilitate the resolution of those concerns and grievances; (ii) to seek information about, and facilitate access by the detainee to, support services appropriate to the needs of the detainee; (iii) to assess whether the detainee has been provided with adequate information about the detainee’s rights; (iv) to assess, in the opinion of the Child Advocate, the wellbeing of the detainee; (b) must, while acting as such an advocate – <ul style="list-style-type: none"> (i) within reason, seek and take into account the views and wishes of the detainee before – <ul style="list-style-type: none"> (A) asking a staff member of the detention centre, within the meaning of the Youth Justice Act 1997, a question about the detainee; or (B) inspecting, or taking extracts or copies of, a document that relates to the detainee; and (ii) preserve, as far as practicable in the circumstances, the privacy of the detainee; and (iii) respect the wishes of any other detainee who does not wish to communicate with the Child Advocate. <p>The functions of the Commissioner for Aboriginal Children and Young People with respect to what is presumed to be an equivalent advocacy program are described without any similar level of detail. Sub-clauses 13(2)(e) and (3)(a) make provision for this function in much more abbreviated terms as follows:</p> <p>13. Commissioner for Aboriginal Children and Young People (...)</p>



	<p>(2) The Commissioner for Aboriginal Children and Young People has the following functions and powers: (...) (e) to visit Aboriginal children and Aboriginal young people in out-of-home care or youth detention.</p> <p>(3) The Commissioner for Aboriginal Children and Young People has all the functions and powers necessary to – (a) advocate for an Aboriginal child or Aboriginal young person, or Aboriginal children and Aboriginal young people generally, including and not limited to children in out-of-home care, youth detention and other residential youth justice facilities; (...) (e) uphold and promote the rights of Aboriginal children and Aboriginal young people in out-of-home care or the youth justice system.</p>
<p>Clause 13 - Omission – safety and wellbeing of children and young people generally</p>	<p>Clause 13 of the Bill provides as follows (emphasis added):</p> <p>13. Commissioner for Aboriginal Children and Young People (...) (2) The Commissioner for Aboriginal Children and Young People has the following functions and powers: (...) (c) to promote the <i>safety and wellbeing of Aboriginal children and Aboriginal young people generally</i>; (...)</p> <p>The Child Advocate has no equivalent function to promote the <i>safety and wellbeing of children and young people generally</i>.</p> <p>While the Commission itself is given certain functions/powers in relation to <i>safety and wellbeing</i>, this is only in relation to a narrower cohort of children and young people in youth detention or other residential youth justice facilities (per cl 8) and out-of-home care or youth justice systems (per cl 9). Those clauses provide (emphasis added):</p> <p>8. Functions of Commission In addition to any other functions and powers under this Act or any other Act, the Commission has the following functions: (...) (l) to monitor and review – (i) the operation of facilities where children or young people are in youth detention or other residential youth justice facilities; and</p>



	<p>(ii) the <i>safety and wellbeing</i> of, and the provision of services to, children and young people within those facilities;</p> <p>9. Powers of Commission</p> <p>(1) The Commission has the power to do all things necessary, or convenient, to perform its functions and exercise its powers under this Act or any other Act.</p> <p>(2) Without limiting subsection (1), the Commission has the power –</p> <p>(...)</p> <p>(c) to conduct investigations, inquiries and reviews into –</p> <p>(...)</p> <p>(ii) the <i>safety and wellbeing</i> of, and the provision of services to, children and young people who use [out-of-home care or youth justice] systems; or</p>
<p>Clauses 34 and 41 – Minor typographical and clerical errors</p>	<p>Clause 34 contains two typos, both being ‘case of circumstances’ (instead of ‘case or circumstances’) in cl 34(3)(b) and (5).</p> <p>Clause 41 provides a definition of the phrase, <i>information-sharing entity</i>, which includes the word, ‘mas’. This should be, ‘has’.</p>
<p>Clause 34 - Power to conduct inquiries</p>	<p>Clause 34(3)(c) requires further consideration. In my view, the Commission or Commissioner for Children and Young People should not be precluded from commencing an inquiry into any matter affecting the rights or interests of a specific class of children or young people or children and young people generally where the matter is raised through a complaint by or on behalf of an individual child or young person.</p>
<p>Schedule 4: Savings and transitional provisions</p>	<p>I note the transitional arrangements for employees of the Commissioner for Children and Young People under the current CCYP Act. It is unclear why transitional arrangements have not been also included for employees of the Office of the Independent Regulator.</p> <p>I welcome the intention to continue membership of committees under the current CCYP Act. This is important to ensure continuity of committees including my Rights-Based Monitoring and Evaluation Expert Advisory Panel and any Children’s Consultative Council(s) and ensures that the interests of children and young people engaging through these mechanisms at the time the new legislation commences will not be adversely affected.</p> <p>Consideration should be given to carrying across the protection from liability under the current CCYP Act (which would otherwise be repealed).</p>
<p>Schedule 5: Consequential amendments</p>	<p>The amendment to section 3(1) of the <i>Youth Justice Act 1997</i> should apply to <i>all</i> Commissioners.</p> <p>Note also the relevant rules under the Youth Justice Regulations 2019.</p>