

Your Ref:
Our Ref: 854

2 June 2020

The Secretary
Office of the Secretary
Department of Justice
Email: haveyoursay@justice.tas.gov.au
secretary@justice.tas.gov.au

Dear Secretary

Re: Establishment of a Tasmanian Civil and Administrative Tribunal

Thank you for the opportunity to comment on the consultation draft of the Tasmanian Civil and Administrative Tribunal Bill 2020 (the draft Bill).

Background to the draft Bill

On 18 March 2020, the Government announced that a Tasmanian Civil and Administrative Tribunal (TasCAT) will be established to streamline services and improve access to justice in Tasmania. According to the explanatory material for the draft Bill:

- As a first step towards the establishment of TasCAT, several existing tribunals (including the Mental Health Tribunal and the Guardianship and Administration Tribunal) will co-locate at new premises at Barrack St in Hobart later in 2020; they will not become part of TasCAT until 2021.
- The draft Bill is the first of several Bills necessary to establish TasCAT. The draft Bill:
 - * Establishes TasCAT;
 - * Sets out TasCAT's objectives;
 - * Provides for membership and staffing of TasCAT;
 - * Sets out TasCAT's structure; and
 - * Assists with issues arising from co-location at the Barrack Street premises.
- Future Bills will expand TasCAT's jurisdiction and will provide further powers, including in relation to costs, diversity proceedings and alternative dispute resolution.

Role of the Commissioner for Children and Young People

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



Consistent with my statutory functions, my comments focus on matters that are particularly relevant to promoting and protecting the rights, wellbeing and best interests of children and young people in Tasmania.¹

Comment

I am generally supportive of the establishment of a Civil and Administrative Tribunal for Tasmania. I am especially pleased to note that one of the main objectives of TasCAT is for it to be 'accessible by being easy to find and easy to access, and to be responsive to parties, especially people with greater needs for assistance than others' (proposed section 10(1)(b)).

I understand that matters relating to the practice and procedure of TasCAT and the unique features of each of its divisions and streams will be dealt with in consequential amendments taking account of the existing provisions relating to specialist tribunals under relevant Acts (e.g. the *Mental Health Act 2013* and the *Guardianship and Administration Act 1995*). Consequently, I will reserve providing any substantial comment until the next round of consultation.

A matter I do wish to emphasise at this time is how important it is for TasCAT to be sufficiently adaptable to take on new administrative review functions in the future. In particular, I have advocated for the establishment of a tribunal which can independently review decisions made which affect children and young people's wellbeing while they are in out-of-home care.

As former Commissioner for Children Mark Morrissey noted in his 2017 report on [Children and Young People in Out-of-Home Care in Tasmania](#), children and young people in the out-of-home care system in Tasmania should have access to an independent decision maker - such as a tribunal - should they wish to seek a review of a decision made in the context of their care (see Recommendation 6C).

In October 2019, I made the following relevant recommendations in the [first report of my Out-of-Home Care Monitoring Program](#):

1. That the Tasmanian Government encourages and empowers children and young people in out-of-home care to express their views and participate in decisions affecting them, by:
 - a. Ensuring all out-of-home care providers have mechanisms in place for children and young people in out-of-home care to communicate their views about their care, as well as concerns and complaints, consistent with Recommendation 12.10 of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).
 - b. Ensuring that children and young people in out-of-home care have their voices heard in the development and review of Case and Care Plans and participate in day-to-day decision-making that affects their lives.
 - c. Establishing a visitor program funded by the Tasmanian Government, initially focusing on children and young people in out-of-home care who are living in non-family-based care settings.
 - d. Ensuring that visits from Child Safety Officers occur regularly and in accordance with policies of the Department of Communities Tasmania.
 - e. **Consistent with former Commissioner Morrissey's Recommendation 6C, expediting the establishment of a Tribunal in Tasmania, that can review decisions about children and young people's wellbeing while they are in out-of-home care [emphasis added].**

¹ Pursuant to section 3 of the CCYP Act, 'child' means a person who has not attained the age of 18 years; and 'young person' means a person, who has not attained the age of 18 years, as determined by the Commissioner in accordance with section 8(4).



In its response to recommendation 1.e. the Tasmanian Government noted the following:

The Department of Justice is currently working to establish a single Civil and Administrative Tribunal that will provide Tasmanians with an efficient method of civil and administrative arbitration. The capacity to review decisions about children and young people's wellbeing whilst they are in OOHC will be considered further following the full establishment of Tasmania's Civil and Administrative Tribunal.²

Identification of the types of administrative decisions in the out-of-home care context that could be reviewable by the tribunal should of course be a matter for discussion and consultation, however possible examples include decisions about contact with family members, education, living arrangements, or other care arrangements.

Without wishing to pre-empt the outcome of the process mentioned in the Government's response set out above, it is important to ensure from the outset that:

- i) The legislative framework which establishes TasCAT is such that it can accommodate the addition of additional review functions. Based on information received at officer level, it is my understanding that this is the intent of the drafters; and
- ii) TasCAT is sufficiently adaptable, accessible, skilled and resourced to enable the addition of new jurisdictions such as the one contemplated above.

Conclusion

Thank you for the opportunity to comment on the draft Bill. I would welcome the opportunity to discuss my comments in further detail and look forward to providing more substantial comment in the context of future Bills.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

cc *The Hon Elise Archer MP, Attorney General, Minister for Justice*
The Hon Roger Jaensch MP, Minister for Human Services

² [Tasmanian Government Out of Home Care Response - Report and Action Plan 2020](#)