

Your Ref:
Our Ref: 854

5 February 2021

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

Dear Secretary

Re: Tasmanian Civil and Administrative Tribunal Amendment Bill 2020

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

Role of the Commissioner for Children and Young People

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

Background to the draft Bill

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

- In July 2020, as a first step towards establishing TasCAT, several existing tribunals (including the Mental Health Tribunal and the Guardianship and Administration Board) co-located at new premises at Barrack St in Hobart.
- The Tasmanian Civil and Administrative Tribunal Bill 2020 passed Parliament on 15 October 2020 and further legislation to expand TasCAT's jurisdiction is being prepared.

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).



- The draft Bill:
 1. Sets out how the Tribunal is to be constituted in a particular matter;
 2. Establishes the original jurisdiction of TasCAT and the review jurisdiction of TasCAT;
 3. Provides for further powers and procedures for TasCAT (e.g. costs, appeals, alternative dispute resolution);
 4. Provides for referral of matters from TasCAT to the Magistrates Court Civil Division for matters that involve Federal diversity jurisdiction; and
 5. Sets out the transitional arrangements allowing current Tribunal/Board members to be transferred to TasCAT from the commencement date of TasCAT.
- In addition to the draft Bill, there will be a further bill setting out consequential amendments to a range of legislation in order to confer jurisdiction on TasCAT within both its original and review jurisdictions, which will be consulted on in 2021.

Comment

1. The Tasmanian *Civil and Administrative Tribunal Act 2020* settles the existing nine Tribunals and Boards that will initially become part of TasCAT. As I indicated in my 2 June 2020 [submission](#) in response to the draft Tasmanian Civil and Administrative Tribunal Bill 2020, I am generally supportive of the establishment of TasCAT.
2. Any additions to TasCAT's jurisdiction are to be considered in the future. On the issue of jurisdiction, I have previously advocated for the establishment of a tribunal in Tasmania which can independently review relevant decisions affecting the wellbeing of children and young people while they are in out-of-home care. For further details see my [submission](#) in response to the draft Tasmanian Civil and Administrative Tribunal Bill 2020 and Recommendation 1(e) of my October 2019 [Monitoring Report No. 1 The Tasmanian Out-of-Home Care System and "Being Healthy"](#).
3. I am pleased to acknowledge the Attorney-General's confirmation that the Tasmanian Government will consider my 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). I therefore look forward to contributing to discussions and consultation regarding the types of decisions in the out-of-home care context that could be reviewable by TasCAT as part of the third stage of its establishment later this year.
4. Clearly there will be circumstances in which tribunal proceedings will directly or significantly affect the rights or wellbeing of children. It is important to ensure that for those children involved in such proceedings, the legislative framework appropriately acknowledges their capacity to be so involved and includes mechanisms to support their involvement. For an example of how this has been approached elsewhere, see the NSW *Civil and Administrative Tribunal Act 2013 No 2*:
 - 45 Representation of parties
 - (4) The Tribunal may—
 - (a) appoint a person to act as guardian ad litem for a party, or
 - (b) appoint a person to represent a party, or
 - (c) order that a party be separately represented.
 - (4A) In proceedings that directly or significantly affect a child (that is, a person under the age of 18 years) who is not a party to the proceedings, the Tribunal may—
 - (a) appoint a person to act as guardian ad litem for the child, or
 - (b) order that the child be separately represented.



I would therefore welcome the opportunity to have a conversation about how the legislative framework is intended to accommodate and support children who for whatever reason are directly involved in proceedings before TasCAT.

Thank you for the opportunity to comment on the draft Bill.

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