

Your Ref:
Our Ref: 870

05 December 2022

The Hon Jeremy Rockliff MP
Premier
jeremy.rockliff@dpac.tas.gov.au

The Hon Elise Archer MP
Attorney-General
elise.archer@dpac.tas.gov.au

Dear Premier and Attorney-General

Child and Youth Safe Organisations Framework

Thank you for agreeing to meet with me on 29 November, and for the opportunity to discuss my views on promoting the safety of Tasmanian children and, in particular, options for implementation, oversight and regulation of the Child and Youth Safe Organisations Framework. I note, Premier, that you were unable to join the meeting due to ill health. However, I have included you in this correspondence noting the considerable priority you have both placed on undertaking reforms in this important area of government policy relating to children's rights, safety and wellbeing.

As discussed during our meeting, my intent in providing my views to you at this stage is to fulfil my role and function as Tasmania's Commissioner for Children and Young People, according to the principle that the wellbeing and best interests of children and young people are paramount.

Throughout 2022, I have participated in the public hearings of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (Commission of Inquiry), including by listening to much of the evidence and appearing as a witness on three occasions. While the work of the Commission of Inquiry will continue until it reports on its findings and recommendations in May 2023, the Commission has also clearly encouraged Government to progress the reforms it already knows are necessary.

I welcome your commitment to progressing the implementation of a Child and Youth Safe Organisations Framework for Tasmania (Framework) and the recent tabling of the Child and Youth Safe Organisations Bill 2022. I had input into the draft Bill through the public consultation process and have had regular contact with Child Abuse Royal Commission Response Unit.

Given your intent to establish a new dedicated and independent oversight and regulation body to implement the new Framework by 1 July 2023, I believe it is important to consider the location of that new regulatory function as an urgent matter to enable time for its establishment.

As you are aware, I hold a view that the Victorian Commission for Children and Young People provides an excellent model from which Tasmania can draw in designing the implementation of the Framework. I am also of the view that there is currently a considerable gap between the legislated



functions of Tasmania's Commissioner for Children and Young People, and the community expectation of what a children's commissioner should be able to do.

It is clear from the evidence heard through the Commission of Inquiry hearings process that the current oversight mechanisms in Tasmania are complex and opaque. In my view, a new and more comprehensive independent statutory body is warranted to ensure an integrated and systematic approach to keeping children safe from abuse in institutional settings. My views as expressed in this letter are consistent with and build upon the evidence I have given to the Commission of Inquiry.

It would, in my view, be in the best interests of Tasmanian children that you invest in establishing a new entity - a Commission for Children and Young People (Commission). The Commission could absorb the functions of the Commissioner for Children and Young People, subject to some refinement of existing functions, and new functions could be designed and added to implement the Framework. This would, in my view, be the most cogent and practical way forward to ensure a single, child-centred body is responsible for independent oversight and advocacy to promote and protect the best interests of children and young people in Tasmania.

In summary, my proposal consists of the following:

- Creation of a new entity through a single piece of legislation establishing a *Commission for Children and Young People* while repealing and re-enacting with amendments relevant provisions of the *Commissioner for Children and Young People Act 2016*;
- The new Commission would include the current functions of the Commissioner for Children and Young People, while clarifying the role of the Commission with respect to monitoring Tasmania's systems for out-of-home care (OOHC), child safety and youth justice;
- The new Commission would have functions to provide independent advocacy for individual children and young people in OOHC, as well as for those in custody as watch-house detainees and youth justice detention. (Alternatively, these functions could be set aside from the new Act and given to the Public Guardian, with appropriate information-sharing arrangements established. However, housing functions related to oversight and advocacy in a single child-centred body would make the integrity system simpler and easier to navigate for system users, including children and young people.)
- The Commission structure would, in my view, be best to include a Principal Commissioner to lead the Commission, as well as a Deputy Commissioner, with at least one of these positions required to be occupied by a Tasmanian Aboriginal person and who could fulfill the role of a Commissioner for Aboriginal Children and Young People in Tasmania. These positions could respectively be appointed as the Independent Regulator and Deputy Independent Regulator for the purposes of the Child and Youth Safe Organisations Bill 2022.
- Transitional and saving provisions applied to the new legislation establishing the Commission would enable the current work and activities of the office of the Commissioner for Children and Young People to continue uninterrupted under the new statutory arrangements.

I note that at the time of the introduction of the *Commissioner for Children and Young People Act 2016*, the Government indicated that the Act, and consequently the functions and powers of the Commissioner, would be reviewed within five years.¹ While a review has not yet taken place, the

¹ Jacquie Petrusma MP, Second Reading Speech, *Commissioner for Children and Young People Bill 2015*: "It is standard practice to review the effectiveness of any piece of new legislation after a period of time to ascertain whether it is achieving its intention effectively and efficiently. In the case of this Bill, it is proposed that the Act be reviewed within 5 years to ensure that it satisfies the needs and expectations of the Community".



introduction of the Child and Youth Safe Organisations Bill 2022 offers an opportunity to undertake that review within the context of establishing a Commission.

The office of Commissioner for Children and Young People has established a unique child-centred identity within Tasmania. This includes significant expertise underpinning the promotion and protection of children's rights and wellbeing. The work of the office is recognised locally, nationally, and internationally. The integrity, good will and professional capacity built by the office over the past 20 years has been acknowledged and is valued by children, young people, and their families, as well as decision makers.

The current office of the Commissioner for Children and Young People provides a strong foundation from which to transition to a new, more comprehensive Commission that absorbs, clarifies and enhances the functions and powers of the Commissioner, in line with community expectations. Importantly, establishment of a new organisation such as this would send a very clear message to the Tasmanian community, and particularly to Tasmanian children and young people, that the Government places the highest priority on the promotion and protection of their rights and wellbeing, and particularly their safety in organisations across Tasmania.

Thank you again for meeting with me, and for engaging in frank discussion regarding my position on this matter.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc Hon Roger Jaensch MP, Minister for Education, Children and Youth
Jenny Gale, Secretary, Department of Premier and Cabinet
Ginna Webster, Secretary, Department of Justice
Tim Bullard, Secretary, Department for Education, Children and Young People