

## **DRAFT SECOND READING SPEECH**

**HON. JACQUIE PETRUSMA MP**

### ***Commissioner for Children and Young People Bill 2015***

*\*check Hansard for delivery\**

Madam Speaker

The purpose of this Bill is to provide specific legislation in relation to the Commissioner for Children and Young People, to expand the functions of the Commissioner and extend the powers of the Commissioner around conducting enquires. The Bill also improves the independence of the Office of the Commissioner for Children and Young People.

Currently the Office of the Commissioner for Children is established under the *Children, Young Persons and their Families Act 1997*.

The *Select Committee on Child Protection Final Report 2011* (Select Committee Report) was tabled in the Tasmanian Parliament on 19 April 2012. This Committee recommended the *Children Young Persons and Their Families Act 1997* be amended in several areas.

As a response to this Select Committee Report, the previous Government established a Legislative Amendment Review Reference Committee. This Committee was formed to guide a first stage review process for the *Children, Young Persons and Their Families Act 1997*. This stage was completed in 2013. The Committee recommended a second stage process be undertaken to clarify the expectations of the role, function and powers of the Commissioner for Children.

The Advocacy for Children in Tasmania Committee (ACTC) was established to undertake this second stage review.

The ACTC made 15 recommendations relating to advocacy services for Tasmanian children including the function and role of the Commissioner. This Bill seeks to implement the legislative recommendations made by the Committee in relation to the Commissioner for Children and Young People.

The Committee suggested the powers and functions of the Commissioner for Children be clarified, and in some cases expanded. The Committee observed that this could be achieved through amendments to the *Children, Young Persons and Their Families Act 1997* or by developing stand-alone legislation. The preferred option was the creation of a stand-alone Act as the Committee noted that the role of the Commissioner for

Children is one of supporting all Tasmanian children and there may be benefits in distancing this position from the statutory services provided through the *Children, Young Persons and Their Families Act 1997*.

Functions of the Commissioner have also been clarified in relation to the *Youth Justice Act 1997* so that the Commissioner for Children will focus on acting as an advocate for detainees and the systemic needs of young people in detention while allowing the Ombudsman to deal with individual complaints and concerns.

The Bill also clarifies the ability of the Commissioner to refer matters (received or identified as part of an inquiry) to relevant authorities, including Tasmania Police, the Ombudsman, the Integrity Commission and the Anti-Discrimination Commissioner.

This is an important point, as the relationship between statutory offices, particularly in a small jurisdiction, is critical to avoiding duplication of roles.

The role of Commissioner is focused, first and foremost, on the wellbeing and best interests of children and young people. The Bill also recognises the United Nations Convention on the Rights of the Child as a guiding principle.

Functions of the Commissioner have been expanded to allow the Commissioner to undertake advocacy, monitoring, policy development and influence, research and inquiry, receipt and referral of concerns to appropriate authorities, education and raising public awareness around matters affecting the wellbeing of children and young people.

### Own Motion Power

Powers of the Commissioner have been expanded to include an own motion investigative function as well as conducting inquiries when requested by the Minister.

The ACTC report recommended that the Act include an 'Own Motion' investigation/inquiry capacity (recommendation 10), and cites Western Australian legislation as an example which provides the Commissioner in that State with such capacity.

The report also notes the provisions within the Victorian Commission for Children and Young People Act 2012, and how these may provide the basis for the Tasmanian legislation.

The Victorian legislation provides for inquiries that are intended to promote continuous improvement and innovation in children's services, which is appropriate in Tasmania, given the role of the Commissioner in terms of policy advice and systemic advocacy.

The Victorian legislation provides a model which allows systemic inquiries, but still allow such inquiries to be conducted on an own motion basis, or via Ministerial request

The approach taken in the Bill also allows the Commissioner a broad scope for own motion inquiry including, but not limited to, those statutory services such as Child Protection (including out of home care) and Youth Justice Services.

The Commissioner also has significant discretion in how inquiries are conducted, including the use of public hearings, calling for submissions or direct requests for necessary information.

### Independence

Independence of the Commissioner has been increased by having the statutory position report to the Parliament rather than the Minister and lengthening the period of appointment to up to five years.

While the ACTC recommended that the Commissioner report to a Parliamentary Sub-Committee, the implicit desire of the ACTC was to ensure the maximum independence of the Commissioner possible and this is achieved in this Bill through provisions which allow the position to report directly to Parliament.

The Commissioner is also explicitly provided with the ability to determine activities of the office within the broad scope of the role and the manner in which these activities are conducted and reported.

### Access to Information

The ability of the Commissioner to access information necessary to perform their functions was a central concern of the ACTC report and has been the source of some controversy in the past.

I am pleased to note that the Bill clarifies the powers available to the Commissioner and provides the necessary protections for the exercise of that power.

The Commissioner is able to both request de-identified information and require identifying information, dependent on the Commissioner's determination of the required level of detail.

This power is also accompanied by penalties for non-compliance and clear confidentiality provisions governing the sharing of such information.

Equally, and perhaps more importantly, the Bill enables Information-Sharing Entities (such as Government Agencies) to proactively provide the Commissioner with information relevant to the functions of the role. The intention being to improve what has been difficult relationships between the Commissioner and other agencies in the past due to a lack of clarity around powers to access information.

As with any legislation, the test will be in the operation of the Bill. 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.

I commend the Bill to the House.