

## **DRAFT SECOND READING SPEECH**

**HON GUY BARNETT MP**

### **Commission for Children and Young People Bill 2025**

*\*check Hansard for delivery\**

Honourable Speaker, I move that the Bill now be read a second time.

The Government has committed to implementing all 191 recommendations of the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*. A critical reform was the recommendation to establish a Commission for Children and Young People.

The Commission for Children and Young People Bill 2025 fulfils this commitment. It will create three new statutory roles in the new Commission – a Commissioner for Children and Young People, a Commissioner for Aboriginal Children and Young People, and a Child Advocate. The existing Independent Regulator, who oversees Tasmanian organisations to comply with the Child and Youth Safe Organisations Framework, will be part of the Commission.

#### **Public consultation**

The Bill is the product of a whole-of-government approach with extensive community consultation. The Departments of Premier and Cabinet, Justice and Education, Children and Young People worked closely together. The Commissioner for Children and Young People and the Independent Regulator were closely consulted throughout drafting.

The Government undertook extensive public consultation on a draft Bill for three months from September 2024. The final Bill has been amended and improved significantly from the consultation draft. There were 14 targeted consultation sessions with key stakeholder groups, including children and young people, Aboriginal organisations and people, victim-survivors, and foster and kinship carers. Including Tasmanian Government agencies, 31 written submissions were also received. Submissions and a “what we heard report” on face-to-face consultations were published in April this year.

The feedback received was detailed and constructive. I thank all stakeholders who have contributed to this important process. There was overwhelming support for an enhanced Commission for children and young people.

## How the new Commission will operate

It is important to be clear about what the new Commission will be expected and empowered to do.

As the Commission of Inquiry, or 'COI', noted, this new Commission will not be a general complaints handling or investigation body. However, the COI also considered that after a transition period, the same person would fill both the roles of Commissioner for Children and Young People and the Independent Regulator. This would embed the investigative functions of the Independent Regulator under the *Child and Youth Safe Organisations Act 2023* within the Commission.

The COI wrote that as the successor to the current Commissioner for Children and Young People, the new Commission will have the benefit of being known to Tasmanian children and families as an organisation that can help with concerns relating to children and young people. It will ensure there is one oversight body in Tasmania with a focus on their safety and wellbeing. The COI considered this takes account of Tasmania's relatively small size and the need for regulation to be effective and efficient.

I will first walk through how the Commission will work. The new Commissioner for Children and Young People will be the head of agency for the purposes of administration of the Commission as a State Service Agency and will be the first of the three new Commissioners appointed. As a State Service Agency, the Commission will be able to manage its staff and finances directly, rather than through a Department.

One person will be ultimately appointed as both Commissioner for Children and Young People under the Bill, and Independent Regulator under the *Child and Youth Safe Organisations Act*. This will follow a transition period during which two different people hold each of those roles.

The transition period is expected to be up to 3 years after commencement of the Act, as the current Independent Regulator's term of appointment expires on 24 January 2029.

The Independent Regulator's functions and powers remain in the *Child and Youth Safe Organisations Act*.

The Commissioner for Children and Young People, Commissioner for Aboriginal Children and Young People, and Child Advocate, will have both specific functions and powers relevant to their office, and shared general powers of the Commission.

## Functions

The Bill sets out several principles to be applied when a person is performing a function or exercising a power under the Bill. The paramount consideration is the wellbeing and best interests of children and young people. As a result of consultation, the final Bill expressly states that this paramount consideration is reflected in, but is not limited to, the rights and principles specified in the United Nations Convention on the Rights of the Child, Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities. It also states that relevant provisions of those documents are to be taken into account when performing a function, or exercising a power.

The Commission's general functions will include making recommendations to Government on system improvements, conducting inquiries into systemic issues, and advocacy for all, or a class of, children and young people. Further, promoting safety and wellbeing, rights and participation. And monitoring and reviewing wellbeing, care and treatment of children and young people in out-of-home care or the youth justice system, the use of isolation, force, restraints and searches, serious incidents and electronic surveillance.

The Child Advocate and Commissioner for Aboriginal Children and Young People have exclusive powers and functions regarding advocacy for an individual child or young person.

The Bill will require the Child Advocate to establish and administer an independent visitor scheme regarding children and young people in detention and out-of-home care. The Child Advocate must consult with the Commissioner for Aboriginal Children and Young People about how that applies to Aboriginal children and Aboriginal young people. Both of those Commissioners will be empowered to appoint independent visitors. Each of the three Commissioners is taken to be an independent visitor under the scheme. The Bill creates those powers but does not establish the scheme itself. The COI scheduled date for completion for the scheme is July 2029.

The Bill does not contain coercive powers of entry to residences or premises regarding the out-of-home care system. I anticipate that the independent visitor scheme, when established, will include strong but measured, considered powers regarding access to, and oversight of, children and young people in out-of-home care. I also expect that this will occur with appropriate community consultation and input from the Commission.

The Child Advocate has further functions and powers which include helping a child or young person, in appropriate circumstances, to make a complaint, or even to make that complaint as proxy, to a statutory complaints authority. That means a person or entity, including an Agency, with a legislated function, or

power, to determine complaints or review decisions. This is an expansion of a COI recommendation about assisting with complaints to the Ombudsman.

The Commissioner for Aboriginal Children and Young People has similar functions and powers of the Child Advocate in respect of Aboriginal and Torres Strait Islander children. An Aboriginal or Torres Strait Islander person is to be appointed to this Commissioner's position.

## **Powers**

The Commission's general powers include requiring information and data for the purposes of maintaining information regarding Tasmanian children and identifying and monitoring trends relating to them.

It has systemic investigation, inquiry and review powers. It does not inquire into specific decisions, complaints, or circumstances regarding an individual child or young person. However, it can investigate or review a systemic matter that arises as a result of a matter raised about an individual. It can also hold an inquiry into a matter raised in respect of an individual, if that is commenced by the Child Advocate or Commissioner for Aboriginal Children and Young People. These mechanisms allow the Commission to examine services and provide recommendations to Government, through reports tabled in Parliament.

The Bill gives the Commission power to access, inspect and review a detention facility without warrant. This is not intended to match the extent of the powers of the Custodial Inspector or National Preventive Mechanism, because the Commission is essentially an advisory and reporting body.

There is ongoing work to consider the different approaches recommended by the COI and former Ombudsman Mr Connock in relation to the powers of the Custodial Inspector and National Preventive Mechanism regarding children and young people. The relevant COI Recommendations in this area are 12.38 and 12.39 and will progress by 1 July 2026 as scheduled. They are not expected to require amendments to this Bill, but amendments to the Custodial Inspector and National Preventive Mechanism legislation may be required.

The Bill's inspection powers allow general access during the ordinary business hours of a detention facility or as agreed between the Commissioner and person in charge of the facility. They can occur with or without notice. There is power to take photographs, files or audio or visual recordings. It is an offence for a person in charge of a detention facility to unreasonably refuse a Commissioner access.

However, the Commissioner has access to a resident child, young person, or person with care or charge of a child in a detention facility at any time to monitor the safety and wellbeing of the resident.

A person in charge of a detention facility, a member of staff, or a person providing services at the detention facility, commits an offence if they do not allow a Commissioner to interview a resident in private or allow an interpreter to accompany the Commissioner for that purpose. Written communications between the resident and Commissioner are also protected.

## **Important definitions**

The Bill contains definitions which have been significantly strengthened since the consultation draft.

A child is a person under the age of 18. The term ‘young person’ covers people aged 15 through 20 inclusive who still have, or have had, experience in the youth justice or out-of-home care systems.

Out-of-home care is also defined to cover a range of orders or statutory powers under the *Children, Young Persons and Their Families Act 1997* and some under the *Adoption Act 1988*. This gives certainty to the Commission’s jurisdiction.

There are a collection of definitions regarding detention. “Detention facility” has a broad definition to cover detention centres, prisons holding children or young people, various police facilities including stations, vehicles and watchhouses and courts. This covers people on remand or people under sentence. Other terms, “facility resident” and “resident” round this out to cover someone with a child of their own in detention, there because of that parent’s circumstances.

The Bill applies to Aboriginal and Torres Strait Islander people in two different ways. Children and young people need only self-identify, or be recognised as, Aboriginal or Torres Strait Islander people to access the assistance of the Commissioner for Aboriginal Children and Young People. Such children would mostly self-identify, while the Commissioner can also support very young children or children with communication needs who can’t self-identify but who are recognised as Aboriginal or Torres Strait Islander children. For instance, this may be the recognition of a parent or relative, or persons in the community.

The Bill also defines the phrase “a person known to be an Aboriginal or Torres Strait Islander”. This definition applies to the appointment of adults to positions created by the Bill. These include the Commissioner for Aboriginal Children and Young People, an independent visitor appointed to visit Aboriginal or Torres Strait Islander children and the majority of selection panel members appointing the Commissioner for Aboriginal Children and Young People. These persons must be of Aboriginal or Torres Strait Islander descent, identify as such and be accepted as such by a recognised Aboriginal or Torres Strait Islander organisation. This reflects the definition and test as recently passed by Parliament in the *Child and Youth Safe Organisations Act* in 2023.

The Bill also makes clear that using the word “Aboriginal” in reference to a child or young person is taken to include a reference to a Torres Strait Islander too.

Each Commissioner in the new Commission, when providing services to children, will be bound by the child and youth safe standards and the universal principle in the *Child and Youth Safe Organisations Act*. That means the Commission must provide an environment that respects the right to cultural safety of children who identify as Aboriginal or Torres Strait Islander.

Appointment requirements for Commissioners reflect the COI recommendations. These include a transparent process, compliance with best practice for merit-based recruitment and a selection panel with at least one non-government employee and if appropriate, at least one young person.

A panel of children and young people must also be consulted for its views and opinions regarding selection of the Commissioner and determining the best process for selection.

The selection process for the Commissioner for Aboriginal Children and Young People also requires the majority of the selection panel be known to be Aboriginal or Torres Strait Islander.

Finally, before making a recommendation to the Governor regarding appointing a Commissioner, the Minister is to consult with at least one representative of each political party that then has two or more sitting members in Parliament.

## **Information management**

The Bill’s information management provisions were significantly redrafted after consultation to clarify and improve them.

The Bill requires the Commission to protect the identity of a child or young person as far as is practicable. There is express guidance on Commissioners sharing information within the Commission to ensure information privacy.

The Commission may request information from persons and specified bodies. When necessary, the Commission can also compel the provision of information. A group of government and statutory bodies who have their own information management powers and responsibilities, defined as “relevant authorities”, are not subject to this power. An example is the Integrity Commission. There are further safeguards which the Commission must consider before compelling identifying information.

It is an offence not to comply with the requirement to provide information unless a listed exemption applies. The Magistrates Court may make an order requiring compliance with the Commission’s requirement.

The Bill provides for the Commission's ability to disclose or refer information under specified criteria, and for confidentiality of information obtained under the Bill.

The Bill improves upon the consultation version by using a more targeted exemption to the *Personal Information Protection Act 2004* which maintains personal information protection obligations where possible.

By consequential amendment to the *Right to Information Act 2009*, the Bill adds the Commission and each Commissioner as excluded persons or bodies so that Act only applies to information about the Commission's administration. This is consistent with the current Commissioner for Children and Young People.

### **Timeframe to establish the Commission**

The COI acknowledged it would take some time to fully establish the new Commission. The COI provided a timeframe of 1 July 2024. However, work on the Bill found that this timeframe did not allow for the significance and complexity of this reform.

Consistent with the COI's recommendations and timelines, the full implementation of the Bill will take place in phases.

The first phase on commencement of the Bill is the establishment of the Commission and appointment of the new Commissioner for Children and Young People.

The second phase includes appointing the Commissioner for Aboriginal Children and Young People and the Child Advocate. These appointments are due by July 2026. Establishing the independent visitor scheme is due by July 2029.

As I have mentioned, one person will ultimately be appointed as both the Commissioner for Children and Young People and the Independent Regulator.

The Bill manages these steps by being drafted in a way that allows the relevant sections to be commenced by proclamation of the Governor at later dates.

### **Independence**

The Bill has multiple provisions designed to ensure the independence of the Commission and each Commissioner. Each may perform the functions, and exercise the powers, of the Commission. If one Commissioner performs a function, or exercises a power, this does not stop another Commissioner or the Commission from performing that function or exercising that power.

The Commission and each Commissioner is not subject to the direction or control of the Minister, or any Minister. The Commission and each Commissioner must act independently, impartially and in the public interest. When doing so, a Commissioner is not subject to the direction or control of any other Commissioner, nor to the *State Service Act 2000* in respect of that statutory function or power.

As Minister administering the Bill, I have a power to request that the Commission conduct an inquiry, which can include an inquiry outside the Commission's usual jurisdiction. This reflects a power regarding investigations or reviews under the current Act. However, the Bill gives the Commission discretion to refuse this request, preserving its independence.

## **Oversight**

The Bill also has appropriate oversight mechanisms. If the Commission is satisfied that a function or power is unable to be performed or exercised by a specific Commissioner without a conflict of interest being present, the Commission may authorise another Commissioner, if appropriate, to perform that function or exercise that power.

Provisions regarding the Commission's administration cover annual reporting requirements. These include summaries of any inquiries, a list of published reports and a forward-looking annual plan describing the proposed program of work and activities, as known, for that financial year. This must be tabled in each House of Parliament.

There is discretion to, at any time, table other relevant reports in each House of Parliament, or provide them to the Minister or Joint Committee, or to publish reports.

The Bill creates a new Joint Standing Committee on the Commission for Children and Young People. This is based on the *Integrity Commission Act 2009* and its Joint Standing Committee on Integrity.

This new Commission is so different in purpose and function, with its child-centred focus, that it justifies a new Committee being established.

The Bill preserves the Children and Young People Advisory Council and Children and Young People Consultative Council created under the existing *Commissioner for Children and Young People Act 2016*. The Child Advocate must establish an advisory group in relation to children in out-of-home care. And the Commissioner for Aboriginal Children and Young People must establish an advisory group in relation to Aboriginal children and young people. There are broad discretionary powers to establish other committees or advisory groups,



to determine their terms of reference, and to consult with the committee or advisory group in respect of the proposed terms of reference.

The Joint Standing Committee is to review the functions, powers and operations of the Commission and each Commissioner, and table its report as soon as practicable after the third anniversary of the commencement of the relevant provision. Second, a statutory review is to occur in respect of the 5-year period commencing on the first appointment of a Commissioner under the Act.

The Bill requires the Commission to liaise with other relevant statutory authorities, statutory officers and official bodies when conducting an inquiry or investigation. One purpose of this is to prevent, if appropriate, duplicate inquiries or investigations. Another purpose is to facilitate the coordination, and resourcing, of inquiries or investigations into matters that are to be conducted separately. Hence, concurrent matters are not entirely ruled out.

The same provision also requires the Commission to take certain actions if it becomes aware that a child or young person has sought assistance from another of its counterparts in that cohort. It must take all reasonable steps to avoid unnecessary duplication of assistance while facilitating the provision of support and assistance, in respect of that matter.

There are general offence provisions around protection from reprisals for persons providing information to the Commission, and protection from liability for those acting in good faith.

The Bill effectively combines four different statutory officers into one new Commission. It is the product of sustained effort to honour the COI recommendations and improve on a consultation version thanks to the detailed input of many and varied stakeholders. I would like to thank everyone who has contributed to this Bill, a tremendous step forward in the shared purpose of this Government, this Parliament, and the community at large, to make Tasmanian children safer.

Honourable Speaker, I commend the Bill to the House.