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**TASMANIAN ABORIGINAL  
LEGAL SERVICE**

**Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:**  
Consultation on the Commission of Children and Young People Bill 2024  
November 2024

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## Introduction:

The Tasmanian Aboriginal Legal Service (TALS) welcome the opportunity to provide feedback on the Commission of Children and Young People Bill 2024.

TALS is a member-based, independent, not-for-profit community legal centre that specialises in the provision of criminal, civil and family law legal information, advice and representation for Aboriginal and Torres Strait Islander peoples across Tasmania. We also have a dedicated service, SiS Tasmania, for victim/survivors of family violence and sexual abuse.

We are an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations. In this submission, any reference to Aboriginal people is understood to also encompass Torres Strait Islander people. TALS provides culturally safe, holistic and appropriate services that are inclusive and open to all Aboriginal Tasmanians. We understand that the most vulnerable people needing access to legal assistance are often also those who face the most difficulties asking for help, and we work hard to ensure everyone can access our services within and outside of traditional legal settings. We also are an advocate for law reform and for justice, equality and human rights for all First Peoples in Tasmania. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

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## Response:

TALS is strongly supportive of any mechanism that increases the wellbeing and safety of Tasmanian children. It is TALS' understanding that this new legislation is a result of the findings from Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings. Notably, the final report dedicated section 4.1 to the recommendation of the establishment of 'a new, strengthened regulator and advocate for children and young people's rights and safety'. TALS commends the Tasmanian Government for the development of this legislation within a timely manner. To ensure that this legislation can carry out and facilitate its intended purpose, TALS wishes to raise the following points for consideration.

### *The appointment of the Aboriginal Children's Commissioner:*

Tasmania, like many parts of Australia, is home to diverse Aboriginal communities, each with their own ways of addressing issues and engaging with government. In the past, some Aboriginal communities have failed to acknowledge or support other Aboriginal groups. As a result, this has led to some groups and families being excluded from communities and associated services<sup>1</sup>. TALS wishes to raise this as a point for the Government to be mindful of when they are appointing an Aboriginal person to the role of Aboriginal Commissioner, and how that role will recognise and support Aboriginal children of all communities within in Tasmania and consequently work alongside their relevant community organisations. TALS further encourages extensive and genuine consultation with all Aboriginal communities prior to the appointment of this position.

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<sup>1</sup> Lehman, R *Aboriginal tensions over expanded advisory body and World Heritage Area role*, (2015) Australian Broadcasting Company

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*Objective statement:*

Although the proposed legislation appears to provide significant resources and power to the Commission, when compared to other jurisdictions it lacks an 'objective' statement. For example, the *Commission for Children and Young People Act 2012 (Vic)*<sup>2</sup> states the following in s.7

**Objective of Commission**

The objective of the Commission is to promote continuous improvement and innovation in—

(a) policies and practices relating to the safety and wellbeing of—

(i) vulnerable children and young persons;

and

(ii) children and young persons generally;

and

(b) the provision of out of home care services  
for children.

This objective statement supports the intended purpose and the goals the Commission aims to achieve. Although this may seem trivial, it supports the intention and objectives of the office and its staff.<sup>3</sup> TALS believes that something similar would be helpful to include in the proposed legislation.

*Advisory capacity v actual agent of change:*

As previously stated, TALS is very supportive of the development of this legislation; however, for it to be effective at keeping children safe, particularly vulnerable children in youth detention and out of home care, it must be robust in its capacity. This is a difficult component to legislate and will ultimately be dictated by the

<sup>2</sup> *Commission for Children and Young People Act 2012, (Vic) s7*

<sup>3</sup> Australian Law Reform Commission, *The Objects of the Act*, 2010 Australian Government, <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/5-the-privacy-act-name-structure-and-objects/the-objects-of-the-act/>

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intentions of the Government of the day. It must be the intention of the Government to take seriously, all recommendations and concerns raised by the new office.

For example, this year the Tasmanian Office of the Custodial Inspector reported that only 12 of 46 recommendations made in 2017 in relation to prisoners' mental health needs had been implemented by the Department of Justice.<sup>4</sup> During a recent inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters, the Custodial Inspector, Mr Richard Connock, and Inquiry panellist, Rosemary Armitage discussed the difficulties of the office's position. Ms Armitage was quoted to say, "But you have no teeth to do anything about it." in relation to issues raised by the office in connection to treatment of prisoners. Mr Connock responded by stating "I do not have any coercive powers, no".<sup>5</sup>

TALS raises this point to stress the need for the Government to embed policy that ensures compliance with any reasonable recommendations made by the office of the Children's Commissioner. This mechanism must be able to affect change, and the Government must listen.

*Inspection Functions:*

If the Commissioner is to take over inspection functions of facilities, it should mirror the provisions in the *Custodial Inspector Act*.

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<sup>4</sup> L, McDonald, *Tasmania's prison service under fire as report into inmate's health makes 117 recommendations*, 19 July 2024, Australian Broadcasting Company <https://www.abc.net.au/news/2024-07-19/tasmanian-custodial-inspector-report-prison-health/104114410>

<sup>5</sup> Evidence to Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters, Legislative Council, Hobart, 10 August 2023, p.8 (Mr Richard Connock)

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The following powers are set out clearly in the *Custodial Inspector Act 2016*:

## 8. Powers

The Inspector has the following powers:

(a) to visit and examine any custodial centre, and any vehicle, equipment, container or other thing in a custodial centre, at any time the Inspector thinks fit;

Of particular concern is detention facility access being restricted to business hours or with prior approval outside of those hours. For this function to hold children's safety and wellbeing at its core, access to facilities, particularly youth detention facilities where significant harm has been caused, should not be hindered in any way.

TALS further notes that it may not be in the best interest of children and young people who are housed in facilities where they are deprived of liberty to be monitored only by the Office of the Commissioner, particularly as there are no reporting requirements in the proposed legislation. The NPM's core function is to monitor, report and make recommendations in relation to the functions and operation of places like Ashley Youth Detention Centre (AYDC). Please see section 5.3.4 of *Preventing Torture and Ill Treatment in Tasmania*, report published by the NPM in 2023, where these same issues are raised. TALS proposes that the NPM and Childminder's Commissioner could work together to ensure such facilities are closely monitored with complimentary sharing of subject matter expertise.

It is of concern that if such monitoring mechanisms are distributed vaguely amongst multiple bodies, it could create room for error and misreporting. If an institution such as AYDC is to remain open, it must be subject to rigorous scrutiny and monitoring mechanisms, which was a clear recommendation of the Commission of Inquiry into the Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings. As such TALS requests that these reporting functions and mechanisms are closely reviewed and clearly defined moving forward.

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In conclusion, TALS supports the mechanism that this legislation proposes, however; for the legislation to be impactful and effective at protecting all children, including Aboriginal and Torres Strait Islander children, we hope the Government takes into consideration the above-mentioned suggestions.

Warmest regards,



Jake Smith

Chief Executive Officer

Tasmanian Aboriginal Legal Service

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