

Submission on the draft bill for the Commission for Children and Young People

December 2024



Laurel House
SEXUAL ASSAULT SUPPORT
COUNSELLING • EDUCATION • ADVOCACY • CHANGE

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About Laurel House

Laurel House is a not-for-profit, community-based sexual assault support service based in North and North-West Tasmania. Laurel House provides a range of trauma-informed, evidence based, therapeutic services to victim-survivors of sexual assault, their families and supporters. We also develop and deliver a broad range of programs to adults, young people and children including the provision of therapeutic face-to-face counselling at our centres located at Launceston, Devonport and Burnie and through outreach locations across the North and North-West Tasmania, and 24/7 telephone support and assistance with accessing police and forensic medical processes.

Laurel House partners with the Tasmanian Government in the delivery of the Arch Centres (multidisciplinary centres for victim-survivors of sexual harm) with the Northern Arch Centre opened in 2023 and the North-West Arch Centre currently under development.

Laurel House delivers the PAST (Prevention, Assessment, Support and Treatment) Program for children and young people (aged 17 years and under) who have displayed harmful sexual behaviours in North and North-West Tasmania.

Our team also provides community education and other capacity building programs focused on the prevention of sexual harm and on supporting parents, carers and service providers to better respond to disclosures of sexual violence.

Laurel House plays a key role in policy and advocacy work to improve the lives and safety of victim-survivors and the Tasmanian community. This includes our Laurel House Expert Advisory Panel for Youth (LEAPY) which is a program that provides victim-survivors aged 12 to 18 years with an opportunity to advocate and drive change, and our Policy and Advocacy Committee comprised of a diverse group of experts from practice, research, policy and lived experience.

1. Introduction

Laurel House welcomes the opportunity to provide feedback on the released draft Commission for Children and Young People (‘CCYP’) Bill 2024. This feedback is further to our initial discussions and advice provided to the Department of Premier and Cabinet (‘DPAC’) during the early stages of the consultation period.

The lens we bring to the review of this draft legislation is that of the Convention on the Rights of the Child. Children and young people have an inherent right not only to life, survival, and development, but to have the adults in their life also ensuring that they are able to thrive. They have the right to be protected from all forms of physical or mental violence, injury, abuse, neglect, maltreatment, or exploitation. While this draft legislation articulates principles that align with areas of the Convention, the extent to which these principles translate into practice in the context of the legislation is mixed. Each of the recommendations we make seeks to ensure that the interests and wellbeing of the children and young people impacted by this legislation are the primary consideration of every part of the legislation, resulting in actions that protect and uphold the inherent rights of children and young people in Tasmania.

Our submission is informed by the views and experiences of Laurel House staff, board and our Policy and Advocacy Advisory Committee that includes researchers, practitioners and victim-survivors. We have drawn from our previous engagement with victim-survivors, practitioners and community members in informing our response.

2. General notes

We are concerned that nowhere in the draft legislation is there a requirement for consultation or engagement with children and young people or those with relevant lived experience beyond those on the children and young people Consultative Council. This will be a small number of likely already highly engaged (and often privileged) children and young people.

We believe there should be requirements for the CCYP to consult with a broader group of children and young people, those with relevant lived (and living) experience, and those who advocate with/for children and young people beyond the Consultative Council to ensure a truly diverse range of voices inform the activities of the CCYP.

As we expand on in following sections, we also believe there should be greater responsibility and oversight given to the Advisory and Consultative Committees and relevant Advisory Groups.

Such amendments would more meaningfully uphold principles II-IV (5) of the Act:

- “the views of children and young people on all matters that affect them individually, or children and young people generally, are to be taken into account and given serious consideration”;
- “the contributions made by children and young people, to the community, are to be recognised for their value and merit”; and
- “the interests and needs of children and young people who are disadvantaged or vulnerable, for any reason, are to be given special regard and consideration”.

As well as more fully facilitating one of the core functions of the CCYP to: “promote and empower the participation of children and young people in making decisions, and expressing opinions on matters, that affect their lives or the lives of children and young people generally” (8.b.).

We object to the language ‘detainee’ used to refer to a children and young people in a residential facility. We believe this language is dehumanizing and poses a threat to the authentic upholding of the human rights of children and young people. We recommend alternate language such as ‘facility resident’ (used elsewhere in the draft) or ‘children or young people residing in a detention facility’.

3. Feedback on Part 2

8.a.i. We have concerns that throughout the Act the reach of the Commission is most commonly stated to extend only to “facilities where children and young people are in youth detention and other residential youth justice facilities”. We are concerned that this remit is far too narrow and should extend to any facility where children and young people are in care, residential or otherwise – a remit far broader than that stated here, but which aligns with the OPCAT¹ provisions that are already enacted in Tasmania. We recommend that language about the reach of the CCYP be extended to allow a much broader remit.

8.c. We suggest the inclusion of text that indicates it is necessary to include the diverse perspectives of children and young people in policy development.

¹Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

8.e. We suggest a change of language to “to advocate for AND WITH children and young people generally”, acknowledging children and young people have the capacity and right to advocate on behalf of themselves.

9.f. We suggest that there be transparency mechanisms considered here to make the publication of reports less ambiguous beyond that which is deemed ‘appropriate’.

12.2.b.i. We have concerns over, with one person holding the position of Child Advocate, how this role can function in a way that is culturally safe for children and young people from diverse backgrounds and allows them to exercise their rights to have choice in opting for a representative who is socially and culturally safe. Precedent for this set in the Act by stating the Aboriginal children have the right to have the Commissioner for Aboriginal Children and Young People act on their behalf. The same right should be extended to those children from disadvantaged groups such as those who are disabled or LGBTQIA+ or from cultural and linguistically diverse communities. We suggest consideration be given to having multiple Advocates employed by the CCYP who represent a diverse range of interests and experiences.

12.2.b.iv. What happens in the case where consent is given only by one party – the children and young people or their guardian – and the other party does not consent? Whose consent is given preference? How will children and young people’s rights be upheld in a situation where the guardian’s wishes deviate from their own? The same applies to the relevant point under Section 13. We also suggest that consent be clearly defined to leave no ambiguity, ensuring this is sought and provided in a child appropriate language and manner.

12.3.a.iv. Specifies “to assess, in the opinion of the Child Advocate, the wellbeing of the detainee”. We seek clarification on what qualifications will be required of the person in this role which equips them to assess a child’s wellbeing. We seek specification on what holistic evidence-based metrics will they use to make such an assessment. It is critical that a diverse range of metrics are used that are tailored to be appropriate to different cohorts and are culturally safe. It is also of utmost importance that these metrics prioritise, above all other assessments, the child’s voice and self-assessment of their own wellbeing. For example, we recommend those qualifications should include recognising signs of child sexual abuse, harmful sexual behaviours, and responding to disclosures of abuse in a trauma informed manner. Where such qualifications do not exist in a Child Advocate, training should be provided specialist organisations, such as Laurel House. The same applies to the relevant point under Section 13.

12.3.b.iii. Outlines the right of other children and young people in detention to choose not to communicate with the Child Advocate. There appears to be no such provision, however, for the children and young people in question to have the same right to choose not to communicate with the Child Advocate. All children and young people in a detention facility should have the right to refuse to communicate with the Child Advocate or the Commissioner(s). The same applies to the relevant point under Section 13.

23.b. We suggest that the Commissioner also be allowed to be accompanied by an appropriate support person for the children and young people being interviewed.

25. We seek clarification over who will have direct input into drafting annual plans. We recommend that the children and young people Advisory and Consultative Councils and relevant Advisory Groups are included in setting the direction of the Commission's activities annually.

26.2. Recommendation that the annual report be required to include an evaluation or review of the Commission's activities from the perspective of the children and young people Advisory and Consultative Councils and relevant Advisory Groups to ensure that the perspectives of children and young people are included and ensure it is presented in a child accessible way.

26.3. We are concerned that the CCYP Committees and Advisory Groups have limited input into the final annual report with no oversight or accountability built into the process for reporting from the groups. We recommend that a draft annual report be provided to relevant CCYP Committees and Advisory Groups prior to delivery to each House of Parliament. The CCYP Committees and Advisory Groups should be able to review the report and either endorse the contents of the report or, where endorsement was not given, table an alternative dissenting report at the same time as delivery to Houses of Parliament. This would uphold the principles of the CCYP legislation in placing value and legitimacy on the voices of children and young people and those who support and work with them.

26.5.b. Recommendation that such reports should also be provided in the same manner to relevant CCYP Committees and Advisory Groups in addition to the Joint Committee.

30. We recommend further details be included in the Act regarding the Independent Visitor Scheme including but not limited to:

- The process of recruitment of Independent Visitors. We recommend these

Independent Visitors should be diverse in qualification and lived experience, including but not limited to children and young people, people with lived experience of children and young people in detention, and those representing diverse identities from groups who experience disadvantage.

- Clarity about whether those positions are voluntary or paid, with the recommendation that they be paid.
- Clarity around what training is provided to Independent Visitors, particularly regarding recognising signs of child sexual abuse and responding to disclosures in a trauma informed manner with the recommendation that such training be provided specialist organisations.
- Clarity around what support and supervision is provided to Independent Visitors including but not limited to understanding their obligations, reporting, and providing referral pathways for children and young people beyond those provided through residential facilities. Independent Visitors should also be entitled to comprehensive and adequate support to protect their wellbeing (including to prevent vicarious trauma) before, during, and after visitations.

31 – 32. These sections refer to the establishment of Advisory Groups and Committees within the CCYP including children and young people Advisory and Consultative Councils. We acknowledge there is additional detail in Schedule 3, however we believe this detail remains insufficient. We raise the following considerations regarding these sections.

- We are concerned that these two sections are exceptionally brief – especially when compared to the level of detail dedicated to the Joint Standing Committee in Part 4 which addresses the membership, functions and powers, and reporting of that committee.
- We are concerned about this omission, particularly relating to the functions and powers of these Committees and Advisory Groups – a significant oversight when compared to the extensive detail given to the function and powers and the Joint Standing Committee. Without legislation to ensure that these Committees and Advisory Groups have the capacity for real impact and accountability within the Commission, they risk becoming a tokenistic box checking exercise.
- We recommend the same level of thought and detail as is given to the Joint Standing Committee be given to outlining, at a minimum, the same focus on membership, functions and powers, and reporting for each of the children and young people Advisory and Consultative Councils respectively.

- We recommend the children and young people Councils be included in all aspects of oversight and input to the Commission’s decision-making, governance, reporting, evaluation, activities, and strategic planning.
 - We recommend the addition of an Aboriginal Consultative Council to guide the activities of the Commissioner for Aboriginal Children and Young People. Even where the children and young people Consultative Council includes a least one Aboriginal representative, this will not be sufficient to represent the diversity of Tasmanian Aboriginal communities.
 - Schedule 3 outlining details pertaining to committees does not cover the details pertaining to Advisory Groups. There appears to be nothing in the Act which outlines details about the makeup, rights, process, payments, or power and functions of Advisory Groups despite the Act recommending the setup of at least one permanent Advisory Group, relating to out-of-home care (12.2.a.ii). The same concerns outlined above relating to committees apply here.
 - We recommend the same level of thought and detail be given to outlining, at a minimum, the same focus on membership, functions and powers, and reporting for Advisory Groups set up under the CCYP.
 - Such amendments would more meaningfully uphold principles II-IV of the Act:
 - “the views of children and young people on all matters that affect them individually, or children and young people generally, are to be taken into account and given serious consideration”
 - “the contributions made by children and young people, to the community, are to be recognised for their value and merit”
 - “the interests and needs of children and young people who are disadvantaged or vulnerable, for any reason, are to be given special regard and consideration”
- And the function of the CCYP to: “promote and empower the participation of children and young people in making decisions, and expressing opinions on matters, that affect their lives or the lives of children and young people generally” (8.b.).

4. Feedback on Part 3

34.b. We recommend universities be included in this section alongside Tafe.

5. Feedback on Schedule 1

1.1.d. Remove ‘if appropriate’ to mandate the inclusion of children and young people on the selection panel for the recruitment of Commissioners and recommend changing to include at least two children and young people in alignment with best practice elsewhere. We recommend the inclusion of “at least TWO young people WHO ARE PROVIDED WITH ADEQUATE AND ACCESSIBLE SUPPORT TO PARTICIPATE FULLY IN THE PROCESS, PAYMENT FOR TIME, AND REIMBURSEMENT OF COSTS”.

2.a. We seek clarification of what constitutes the determination of “fit and proper”? We have concerns that this is undefined and ambiguous especially given that evidence shows the use of ‘fit’ in recruitment processes is typically used to permit and facilitate the inclusion of bias in decision-making, unconscious or otherwise.

6. Feedback on Schedule 3

This schedule outlines particulars for committees other than the Joint Standing Committees (outlined in Schedule 2), including the children and young people Advisory and Consultative Councils. We are concerned that this schedule is brief when compared to the level of detail dedicated to the Joint Standing Committee in Schedule 2. We recommend that more thought and detail be outlined in this Schedule, including but not limited to the suggestions below. We also recommend that the same level of detailed specifications be given to Advisory Groups either by including them within this Schedule or adding an additional Schedule.

3.b. Which groups specifically? We are concerned that the lack of detail here allows for ambiguity which may facilitate certain important groups being left unrepresented. We recommend the inclusion of a list of groups which experience disadvantage and require representation on such groups, including but not limited to people who are:

- Aboriginal and Torres Strait Islander People
- Culturally and linguistically diverse
- Disabled
- Neurodivergent
- From low socio-economic backgrounds
- LGBTQIA+
- Migrant, refugees, and asylum seekers
- People with lived experience in the youth justice system, youth detention, and out of home care

- People with low levels of literacy or education.
- Victim survivors of child sexual abuse

3.c-d. We recommend the inclusion of language ‘including BUT NOT LIMITED TO’ to allow for the inclusion of experiences beyond those listed as necessary.

4. We recommend the inclusion of a section that ensures members of this committee are given adequate and accessible support to participate fully in the process including but not limited training, ability to bring a support person, easy read and simple information, payment and reimbursement of costs, access to mental health support, etc.

4.b. Which groups specifically? We are concerned that the lack of detail here allows for ambiguity which may facilitate certain important groups being left unrepresented. We recommend the inclusion of a list of groups which experience disadvantage as provided above.

7. Future Consultation about Legislative Reform

We appreciate the extended timeframe of three (3) months provided for the consultation on this Bill and the orientation toward consulting with victim survivors to inform feedback on the draft legislation. This is consistent with recommendations previously provided by Laurel House in our report for the Child Sexual Abuse Reform Strategy.² We believe, however, that the Tasmanian Government needs to develop a more robust approach to consulting with victim-survivors (including children and young people who are victim-survivors) including via organisations like Laurel House.

We note that in order to support effective engagement with victim-survivors (including children and young people), Laurel House would need to be clear on the purpose of the consultation, what the Government seek to learn that is both new and not able to be gleaned from all the previous evidence and experiences shared (including via the Commission of Inquiry, other reviews and other consultation reports informed by victim survivors including those produced by Laurel House and other organisations for the Change for Children strategy), specific questions of interest, a clear value add for victim survivors in sharing their experiences (again), and with the provision of simple and accessible resources to support the consultation.

² [Laurel House Report for Child Sexual Abuse Reform Strategy - April 2024.](#)

We note that plain-English Fact Sheets and easy-read Fact Sheets were added to the consultation website on the 6 December. With consultation closing on the 15 December this is not appropriate or adequate to allow children and young people, people with disabilities or others who would benefit from these to meaningfully engage with the consultation process.

We would also recommend that, in future, documentation that supports the consultation period should be framed along the lines of ‘here’s what we heard from you (via past inquiries/reports), here’s how that informed the legislation, did we hear you right/what else might you add?’ which would demonstrate that all efforts had been taken to review and draw from the evidence and experiences people have already shared.

From an organisational perspective, Laurel House would like to see that future consultation on legislative changes be supported by specific consultation questions that would allow us to focus our efforts in reviewing often complex draft bills and ensuring that the feedback we give is both useful to Government and a meaningful use of our resources. We suggest that consultation documents provide:

- specific consultation questions,
- summaries of the relevant information under each question, and
- additional information within each section relevant to each question.

We understand that considerable legislative reform is needed over the coming years in response to Commission of Inquiry recommendations and other reviews. We are keen to see a planned consultation/engagement approach regarding likely consultation on those future drafts. We would like to see that a consultation or engagement strategy that includes:

- A predicted timeline of legislative reform (consultation and deadlines) – we acknowledge that this is challenging but this would support planning for organisations in our consultation with victim-survivors and managing our resources.
- Clarity on how consultations will be targeted, specific, trauma-informed and in line with best practice engagement standards for victim survivors, so as not to risk alienating, retraumatising, or pushing them to consultation fatigue. This piece of work would ideally happen by or in partnership with specialist services, like Laurel House, with appropriate funding.



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