

Your Ref:  
Our Ref: 043

14 December 2022

Isla Macgregor  
[REDACTED]

Dear Ms Macgregor,

**Re: Tasmania's Gender Services**

I refer to your emails of 20 September, 25 November and 26 November 2022, and to our meeting on 24 November, in which you expressed your views and concerns relating to gender services in Tasmania.

I apologise for the delay in responding to your earlier email.

As you may be aware, the role of Commissioner for Children and Young People is established by Tasmanian legislation. The [Commissioner for Children and Young People Act 2016](#) (CCYP Act) sets out the general functions of my role which include:

- a. advocating for all children and young people in the State generally;
- b. researching, investigating and influencing policy development into matters relating to children and young people generally;
- c. promoting, monitoring and reviewing the wellbeing of children and young people generally;
- d. promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives; and
- e. assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.<sup>1</sup>

In performing these and other functions under the CCYP Act, the Commissioner is required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount; and

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<sup>1</sup> Section 8(1) of the [Commissioner for Children and Young People Act 2016](#)



- observe any relevant provisions of the United Nations [Convention on the Rights of the Child](#).<sup>2</sup>

Further, the Commissioner must give special regard to the needs of children and young people who are vulnerable or disadvantaged.<sup>3</sup>

Consistent with my statutory functions, I focus on issues of importance to the rights and wellbeing of Tasmanian children and young people aged less than 18 years.

Consistent with the CCYP Act, my advocacy is largely informed by the United Nations Convention on the Rights of the Child (CRC). Under the CRC, children are afforded the rights to identity, health and development, the freedom of thought, conscience, and religion. They also have the right to be protected from violence and harmful practices such as torture or other cruel, inhuman, and degrading treatment. These rights are not given to children by adults or governments, rather they are intrinsic to the child.

The CRC also expresses the right of a young person to have a say in decisions that affect them, and for their views to be given due weight in accordance with their age and maturity.<sup>4</sup> Children are also afforded the right to freedom of expression.<sup>5</sup> This means children can explore ideas and ways of thinking about themselves and the world they live in such a way that is supported by family, friends, and other people that play important roles in their lives. Because children, and especially adolescents, are finding their own way to how they want to live, and how they want to be seen by their communities, it is crucial that families and friends provide positive support, and not act in a paternalistic or coercive manner. Parents and families are central to providing this support and guidance *with the child* and not *for the child*.<sup>6</sup>

In accordance with the CCYP Act, my views on gender dysphoria in children and young people and related issues, such as sexual orientation and gender identity conversion practices (SOGI), are guided by the fundamental rights of children and the core principle that the best interests of the child shall be a primary consideration in all actions concerning children, as outlined in the United Nations Convention on the Rights of the Child (UNCRC).<sup>7</sup>

As such, I believe gender identity is a core component of a child's sense of self identity. Sexual orientation and gender identity are complex ideas that can be subject to change, challenge, and pressure from time-to-time. Developing a sense of self is vitally important in establishing a sense of place and belonging both within ourselves and in our relationships with others. There is no right or wrong gender, nor is there a wrong sexual orientation. In fact, our society is made all the richer and more vibrant by sharing our lives with a diverse range of people, especially young people, who bring new ways of expressing their identity. In dismissing, denying, or attempting to force the "correction" of a young persons' gender, no matter how gently the methods are described, SOGI conversion practices question the child's very existence and sense of being. Not only does this disempower young people, but

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<sup>2</sup> Section 3(1) of the [Commissioner for Children and Young People Act 2016](#)

<sup>3</sup> Ibid, s3(2)

<sup>4</sup> Article 12 United Nations [Convention on the Rights of the Child 1989](#)

<sup>5</sup> Ibid, Article 13

<sup>6</sup> Ibid, Article 18

<sup>7</sup> Section 3(1) of the [Commissioner for Children and Young People Act 2016](#)



it is also cruel and dehumanising and is against the principles of the child's right to an identity,<sup>8</sup> health and development<sup>9</sup> under the CRC.

It is my understanding that gender affirmation therapies are provided by registered professionals who are informed by the evidence and work with young people, *their parents*<sup>10</sup> and families to seek mutually agreeable outcomes for a young person.<sup>11</sup> At its heart, gender affirmation respects a child's autonomy, upholds their right to information, respects their freedom of thought, and promotes their right to health and wellbeing. These approaches recognise the evolving capacity of a young person to acquire understanding<sup>12</sup> and can respond to increasing levels of agency by providing alternative therapeutic approaches. Positive outcomes are achieved, in part, by creating a safe space for children to ask questions, seek explanations, explore their ideas, and express their thoughts. In my view, such a supportive approach, free from judgement, represents good practice.

While the UNCRC does not explicitly define what constitutes the 'best interests' of the child, this term is universally recognised as referring to a child's general wellbeing. This includes paying attention to a child's views and opinion and ensuring they have access to the things they need to grow and thrive. The [Committee on the Rights of the Child](#) (the Committee) stresses the importance of taking a child's views into account and considering the child's characteristics in determining best interests.<sup>13</sup> Furthermore, the child's best interest also extends to article 12 of the CRC, which guarantees the right to express their views on all matters affecting them, in accordance with their age and maturity, including matters relating to their health.<sup>14</sup>

Providing guidance on realising the rights of children during adolescence, the Committee emphasises 'the rights of adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy'.<sup>15</sup> The Committee specifically condemns 'treatments' designed to change sexual orientation or gender identity and has urged State signatories to the UNCRC to eliminate such practices.<sup>16</sup> Australia is a State signatory to the UNCRC.

As an advocate for children and young people generally, I am committed to the adoption of policy and legal frameworks which protect and promote human rights as they are described by the UN Committee. For further insight to my views and their basis, you may be interested to read my published [submission](#) in response to the Tasmania Law Reform Institute's invitation to comment on their [Issues Paper No. 31 Sexual Orientation and Gender Identity Conversion Practices](#).

I hope the information shared above provides clarity on my role, responsibilities and obligations as the Commissioner for Children and Young People for Tasmania. Further, I trust the information will provide further insight to the obligations of State signatories to the

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<sup>8</sup> Article 12 United Nations [Convention on the Rights of the Child 1989](#)

<sup>9</sup> Ibid, Article 6

<sup>10</sup> Ibid, Article 18

<sup>11</sup> [Australian Standards of Care and Treatment Guidelines: For trans and gender diverse children and adolescents version 1.3](#)

<sup>12</sup> Paragraph 18, Committee on the Rights of the Child, [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#)

<sup>13</sup> Ibid, para 22

<sup>14</sup> Ibid, para 23

<sup>15</sup> Ibid, para 34

<sup>16</sup> Ibid



United Nations Convention on the Rights of the Child, such as Australia, and the evidence base informing my views.

Communications such as yours are very important because they help to inform my advocacy in relation to the safety and wellbeing of children and young people in Tasmania generally. I therefore thank you for sharing your views and bringing your concerns to my attention.

Kind regards

A handwritten signature in black ink, appearing to read 'L. McLean'.

**Leanne McLean**  
Commissioner for Children and Young People