

## Consultation with Commissioner for Children and Young People (Teams 10/07/2023 10-10.30AM)

Attendees: Leanne McLean (Commissioner for Children and Young People), Tim Ferguson (Policy Officer), Yvette Maker (UTAS/TLRI)

- YM explained that we could treat Leanne and Tim's comments as a submission, which could be either standard (quoted/cited in the document with attribution), anonymous (quoted/cited in the document without attribution) or confidential (treated as background information only).
- LM said she is always happy to be quoted although much of what she expected to say would be more by way of background and posing questions to the TLRI about the scope and content of the project.
- LM noted that they have long had a collegial relationship with the TLRI and would be happy for us to come back to them with follow-up questions.
- LM said that the implications for children and young people are massive and complex when we think about privacy.
  - The Issues Paper does not delve into the world of children and privacy. It is almost a rabbit hole of its own. There is an entire body of work requiring exploration on the new paradigm of privacy for young people who have grown up in a world that's online, which sets up a different paradigm from the beginning.
  - This is a scope issue for the TLRI – how far do you want this go in terms of children and the right to privacy?
- YM said that we are open to hearing input on scope and noted that other developments, such as the Federal review of the Privacy Act, will be incorporated into the final report.
- LM said the local context is also very interesting at the moment.
  - The Commission of Inquiry will release their findings at the end of the year (privacy and information sharing have been contentious issues)
  - The government has committed to a review of the *Children, Young Persons and Their Families Act 1997* (which was touched on in the Issues Paper)
  - The government has committed to a review of the *Youth Justice Act*
  - The CYPF Act and the YJ Act both touch on PIPA.
- LM said one issue worthy of particular consideration is the new paradigm of privacy for young people, and within that, issues for particularly vulnerable groups (children in the youth justice system and children and young people in the care system).
  - The CYPF Act gives LM particular functions around children's rights – one principle is to give consideration to the *Convention on the Rights of the Child* (CRC) and help the state uphold its obligations under the CRC. This means considering the international human rights position on children's privacy. The child has a right to privacy, which means having

their own things, having a private space, and that private information about them is only share where it is necessary and the person has a right to know).

- People providing care need to know information about a child in order to develop therapeutic care plans, but information is often not shared due to privacy – the question is whether that is always in the child’s best interests.
  - How much do we share with people to ensure we uphold the child’s right to privacy and their right to safety?
- YM asked for LM’s view on a legislated right to privacy.
    - LM said supportive as long as it does not impede on the right to be safe.
    - LM said the right to privacy is more complicated in relation to children who operated in a world where adults help them uphold their rights.
    - LM said this is an area that the Commission of Inquiry has had to grapple with.
  - LM said another element is the concept of victim history, and the way sharing children’s victim history in child protection and youth justice decisions can influence their wellbeing and the actions of the people caring for them.
    - TF said he previously worked in Queensland the legislative context there is different. There are a number of protections included in the legislation that is fortified with significant penalties and capture more behaviours that put children at risk.
    - TF explained the issue is about protecting the child’s reputation, which means considering the flow of information in the child’s own community, family and care environment – information is so liable to get out and the child can be traumatised or re-traumatised. TF thought that it might be (or historically was) defamatory for people to be publicly identified as having been raped.
    - TF said Queensland law also protects the child protection history of a child and their parents – it is an offence to publish information that the parent or child has had any involvement in child protection, that they have an order on them etc.
    - LM said we have similar protections in Tasmania but don’t think penalties are as strong.
  - LM said there are similar issues where a child is involved in troubling (?) behaviour which may also be criminal behaviour because age of responsibility is 10 – this may also be disclosed.
    - Where a young person has been detained it may be very traumatic for this to be reported in the media. The young person will be de-identified in the media report (and the Mercury turns off comments on such stories) but once it gets to social media, people will comment and the child’s identity will often be disclosed or apparent. This affects the child’s ability to rehabilitate, move on etc.
  - LM said another area in youth justice is that the Department is currently investigating body worn cameras for children. CCTV cameras are now the norm for that environment, there are privacy concerns relating to storage and access to those materials in the future.
    - E.g. the Commission of Inquiry has a wide scope of power to obtain evidence. If we end up with another inquiry in 15 years, if a person mentions an incident when they were a young person and the inquiry seeks footage, who owns it, who can access it?
    - LM said she is not sure we have a rights-based framework. If we did, this would give context for her to say she is comfortable with the introduction of body-worn cameras (which have the advantage of recording audio). Currently she has said she is only comfortable with a trial.

- LM observed that they are raising more questions than answers. LM said she and TF would be happy to have a further discussion in future once these questions have been considered.
  - The Commissioner would not have capacity to do a full privacy analysis but could flesh out relevant matters in another meeting.
- TF mentioned some relevant documents/information:
  - CRC General Comment no. 25 on children's rights in a digital environment. This is a useful and rich document. It does have a lot of focus on private entities. The PIP Act obviously has limited scope there.
  - Sections 188 and 189 of the *Child Protection Act* of Qld.
    - Section 188 specifies that penalties apply to any third party receiver of information (compared to limited scope of PIPA)
    - Section 189 addresses parents who might have grievance and reveal information about child (in care).
  - Penalties for corporations breaching in Tasmania are very tiny (cf Queensland where they are still a drop in the ocean but larger) – e.g. the Courier Mail could be up for a much higher penalty than the Mercury.
    - Penalties very limited, probably seen as a cost of doing business by media – e.g. the case of four girls subject of action under *Hague Convention on the Civil Aspects of International Child Abduction* whose photos were published in the front of the Courier Mail, there was a fine issued but it was probably nothing for the paper.
- LM said some of these issues will be taken up in the review of the CYPF Act.
  - That review has been intentionally delayed to enable the Commission of Inquiry to report, expect that won't ramp up until late next year/early next year. The TLRI report could therefore be taken into consideration.
  - TF said the review probably won't report until the end of 2024.
- LM said one final thing that she must mention in her capacity as Commission for Children and Young People: if the TLRI does decide to delve more into the space of children and privacy, she encourages use of an engagement mechanism for children so we can really understand the implications of privacy in their lives.
- TF mentioned that the General Comment of the CRC begins with a useful observation that children really embrace technology and there is a need to balance opportunities and risks – it is fraught.
- LM mentioned that it might be useful to consult with the eSafety Commissioner – would be an interesting person on this.
- YM thanked LM and TF and said she would be in touch with any follow-up questions.