



Tasmanian Council of Social Service Inc.

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# Youth Justice Blueprint

*December 2023*



**INTEGRITY  
COMPASSION  
INFLUENCE**



INTEGRITY  
COMPASSION  
INFLUENCE

## About TasCOSS

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TasCOSS's vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

Please direct any enquiries about this submission to:

Adrienne Picone

Chief Executive Officer

*Phone Number:* (03) 6231 0755

*Email Address:* [adrienne@tascoss.org.au](mailto:adrienne@tascoss.org.au)

## Introduction

TasCOSS welcomes the opportunity to provide further feedback to the Department for Education, Children and Young People ('the Department') in relation to the updated Draft Youth Justice Blueprint 2024-2034 ('the Draft Blueprint').

In responding to the latest iteration of the Draft Blueprint, we highlight our previous responses to the Youth Justice Reform discussion paper released in 2022,<sup>1</sup> the earlier version of the Draft Blueprint,<sup>2</sup> and our recent written submission and oral evidence provided to the Legislative Council Inquiry into Adult Imprisonment and Youth Detention in Tasmania.<sup>3</sup>

We welcome some of the changes to the Draft Blueprint, including the following:

- Inclusion of recommendations from the Commission of Inquiry Report;
- Recognition of the role played by families, communities and society as a whole in relation to child and youth wellbeing as one of the key principles underpinning the Draft Blueprint;
- Inclusion of more specific details or objectives under some strategies – for example, *Strategy 4: Integrate and connect whole-of-government and community service systems* includes additional objectives of 'clarity of roles and responsibilities for agencies and organisations involved in the delivery of services to children and young people' and 'appropriate and timely information sharing'; and
- Recognition of the need for cultural change within the youth justice system to create environments that are safe for children and young people.

As raised in our response to the earlier version of the blueprint, it is difficult to provide comprehensive feedback on the potential impact of the Draft Blueprint in the absence of clear and prioritised actions, as well as information about how progress towards actions will be measured. The recently released report ('the Commission of Inquiry Report') from the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings ('the Commission of Inquiry') indicates a draft action plan exists and was provided to the Commission of Inquiry for consideration. We have not received a copy of any action plan and are unaware of any consultations on the plan provided to the Commission of Inquiry. The Draft Blueprint also does not include detailed information of any projects, initiatives or changes currently underway.

The Draft Blueprint was provided to us as an embargoed copy which was not to be circulated to other organisations or individuals, and feedback was required within a fortnight of our receipt of the Draft Blueprint. This response has therefore been prepared without any consultation with our members or other key stakeholders and under significant time constraints.

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<sup>1</sup> TasCOSS, Submission to Tasmanian Government, 'Reforming Tasmania's Youth Justice System' (March 2022).

<sup>2</sup> TasCOSS and Create Foundation, Submission to the Department of Education, Children and Young People, 'Youth Justice Blueprint' (December 2022).

<sup>3</sup> TasCOSS, Submission to Legislative Council Parliamentary Committee, 'Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters' (April 2023).

## Key Issues Arising from the Draft Blueprint

### 1. Reduce involvement in the criminal justice system

We believe Tasmania is well positioned to lead the country in criminal justice reform and, in this case, implementing evidence-based and innovative youth justice reform. As one of the smallest jurisdictions, we can draw upon the very best of our local research, such as that of former Attorney-General Vanessa Goodwin, which recognises the majority of crime (including youth crime) is attributed to a relatively small number of families.<sup>4</sup> This notion is further evidenced by recent statements from Tasmania Police confirming most youth crime is perpetrated by a small and identified group of individuals.<sup>5</sup> A pragmatic and evidence-based approach therefore should be to focus our resources on this cohort.

We continue to recommend the inclusion of a strategy specifically focused on reducing the involvement of children and young people within the criminal justice system, ideally included as the first strategy of the Draft Blueprint. Although the Draft Blueprint states that the Government's goal, 'is to reduce the involvement of children and young people in the youth justice system', this is still not explicitly included as a key strategy, despite recognition of the need to 'divert' children from the formal system within the Draft Blueprint, and clear and consistent evidence of the ongoing negative impacts of early involvement with the criminal justice system.<sup>6</sup>

This additional strategic approach could include specific objectives targeted towards the reduction of criminal justice involvement, including the following:

- ***Raising the age of criminal responsibility and the age of detention***

The Commission of Inquiry Report recommended raising the age of criminal responsibility to at least 14 and the age of detention to at least 16,<sup>7</sup> without exceptions for particular offences.<sup>8</sup> Although references to raising the age of both criminal responsibility and detention are included in the Draft Blueprint, it is not included as an objective. We believe it should be included and a specific timeframe should be given.

We note that although the Draft Blueprint states the Commission of Inquiry 'characterised this as a long-term reform, with a suggested implementation deadline of July 2029', we have been unable to find any reference to a long-term timeframe for this reform in the section of the Commission of Inquiry Report covering this issue. We strongly recommend urgent steps are taken

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<sup>4</sup> See Dr Vanessa Goodwin, Tasmanian Institute of Law Enforcement Studies, 'TILES Briefing Paper No.8: The Concentration of Offending and Related Social Problems in Tasmanian Families' (December 2008); Goodwin, V and Davis, B, Australian Institute of Criminology, 'Crime families: Gender and the intergenerational transfer of criminal tendencies' (May 2011).

<sup>5</sup> Lucy MacDonald, Surge in repeat youth crime worries Tasmania Police (ABC News, 8 May 2023), accessed at <https://www.abc.net.au/news/2023-05-08/surge-in-youth-crime-repeat-offenders-tas-police-worried/102316044>.

<sup>6</sup> For example, Victorian Aboriginal Legal Service, 'Submission to Council of Attorney Generals (COAG) Age of Criminal Responsibility Working Group' (February 2020), 15-16.

<sup>7</sup> Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse: Final Report (August 2023), Volume 5 (Book 3): Chapter 12 — The way forward: Children in youth detention, p80.

<sup>8</sup> Ibid, 79.

by the Tasmanian Government to align our criminal justice system with other Australian states and territories who have committed to reform and progressed urgent changes.

- ***Reviewing of existing summary offences to progress the decriminalisation of certain activities as supported by research and evidence from other jurisdictions***

TasCOSS strongly supports a comprehensive review of summary offences to identify opportunities to further reduce the criminal justice involvement of young people, particularly those already experiencing disadvantage.

One example is the decriminalisation of drug use and possession in Tasmania as a practical and evidence-based approach to reduce involvement in the criminal justice system, and to respond to drug use and possession in a way that is aligned with a public health model.<sup>9</sup> TasCOSS has previously advocated for the adoption of a decriminalisation model in Tasmania,<sup>10</sup> which is supported by a number of Tasmanian community organisations, including Community Legal Centres Tasmania,<sup>11</sup> the Social Action and Research Centre (SARC) at Anglicare Tasmania,<sup>12</sup> and the Alcohol, Tobacco and other Drugs Council of Tasmania (ATDC).<sup>13</sup> This approach is also aligned with other Australian jurisdictions such as the Australian Capital Territory,<sup>14</sup> and proposed reforms in Queensland.<sup>15</sup> Recent research also shows there is significant community support for the decriminalisation of drug use and possession.<sup>16</sup>

Public space offences are another area where reform could have a significant positive impact on young people. Other Australian jurisdictions abolished offences such as public drunkenness in recognition of the disproportionate impact of these offences on communities experiencing marginalisation, particularly Aboriginal people.<sup>17</sup> A group of community organisations, including

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<sup>9</sup> TasCOSS, Submission to Legislative Council Parliamentary Committee, 'Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters' (April 2023), 15.

<sup>10</sup> Ibid, 15; TasCOSS, Submission to Department of Health, 'Tasmanian Drug Strategy' (August 2023), 5-6.

<sup>11</sup> Bartl, B, Community Legal Centres Tasmania, 'The Case for a Health Focused Response to Drug Use in Tasmania's Legal System' (January 2022).

<sup>12</sup> Social Action and Research Centre, Anglicare Tasmania, 'Action for a healthier community: an effective response to illicit drugs' (2023).

<sup>13</sup> Alcohol, Tobacco and other Drugs Council Tasmania, 'Decriminalising personal use: position paper' (December 2022).

<sup>14</sup> ACT Government, [https://www.cmtedd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/rachel-stephen-smith-mla-media-releases/2022/act-to-decriminalise-small-amounts-of-illicit-drugs](https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rachel-stephen-smith-mla-media-releases/2022/act-to-decriminalise-small-amounts-of-illicit-drugs).

<sup>15</sup> Jemima Burt, 'Queensland is to relax its drug laws, even for ice and heroin. How could it affect you?' ABC News (22 February 2023) accessed at <https://www.abc.net.au/news/2023-02-22/queensland-illicit-drug-law-changes-three-strikes/102005684>.

<sup>16</sup> Weatherburn D, Alexeev S & Livingston M, 'Changes in and correlates of Australian public attitudes toward illicit drug use' Drug and Alcohol Review (July 2022), 41, 1029–1040, accessed at [https://www.researchgate.net/profile/Sergey-Alexeev-4/publication/357390147\\_Changes\\_in\\_and\\_correlates\\_of\\_Australian\\_public\\_attitudes\\_toward\\_illicit\\_drug\\_use/links/63ca06336fe15d6a5731fd8a/Changes-in-and-correlates-of-Australian-public-attitudes-toward-illicit-drug-use.pdf](https://www.researchgate.net/profile/Sergey-Alexeev-4/publication/357390147_Changes_in_and_correlates_of_Australian_public_attitudes_toward_illicit_drug_use/links/63ca06336fe15d6a5731fd8a/Changes-in-and-correlates-of-Australian-public-attitudes-toward-illicit-drug-use.pdf).

<sup>17</sup> Public intoxication was decriminalised in Victoria from 7 November 2023 – see <https://www.health.vic.gov.au/alcohol-and-drugs/public-intoxication-reform>; Expert Reference Group on Decriminalising Public Drunkenness, 'Seeing the Clear Light of Day: Report to the Victorian Attorney-General' (August 2020); Parliament of Victoria, Legislative Council Legal and Social Issues Committee, 'Inquiry into Victoria's criminal justice system: Volume 1' (March 2022), 478-480.

TasCOSS, recently supported the abolition of the offence of begging,<sup>18</sup> which disproportionately impacts people experiencing homelessness (a key issue for young Tasmanians). A recent inquiry into the criminal justice system in Victoria also recommended a review of all summary offences,<sup>19</sup> and a similar review in Tasmania could identify areas where reform could benefit children and young people.

- ***Inclusion of strategies to reduce the involvement of Aboriginal children in the child safety and youth justice systems***

The Draft Blueprint recognises that Aboriginal children are overrepresented in the criminal justice system in Tasmania,<sup>20</sup> but does not include objectives to address this overrepresentation. As previously noted, the Blueprint should echo the commitments made by the Tasmanian Government to address the overrepresentation of Aboriginal young people in the criminal justice system in their Closing the Gap report,<sup>21</sup> which includes an identified target of reducing the number of children aged 10-17 years in detention by 30%.<sup>22</sup> It should also contain strategies and targets relating to other priority areas for reform to better support Aboriginal children and families, such as the rate of adult Aboriginal incarceration and child protection involvement.

The Tasmanian Government should incorporate the recommendations of Aboriginal community organisations working in the areas of youth justice and child protection into the identified strategies and targets included in the plan, including the inclusion of ‘a rebuttable presumption that the best interests of the Aboriginal child is inextricably linked to the best interests of the Aboriginal community, and the best interests of both lies in keeping Aboriginal children within that community’,<sup>23</sup> as well as formal recognition that ‘the initial decision to remove a child from his or her family and community is the decision of greatest consequence and should require the decision maker to be satisfied beyond reasonable doubt that the safety and well-being of the child requires it’.<sup>24</sup> The Draft Blueprint should also include specific strategies and targets (including additional funding measures) to support existing Tasmanian Aboriginal organisations in their work with their communities, as the people and organisations best placed to identify and respond to the needs of children and families.

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<sup>18</sup> TasCOSS recently signed on to a letter (prepared by Community Legal Centres Tasmania and co-signed by other Tasmanian community organisations) in support of the Police Offences Amendment (Begging Repeal) Bill 2023 tabled by the Tasmanian Greens – information about the Bill can be accessed here: <https://tasmps.greens.org.au/media-release/greens-move-decriminalise-begging>.

<sup>19</sup> *Recommendation 60: That the Victorian Government undertake a review of relevant legislation, including the Summary Offences Act 1966 (Vic), in relation to offences often linked to underlying forms of disadvantage. Such a review should assess which indictable offences could appropriately be reclassified as summary offences, and whether any summary offences are appropriate for decriminalisation* - Parliament of Victoria, Legislative Council Legal and Social Issues Committee, ‘Inquiry into Victoria’s criminal justice system: Volume 1’ (March 2022), p480.

<sup>20</sup> The rate of detention for Aboriginal children in 2019-2020 was 10.8 per 10,000 young people, compared to 1.9 per 10,000 for non-Aboriginal children. This means Tasmanian Aboriginal children are five times more likely to be in detention. Aboriginal children are also more likely to be subject to supervision in the community: in 2019-2020, 63.4 per 10,000 Aboriginal youth were subject to supervision, compared to 13.7 for non-Aboriginal young people.

<sup>21</sup> Tasmanian Government, ‘Closing the Gap: Tasmanian Implementation Plan 2021-2023’.

<sup>22</sup> *Ibid*, 17.

<sup>23</sup> *Ibid*, iii.

<sup>24</sup> *Ibid*.

- ***Exploring options to reduce the number of children on child safety orders who become or remain involved in the criminal justice system***

Although most children who are involved with the child protection system do not engage in offending behaviours, there are demonstrated links between the offending of young people and early childhood experiences of trauma, which means many children who are involved in the child protection system are presenting with risk factors for offending.<sup>25</sup> This is a particular issue for Tasmania as our rates of children in out-of-home care are higher than the national average,<sup>26</sup> which may be driving involvement in the criminal justice system.

Many children first become involved in the criminal justice system due to problems relating to their experiences in care, including police becoming involved when children are reported as missing, were understood to be missing by residential care workers, or had run away from their out-of-home care placements, at times due to safety concerns.<sup>27</sup> Reports have highlighted many parts of the out-of-home care experience which may underly or contribute to offending,<sup>28</sup> such as difficulties accessing specialist support services, experiencing further trauma whilst in care, and being co-located with other ‘high risk’ and traumatised young people. Research demonstrates that many children residing in out of home care also face criminal sanctions for behaviours which would not necessarily trigger a police response if they had occurred in a home environment.<sup>29</sup> The Commission of Inquiry also raised significant concerns about the prevalence of harmful sexual behaviours in residential care.<sup>30</sup> Rather than criminalising children who are in environments where they are at risk of further trauma or harm, TasCOSS asserts we should be directing additional resources towards providing them with additional supports to reduce and eliminate these risks.

The Draft Blueprint should include strategies addressing the underlying causes contributing to the relatively high number of Tasmanian children in care, as well as the issues which may result in the criminalisation of young people in out-of-home care. This could include:

- Greater investment in targeted interventions such as family support services;
- Strategies to decriminalise problematic behaviours in the residential care setting; and
- Training for all workers across the child safety system (including both Government and non-Government services) in trauma-informed care and responses, to support all staff to engage therapeutically to manage challenging behaviours.<sup>31</sup>

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<sup>25</sup> Tasmania Legal Aid (2021), ‘Children First: Children in the child safety and youth justice system’.

<sup>26</sup> Productivity Commission (2023), ‘Report on Government Services 2023 – 16A Child Protection Services’, Table 16A.2

<sup>27</sup> For example, see Create Foundation (2018), ‘Youth Justice Report: Consultation with young people in out-of-home care about their experiences with police, courts and detention’, p3-4.

<sup>28</sup> Victoria Legal Aid (2016), ‘Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system’, p7.

<sup>29</sup> Yoorrook Justice Commission, ‘Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems (2023), pp195-196.

<sup>30</sup> See, for example, Commission of Inquiry into the Tasmanian Government’s Responses to Child Sexual Abuse: Final Report (August 2023), Volume 4: Chapter 9 — The way forward: Children in out of home care, pp194-204.

<sup>31</sup> For example, Catholic Care offers specialist ‘Therapeutic Crisis Intervention’ training – details can be found here: [https://rccp.cornell.edu/TCI\\_LevelOne.html](https://rccp.cornell.edu/TCI_LevelOne.html).

## 2. A broader approach to diversion

Whilst we support the inclusion of a strategy focused on diversion, we believe 'Strategy 2: Ensure diversion from the justice system' is early and lasting should also include objectives targeted towards pre-charge, pre-court interventions as well as expansion of opportunities to engage in formal diversionary processes under the *Youth Justice Act 1997*.

We believe Strategy 2 should also include objectives relating to early therapeutic engagement with children and families to prevent them from entering the criminal justice system in the first instance. This could include the development and implementation of a multidisciplinary panel, similar to what has been recommended in the ACT to engage therapeutically with children whose behaviour will not attract a criminal justice response once the minimum age of criminal responsibility has changed.<sup>32</sup> Such a panel would provide a central intake point for information and support to address the needs of young people and could sit alongside the formal criminal justice system. It would give agencies such as schools, police or service providers the opportunity to refer children who are attracting attention or raising concerns due to challenging behaviours, and allow for a multi-agency response to provide supports or interventions as needed.

The Draft Blueprint acknowledges a decrease in the number of diversions offered by Tasmania Police. To address this, we strongly support the inclusion of targets for early diversionary referrals by police (such as informal cautions, or referrals to community organisations for external support). Police should be given additional training and education in community support programs and initiatives, to encourage consideration of whether diversion might be appropriate and support more referrals from police to community organisations. We also strongly support the implementation of early intervention policing models, to mandate pre-charge consultations with family and/or community to identify any support needs, and to provide police with an opportunity to obtain information about a child's background and circumstances before making a decision about whether to formally charge them.<sup>33</sup>

This strategy would also be strengthened by the inclusion of objectives relating to legislative reform, including legislative provisions mandating police consideration of diversion as the most appropriate response for child or youth offending and the removal of offences for which diversionary responses are prohibited,<sup>34</sup> as recommended by the Commission of Inquiry (see Recommendation 12.13).

As highlighted in our earlier submission, objectives relating to police decision-making should also be included and could include the following:

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<sup>32</sup> McArthur, M, Suomi, A, Kendall, B, 'Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory: Final Report' (2021), 51.

<sup>33</sup> A similar model has been adopted in New Zealand - for an overview of this model, see New Zealand Government, Ministry of Justice, 'Youth Crime Action Plan 2013 – 2023' (2013); anecdotal evidence about rates of youth being charged is also discussed here: [Lessons from NZ on what works to stop children and young people getting caught up in the criminal justice system – JYP Network](#)

<sup>34</sup> The definition of 'prescribed offences' is found in *Youth Justice Act 1997 (Tas)* s3 (1).



- Amendments to the police diversionary framework to focus on the needs of children and young people, rather than a focus on the alleged offending, to determine whether diversion is appropriate;
- Initiatives to promote non-prosecutorial options for young people within Tasmania police;
- The development of specialist policing divisions or units to better support young people,<sup>35</sup> such as the New Zealand Police Youth Aid section;<sup>36</sup>
- Additional training for police about youth specific trauma-informed practice, complex needs, and de-escalation, as well as more information and education about diversion and support services, including their aims and benefits to increase staff's motivation to refer young people;
- Mandatory record-keeping and disclosure of decisions made relating to diversionary options for young people, to improve equitable access to relevant programs and provide greater accountability in relation to decision-making processes; and
- Greater involvement of Aboriginal and Torres Strait Islander elders and communities in decision-making about diversionary options for young people (including whether they should be charged).

### 3. Embedding therapeutic practice throughout the criminal justice system

TasCOSS strongly supports the introduction of a specialist children's court division in Tasmania and are pleased this recommendation has been included in the Draft Blueprint. Consistent with our previous submissions, we also strongly recommend this court or 'list' have embedded therapeutic justice principles and practices, including a 'problem-solving' approach, less formal and more developmentally appropriate court environment, training for all court staff (including judicial officers) in trauma-informed and developmentally appropriate engagement with children, and case management models to support children with complex needs. We would strongly recommend a community-based youth court (using the Neighbourhood Justice Centre in Victoria as a model) with co-located community services to provide wraparound supports to children and families.

The Draft Blueprint flags the need for legislative reform to ensure legal processes (including bail and sentencing) are appropriate and effective for children. The recommendations in the Commission of Inquiry Report also highlight the need for extensive legislative reform in re-shaping the culture and impact of the criminal justice system. TasCOSS strongly supports the prioritisation of legislative changes recommended by the Commission of Inquiry and recommends this reform be progressed as a matter of urgency. This includes (but is not limited to) the following:

- Changes to the *Youth Justice Act 1997* to ensure rehabilitation is the primary sentencing purpose for a child and imprisonment can only be imposed as a last resort (Recommendation 12.15 of the Commission of Inquiry);
- Changes to the *Youth Justice Act 1997* to mandate the consideration of additional factors (including the consequences of intergenerational trauma, historic discrimination and systemic

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<sup>35</sup> Recommended in Victorian Aboriginal Legal Service, Submission to the Inquiry into Victoria's Criminal Justice System (2021), 12.

<sup>36</sup> For an overview of the policing practices in New Zealand, see New Zealand Government, Ministry of Justice, 'Youth Crime Action Plan 2013 – 2023' (2013), 21-27.

racism) when sentencing an Aboriginal child (Recommendation 12.15 of the Commission of Inquiry);

- Additional legislative provisions in relation to bail outlining factors to be considered by bail decision-makers, and prohibiting a refusal of bail on the ground that a child does not have appropriate accommodation (Recommendation 12.14 of the Commission of Inquiry); and
- Raising the minimum age of criminal responsibility and detention as outlined above (Recommendation 12.11 of the Commission of Inquiry).

Although we strongly support the expansion of programs to address particularly challenging behaviours, we are concerned that the Draft Blueprint's focus on the creation of a specific harmful behaviours unit (within the youth justice facility or facilities) will not provide opportunities for children to receive early, targeted therapeutic interventions for these behaviours. It would be a perverse outcome for children to be more likely to be sentenced to a term of imprisonment due to the availability of these services in the custodial environment. TasCOSS strongly recommends the expansion of community-based programs and supports, including specialist behavioural change programs already working to support Tasmanian children and their families.

#### **4. Mapping of agencies, initiatives and responsibilities**

Although the Draft Blueprint acknowledges the need for collaborative work across Government departments, agencies and the community sector, recent communication with the Department (including a meeting attended by TasCOSS and other community service organisations with Minister Jaensch) indicates a lack of awareness of understanding from the Government in relation to community-based services, their organisational capacity and what support they might need to implement change. The Department has raised with us the need for a comprehensive 'mapping' of the sector to clarify what work is already being done, highlight gaps in current or projected service provision, and identify strategies to address these gaps and strengthen service provision to children and families. This mapping could also assist with some of the objectives outlined in Strategy 4: Integrate and connect whole-of-government and community service systems (for example, the objective 'clarity of roles and responsibilities for agencies and organisations involved in the delivery of services to children and young people'). As flagged by the Commission of Inquiry Report, there have been numerous reports into the youth justice and youth detention systems in Tasmania,<sup>37</sup> so some work on understanding the service system has presumably been undertaken. If more work needs to be done to understand existing services and initiatives, this should be included in the Draft Blueprint, either as a separate appendix, or in the sections relating to specific strategies (for example, a 'mapping' of all existing diversionary programs at the end of Strategy 2).

We reiterate the need for engagement across the community sector to inform the development and implementation of the Draft Blueprint and any other changes to keep children and families safe. We strongly recommend the Government convene a working group – with members from civil society organisations, community practitioners and experts in the fields of child safety and youth justice – to

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<sup>37</sup> These were outlined in Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse: Final Report (August 2023), Volume 5 (Book 1): Chapter 10 — Background and context: Children in youth detention, pp42-63.

progress the reform we know is so urgently needed. This should include ongoing discussions of risk management and how community organisations can be supported to manage risks and workplace obligations (such as the health and wellbeing of staff).

## 5. A focus on cultural change

We strongly support the inclusion of a strategy focused on training and support for staff working with children in the youth justice system which includes an objective of supporting cultural change. This was a key issue highlighted in the Commission of Inquiry Report:

*'System reform is urgently needed. We acknowledge that transforming a youth detention system that has been resistant to change over many years is not straightforward. It requires radical cultural change, strong leadership and a long-term commitment from the Government. It may take time, but we consider it is achievable'.<sup>38</sup>*

We recommend rewording Strategy 5 to more accurately reflect the scope of changes needed to create the crucial changes recommended by the Commission of Inquiry. Alongside more concrete objectives relating to the training and support needed for the workforce (such as ensuring staff 'are appropriately qualified, trained and supported to deliver a therapeutic model of care to children in detention'),<sup>39</sup> the Draft Blueprint should also include objectives relating to the need for increased safety in the custodial setting and the elimination of practices demonstrated to cause or exacerbate harm.

TasCOSS has publicly supported the Commission of Inquiry's recommendation to immediately close Ashley Youth Detention Centre (AYDC), given the legacy of abuse suffered by children at this facility and the ongoing concerns highlighted in the Commission of Inquiry Report relating to the safety and wellbeing of detained children. We believe the Government should immediately begin the process of transitioning all currently detained children into community-based care, supported by Tasmanian community organisations (who already provide services to children and their families across the state, including children who are already in contact with the criminal justice system). To facilitate this planning process, we strongly recommend the Government immediately convene a working group of community organisations to identify the needs of the children who are currently detained at AYDC and prepare a plan for their ongoing care in the community.

Practices which continue to compromise the safety of children in the custodial environment must be urgently reviewed. No detained child should be subject to ongoing practices or procedures which disproportionately compromise their safety and wellbeing, such as inappropriate personal searches, isolation or the use of force as a behaviour management strategy. We commend the Department for already responding in relation to searches and implementing legislative reform to prevent the routine strip searching of children in custody.<sup>40</sup> We strongly recommend the Government continue this progress

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<sup>38</sup> Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse: Final Report (August 2023), Volume 5 (Book 3): Chapter 12 — The way forward: Children in youth detention, p2.

<sup>39</sup> Ibid – see also Recommendation 12.9 at pp72-74.

<sup>40</sup> Youth Justice Amendment (Searches in Custody) Act 2022.

and include in the Draft Blueprint further objectives relating to the elimination of harmful practices, such as the following recommended by the Commission of Inquiry Report:

- Changes to the *Youth Justice Act 1997* to clarify that confining children in their cell/unit and preventing them from having contact with other detainees (other than overnight) constitutes isolation, prohibiting isolation as a form of punishment, and stipulating that isolation is a measure of last resort (Recommendation 12.32);
- Changes to the *Youth Justice Act 1997* to prohibit the use of force as a punishment for children (Recommendation 12.33);
- Update the Use of Isolation and Use of Force procedures within the Department (Recommendations 12.32 and 12.33);
- Require the recording and reporting of information relating to isolation (Recommendation 12.32) and use of force (Recommendation 12.33); and
- Providing regular joint training and professional development for staff in relation to laws, standards, policies and procedures relating to personal searches, use of force and isolation (Recommendation 12.34).

As recommended by the Commission of Inquiry, the Department must also commit to ongoing evaluation relating to the progress of creating meaningful and lasting change in the culture at AYDC (and any future facilities where children may be detained). This includes the development of monitoring and evaluation measures to track progress towards cultural change, data collection and a robust governance structure to monitor the youth justice system (Recommendation 12.7 of the Commission of Inquiry Report).

TasCOSS believes cultural change would be greatly supported by enhanced oversight mechanisms relating to both youth justice and youth detention. We strongly recommend the Draft Blueprint recognise the positive duty of the Government to keep children safe under international law, as well as objectives relating to strengthened oversight mechanisms as recommended by the Commission of Inquiry:

- Establishing and resourcing a new independent community visitor scheme to provide additional oversight of youth detention (Recommendation 9.34);
- Expanding the scope of the powers of the Tasmanian Commissioner for Children and Young People in relation to the monitoring and review of youth detention facilities (including adult prisons where children may be held) and ensuring their office is appropriately resourced to fulfill all their oversight functions (Recommendation 12.38); and
- Appointing child-specific National Preventative Mechanisms under OPCAT and provide adequate resourcing to allow them to perform their legislative duties (Recommendation 12.39).

## **6. A human rights approach to child safety and wellbeing**

While we support the inclusion of principles relating to child rights and participation in the Draft Blueprint, we believe these principles should be accompanied by concrete objectives designed to promote and protect these rights, as well as a clear acknowledgement of the Government's responsibilities and duties.

A rights-focused approach to youth justice and child wellbeing has been supported by key agencies working to support children and families. For example, the Tasmanian Commissioner for Children and

Young People has repeatedly highlighted the need for a rights-focused approach to all legislative reform involving the safety of young people within the criminal justice system.<sup>41</sup> The National Children's Commissioner has recently developed a Child Rights Impact Assessment tool,<sup>42</sup> to assist governments and policy-makers in assessing the potential impact of laws and policies on children's rights (including youth justice reforms). A recent report from Save the Children/54 reasons (an organisation running key community programs supporting children involved in the criminal justice system, such as the Reboot program) also outlines the need for a human-rights approach to youth justice and child safety reforms.<sup>43</sup>

Alongside the legislative and other reforms outlined above, TasCOSS is also strongly in favour of the introduction of a Tasmanian Charter or Rights or a Human Rights Act to further promote and protect the rights of Tasmanian children. We believe the introduction of an Act or a Charter will have a significant and positive impact on all Tasmanians, not only those who are or may be vulnerable to abuse, by promoting understanding and awareness of rights, putting rights at the centre of government decision-making, and providing tools to prevent and respond to injustice.<sup>44</sup> Experience from other jurisdictions indicates human rights legislation could have wide-ranging impacts, including encouraging a cultural change in attitudes and beliefs, improved accountability and transparency, greater community awareness and empowerment, and as a tool for legal and social advocacy.<sup>45</sup> The introduction of a Tasmanian Charter of Rights has been recommended by a number of legal and community organisations in Tasmania, including the Commissioner for Children and Young People (as outlined above) and the Tasmanian Law Reform Institute.<sup>46</sup>

Finally, a rights-centred approach would require ongoing and meaningful participation from children and young people, particularly those with a lived experience of criminalisation and/or incarceration. The Commission of Inquiry Report highlighted the need to strengthen children's participation in reforms to the justice and detention systems and included a recommendation to develop an empowerment and participation strategy, including the establishment of a permanent advisory group of children and young people with experience of the detention system, mechanisms to ensure detained children are aware of their rights, and regular monitoring and evaluation of all participation measures. The Draft Blueprint indicates the Government is supportive of this recommendation and approach, and we look forward to receiving more detailed information about strategies and initiatives to embed this recommendation into the Department's work in developing and implementing youth justice reforms.

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<sup>41</sup> See, for example, Commissioner for Children and Young People Tasmania, 'Submission – Tasmanian National Preventive Mechanism Implementation Project, Consultation Paper 2' (7 July 2023); Commissioner for Children and Families Tasmania, Submission to Department of Communities, 'Reforming Tasmania's Youth Justice System Discussion Paper' (21 March 2022).

<sup>42</sup> Australian Human Rights Commission, 'Safeguarding Children: A child rights impact assessment tool' (October 2023) – the tool can be accessed here: [https://humanrights.gov.au/sites/default/files/document/publication/cria\\_2023\\_-\\_standalone\\_assessment\\_tool\\_-\\_18\\_aug\\_2023\\_1.pdf](https://humanrights.gov.au/sites/default/files/document/publication/cria_2023_-_standalone_assessment_tool_-_18_aug_2023_1.pdf).

<sup>43</sup> Save the Children/54 Reasons, 'Putting children first: A rights respecting approach to youth justice in Australia' (April 2023).

<sup>44</sup> For example, see Human Rights Law Centre, 'Charters of Rights Make Our Lives Better: Here are 101 cases that show how' (June 2022), 2.

<sup>45</sup> For a general discussion of the impact of the Victorian charter, see Human Rights Law Centre, *Victoria's Charter of Human Rights and Responsibilities in Action: Case studies from the first five years of operation* (March 2012).

<sup>46</sup> Tasmanian Law Reform Institute, *A Charter of Rights for Tasmania* (2007), 1.