



Tasmanian Council of Social Service Inc.

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# Australia's Youth Justice and Incarceration System

*October 2024*



**INTEGRITY  
COMPASSION  
INFLUENCE**

## About TasCOSS

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TasCOSS' 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.

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# Introduction

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As the peak body representing community services and Tasmanians on low incomes, TasCOSS advocates for policies to support Tasmanians and their families and communities to live a good life. This includes a commitment to human rights principles and to ensuring our public systems and services are reflective of these principles. Our role is to advocate for fairness and justice for all Tasmanians, particularly those on low incomes or who may be experiencing marginalisation, as well as supporting our member organisations in the community services industry, many of whom provide services and support to Tasmanians who are involved in the criminal justice system.

TasCOSS has engaged in extensive advocacy relating to the rights of children and families who are involved in the criminal legal system. This advocacy has included:

- Submissions on proposed legislative and policy reform;<sup>1</sup>
- Participating in Tasmanian inquiries, including giving evidence at the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings ('the Commission of Inquiry'),<sup>2</sup> and making a submission to the Legislative Council Inquiry into Adult Imprisonment and Youth Detention ('the Legislative Council Inquiry');<sup>3</sup>
- Engaging in public advocacy around issues relating to youth justice;<sup>4</sup> and
- Providing advice and recommendations to the Government through project work.<sup>5</sup>

We strongly support the current inquiry into Australia's Youth Justice and Incarceration System ('the Inquiry') undertaken by the national Legal and Constitutional Affairs References Committee ('the Committee'). Whilst we have been engaged in advocacy and policy reform work at a state level, we recognise the urgent need for consistent practice and legislation across jurisdictions to better support children and their families, particularly those who are most at risk of involvement in the criminal legal and detention systems. We also believe the current trends and events in areas relating to youth justice and child rights across the nation demonstrate a clear lack of commitment from state and territory governments to engage in evidence-based reform, and we sincerely hope the Inquiry will result in leadership from the Australian Government in demanding compliance with our international obligations in relation to the rights of children, as well as the development of consistent, culturally safe and trauma-informed approaches to keeping both children and communities safe.

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<sup>1</sup> TasCOSS and CREATE Foundation (2022), Submission to the Tasmanian Government, 'Reforming Tasmania's Youth Justice System,' March; TasCOSS and CREATE Foundation, Submission to the Department of Education, Children and Young People (2022), 'Response to the Youth Justice Blueprint,' December.

<sup>2</sup> TasCOSS (2021), Submission to the Commission of Inquiry into the *Tasmanian Government's Response to Child Sexual Abuse in Institutional Settings*, April.

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

<sup>4</sup> For example, see Picone, A (2024), 'Believe children when they raise concerns about their care and wellbeing,' *The Advocate*, Launceston, 8 July; Picone, A & Burton, P (2023), 'No time to waste on children's safety,' *The Mercury*, Hobart, 16 December.

<sup>5</sup> TasCOSS is currently collaborating with the Tasmanian Government as part of a project relating to the implementation of all recommendations from *the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*.

TasCOSS' principal position is that the current Tasmanian criminal justice and imprisonment model is failing our communities, and that these failures are also evident in other jurisdictions across the country. We strongly believe the Australian Government must recognise and address the underlying factors contributing to growing imprisonment rates — particularly the rates of children and adults on remand — and implement measures to respond therapeutically to children who are involved in, or at risk of becoming involved in, the criminal justice system. The evidence shows that efforts and resources should be directed primarily at improving early intervention measures, as well as addressing systemic issues which may be contributing to rising imprisonment rates.

Our advocacy for reforms in this area is focussed on four key areas of urgent need:

- 1) Increased opportunities for early intervention to support children and families (both universal programs and initiatives to support those most likely to have interactions with the criminal legal system);
- 2) Legislative and policy changes to proactively reduce the number of children who are involved in the criminal legal system;
- 3) Measures to transform the criminal legal system to provide opportunities for therapeutic engagement with children and their families; and
- 4) Transformation of detention facilities and processes to prioritise ongoing connection with community and access to evidence-based, therapeutic supports

Our submission will provide a brief overview of factors influencing increases in the Tasmanian prison population, before focussing on proposed reforms to address the four key areas above. We will also address the issue of ongoing problematic public opinions relating to the young people involved in (or at risk of being involved in) the criminal justice system, and the role strong governments can play in shaping and transforming harmful narratives around youth offending, focussing on the positive impact of therapeutic approaches in promoting public safety and youth wellbeing.

### **Imprisonment in Tasmania**

As we have recognised in previous submissions, criminal justice policy generally must balance several objectives — including the need to protect the community or individuals from danger; rehabilitation of offenders; or to promote public confidence in the criminal justice system by being seen to respond appropriately to serious crime. However, the importance of 'rehabilitation' as a primary sentencing objective for children is, in our view, currently overlooked (in Tasmania and elsewhere), resulting in legislative and policy developments which are not meeting the aims of this objective.

Recent Tasmanian research shows that, despite youth crime rates falling in Tasmania and across Australia across the last decade,<sup>6</sup> a large number of Tasmanian children continue to be involved in the youth justice system, with recent statistics showing the number of Tasmanian children who are supervised in the community by Youth Justice is higher than the national average.<sup>7</sup> Recent media reports have raised

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<sup>6</sup> Sentencing Advisory Council (2021), 'Sentencing Young Offenders,' p. 4.

<sup>7</sup> In 2021-22, the national rate (per 10,000 young people aged 10-17) years was 10.7, whereas the Tasmanian rate was 11, higher than NSW, VIC, SA and the ACT. See Productivity Commission (2023), 'Report on Government Services 2023 — 17 Youth Justice Services,' Table 17A.1.

concerns about the high number of children who are involved in the system, particularly those children held in detention on remand.<sup>8</sup>

This is concerning in the Tasmanian context for several reasons. Firstly, research shows that any involvement in the criminal justice system — particularly early involvement - has a criminogenic effect on young people. While many people in the community may believe that a police or criminal legal response to problematic behaviour provides the ‘wake-up call’ that young people may need to be deterred from further offending, the evidence actually shows that this contact with the formal legal system is a predictive factor for ongoing problem behaviour and legal system involvement. Secondly, TasCOSS remains extremely concerned for the safety and wellbeing of children currently detained at Ashley Youth Detention Centre (‘AYDC’), particularly in light of recent reports which highlight the ongoing lack of therapeutic supports available to children at the facility,<sup>9</sup> and ongoing concerns about the impact of practices such as lockdowns.<sup>10</sup>

Our concerns relating to detention extend to the imprisonment of adults. As recent inquiries and research have demonstrated,<sup>11</sup> children of incarcerated parents or caregivers have significantly increased risk of being involved in the criminal legal or detention systems themselves.<sup>12</sup> This is an area of concern in Tasmania due to the current rates of imprisonment of adults. While the most recent ABS data shows a decrease in prison population over the past three years, the current number of prisoners in Tasmania is still significantly higher than 10 years ago (630 in 2022 compared to 494 in 2012 — a 28% increase).<sup>13</sup> This is resulting in significant costs, with the Tasmanian Government spending over \$93.9 million on prisons each year in Tasmania — \$334.64 per person per day (above the national average, and the second-highest expenditure per state following the ACT).<sup>14</sup> Despite these high costs, however, there is little evidence to show that prisoners in Tasmania are successfully rehabilitated — according to the Justice Reform Initiative (JRI), ‘prior imprisonment rates in Tasmania are at their highest level in more than a decade, rising from 60.9% of people in prison who have been in prison before in 2015 to 66.5% in 2020. This is above the national rate of 59.5%.’<sup>15</sup>

As in other states and territories, these are issues which affect all Tasmanians, but disproportionately impact Aboriginal and Torres Strait Islander people. Despite the well-evidenced, disproportionate impact of punitive criminal justice policies on Aboriginal and Torres Strait Islander communities, as well as the risks posed to these communities within the custodial environment, the incarceration rates of Tasmanian Aboriginal people continue to rise. The JRI in their 2021 report noted ‘[t]he Aboriginal and Torres Strait

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<sup>8</sup> Balen, C (2024), ‘High youth detention figure has Tasmanian children’s commissioner calling for action to get kids out of Ashley,’ *ABC News* (online, 22 May).

<sup>9</sup> Office of the Custodial Inspector Tasmania (2024), ‘Inspection of Youth Custodial Services in Tasmania: Youth Health Care Inspection Report 2023,’ 18 July, p. 8.

<sup>10</sup> *Ibid*, pp. 25-30.

<sup>11</sup> For example, see Parliament of Victoria (2022), Legislative Council, Legal and Social Issues Committee, ‘Inquiry into Children Affected by Parental Incarceration: Final Report,’ August.

<sup>12</sup> *Ibid*, pp. 31-32.

<sup>13</sup> Australian Bureau of Statistics (2023), ‘Prisoners in Australia 2022,’ Prisoner Characteristics, Table 15.

<sup>14</sup> The average expenditure per prisoner per day in Australia is recorded as \$294.90, whereas Tasmania’s expenditure is recorded as \$432.27; Productivity Commission (2023), ‘Report on Government Services 2023 — 8A Corrective Services,’ Table 8A.20.

<sup>15</sup> Justice Reform Initiative (2021), ‘State of Incarceration: Tasmania’s Broken Criminal Justice System,’ April, p.5.

Islander prison population has increased by 97% since 2010, compared to 7% for non-Indigenous people.<sup>16</sup> According to the Productivity Commission Aboriginal and Torres Strait Islander adults are approximately 4.7 times more likely than non-Aboriginal people to be in prison,<sup>17</sup> and Aboriginal and Torres Strait Islander children are approximately 4.5 times more likely to be in youth detention than non-indigenous children in Tasmania.<sup>18</sup> Even more concerning, the rates of imprisonment for both Aboriginal and Torres Strait Islander adults and children have recently increased, rather than decreased,<sup>19</sup> despite Tasmanian Government's stated aims under *Closing the Gap*.<sup>20</sup>

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<sup>16</sup> Justice Reform Initiative (2021), 'State of Incarceration: Tasmania's Broken Criminal Justice System,' April 2021, p. 1.

<sup>17</sup> Productivity Commission (2023), 'Report on Government Services 2023 — 8A Corrective Services,' Table 8A.6.

<sup>18</sup> Productivity Commission (2023), 'Report on Government Services 2023 — 17 Youth Justice Services,' Table 17A.5.

<sup>19</sup> For children and young people, the rate increased from 6.4 to 6.7 and for adults the rate increased from 761.0 to 796.1. See Productivity Commission (2023), 'Report on Government Services 2023 — 17 Youth Justice Services,' Table 17A.5.

<sup>20</sup> The Government has committed to reducing the rate of imprisonment of Aboriginal and Torres Strait Islander adults by 15%, and children by 30%. See Tasmanian Government (2020), '*Closing the Gap*: Tasmanian Implementation Plan 2021-23.'

## Key Areas for Urgent Reform

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Several recent reports have highlighted the underlying factors which are driving increases in the prison population (for both adults and children) and increasing the numbers of people involved with the police and legal systems. These factors include:

- Shifts in sentencing towards increasingly more punitive responses,<sup>21</sup> including mandatory sentencing regimes;<sup>22</sup>
- Increasingly punitive and restrictive bail laws;<sup>23</sup>
- Failure to address underlying factors which are driving involvement in the criminal legal system (such as poverty, disadvantage or homelessness); and<sup>24</sup>
- A shift towards punitive, criminal justice-focussed responses to issues, such as family violence, rather than investing in prevention and early intervention measures.

To shift towards therapeutic and evidence-based responses for children and families, we recommend focussing on the following four priority areas:

Increased opportunities for early intervention to support children and families (both universal programs and initiatives addressed towards those children and families who are most likely to have interactions with the criminal legal system)

**Increase opportunities for early intervention to support children and families (both universal programs and initiatives addressed towards those children and families who are most likely to have interactions with the criminal legal system)**

### ***Expansion of initiatives to address key risk factors for legal system involvement***

Crime is often presented as an individual issue which relates to a person (or group of people) choosing or deliberating engaging in problem behaviour. Yet decades of research demonstrate there are key underlying factors determining who becomes involved in the police and legal systems.<sup>25</sup> Recent research has highlighted the need for an evidence-based framework to address these socio-economic, environmental and political factors — in the way that governments have increasingly recognised and

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<sup>21</sup> Productivity Commission (2021), 'Australia's Prison Dilemma,' p. 28.

<sup>22</sup> Ibid, p. 11-12.

<sup>23</sup> Productivity Commission (2021), 'Australia's Prison Dilemma,' p. 11, pp. 39-41; Victorian Aboriginal Legal Service (2022), 'VALS Policy Brief: Fixing Victoria's Broken Bail Laws.'

<sup>24</sup> Wikström, P & Treiber, K (2016), 'Social Disadvantage and Crime: A Criminological Puzzle,' *American Behavioural Scientist* 60(10), pp. 1232-59.

<sup>25</sup> For example, see Productivity Commission (2021), 'Australia's Prison Dilemma,' pp. 19-22; Schetzer, L & Sotiri, M (2024), 'Policing Differently: How to Reduce Criminal Justice System Involvement and Incarceration,' Justice Reform Initiative; Baldry, E, et al. (2017), 'Cruel and Unusual Punishment: An Inter-Jurisdictional Study of the Criminalisation of Young People with Complex Support Needs,' *Journal of Youth Studies*.



sought to promote the ‘social determinants of health,’ criminal legal policy should also recognise the factors which are driving involvement in the legal and detention systems.<sup>26</sup>

In their article, ‘Who Does Australia Lock Up? The Social Determinants of Justice,’<sup>27</sup> Ruth McCausland and Eileen Baldry identify key risk factors contributing to what they call the ‘web of criminalisation’ and advocate for policy solutions targeting underlying factors (such as unaddressed mental health issues or cognitive impairment) rather than focussing narrowly on ‘crime’ and ‘criminal behaviour.’ They also point out that these factors are often intertwined and linked. For example, while ‘being Indigenous’ is clearly a risk factor for criminal legal involvement, recognising that ‘early police contact’ is a predictive factor for future involvement in the system — and that Indigenous Australians are far more likely to come to the attention of police at an early stage — allows us to identify and focus on targeted policy and legislative solutions to address individual and complex risks.

Areas where targeted interventions are needed include (but are not limited to) the following:

#### ***Children experiencing homelessness***

A child’s experience of homelessness or insecure housing has a significant impact on whether they become (or remain) involved in the criminal legal system. A recent Tasmanian report highlighted links between young people’s experience of homelessness and their involvement in the criminal justice system,<sup>28</sup> and these concerns have also been raised in reports and research from other Australian jurisdictions, as well as identified as a key focus area by the National Children’s Commissioner.<sup>29</sup>

Research shows many young people in Tasmania and throughout Australia are committing offences out of necessity, including for reasons associated with unstable housing or poverty. This is reflected in statistics relating to the types of offences committed by young people, which show property offences (in particular, stealing) are offences for which young people are commonly charged.<sup>30</sup> Homelessness is also a factor considered by the courts in deciding whether a young person should be released on bail or remanded into custody. This means that a lack of secure accommodation or other community support can significantly impact a child’s ability to successfully engage with or complete a supervised order,<sup>31</sup> increasing their likelihood of a custodial sentence or the amount of time they spend detained. This issue is particularly urgent given the rising rates of homelessness across Australia, particularly for children and young people.<sup>32</sup>

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<sup>26</sup> McCausland, R & Baldry, E (2023), ‘Who Does Australia Lock Up? The Social Determinants of Justice,’ International Journal for Crime, Justice and Social Democracy.

<sup>27</sup> McCausland, R & Baldry, E (2023), ‘Who Does Australia Lock Up? The Social Determinants of Justice,’ International Journal for Crime, Justice and Social Democracy.

<sup>28</sup> Sentencing Advisory Council (2021), ‘Sentencing Young Offenders’ p. 16.

<sup>29</sup> Australian Human Rights Commission (2024), ‘Help Way Earlier! How Australia Can Transform Child Justice to Improve Safety and Wellbeing,’ pp. 33-35.

<sup>30</sup> Sentencing Advisory Council (2021), ‘Sentencing Young Offenders,’ pp. 7-9.

<sup>31</sup> Ibid, p. 16.

<sup>32</sup> Mission Australia (2024), ‘The Unfair Divide: Disadvantage Faced by Young People who are Homeless.’

It is crucial for the Australian Government to enact policy changes to address these issues. This includes changes to Commonwealth income support payments to reduce poverty as a driving factor for involvement in the criminal legal system, and greater investment in priority housing solutions.

### ***Children with unsupported treatment needs (including AOD, mental health and/or cognitive impairment)***

Drug and alcohol misuse has been recognised as a risk factor for criminal justice involvement for young people in Tasmania,<sup>33</sup> as well as for early involvement with the police.<sup>34</sup> Similarly, mental health and/or cognitive impairment has been recognised as a factor contributing towards youth offending.<sup>35</sup> This is consistent with research demonstrating the high rates of cognitive impairment and/or acquired brain injury within the criminal justice system generally,<sup>36</sup> as well as studies from other jurisdictions which highlight the high rates of certain conditions (for example, FASD) in the youth justice population.<sup>37</sup>

TasCOSS' experience speaking with communities across the state, and recent research, shows the cost of living crisis is forcing many Tasmanians to go without medical appointments or medication due to the prohibitive cost.<sup>38</sup> Those residing in regional or remote communities have limited access to GPs, and an overall lack of specialist services — including mental health services — is impacting the health and wellbeing of families and children.<sup>39</sup> This ties in with research demonstrating the impact of residing in a regional or remote community on children and families' experiences of the criminal legal and policing systems.

### ***Children of incarcerated parents***

There are demonstrated negative impacts on children arising from parental incarceration, including social and emotional impacts (such as fear and shame), as well as the significant disruption to a child's life and routine. Parental incarceration has been recognised as an adverse childhood experience which can significantly impact the development and emotional wellbeing of a child.<sup>40</sup> As noted by the Victorian Aboriginal Legal Service in a recent submission:

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<sup>33</sup> Sentencing Advisory Council (2021), 'Sentencing Young Offenders,' p. 14

<sup>34</sup> Tasmania Legal Aid (2021), 'Children First: Children in the Child Safety and Youth Justice System,' p. 8.

<sup>35</sup> Sentencing Advisory Council (2021), 'Sentencing Young Offenders,' pp. 14-15; Tasmania Legal Aid (2021), 'Children First: Children in the Child Safety and Youth Justice System,' p. 9.

<sup>36</sup> For an overview of the overrepresentation of adults with an acquired brain injury in the Victorian criminal justice system, see Centre for Innovative Justice & Jesuit Social Services (2017), 'Recognition, Respect and Support: Enabling Justice for People with an Acquired Brain Injury.'

<sup>37</sup> Bower, C, et al. (2018), 'Fetal Alcohol Spectrum Disorder and Youth Justice: A Prevalence Study Among Young People Sentenced to Detention in Western Australia,' *BMJ Open*.

<sup>38</sup> Recent consultations with Tasmanians on low incomes (which included discussions of difficulties accessing health care) have been cited in recent submissions: TasCOSS (2023), *Draft Long-Term Plan for Health Care in Tasmania 2040*, Department of Health. May & TasCOSS (2023), *Inquiry into Tasmanian Experiences of Gendered Bias in Health Care*, Joint Sessional Committee on Gender and Equality, April.

<sup>39</sup> For example, see Centre for Community Child Health, Murdoch Children's Research Institute (2017), *Reporting the Health and Development of Children in Rural and Remote Australia*, pp. 3-6; Women's Health Tasmania (2019), *Talking to Women in Rural and Remote Tasmania*, pp. 8-12.

<sup>40</sup> Parliament of Victoria (2022), Legislative Council, Legal and Social Issues Committee, 'Inquiry into Children Affected by Parental Incarceration: Final Report,' August, pp. 22-23.

*Having a parent in prison has a dramatic effect on children’s wellbeing and development... The disappearance of their imprisoned parent can leave the household in poverty, increasing the likelihood of unstable housing, disengagement from education and a range of other harms. In other cases, particularly when single mothers are imprisoned, children may come into the care of the child protection system. Any of these scenarios greatly increase the risk of children becoming involved in the youth justice system and with the criminal legal system later in life.<sup>41</sup>*

### **Children in out-of-home care**

Although it is important to note most children who are involved with the child safety system do not engage in offending behaviours, the evidence does show that being in out-of-home care is a significant risk factor for involvement in the criminal legal system. There are many reasons for this overrepresentation — for example, there are demonstrated links between the offending of young people and early childhood experiences of trauma,<sup>42</sup> which means many children who are involved in the child protection system are presenting with risk factors for offending. Many children in care first become involved in the criminal legal system because they 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>43</sup> Young people in residential care are often charged with offences committed in this environment and may face criminal sanctions for behaviours which would not necessarily trigger a police response if they had occurred in a home environment.<sup>44</sup>

Research demonstrates the following elements of the out-of-home care experience may also contribute to further offending:<sup>45</sup>

- Placement breakdowns, which may prevent the formation of pro-social relationships;
- Inability to access specialist support services to address underlying issues contributing to offending;
- Further traumatic experiences in care;
- Being co-located with other ‘high-risk’ and traumatised young people, possibly increasing exposure to problematic or criminogenic behaviours and attitudes; and
- Limited financial or emotional support for young people leaving out-of-home-care.<sup>46</sup>

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<sup>41</sup> Victorian Aboriginal Legal Service (2022), ‘Submission to the Inquiry into Children of Imprisoned Parents,’ May, p. 19.

<sup>42</sup> Sentencing Advisory Council (2021), ‘Sentencing Young Offenders,’ pp. 20-22.

<sup>43</sup> CREATE Foundation (2018), ‘Youth Justice Report: Consultation with Young People in Out-of-Home Care About their Experiences with Police, Courts and Detention,’ pp. 3-4.

<sup>44</sup> Victoria Legal Aid (2016), ‘Care Not Custody: A New Approach to Keep Kids in Residential Care Out of the Criminal Justice System,’ pp. 9-14.

<sup>45</sup> Ibid, p. 7.

<sup>46</sup> Ibid.

### ***Aboriginal children***

There is clear, well-documented and overwhelming evidence of the overrepresentation of Aboriginal children in the criminal legal system, both in Tasmania<sup>47</sup> and across Australia more broadly.<sup>48</sup> Despite commitments made by state and federal governments to reducing the numbers of Aboriginal children and adults in detention, the number of children and families impacted by the legal system is still increasing in jurisdictions across the country (including Tasmania).<sup>49</sup> Any proposed reforms to youth justice must focus specifically on addressing the needs of Aboriginal children and families. In the Tasmanian context, we have advocated for the expansion of existing programs and initiatives designed by and for the Aboriginal community,<sup>50</sup> and a review of all Tasmanian Government and government-funded programs working with children, as well as enacting cultural safety recommendations for Aboriginal children.<sup>51</sup> We also recommend the funding of Aboriginal communities and organisations to develop their own programs to support their communities and families. All law reform proposals must also acknowledge and take into consideration the potential impact on Aboriginal children, and work towards the goal of reducing the numbers of Aboriginal children in the criminal justice system.

### ***Greater support to manage challenging transition points***

The research highlights the challenges presented at various points throughout a child's life, and the connections between poorly managed transitions and potential problematic or criminal behaviour. Too often, children are left without the support they need to effectively manage these transitions, which can not only contribute to further trauma but may also lead to offending. This is a particular challenge for young people within the child safety system, most of whom have already been exposed to trauma (as outlined above) and may not be able to cope with the challenges presented by life changes or be equipped with sufficient social supports.<sup>52</sup>

Even though moments of transition, exiting out-of-home-care, have been recognised in various studies as challenging moments in the life of a young person, our stakeholders have raised concerns that many young people struggle to find the support they need to manage these changes.<sup>53</sup> By adopting a 'whole-of-life' approach to mapping and responding to the needs of children and their families, the Government could better identify and work proactively to support children in the moments where they need the most assistance.

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<sup>47</sup> The rate of detention for Aboriginal children in 2021-22 in Tasmania was 6.7 per 10,000 young people, compared to 1.0 per 10,000 for non-Aboriginal children. Tasmanian Aboriginal children are also more likely to be subject to supervision in the community. In 2021-22, 40.7 per 10,000 Aboriginal youth were subject to supervision, compared to 7.5 for non-Aboriginal young people. See Productivity Commission, Productivity Commission (2023), 'Report on Government Services 2023 — 17 Youth Justice Services,' Tables 17A.5 and 17A.6.

<sup>48</sup> Australian Human Rights Commission (2024), 'Help Way Earlier! How Australia Can Transform Child Justice to Improve Safety and Wellbeing,' pp. 22-23.

<sup>49</sup> In 2020-21, the rate of Aboriginal and Torres Strait Islander children in detention (per 10,000 young people aged 10-17 years) was 23.2 nationally and 6.4 in Tasmania; this increased in 2021-22 to 28.3 nationally and 6.7 in Tasmania.

<sup>50</sup> For example, see the proposed [Bark Hut projects](#).

<sup>51</sup> TasCOSS (2021), 'Tasmanian Child and Youth Wellbeing Strategy,' Tasmanian Government, pp. 26-27.

<sup>52</sup> CREATE Foundation Youth Advisory Group, February 2022.

<sup>53</sup> For example, see McDowall, J (2008), 'Report Card: Transitioning from Care,' CREATE Foundation.

## ***Focus on key opportunities for prevention and early intervention***

### **The first 1,000 days**

Research shows preventative health measures can also increase the safety and wellbeing of children and families.<sup>54</sup> To address underlying issues contributing to criminal legal system involvement (such as involvement with child safety or unaddressed treatment needs), families should be linked in where possible with supports allowing them to stay together and receive assistance as needed in community.<sup>55</sup> This is particularly important for families with elevated risk of institutional involvement — for example, families with disability or Aboriginal families who experience an increased risk of involvement in both criminal justice and child safety systems.<sup>56</sup>

The importance of the first 1,000 days has been recognised in both Tasmanian and national policy.<sup>57</sup> We strongly recommend a focus on initiatives and measures providing greater and more meaningful engagement with families in the early stages of a child's life, to give children (and their families) the best possible opportunity of living healthy lives in community. In the Tasmanian context, we have previously advocated for the following:

- Expansion of services such as Child and Family Learning Centres;
- Greater funding for place-based initiatives;
- Expanded resourcing for programs and initiatives designed and developed by Aboriginal communities and organisations; and
- The design of supports intended to support children and young people across the lifespan, to reduce existing gaps in service delivery and address challenging transition points (as identified above).

### **Education system**

Access to education is a strong protective factor which is linked to positive outcomes for children, including reducing the likelihood of later incarceration or involvement in the criminal justice system.<sup>58</sup> However we know many Tasmanian children are excluded from school due to their presentation or challenging behaviours, many of which may be a direct result of their trauma experiences.<sup>59</sup> As research

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<sup>54</sup> This is echoed in existing Tasmanian policy, including the *Child and Youth Wellbeing Strategy ('It Takes a Tasmanian Village')* and the *Healthy Tasmania Five Year Strategic Plan (2022-26)*.

<sup>55</sup> Examples found in Sculthorpe, H (2014), *Iuwutina mana-mapali krakani waranta ('Keeping Our Children With Us'): Report to Government and the Aboriginal Community about Changes Needed to the Child Protection System in Tasmania*, Tasmanian Aboriginal Centre; Hinton, T (2018), *Breaking the Cycle: Supporting Tasmanian Parents to Prevent Recurrent Child Removals*, , Anglicare Tasmania Social Action and Research Centre, September; Fidler, L (2018), *In Limbo: Exploring Income and Housing Barriers for Reunifying Tasmanian Families*, Anglicare Tasmania Social Action and Research Centre, September.

<sup>56</sup> For example, see Libesman, T, et al., (2023), *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Parents with Disability and their Experiences of Child Protection Systems*; Tasmania Legal Aid (2021), *Children First: Children in the Child Safety and Youth Justice System*; Victorian Aboriginal Legal Service (2021), *Submission to the Inquiry into Victoria's Criminal Justice System*.

<sup>57</sup> Tasmanian Government (2021), 'It Takes a Tasmanian Village: Child and Youth Wellbeing Strategy,' Department of Prime Minister and Cabinet (2021), 'National Strategy to Prevent and Respond to Child Sexual Abuse 2021-30.'

<sup>58</sup> Sentencing Advisory Council (2021), 'Sentencing Young Offenders,' p. 17.

<sup>59</sup> Robinson, C (2017), 'Too Hard? Highly Vulnerable Teens in Tasmania,' Social Action Research Centre, Anglicare Tasmania, p. 115-21; CREATE Foundation & Commissioner for Children Tasmania, 'Educational Experiences of Children and Young People in Care,' pp. 17-18.

demonstrates links between poor educational attainment and criminal legal system involvement,<sup>60</sup> we strongly recommend a focus on keeping children engaged in education as part of the current Inquiry.

To better address the needs of children who are most at risk of educational disadvantage, we believe there is a clear need for greater awareness of and training in responses to trauma in children across all sectors engaging with young people. We have previously advocated for greater investment in comprehensive training for teachers and education staff in recognising and responding to trauma awareness, to better equip school staff to engage with children who may be at risk of becoming involved in the criminal justice system, as well as ensuring school policies and procedures are not unfairly targeted children with trauma histories.<sup>61</sup>

In previous submissions, we have highlighted the effectiveness of pre-primary programs to support families with their transition into school.<sup>62</sup> These programs provide an example of voluntary, community-based supports focussed on early intervention that are effective and responsive to the needs of the families accessing their services.

We have recommended changes to mainstream schools to better support children who are engaging in problematic behaviours, such as expanded resourcing for social workers and other psycho-social supports for students and their families. We also support Tasmania Legal Aid's recommendation for developing and implementing a school-based lawyer program,<sup>63</sup> noting the stated benefits such schemes have had on children in other jurisdictions,<sup>64</sup> and have also recommended consideration of alternative education models to better support children who are struggling to cope with mainstream school environments.<sup>65</sup>

### **Alternatives to legal or detention system responses**

In advocating for legislative and policy changes to shift children away from the police, legal and detention systems, we have previously recommended for targeted approaches to link children and families in with community-based support services as early as possible. This approach is being used in alternative responses to criminal offending in the Australian Capital Territory, following their commitment to raise the age of criminal responsibility to 14,<sup>66</sup> and examples from other jurisdictions are providing targeted support and case management to children with complex and intersecting needs which cannot be

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<sup>60</sup> McCausland, R & Baldry, E (2023), 'Who Does Australia Lock Up? The Social Determinants of Justice,' International Journal for Crime, Justice and Social Democracy.

<sup>61</sup> For examples, see Tasmanian Government (2020), 'Good Teaching: Trauma Informed Practice,' Department of Education.

<sup>62</sup> There are several existing programs throughout Tasmania. See for example, community playgroups, [Children and Family Centres](#) and specialist programs, such as [HIPPY working with families](#). The [Working Together initiative for children](#) in the year before school is another example of how non-educational supports can be provided to children and their families to make it easier to engage in early learning – for more information about this program.

<sup>63</sup> Tasmania Legal Aid (2021), 'Children First: Children in the Child Safety and Youth Justice System,' p. 19.

<sup>64</sup> Information about the school lawyer program can be found at [WestJustice's website](#). WestJustice & SVA Consulting (2018), 'School Lawyer Program Framework,' March, p. 12.

<sup>65</sup> TasCOSS and CREATE Foundation (2022), Submission to the Tasmanian Government, 'Reforming Tasmania's Youth Justice System,' March, pp. 25-27.

<sup>66</sup> McArthur, M, Suomi, A & Kendall, B (2021), 'Review of the Service System and Implementation Requirements for Raising the Minimum Age of Criminal Responsibility in the Australian Capital Territory: Final Report.'

addressed in mainstream services.<sup>67</sup> There are already examples of multidisciplinary supports in Tasmania, which we have recommended the Government should be considering as part of the alternatives which should be in place once the age of criminal responsibility and detention are raised.<sup>68</sup> We would further advocate for a panel of this nature to be available for all families or children who are at risk of experiencing or causing harm, ideally with the support of existing community-based organisations who are already working with young people in community.

**Cultural change to shift harmful public narratives relating to young people**

Despite the falling rates of youth crime over the past decade (as outlined above), media reports from across the country indicate substantial and growing concerns relating to what has been described as a ‘youth crime epidemic.’<sup>69</sup> Recent reports have recognised the ongoing impact of the ‘tough on crime’ rhetoric used by Australian Governments as a barrier to achieving meaningful and evidence-based reform.<sup>70</sup>

TasCOSS is extremely concerned about the impact of ongoing public discussion relating to ‘youth offending,’ noting that this language is not only harmful to the young people involved in the criminal legal system, but may be contributing to fear and anxiety experienced by the community in general relating to young people and their behaviour. In our view, sensationalised reporting on these issues fails to present a balanced, nuanced view of youth offending, particularly the underlying factors which may be contributing to youth crime, and may be perpetuating the existing discrimination faced by children experiencing marginalisation, including Tasmanian Aboriginal children, children who are experiencing poverty, or children with mental health issues or cognitive impairment. We strongly support the development of national guidelines or principles to ensure public debate on issues relating to children is informed by evidence and best-practice, upholds children’s rights and avoids the sensationalist, ‘tough-on-crime’ rhetoric, which may be exacerbating the disadvantage experienced by children and families who are already marginalised within the criminal legal system.

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<sup>67</sup> For example, the Multiple and Complex Needs Initiative (MACNI) in Victoria is a panel providing interventions for clients with a combination of needs including mental health, substance dependency, and cognitive impairment and/or ABI. See Victorian Government (2019), ‘Getting it Together: A Guide for Individuals, Carers and Services on accessing the Multiple and Complex Needs Initiative,’ Department of Health and Human Services.

<sup>68</sup> For example, the [Intensive Family Engagement Services \(IFES\) run by Save the Children as part of the Strong Families, Safe Kids program](#), is a program offering short-term, intensive support for families who are involved with the formal Child Protection system. The Targeted Youth Support Services (TYSS) program, run by Bapcare, is another example of a program offering targeted interventions from a wide range of professionals to young people who are at risk of or experiencing homelessness, providing support and casework services to young people in an attempt to re-engage them in education, training, employment and housing. See <https://www.bapcare.org.au/services/family-youth-and-foster-care/tasmanian-services/youth-targetted-youth-support-services-tyss>.

<sup>69</sup> For example, see Lucy MacDonald, ‘Tasmanian Liberals election promise to ‘crack down’ on young offenders questioned in wake of Ashley findings,’ ABC News (online, 2 March 2024).

<sup>70</sup> Australian Human Rights Commission, ‘Help way earlier! How Australia can transform child justice to improve safety and wellbeing’ (2024), pp108-110.

## Legislative and policy changes to proactively reduce the number of children who are involved in the criminal legal system

Involvement in the criminal legal system is criminogenic,<sup>71</sup> and the earlier a child is involved in the system, the more likely they are to re-offend.<sup>72</sup> Alongside investing in further opportunities for early intervention with children and families, State and Territory governments should also urgently prioritise strategies to reduce the involvement of children in the criminal justice system. These options should include legislative changes to reduce or remove criminal justice responses to youth offending (including raising the age of criminal responsibility) and to decriminalise certain offences (such as public space offences, drug use and possession, and offences relating to bail). It also includes legislative and policy measures to address the overrepresentation of children in out-of-home care or child safety involvement in the criminal justice system, as well as expansion of therapeutic responses to problem behaviours and increased oversight of police decision-making to expand opportunities for cautions, diversions and non-prosecutorial outcomes.

### ***Raising the age***

Whilst the recent commitment from the Tasmanian Government to raise the age of criminal responsibility from 10 to 12 years is a step in the right direction,<sup>73</sup> we strongly believe all jurisdictions across the country should be raising the minimum age to at least 14, consistent with the recommendations of the United Nations,<sup>74</sup> and several national and state-based organisations.<sup>75</sup>

Although detention is already recognised as an option of last resort for children in Tasmania's legislation,<sup>76</sup> we believe a disproportionate number of young people still end up spending time in detention instead of engaging in community-based therapeutic programs. Alongside raising the age of criminal responsibility to 14, TasCOSS strongly advocates for 16 to be the minimum age for detention in all states and territories, consistent with the recommendations of other community organisations.<sup>77</sup>

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<sup>71</sup> Sotiri, M, Schetzer, L & Kerr, A, Justice Reform Initiative, 'Children, Youth Justice and Alternatives to Incarceration in Australia' (2024), 9-10.

<sup>72</sup> Sentencing Advisory Council (Tasmania), 'Sentencing Young Offenders' (October 2021), 26-29, Sentencing Advisory Council (Victoria), 'Reoffending by Children and Young People in Victoria' (December 2016), 31.

<sup>73</sup> Tasmanian Government (2021), 'States Agree to Develop Nationally Consistent Approach to Raising the Age of Criminal Responsibility,' Media Release, 15 November 2021.

<sup>74</sup> United Nations (2007), 'General Comment No.10: Children's rights in juvenile justice,' Convention on the Rights of the Child, Committee on the Rights of the Child, 44th Session, No. CRC/C/GC/10, p11, Available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

<sup>75</sup> For example, see Human Rights Law Centre (2021), 'Raising the age in Tasmania: Responses to the Tasmanian Commissioner for Children and Young People's survey on raising the minimum age of criminal responsibility'; Victorian Aboriginal Legal Service (2020), 'Submission to Council of Attorney Generals (COAG),' Age of Criminal Responsibility Working Group; Social Reinvestment Western Australia (2021), 'Raising the Minimum Age of Criminal Responsibility: A Pathway to a Brighter Future for Western Australia's most at risk children'.

<sup>76</sup> Under the general principles outlined in Youth Justice Act 1997 s5:(g) *detaining a youth in custody should only be used as a last resort and should only be for as short a time as is necessary.*

<sup>77</sup> Victorian Aboriginal Legal Service (2020), 'Submission to Council of Attorney Generals (COAG),' Age of Criminal Responsibility Working Group, p20-21; Victorian Aboriginal Legal Service (2021), 'Submission to the Inquiry into Victoria's Criminal Justice System,' p77-83.



### ***Decriminalisation of substance use and dependency***

Many Tasmanians who come into contact with the criminal justice system do so partly as a result of use of illicit substances. TasCOSS supports a public health approach to substance use, consistent with the principle of harm minimisation, which should include a shift towards the decriminalisation of substance use for both adults and children.

The potential decriminalisation of drug use in Tasmania was explored in a recent research paper from Community Legal Centres Tasmania,<sup>78</sup> which looked at the current approach in Portugal as a model for potential decriminalisation/drug law reform. The report estimates that the introduction of a similar model in Tasmania could not only result in significant cost savings, but also reduce drug-related deaths and disease, hospitalisations and drug-related ambulance call-outs, and crimes involving actual or threatened violence.<sup>79</sup>

Consistent with our previous recommendations in relation to drug reform in Tasmania,<sup>80</sup> we strongly support measures to decriminalise drug use. This could include a review of the existing legislative framework in relation to drug use and possession, to consider whether certain acts should be decriminalised — for example, in the Tasmanian context, possession and use of a small amount of cannabis (and potentially other substances) under s24 of the *Misuse of Drugs Act 2001* (Tas)<sup>81</sup> — as well as the expansion of existing diversionary options for drug offences (as outlined above), including additional funding for community organisations to increase their capacity to provide support and education programs.<sup>82</sup>

### ***OOHC***

To address the overrepresentation of children in care within the criminal legal system (as outlined above), we recommend the development and implementation of policy and legislative reform to reduce the number of ‘crossover children’. This should include the development of shared behavioural management protocols between police and residential care providers to ensure prosecution is a measure of last resort,<sup>83</sup> legislative and policy provisions to mandate consideration of a child’s care experience as part of prosecutorial decision-making and sentencing, as well as expanded access to training (for police and residential care providers) in awareness of and responses to childhood trauma.

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<sup>78</sup> Community Legal Centres Tasmania (2017), ‘The Case for a Health Focused Response to Drug Use in Tasmania’s Legal System,’ accessed at <http://www.clctas.org.au/wp-content/uploads/2013/06/DrugReformPaperFinal.pdf>.

<sup>79</sup> Community Legal Centres Tasmania (2017), ‘The Case for a Health Focused Response to Drug Use in Tasmania’s Legal System,’ accessed at <http://www.clctas.org.au/wp-content/uploads/2013/06/DrugReformPaperFinal.pdf>, p27.

<sup>80</sup> TasCOSS (2022), ‘Submission to Department of Health – Tasmanian Drug Strategy,’ July 2022.

<sup>81</sup> *Possessing, using or administering controlled drug*

*A person must not –*

*(a) possess a controlled drug; or*

*(b) use a controlled drug; or*

*(c) administer a controlled drug to another person.*

*Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years.*

<sup>82</sup> A list of community organisations providing relevant treatment is found at Department of Health (2013), ‘Tasmanian Drug Strategy 2013-2018: Report on Activities,’ Tasmanian Government, p19-20.

<sup>83</sup> For an example, see Victorian Government, ‘Framework to reduce criminalisation of young people in residential care’ (2020).

### **Greater diversionary options**

Diversion allows offences to be dealt with away from the formal justice system. Its benefits include reducing recidivism if programs effectively address underlying behaviours and/or give offenders an opportunity to take responsibility their actions and engage in rehabilitation. It is a key feature of the Tasmanian youth justice system<sup>84</sup> and adult offenders can also be given the opportunity to be ‘diverted’ from the mainstream criminal justice system (see below). Despite the fact that diversionary programs are particularly effective as a response to youth offending,<sup>85</sup> recent data shows there has been a decrease in the use of diversion for young people in Tasmania, in particular informal cautions and community conferences.<sup>86</sup>

TasCOSS recommends a range of reforms to increase the number of youth justice matters being dealt with by way of diversion including the following:<sup>87</sup>

- Increasing pre-charge diversionary measures and reducing the rates of arrest of young people — this could include changes to police decision-making processes, such as the model used in New Zealand, where police engage in consultation with a child’s family and/or other supports before deciding whether to formally charge a child (which has resulted in significantly lower numbers of charges being laid against children);<sup>88</sup>
- Developing specific caution and charging protocols for children in out-of-home care, to address the high rates of criminalisation of these children and ensure they are being offered opportunities for community-based rehabilitation;
- Removing of prohibited offences for pre-court diversion from the *Youth Justice Act 1997 (Tas)*;
- Implementing measures to promote non-prosecutorial options within Tasmania Police;
- Developing specialist policing divisions or units to better support young people,<sup>89</sup> such as the New Zealand Police Youth Aid section;<sup>90</sup>
- Introducing additional legislative provisions to allow for review of early decisions (such as whether an informal or formal caution may have been appropriate) without the approval of the prosecutor or charging officer, to give magistrates and judges greater opportunities to proactively intervene in cases where they deem it appropriate for diversion to be offered;
- Increasing diversionary programs (ideally offered by community organisations); and

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<sup>84</sup> There are several diversionary options built into the *Youth Justice Act 1997 (Tas)*, including both informal and formal cautions and community conferences, as well as court-mandated diversion.

<sup>85</sup> Tasmania Legal Aid (2021), ‘Children First: Children in the child safety and youth justice system,’ p14-15; Noetic Solutions Pty Ltd (2010), ‘Review of Effective Practice in Juvenile Justice,’ p68.

<sup>86</sup> Sentencing Advisory Council (2021), ‘Sentencing Young Offenders,’ xi; Figures from Tasmania Police records show the number of informal cautions has been steadily decreasing over the past ten years: for example, whereas 1432 informal cautions were offered in 2010-2011, only 502 were offered in 2018-2019.<sup>86</sup>

<sup>87</sup> For more information see TasCOSS (2022), ‘Submission to the Tasmanian Government’s discussion paper, *Reforming Tasmania’s Youth Justice System: A pathway for improving outcomes across the youth justice support continuum*,’ March 2022, p14-19.

<sup>88</sup> For an overview of the New Zealand model, see Ministry of Justice (2013), ‘Youth Crime Action Plan 2013 – 2023,’ New Zealand Government; 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>89</sup> Victorian Aboriginal Legal Service (2021), ‘Submission to the Inquiry into Victoria’s Criminal Justice System,’ p12.

<sup>90</sup> For an overview of the policing practices in New Zealand, see Ministry of Justice (2013), ‘Youth Crime Action Plan 2013 – 2023,’ New Zealand Government, p21-27.

- Providing greater support for young people who may struggle to meet attendance requirements or comply with programs.<sup>91</sup>

Alongside the above reforms relating to youth justice, we also recommend the development and increased use of diversionary programs and practices for adult offenders. Although some diversion programs for adults do exist — for example, the Initial Drug Diversion Initiative,<sup>92</sup> as well as the Mental Health Diversion List<sup>93</sup> — TasCOSS strongly supports the development of further diversionary programs for adults, which would provide opportunities for early intervention and divert first-time offenders away from the criminal justice system. We make this recommendation considering studies demonstrating that diversionary options are both extremely cost-effective<sup>94</sup> and reduce recidivism rates.<sup>95</sup> This could include greater opportunities for both police and court-based diversion for a wide range of offences (not just drug offences) and could incorporate community-based treatment and support programs.

### Measures to transform the criminal legal system to provide opportunities for therapeutic engagement with children and their families

For those children who do end up being charged and prosecuted, engagement with the court and legal intervention should provide opportunities to access therapeutic support services to address underlying issues and promote connections with community.

#### **Legislative reform**

TasCOSS strongly supports the implementation of nationally consistent legislative provisions across all States and Territories to embed key principles relating to child rights and trauma-informed responses to youth offending with the legal system. This must include expanded access to diversionary and non-prosecutorial responses (as outlined above), as well as the following:

- Including trauma-informed principles within the general principles outlined in the relevant legislation in each State and Territory, to explicitly recognise the impact of trauma on young people and the role it plays in youth offending;
- Removing general deterrence as a relevant sentencing principle for children;<sup>96</sup>
- Changing the relevant legislation of each State and Territory relating to bail to include provisions designed to ensure that, wherever possible, children are not remanded in custody. These provisions should include a list of factors to be taken into consideration by a bail decision-maker,<sup>97</sup>

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<sup>91</sup> See, for example, the case study of ‘Trevor’ found at Tasmania Legal Aid (2015), ‘Children First: Children in the child safety and youth justice system,’ p15.

<sup>92</sup> For information about this program see <https://www.holyoake.com.au/our-programs/initial-drug-diversion-initiative>.

<sup>93</sup> For information about the list see [https://www.magistratescourt.tas.gov.au/about\\_us/criminal\\_division/diversion\\_list](https://www.magistratescourt.tas.gov.au/about_us/criminal_division/diversion_list).

<sup>94</sup> See, for example, Baker, J and Goh, D (2004), ‘The Cannabis Cautioning Scheme Three Years On: An implementation and outcome evaluation,’ accessed at <https://www.bocsar.nsw.gov.au/Publications/General-Series/r54.pdf>, p35-37.

<sup>95</sup> Payne, J, Kwiatkowski, M and Wundersitz, J (2008), ‘Police drug diversion: a study of criminal offending outcomes,’ Australian Institute of Criminology, p40-46.

<sup>96</sup> This would be consistent with youth justice principles in other Australian jurisdictions such as Victoria, where general deterrence is not included as a matter to be considered for the purpose of sentencing young offenders – see *Children, Youth and Families Act 2005 (Vic)* s362.

<sup>97</sup> Similar to the *Bail Act 1977 (Vic)*, which includes:

and should also prohibit the refusal of bail on the sole ground that a child has no appropriate accommodation.<sup>98</sup>

- Enacting legislative changes to ensure all children charged with criminal offences are dealt with in the Youth Justice Division,<sup>99</sup> as well as further legislative provisions to better support children who are charged as co-accused with adults.

### **Specialist Youth Courts**

TasCOSS has previously advocated for the introduction of a therapeutic list or court for children in Tasmania,<sup>100</sup> informed by the principles of therapeutic jurisprudence<sup>101</sup> and modelled on the examples of ‘problem-solving courts’ from other Australian and international jurisdictions.<sup>102</sup> As the evidence demonstrates (and outlined above), most children within the criminal legal system have unmet social or health needs. A problem-solving approach to problem behaviours could therefore create opportunities for intervention throughout the court process (for example, meetings with a court-appointed case manager, or referrals made at court for treatment in the community from local service providers). Ideally this would involve greater collaboration between the formal court system and community-based organisations who already provide services to children.

In the Tasmanian context, we have previously advocated for:

- Re-designing the approach of the youth justice division to operate in a more therapeutic, problem-solving way. Options include creating a less formal environment to promote greater and more meaningful participation from children,<sup>103</sup> providing training for all court stakeholders in therapeutic and trauma-informed engagement with young people, as well as ensuring all children are able to receive information about their rights and court processes in a way that is developmentally appropriate.
- Developing specialist, community-based problem-solving courts for children and young people, ideally using the Neighbourhood Justice Centre (NJC) in Collingwood, Victoria as an example - a community court with embedded specialist workers across a wide range of service areas (including AOD workers, family violence support workers and counsellors), providing a single

- 
- *the need to consider all other options before remanding the child in custody*
  - *the need to strengthen and preserve the relationship between the child and the child's family, guardians or carers*
  - *the desirability of allowing the living arrangements of the child to continue without interruption or disturbance*
  - *the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance*
  - *the need to minimise the stigma to the child resulting from being remanded in custody; and*
  - *the likely sentence should the child be found guilty of the offence charged*
  - *the need to ensure that the conditions of bail are no more onerous than are necessary and do not constitute unfair management of the child.*

<sup>98</sup> Similar to the *Bail Act 1977 (Vic)* s3B (3).

<sup>99</sup> In Tasmania, children charged with ‘prescribed offences’ must have their matters heard in the Supreme Court and are ineligible for diversionary programs - *Youth Justice Act 1997 (Tas)* s3 (1).

<sup>100</sup> TasCOSS and Create Foundation, Submission to the Tasmanian Government, ‘Reforming Tasmania’s Youth Justice System’ (March 2022), 27-30.

<sup>101</sup> Michael S King, ‘Applying Therapeutic Jurisprudence in Regional Areas – the Western Australian Experience’ (2003) Murdoch University Electronic Journal of Law 10:2, para 15.

<sup>102</sup> For example, see Dr Michael S King, ‘Judging, judicial values and judicial conduct in problem-solving courts, Indigenous sentencing courts and mainstream courts’ (2010) 19 JJA 133, 135.

<sup>103</sup> Dr Michael S King, ‘Judging, judicial values and judicial conduct in problem-solving courts, Indigenous sentencing courts and mainstream courts’ (2010) 19 JJA 133, 141-143.

point of entry for access to services and promoting collaboration between organisations. The court itself is a community resource that can be used by community residents and includes a social enterprise café which offers free tea and coffee, as well as low-cost meals. The NJC has been evaluated as highly successful in reducing crime and responding to the needs of residents of the City of Yarra (where the court is located).<sup>104</sup>

### ***Therapeutic programs and supports***

Alongside the recommendation for a specialist youth court or division, we strongly recommend greater involvement of therapeutic services and supports within the formal legal system. This should include greater investment in community-based treatment programs to address problem behaviours across the spectrum of legal system involvement.

We also strongly advocate for the expansion of community-based programs which can operate as an alternative to remand. Recent reports have highlighted the high number of children who are currently in detention on remand,<sup>105</sup> and the expansion of targeted interventions (such as community-based bail support programs) could have a significant and immediate impact on the number of children who are finding themselves behind bars. TasCOSS has previously advocated for the expansion of existing programs in Tasmania, such as the ‘Supporting Young People on Bail’ program run by 54 Reasons, as well as consideration of examples of youth supported bail programs from other Australian jurisdictions.<sup>106</sup> We also strongly recommended all State and Territory Governments invest in culturally appropriate, community-based bail support programs for Aboriginal children, developed and implemented in partnership with community organisations.

### ***Judicial education and training***

To engage effectively with young people who are coming into contact with the legal system, it is crucial that all court-based workers engage with children in ways that are therapeutic, culturally safe and trauma-informed. To facilitate this, all judicial officers and lawyers should have mandatory specialist training in child and youth development and the impact of trauma on childhood experiences and outcomes. This training should be nationally consistent and available across all jurisdictions, and ideally would be developed in collaboration with community-based organisations with experience working with children and young people.

Many States and Territories have well-established judicial colleges, which provide ongoing education, training and resources for judges, magistrates and legal professionals, as well as informing the public on important aspects of judicial and legal process (such as sentencing). We believe there should be an equivalent body in every jurisdiction. We also strongly recommend that all judicial officers across the country should be required to engage in mandatory training every year as part of their ongoing obligations

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<sup>104</sup> For an evaluation of the effectiveness of the NJC, please see Stuart Ross, ‘Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program’ (2015); Victorian Government, Department of Justice, Evaluating the Neighbourhood Justice Centre in Yarra 2007–2009 (2010).

<sup>105</sup> Australian Human Rights Commission, ‘Help way earlier! How Australia can transform child justice to improve safety and wellbeing’ (2024), 88.

<sup>106</sup> TasCOSS and Create Foundation, Submission to the Tasmanian Government, ‘Reforming Tasmania’s Youth Justice System’ (March 2022), 30.

and duties, which should include training focussed on childhood development, the impact of trauma, and how to promote the rights and participation of children and young people.

### **Transformation of detention facilities and processes to focus on the importance of ongoing connection with community and access to evidence-based, therapeutic supports**

TasCOSS strongly believes the current Inquiry should be primarily focussed on how we can redirect children and their families away from the legal and prison systems. As outlined above, this means ensuring adequate funding for the expansion of evidence-based preventative and primary intervention initiatives, addressing the underlying causes contributing to offending and transforming existing systems (where possible and appropriate) to promote involvement of children and families in therapeutic supports.

#### ***Rethinking detention as a necessary part of the youth legal system***

Our primary recommendation in relation to prison services is for all Governments to seriously consider whether the ongoing detention of children is justified. We make this recommendation in light of the demonstrated negative impacts of incarceration on children and families,<sup>107</sup> the ongoing concerns relating to child rights and wellbeing within detention facilities across the country,<sup>108</sup> the calls from Aboriginal leaders and communities to remove Aboriginal children from custodial settings,<sup>109</sup> the recent tragic deaths of two young people in youth detention,<sup>110</sup> and the lack of any concrete evidence that time in youth detention is beneficial for children or their communities.

We strongly recommend all State and Territory governments seriously examine the cost of funding new prison facilities for children and young people, and urgently reconsider how these funds could instead be redirected into early intervention and prevention initiatives, as recommended by organisations and experts across the country.<sup>111</sup> We also make this recommendation in light of recent developments in other international jurisdictions such as Scotland, where all children under the age of 18 have now been transitioned from Young Offenders Institutions into residential or secure accommodation, recognising that if children are to be deprived of their liberty, it must be in a ‘child friendly and rights respecting’ environment.<sup>112</sup>

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<sup>107</sup> Parliament of Victoria, Legislative Council, Legal and Social Issues Committee, ‘Inquiry into children affected by parental incarceration: Final Report’ (August 2022), 13-32.

<sup>108</sup> Australian Human Rights Commission, ‘Help way earlier! How Australia can transform child justice to improve safety and wellbeing’ (2024); 54 Reasons, ‘Putting children first: A rights respecting approach to youth justice in Australia’ (2023).

<sup>109</sup> Victorian Aboriginal Legal Service, Submission to the Inquiry into Victoria’s Criminal Justice System (2021).

<sup>110</sup> Australian Human Rights Commission, ‘Call for urgent child justice reforms following death of teenager in WA youth detention centre’ (Media Release, Friday 30 August 2024).

<sup>111</sup> Australian Human Rights Commission, ‘Help way earlier! How Australia can transform child justice to improve safety and wellbeing’ (2024); 54 Reasons, ‘Putting children first: A rights respecting approach to youth justice in Australia’ (2023); <sup>111</sup> Overview of this model found at Sotiri, M, Schetzer, L & Kerr, A, Justice Reform Initiative, ‘Children, Youth Justice and Alternatives to Incarceration in Australia’ (2024).

<sup>112</sup> See Children’s Hearings Scotland, ‘All under-18s to be removed from Young Offenders Institutions’ (25 July 2024), accessed at <https://www.chscotland.gov.uk/what-we-do/latest-news/all-under-18s-to-be-removed-from-young-offenders-institutions>.

### **Alternative models**

If detention is to be an element of the youth legal system, we recommend consideration of models from other jurisdictions which are primarily focussed on offering opportunities for rehabilitation and, where possible, strengthening a child’s relationship with the family and community. Services should be delivered in a way that is trauma-informed, with staff who are trained to work with young people and focussed on therapeutic engagement. This includes the complete elimination of harmful practices (such as isolation or separation as behaviour management, or the strip searching of children), in line with recommendations from community organisations,<sup>113</sup> and the Australian Human Rights Commission.<sup>114</sup>

In relation to proposed alternatives to the Ashley Youth Detention Centre in Tasmania, TasCOSS has advocated for:

- Engaging in consultation with the communities where facilities are to be located as early as possible, to identify the needs of these communities, develop partnerships with existing organisations and support any existing initiatives;
- Engaging in comprehensive service mapping (guided by the needs of the community) to scope existing services and areas where greater support is needed;
- Engaging in a manner which highlights the needs and experience of young people with lived experience of the youth justice and detention system, to identify their priorities and co-design services;
- Ensuring children and young people can access therapeutic supports (including AOD services, housing support for post-release, and mental health care) whilst detained — ideally provided by community-based organisations who can provide continuity of care as children transition from custody back into the community;
- Embedding cultural supports within the prison system and ensuring children who are detained can maintain connection with their family, community, culture and country;
- Giving consideration to alternative models focussed on rehabilitation and community connection from other jurisdictions,<sup>115</sup> including:
  - o The Missouri Model (United States of America);<sup>116</sup>
  - o Diagrama (Spain);<sup>117</sup> and
  - o Nordic model.<sup>118</sup>

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<sup>113</sup> Victorian Aboriginal Legal Service, Department of Premier and Cabinet, Consultation on Victorian Youth Strategy (2021), 9-10; Victorian Aboriginal Legal Service, Submission to the Commission for Children and Young People Inquiry: Our Youth, Our Way (2019), 21.

<sup>114</sup> Australian Human Rights Commission, ‘Help way earlier! How Australia can transform child justice to improve safety and wellbeing’ (2024), 90-91.

<sup>115</sup> For an overview of international youth prison models, see Kate Bjur, ‘The Donald Mackay Churchill Fellowship to Investigate Effective Responses to Youth Gangs for Use in Youth Detention Centres’ (2022), accessed at <https://www.churchilltrust.com.au/fellow/kate-bjur-qld-2022/>.

<sup>116</sup> Overview of this model found at Noetic Solutions Pty Ltd, ‘Custodial Youth Justice Options Paper: Report for the Tasmanian Government Department of Health and Human Services’ (2016), p76.

<sup>117</sup> Overview of this model found at Sotiri, M, Schetzer, L & Kerr, A, Justice Reform Initiative, ‘Children, Youth Justice and Alternatives to Incarceration in Australia’ (2024) 35; RMIT, Centre for Innovative Justice, ‘A European alternative approach to juvenile detention’ (13 December 2018), accessed at <https://cij.org.au/news-and-views/a-european-alternative-approach-to-juvenile-detention/>.

<sup>118</sup> Eriksson, A. (2021) ‘Rethinking Australia’s approach to prisoner rehabilitation,’ in The Nordic Edge: Policy Possibilities for Australia by Andrew Scott and Rod Campbell (eds.), Melbourne University Press. Pp. 216-238.

- Developing services and structures which are designed to provide therapeutic services, including comprehensive training for all staff, embedding social workers and intensive case managers in the system, and consideration for how all services can be integrated into the community; and
- Implementing hub-style supports for children who are transitioning into and out of the criminal justice system, to provide easy access to services and reduce the risk of not having specialist needs addressed.

### ***Prison oversight and the need for a human rights framework***

Aside from working to improve services within the custodial environment, TasCOSS strongly supports measures which strengthen the existing oversight of prison services and decision-making. Experience from other jurisdictions and academic research demonstrates that people who are detained in the custodial environment are particularly vulnerable to torture, abuse and cruel or degrading treatment.<sup>119</sup> We therefore strongly recommend all State and Territory governments commit to enacting legislative reform to promote and protect the rights of prisoners — this includes standalone human rights legislation, as well as the implementation of OPCAT across the country.

We note human rights charters in other jurisdictions have proven to be important tools in advocating for and protecting prisoners' rights — for example, a decision to hold Victorian children in an adult detention centre was held by the Victorian Supreme Court to have breached their right to humane treatment in detention under the Victorian Charter of Rights and Responsibilities, resulting in their return to youth justice facilities.<sup>120</sup> We also believe the impact of human rights legislation extends far beyond the protection of the rights of particular minorities (such as prisoners), but could also encourage 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>121</sup>

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<sup>119</sup> For example, see Mackay, Anita (2020), 'Human Rights Guidance for Australian Prisons: Complementing Implementation of the OPCAT,' 25 September 2020, *Alternative Law Journal*, accessed at <https://journals.sagepub.com/doi/pdf/10.1177/1037969X20962863>

<sup>120</sup> *Human Rights Law Centre and Certain Children v Minister for Families and Children* [2017] VSC 251 – summarised in Human Rights Law Centre, 'Charters of Rights Make Our Lives Better: Here are 101 cases that show how' (June 2022), p55.

<sup>121</sup> For a general discussion of the impact of the Victorian charter, see Human Rights Law Centre (2012), 'Victoria's Charter of Human Rights and Responsibilities in Action: Case studies from the first five years of operation,' March 2012.



## Recommendations

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- 1. Enact measures to address underlying issues impacting involvement in the criminal legal system, including (but not limited to):**
  - a. Raising the rate of Commonwealth income support payments above the poverty line;
  - b. Increasing investment in public, social and affordable housing and the expansion of homelessness services;
  - c. Increasing investment in programs and initiatives designed and led by Aboriginal communities to work with families and children; and
  - d. Implementing national media and reporting guidelines.
  
- 2. Ensure state and territory governments are supported to enact consistent, evidence-based legislative and policy change, including (but not limited to):**
  - a. Raising the age of criminal responsibility to at least 14;
  - b. Raising the age of detention to at least 16;
  - c. Enacting legislative and policy change to address the overrepresentation of children in out-of-home care in the criminal legal system; and
  - d. Increasing opportunities for non-prosecutorial responses to problem behaviour in children.
  
- 3. Ensure state and territory governments are supported to enact changes to increase opportunities for therapeutic engagement within the criminal legal system, including (but not limited to):**
  - a. Enacting nationally consistent changes to youth justice legislation to embed trauma-informed principles;
  - b. Facilitating the development of therapeutic alternatives, such as youth courts;
  - c. Increasing opportunities for engagement in therapeutic programs; and
  - d. Providing comprehensive judicial education and training.
  
- 4. Ensure state and territory governments are supported to design and implement therapeutic detention models (to be used as a measure of last resort and only if deemed necessary).**
  
- 5. Enact national human rights legislation, embedding the rights of children.**