Tasmanian Council of Social Service Inc.

POLICE POWERS AND RESPONSIBILITIES ACT – Proposal Paper

January 2025

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About TasCOSS

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

TasCOSS welcomes the opportunity to provide feedback to the Department of Justice ('the Department') on its proposal paper relating to the potential implementation of a Police Powers and Responsibilities Act in Tasmania ('the Draft Proposal'). The Draft Proposal follows a comprehensive inquiry into police powers in Tasmania from the Tasmanian Law Reform Institute ('the TLRI'), with an analysis and recommendations for reform contained in its final report titled 'Consolidation of Arrest Laws in Tasmania' ('the TLRI Report').[1] The TLRI Report noted the current legal framework relating to arrests was 'complex, uncertain and difficult to discover'[2] with arrest powers contained in the provisions of 50 different pieces of legislation.[3] The TLRI also highlighted submissions received by Tasmania Police identifying confusion and difficulty in relation to their arrest powers. The TLRI ultimately recommended the consolidation of arrest powers into a single statute, noting examples of similar legislation in other Australian jurisdictions.[4]

TasCOSS hopes the introduction of legislation consolidating existing powers will promote consistent practice in the exercise of police duties,[5] as well as public awareness and understanding of these functions. However, we are concerned about the significant expansion of police powers outlined in the Draft Proposal, and our submission explores key issues of concern. We also strongly agree with the view expressed in the TLRI Report that legislative change alone will not address existing issues relating to confusion or uncertainty around police powers, or inconsistent application/interpretation of the law.[6] For these reasons, our submission highlights other changes which we believe should accompany any change to legislative powers and strengthen accountability and public confidence in the police.

In general, we support the development and implementation of a consolidated act **which does not expand** on any existing police powers. If powers are to be expanded, we recommend the Government first commit to extensive consultation and research into the need for, and potential impact of, these changes – noting that issues such as search powers and use of force were not considered by the TLRI. Our submission also highlights the need for additional mechanisms to ensure adequate oversight in relation to police powers and decision making.

[1] Tasmania Law Reform Institute, 'Consolidation of Arrest Laws in Tasmania' (May 2011).
[2] Ibid, p3.
[3] Ibid.
[4] For example, *Police Powers and Responsibilities Act 2000* (Qld).
[5] Tasmania Law Reform Institute, 'Consolidation of Arrest Laws in Tasmania' (May 2011), pp44-45.
[6] For example, ibid, p42.

Key Issues

Expanded arrest powers

The TLRI defined arrest as 'the involuntary deprivation of a person's liberty',[7] and noted the importance of personal liberty as an individual right.[8] As such, the Draft Proposal – which includes significant expansion of certain police powers relating to arrest – must be carefully considered in light of its potential impact, particularly in relation to groups and communities who are disproportionately represented within the criminal legal and policing systems.

While the deprivation of liberty is justified as an appropriate response to risks of further harm to individuals or communities, it must be acknowledged that the decision to arrest a person has significant and often far-reaching implications for the person who is detained in police custody. National inquiries, including the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC') and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('RCD'), recommended strategies to reduce the incidents of arrest of First Nations people and Australians with disability,[9] noting these groups are disproportionately targeted by police. The findings of these Royal Commissions outlined the impact of over policing and the need for a nuanced approach to arrest (and other issues) to promote the dignity and safety of groups who are vulnerable in interactions with police and ensure they are not unfairly targeted by police practices. Several reports,[10] academic articles,[11] and coronial inquests[12] have also explored at length the links between experiences of minority groups in police custody and risks to safety and wellbeing.

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[7] Tasmania Law Reform Institute, 'Consolidation of Arrest Laws in Tasmania' (May 2011), p2.
[8] Ibid.
[9] For example, see Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Executive summary: Our vision for an inclusive Australia and recommendations' (2023) p277:

> ***Recommendation 8.20*** *- The Australian Government and state and territory governments and police services should collaborate with people with disability in the co-design, implementation and evaluation of strategies to improve police responses to people with disability.*
> *All police services should introduce adequate numbers of dedicated disability liaison officers.*
> *The Australian Government and state and territory governments should introduce an alternative reporting pathway for people with disability to report crimes to police.*

[10] For example, Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No 133 (2017); Australian Human Rights Commission (2024). 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing. Sydney: Australian Human Rights Commission; Yoorrook Justice Commission, 'Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems' (2023).
[11] For example, Whellum, P., Nettelbeck, A., & Reilly, A. (2020). Cultural accommodation and the policing of Aboriginal communities: A case study of the Anangu Pitjantjatjara Yankunytjatjara Lands. *Australian & New Zealand Journal of Criminology*, *53*(1), 65-83. https://doi.org/10.1177/0004865819866245; Sandra Bucerius, Temitope Oriela and Daniel J Jones, 'Policing with a public health lens—Moving towards an understanding of crime as a public health issue' (2021) 95(3) The Police Journal 421–435; Sentas, V., & McMahon, R. (2014). Changes to Police Powers of Arrest in New South Wales. *Current Issues in Criminal Justice*, *25*(3), 785–801. https://doi.org/10.1080/10345329.2014.12035998.
[12] For example, the recent coronial inquest into the tragic death of Veronica Nelson in Victoria has highlighted the failings of the Victorian prison system to adequately respond to the health care needs of prisoners, particularly Aboriginal prisoners who may already be vulnerable to harm in the custodial environment - Coroner's Court of Victoria at Melbourne (5 April 2023) Finding into death with inquest – inquest into the passing of Veronica Nelson COR 2020 0021.

Research also shows that arrest can act as a 'gateway' to further criminal legal system involvement (including incarceration). Rather than acting as a disincentive or deterrent, being taken into police custody can be a predictive factor for ongoing police and legal system involvement. This is particularly true for children and young people, with evidence showing that the younger children are when they have their first interaction with police, the more likely they are to go on to reoffend later in life.[13]

While the Draft Proposal does clarify that the intention is not to change the existing legislative protections relating to the arrest of children, we are still concerned the proposed changes will have a significant negative impact on a number of community groups. In particular, the proposed expansion of search powers – which will apply to both children and adults – are likely to increase interactions between police and young people, which is concerning given recent research highlighting safety concerns experienced by children when interacting with police,[14] as well as research highlighting early contact with police as a predictive factor for later involvement in the legal system.[15] We are also concerned the changes to general police practice may potentially shift police culture even further towards a 'pro-arrest' or 'pro-prosecution' model – this is the opposite of what has been recommended in relation to children and young people in a number of recent inquiries exploring children's rights and safety within the criminal legal system, including the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (CoI).[16]

For these reasons, we are extremely concerned about the potential impact of the expanded powers of arrest outlined in the draft proposal. Whilst we support in principle the consolidation of existing powers

[13] Sotiri, M, Schetzer, L & Kerr, A, Justice Reform Initiative, 'Children, Youth Justice and Alternatives to Incarceration in Australia' (2024), pp9-10; Sentencing Advisory Council (Tasmania), 'Sentencing Young Offenders' (October 2021), pp26-29, Sentencing Advisory Council (Victoria), 'Reoffending by Children and Young People in Victoria' (December 2016), p31.

[14] Australian Human Rights Commission (2024). 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing. Sydney: Australian Human Rights Commission, pp47-49.

[15] McCausland, R. and Baldry, E. (2023) "Who does Australia Lock Up? The Social Determinants of Justice", *International Journal for Crime, Justice and Social Democracy*, 12(3), pp. 37-53. https://doi.org/10.5204/ijcjsd.2504.

[16] For example, see Recommendation 12.27 in relation to Aboriginal children and young people:

1. *The Tasmanian Government, to protect Aboriginal children and young people against the risk of sexual abuse in youth detention, should urgently develop, in partnership with Aboriginal communities, an Aboriginal youth justice strategy that is underpinned by self-determination and that focuses on prevention, early intervention and diversion strategies for Aboriginal children and young people. Aboriginal communities should be funded to participate in developing the strategy.*
2. *The strategy should consider and address, among other matters:*
    a. *legislative reform to enable recognised Aboriginal organisations to design, administer and supervise elements of the youth justice system for Aboriginal children and young people*
    b. *capacity building and funding for recognised Aboriginal organisations to participate in youth justice decision making in relation to Aboriginal children and young people, and to deliver youth justice services to Aboriginal children and young people*
    c. *the use of police discretion in the investigation and processing of Aboriginal children and young people, including cautioning, arrest, custody, charging and bail*
    d. *alternative pre-court diversionary options for Aboriginal children and young people*
    e. *mechanisms to increase the likelihood of Aboriginal children and young people receiving bail and minimise the number of Aboriginal children and young people on remand, including culturally responsive supported bail accommodation and other bail assistance programs, and legislative reform to require bail decision makers to consider a child's Aboriginal status*
    f. *mechanisms to support Aboriginal children and young people to comply with the conditions of community-based youth justice orders, to minimise their likelihood of breaching conditions and entering detention.*

into a single, streamlined piece of legislation, we do not support the expansion of powers – particularly in the absence of evidence justifying the need for expanded powers for police. We do not support reform that contradicts the recommendations of the RCIADIC and RCD as noted above, and that is likely to further entrench existing disadvantage.

The following is an overview of key issues and areas of concern relating to arrest:

All offences prima facie arrestable

The Draft Proposal is consistent with the recommendation from the TLRI Report in relation to the removal of the distinction between arrestable and non-arrestable offences. In making this recommendation, the TLRI Report acknowledged the risks associated with such a significant change to police powers of arrest, noting concerns about the limited checks on police power/discretion and the risk that powers may be used inappropriately by police, with limited opportunity or recourse for those impacted by a misunderstanding or misuse of the provisions. However, the TLRI ultimately found that 'the objectives of clarity, simplicity and accessibility warrant reform of the law of arrest in Tasmania to remove the distinction between arrestable and non-arrestable offences'.[17]

TasCOSS has serious concerns in relation to this approach. Firstly, we note the TLRI Report, in justifying its position in relation to this issue, references support from the Australian Law Reform Commission ('ALRC') in establishing a scheme under which all offences are prima facie arrestable. However, we note the ALRC report referenced is from 1975 and therefore predates significant and extensive inquiries – including the RCIADIC and the RCD – which raised significant and ongoing concerns relating to the inappropriate use of police powers and the impact of policing practices on groups experiencing marginalisation. In relying on a report which predates these substantial inquiries (not to mention further inquiries undertaken since the publication of the TLRI report),[18] we are concerned the TLRI failed to take into consideration the impact of the changes they recommended on groups who are already vulnerable when interacting with police. We also note the TLRI Report emphasises the need for clarity to protect the interests of the police, by providing clear, easy-to-follow guidelines about the exercise of their powers. However, TasCOSS strongly believes the views and interests of police must be balanced by concerns relating to community safety and wellbeing to ensure that the proposed changes are justified in light of their potential impact on minority groups.

We also note the recommendations of the TLRI in relation to the elimination of arrestable and non-arrestable offences included a recommendation relating to the promotion of non-arrest alternatives and options for police, as well as the need for strengthened oversight mechanisms in relation to police decision-making and the exercise of their powers. These have not been included for consideration within the Draft Proposal.

We therefore do not support provisions making all offences prima facie arrestable. We strongly recommend a system of classification which ensures arrest is an option to be exercised in relation to

[17] Tasmania Law Reform Institute, 'Consolidation of Arrest Laws in Tasmania' (May 2011), p38.

[18] This includes inquiries into the criminal justice system in other jurisdictions such as Victoria, as well as a recent Tasmanian Inquiry – for more details, see our previous submission: TasCOSS (2023), Submission to the Legislative Council Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters, April.

serious offences. We recommend an approach modelled on Victorian legislation which distinguishes between summary and indictable offences (and which also mirrors the existing police powers contained in the Criminal Code in relation to arrest without warrant).[19] We also strongly support the introduction of other safeguards (discussed further below) to guard against inconsistent or inappropriate use of arrest powers.

Option of last resort

We strongly support the TLRI's recommendation that broadened powers of arrest must be circumscribed by statutory requirements that arrest is only be used as a matter of last resort,[20] alongside legislative reforms that expand alternatives to arrest.[21]

During the 2018 *Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, the Australian Law Reform Commission (ALRC) heard that legislative and policy reform is needed to support police to exercise discretion when considering arrest.[22] Police discretion is a critical feature of the criminal law system, directly influencing outcomes of interactions between law enforcement and the community. While regulatory measures such as policing manuals and instructions guide police discretion about arrest, the ALRC considered that they should be underpinned by legislative constraints, mandating arrest as a last resort and ensuring that police officers prioritise alternative responses such as diversion, warnings and community-based interventions wherever possible.

Strengthening these legislative safeguards is crucial to mitigating the risks associated with the overuse of arrest, particularly for vulnerable people who experience disproportionate contact with the criminal law system. Legislative change, supported by comprehensive police training and clear operational guidance, is essential to ensuring discretion is exercised consistently, fairly and in alignment with human rights principles.

We therefore strongly recommend any legislation explicitly state that arrest is an option of last resort.

Expanded search powers

The TLRI did not examine police powers related to personal searches or searches of premises following an arrest. However, it is proposed that the existing search provisions under the *Police Offences Act 1935*[23] are brought forward and expanded. This expansion includes lowering the threshold of search powers from reasonable grounds to reasonable suspicion alongside the introduction of four protections:

- that the search is conducted in the least intrusive means possible to achieve the legitimate objectives of the search;
- that the search is carried out in circumstances that provide reasonable privacy to the person being searched;

[19] *Criminal Code 1924* (Tas) s27.
[20] Tasmania Law Reform Institute, 'Consolidation of Arrest Laws in Tasmania' (May 2011), Recommendation 5(2)(a).
[21] Ibid, Recommendation 5(4).
[22] Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No 133 (2017) pp452-455.
[23] *Police Offences Act 1935* (Tas) s58B.

- that where reasonable and practicable, the search is undertaken by an officer of the same gender as the person being searched, or where the person is transsexual, transgender or has innate variations of sex characteristics, by an officer of a gender they request or, if an officer of the gender requested is not immediately available, an officer who is, at the further request of the person, male or female; and
- explicitly noting that the search power does not authorise a body cavity search.[24]

The change threshold is significant, yet it is unclear from the proposal paper as to why the expanded search powers are warranted. Additionally, the paper notes that the consolidated powers to search a suspect would include restrictions that 'do not typically exist at present'.[25] This is not expanded upon in the paper and as such, the lack of detail raises some concerns about the scope and implications of the proposed expansion.

While we support the inclusion of the proposed protections, we remain concerned about the impact of the expansion of search powers. We also note this change would impact children and young people, who are already at risk of over-policing (particularly those who are otherwise vulnerable to misuse of police powers, as discussed above).

We recommend further investigation into the need for expanded search powers before implementing such a significant change. If changes are to be considered, we recommend further legislative safeguards such as distinguishing between, and provisions pertaining to, different types of personal searches, principles of urgency and seriousness, provisions for searching vulnerable people, and accountability mechanisms such as adherence to procedural safeguards. While we do not support all aspects of the *Law Enforcement (Powers and Responsibilities) Act 2022 (NSW) – Division 4 Provisions relating generally to personal searches*, we note that the Act does provide legislative provisions for different types of personal searches, preservation of privacy and dignity during search and rules for conduct of strip searches. We believe that expanding the protections beyond what has been proposed is required to minimise harms associated with personal searches.

'Use of force' provisions

Police operate in particularly challenging circumstances and the inclusion of use of force provisions in legislation outlining police powers recognises the need (at times) for the use of force to protect members of the public, particularly in instances where there is a risk of serious violence or harm. However, for these reasons, TasCOSS strongly supports the inclusion of clear limitations on what constitutes reasonable force within the legislation. This is also consistent with the Australia New Zealand Policing Advisory Agency (ANZPAA) Use of Force Principles,[26] which stipulate police use of force should be 'reasonable, necessary, proportionate and appropriate to the circumstances'. As such, the ANZPAA Use of Force Principles highlight that, where possible, police officers are required to utilise communication, conflict resolution and de-escalation strategies to minimise the risk of excessive use of force and the harms associated.[27]

[24] Tasmania Law Reform Institute, 'Consolidation of Arrest Laws in Tasmania' (May 2011), p27.
[25] Tasmanian Government, Department of Justice, 'Police Powers and Responsibilities Act: Proposal Paper' (November 2024), p38.
[26] Accessed at https://www.anzpaa.org.au/products/products/australia-new-zealand-use-of-force-principles.
[27] Ibid.

We strongly support the inclusion of the ANZPAA Principles within the Bill, as well as the inclusion of TLRI recommendation 10 (3)(a), 'a police officer must not, in the course of arresting a person for an offence, do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the police officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the police officer).' We also note that such provisions are present within the Queensland *Police Powers and Responsibilities Act 2000* which explicitly states that '[t]he force a police officer may use under this section (power to use force against individuals – police officers) does not include force likely to cause grievous bodily harm to a person or the person's death'.[28] Explicit consideration should also be made to ensure that vulnerable people are protected against excessive and unreasonable use of force.

We further recommend the inclusion of legislative provisions and policy mechanisms to promote accountability and oversight of use of force. In 2023, the NSW Law Enforcement Conduct Commission found widespread internal inconsistencies and underreporting of use of force by police, raising significant concerns about inaccurate and unreliable data, the extent and nature of misconduct, improving practice, and enhancing community safety.[29] Such observations may be applicable to the Tasmanian context to promote requirements to document use of force incidents, enhanced training, clear guidelines and transparent data.

Oversight and safeguards

The TLRI Report included a clear recommendation that any change (particularly expansion) to police powers should be accompanied by additional safeguards to ensure independent oversight of police decision making, noting the existence of such bodies in other Australian jurisdictions.

TasCOSS has previously advocated for strengthened oversight in relation to police decision making in Tasmania, highlighting the need for independent overview of police complaints and other misconduct to safeguard the rights of Tasmanians and the integrity of our police. This is particularly relevant in relation to protecting and safeguarding the interests, rights and safety of groups who are recognised as vulnerable, with research demonstrating that, 'abuse of police power impacts most upon the already vulnerable such as the young, the mentally ill, those from refugee and migrant backgrounds and Indigenous Australians.'[30] We have recommended the Tasmanian Integrity Commission (TIC) take a more active role in providing accountability and transparency by engaging in more independent reviews of allegations of police misconduct, noting at the same time evidence demonstrating the TIC is not currently engaging in reviews of this nature – for example, the recent decision by the TIC to not investigate allegations of police misconduct in relation to potential breaches of confidentiality and/or legal professional privilege at Risdon Prison.[31]

[28] *Police Powers and Responsibilities Act 2000* (Qld) s615 (3).
[29] Law Enforcement Conduct Commission, 'Review of NSW Police Force – Use of Force Reporting' (February 2023), pp7-8.
[30] Police Accountability Project, 'Independent Investigation of Complaints against the Police: Policy Briefing Paper' (2017), p3.
[31] Amber Wilson, 'Concerns raised over review into Tasmania Police's use of covert recording devices', The Mercury (online, 1 September 2022), accessed at https://www.themercury.com.au/truecrimeaustralia/police-courts-tasmania/concerns-raised-over-review-into-tasmania-polices-use-of-covert-recording-devices/news-story/f247821e079b33ab126bc456113e0213.

We also note community organisations in other jurisdictions have called for independent investigation and management of all police complaints made by Aboriginal and Torres Strait Islander people. This reflects the significant number of complaints related to conduct which wouldn't necessarily be considered 'serious misconduct', but still has significant individual and community impact (such as allegations of racist language or abuse).[32] For example, according to the final report of the Yoorook Justice Commission,[33] 'Victoria's police complaints system is failing First Peoples. The system routinely denies or justifies police misconduct and fails to hold officers or management to account. The vast majority of complaints about police are investigated by police which undermines effectiveness and generates mistrust. There is compelling evidence for the need of a truly independent police complaints system'.[34]

If the TIC is not the appropriate entity to be conducting such investigations, then we strongly support consideration of an independent police ombudsman to promote integrity, accountability and consistency in police-decision making and respond to instances of misuse of police powers.[35]

Additional issues to be considered

Introduction of specific provisions to support and protect groups who may be vulnerable in police custody

The TLRI identified risks and vulnerabilities experienced by young people, people with impacted intellectual or physical functioning, Aboriginal and Torres Strait Islander people and people from a non-English speaking background. The overview of these risks within the TLRI Report included consideration of a person's risk prior to, during and post arrest – however, the recommendations from the TLRI Report seem to focus exclusively on the protection of post-arrest harm.[36]

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[32] Browne, K, Victorian Aboriginal Legal Service (VALS), 'Submission to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria' (September 2017), pp16-17.

[33] Yoorrook Justice Commission, 'Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems' (2023).

[34] Ibid, p21.

[35] For example, for information about the Police Ombudsman in Northern Ireland, see: About the Police Ombudsman NI

[36] ***Recommendation 7****: That the proposed Arrest Act should include protective provisions for vulnerable persons. A vulnerable person should be defined as a person who falls into one or more of the following categories:*

- *Young persons;*
- *Persons who have impaired intellectual functioning;*
- *Persons who have impaired physical functioning;*
- *Aborigines and Torres Strait Islanders;*
- *Persons who are of non-English speaking background.*

The protective provisions for vulnerable people should stipulate:

(1) That the arresting officer must record in writing the reason for effecting an arrest rather than employing an alternative to arrest;

(2) That a vulnerable person must be informed at the time of the arrest of his or her right to communicate with a friend, relative, parent/guardian, responsible person, legal practitioner and/or interpreter (relevant person) as is appropriate;

(3) That when a vulnerable person is arrested there should be an obligation to inform a relevant person of the arrest:

(a) When a young person is arrested, there should be an obligation upon the police to inform a parent/guardian, responsible person or other relevant person of the arrest.

(b) When an Aborigine or Torres Strait Islander is arrested the Aboriginal Legal Service should be notified via the on-call Field Officer in accordance with Tasmania Police requirements (Aboriginal Strategic Plan).

While the proposal paper includes some post-arrest protections,[37] we are deeply concerned by the limited nature of the proposed safeguarding provisions for vulnerable persons. As such, we strongly support the full implementation of TLRI Recommendation 7, alongside the provisions noted below to promote the safety and wellbeing of vulnerable persons.

Definition of vulnerable persons

In New South Wales, the *Law Enforcement (Powers and Responsibilities) Act 2022* defines vulnerable persons in line with TLRI Recommendation 7.[38] In contrast, the Queensland *Police Powers and Responsibilities Act 2000*, provides specific protections for Aboriginal and Torres Strait Islander peoples, children, persons with 'impaired' capacity, and intoxicated persons.[39] Given distinct risks associated with intoxication in the context of arrest, we recommend including intoxicated persons as a separate category of vulnerability.[40,41] We also recommend expanding the TLRI definition of vulnerable persons to include people with impacted capacity, recognising the circumstances in which people with cognitive and/or psychosocial disabilities encounter police, their overrepresentation in the criminal law system and support needs prior to, during and following arrest.[42]

Additional protections for people who have been arrested

In Western Australia the *Criminal Investigation Act 2006* provides arrested persons with entitlements to any necessary medical treatment, a reasonable degree of privacy from mass media, a reasonable opportunity to communicate or attempt to communicate with a relative or friend to inform them of their whereabouts, and to be assisted by an interpreter or other qualified person if required where there are barriers to communicating in spoken English.[43] We recommend embedding similar provisions within the Tasmanian legislation and ensuring that people with disability are also able to have any communication needs met.

Beyond post-arrest protections – reducing the arrest rates of vulnerable people

As noted above, the RCIADIC highlighted the critical need to reduce the overrepresentation of Aboriginal people in custody. The RCIADIC made a number of recommendations to reduce arrests of Aboriginal people,[44] by prioritising diversion, promoting self-determination, improving relationships with police and by enhancing the operation of the criminal law system.[45] These recommendations are as relevant today as they were when they were first made.

(c) If a person with impaired intellectual or physical functioning is arrested, there should be an obligation upon police to notify a relevant person or responsible person as appropriate.

(4) Then the police must assist an arrestee who is a vulnerable person in communicating with a relevant person and the relevant person should be present during any interview.

(5) That when a person from a non-English speaking background is arrested the police officer conducting the investigation must defer any questioning until an interpreter is present.

[37] Tasmanian Government, Department of Justice, 'Police Powers and Responsibilities Act: Proposal Paper' (November 2024), p 28.

[38] *Law Enforcement (Powers and Responsibilities) Act 2022* (NSW) reg24.

[39] *Police Powers and Responsibilities Act 2000* (Qld) s420-423, s631.

[40] For example, see Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Criminal justice and people with disability' (2023) p3; Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No 133 (2017) pp354-355.

[41] For an examination of this issue see Human Rights Law Centre (2020), 'Tanya Day Inquest — Summary of Findings,' 9 April.

[42] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Research Report: Police responses to people with disability (2021), p3-7.

[43] *Criminal Investigation Act 2006* (WA) s137.

[44] Discussed in Tasmania Law Reform Institute, 'Consolidation of Arrest Laws in Tasmania' (May 2011), p48

[45] Ibid.

Similarly, the RDC underscored the disproportionate contact that people with disability have with the criminal law system, including with police.[46] It identified systemic barriers, discrimination, and a lack of appropriate supports as key contributors to this overrepresentation. To address this, the RDC recommended measures to minimise interactions between people with disability and the criminal law system, including the use of cautions or warnings, diversion at the point of investigation and arrest and increased access to support services.[47]

These recommendations reinforce the need for more equitable, trauma-informed approaches to law enforcement that prevent the overcriminalisation of vulnerable people and that prioritises alternatives to arrest. Additionally we believe police should be provided with necessary support to appropriately and effectively assess, identify and respond to the needs of vulnerable people, further recognising that experiences of over policing and fears of statutory harm may influence a person's willingness to disclose their identities and needs.

Alternatives to arrest

The TLRI Report includes a comprehensive overview of alternatives to arrest,[48] and highlights the need to promote and embed alternatives within police practice as part of any reform of police powers.

TasCOSS supports the development of a statutory scheme to enable police to issue on-the-spot attendance notices, as a way of streamlining existing process and also (hopefully) encouraging police to adopt alternatives to arrest wherever possible. However, to accompany this measure – which will involve a high degree of discretion being exercised by individual officers – we also recommend establishing clear protocols governing the exercise of police discretion. Strengthening safeguards around charging practices and arrest decisions will help reduce unnecessary criminal law contact, particularly for vulnerable individuals and reinforce a justice system that prioritises rehabilitation over punitive responses.

In relation to the examination and exercise of police discretion, we have previously recommended establishing clear protocols with Tasmania Police relating to charging practices for young people.[49] These recommendations are also applicable in the context of adults:

- Setting clear targets to reduce the number of arrests or matters involving people referred to prosecution;
- Establishing a system for the review of charging decisions (ideally in consultation with independent entities, such as the TIC or other relevant entity); and
- Developing specialist protocols for vulnerable persons to reduce the number of arrests and/or charges – for example, the existing protocols in jurisdictions across the United Kingdom relating

[46] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Criminal justice and people with disability' (2023), p3.
[47] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 'Criminal justice and people with disability' (2023), p285.
[48] Tasmania Law Reform Institute, 'Consolidation of Arrest Laws in Tasmania' (May 2011), pp78-82.
[49] For example, see 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; TasCOSS (2023), Submission to the Legislative Council Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters, April.

to non-prosecutorial outcomes for children within the out-of-home care system who are engaged in problem behaviour.[50]

We also strongly recommend an urgent review of police practices and implementation of training and other supports to promote non-prosecutorial outcomes (including, but not limited to, the suggestions above), as well as a review of the Tasmanian Police Manual to ensure current policy is consistent with best practice and human rights law. The development and implementation of such training should be consistent with recommendations from relevant inquiries which have identified ongoing issues in police practice.

Increased training and support for police

The need for changes to police culture was recognised by RCIADIC[51] and suggestions for how to effect meaningful change were included in the chapter on 'Police Accountability' in the ALRC's 'Pathways to Justice' report.[52] Alongside recommendations relating to the need for a review of police practices generally,[53] Recommendation 14-4 recommended the following strategies to improve police culture:[54]

- increased employment of Aboriginal police officers;
- ensuring police complete specific cultural awareness training;
- development and implementation of cooperative initiatives between police and communities/ community organisations;
- public reporting on policing initiatives; and
- Reconciliation Action Plans for police.

TasCOSS strongly supports initiatives aimed at promoting consistent, culturally-safe and community-driven practice.

Community awareness

Alongside the introduction of any new legislation relating to amended police powers, we recommend the implementation of a community awareness strategy, including expanded funding for community legal centres and other organisations supporting communities who regularly interact with police. This campaign should include materials to promote understanding of police powers and responsibilities, as well as existing mechanisms for addressing concerns around police misconduct or potential misuse of police powers and how to seek redress. We recommend specialist materials or education/training

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[50] See UK Government, Department of Education, 'The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers' (2018), accessed at National protocol on reducing criminalisation of looked-after children - GOV.UK.

[51] For example:

Recommendation 60*: That Police Services take all possible steps to eliminate:*

a. Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and

b. The use of racist or offensive language, or the use of racist or derogatory comments in log books and other documents, by police officers.

When such conduct is found to have occurred, it should be treated as a serious breach of discipline.

[52] Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No 133 (2017).

[53] For example, Recommendations 14–1, 14–2 and 14–3 (ibid, p17),

[54] Ibid, p18 – police culture is also discussed at pp472-484.

packages are developed to support the needs of groups who are currently vulnerable to police misconduct/misuse or powers (including children and young people, Aboriginal communities and people with disability), and that these materials should be developed in collaboration with community groups and organisations who already work alongside these communities.