



Tasmanian Council of Social Service Inc.

Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

April 2023



**INTEGRITY
COMPASSION
INFLUENCE**

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

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.

This Legislative Council inquiry is an opportunity for the Tasmanian Parliament and the community to reflect on the state of incarceration in Tasmania for both adults and young people, and to critically examine whether our laws, practices and policies are supporting Tasmanians to feel protected and safe. This is an extremely broad and complex topic. Rather than responding to all questions posed by the inquiry, we have focused our response primarily on preventative measures and early intervention to prevent involvement in the prison system. This reflects our members' focus on prevention and early intervention services, as well as the evidence that these approaches cost less than criminal justice responses and have better outcomes for individuals and communities.

TasCOSS' principal position is that the current criminal justice and imprisonment model is failing our communities. We believe the Government must recognise and address some of the factors which are contributing to growing imprisonment rates – particularly the rates of prisoners on remand – and implement measures to respond more therapeutically to those individuals, families or groups 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. We also advocate for the introduction and/or expansion of alternative measures to better support those already within the criminal justice system, including prison reform and the provision of more comprehensive health and other services to prisoners and their families.

Our submission will provide a brief overview of some of the current trends in imprisonment in Tasmania, before examining the following:

- Factors which may be influencing increases in Tasmania's prisoner population;
- Evidence-based strategies to reduce and improve contact with the justice system; and
- Improving the prison service.

Imprisonment in Tasmania

Criminal justice policy 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. Tasmania's criminal justice framework presents imprisonment as a sentencing option which protects the community against dangerous behaviour, as well as guarding against future crime by providing a disincentive for engaging in criminal activity. However, TasCOSS strongly believes the Tasmanian Government must recognise the

current approach to imprisonment is not meeting all its intended aims – for individuals, their families or the community – and that it is time to invest in alternative models of justice.

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).¹ This is resulting in significant costs, with the 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).² 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%’.³

Although we acknowledge rehabilitation is not the only objective of the criminal justice system, TasCOSS is extremely concerned that current trends, policies and legislative developments are leading to an increase in imprisonment rates without improving community safety or public confidence in the criminal justice system. High and rising recidivism rates – both within Tasmania⁴ and across Australia⁵ – could be interpreted as one demonstration of the failings of the current system, as there is little evidence that imprisonment is acting as a deterrent to prevent against crime. As noted by the Productivity Commission, ‘[h]igh recidivism rates, combined with a large proportion of prisoners on remand or serving short sentences, suggest that many prisoners cycle in and out of prison, following a “churn” pathway through the criminal justice system ... [which is] likely to be more common among Aboriginal and Torres Strait Islander prisoners’.⁶

By relying on imprisonment and punitive responses to various social issues – including substance use and family violence – we believe governments are failing to respond to the underlying issues which are driving criminal behaviour but are also contributing to the further marginalisation of disadvantaged Tasmanians, who are most likely to be involved in the criminal justice system.⁷ Over-reliance on imprisonment also fails to address the criminogenic aspects of imprisonment which increase the chances of reoffending, including difficulties experienced by those attempting to adjust to life post-prison, social stigma which can impact possibilities of employment and/or housing, and weakened links with families, friends and other prosocial networks.

TasCOSS is particularly concerned about the increased involvement of young people in the criminal justice system, especially rising rates of youth detention. Despite youth crime rates falling in Tasmania and across Australia,⁸ a large and increasing number of Tasmanian children are involved in the youth justice system,

¹ Australian Bureau of Statistics (2023), ‘Prisoners in Australia 2022’, Prisoner Characteristics, Table 15.

² 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, ‘Report on Government Services 2023 – 8A Corrective Services’, Table 8A.20.

³ Justice Reform Initiative (2021), ‘State of Incarceration: Tasmania’s Broken Criminal Justice System’, April 2021, p5.

⁴ Ibid, p5-6.

⁵ Productivity Commission (2021), ‘Australia’s prison dilemma’, p42-46.

⁶ Ibid, p46.

⁷ Justice Reform Initiative (2021), ‘State of Incarceration: Tasmania’s Broken Criminal Justice System’, April 2021, p8.

⁸ Sentencing Advisory Council (2021), ‘Sentencing Young Offenders’, p4.

with recent statistics showing the number of Tasmanian children who are supervised in the community by Youth Justice is higher than the national average.⁹ Research shows that any involvement in the criminal justice system has a criminogenic effect on young people, and TasCOSS therefore strongly believes urgent intervention is needed to ensure better support for young Tasmanians.

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 Islander prison population has increased by 97% since 2010, compared to 7% for non-Indigenous people'.¹⁰ 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,¹¹ 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.¹² Even more concerning, the rates of imprisonment for both Aboriginal and Torres Strait Islander adults and children have increased, rather than decreased, over the past 12 months.¹³

These statistics are not only a shameful indication of ongoing inequalities and racism in the criminal justice system (and our society more broadly), but also incompatible with the Government's stated aims under Closing the Gap to reduce the rate of Aboriginal and Torres Strait Islander people in prison.¹⁴

Factors which may be influencing increases in Tasmania's prisoner population

Several recent reports have highlighted that, although rates of crime are generally decreasing nationwide, rates of imprisonment have been increasing significantly since 2000.¹⁵ As noted by the Productivity Commission, the victimisation rates for some offences (such as sexual assault) and the incidence of drug and firearms offences have increased, but there have been significant decreases in the victimisation rates for many types of crime, including homicide, kidnapping, robbery, and theft.¹⁶

There are many possible reasons for these seemingly contrasting trends. One is that increased rates of detention have a positive impact on crime rates, with the risk of imprisonment acting as a deterrent against criminal activity. However, the Productivity Commission explored this possibility and concluded that both the risk of imprisonment and the length of sentence imposed had a relatively small impact on rates of crime generally.¹⁷

⁹ Productivity Commission (2023), 'Report on Government Services 2023 – 17 Youth Justice Services', Table 17A.1.

¹⁰ Justice Reform Initiative (2021), 'State of Incarceration: Tasmania's Broken Criminal Justice System', April 2021, p1.

¹¹ Productivity Commission (2023), 'Report on Government Services 2023 – 8A Corrective Services', Table 8A.6.

¹² Productivity Commission (2023), 'Report on Government Services 2023 – 17 Youth Justice Services', Table 17A.5.

¹³ For children and young people, the rate increased from 6.4 to 6.7 (Productivity Commission, 'Report on Government Services 2023 – 17 Youth Justice Services', Table 17A.5) and for adults the rate increased from 761.0 to 796.1.

¹⁴ 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 – 2023'.

¹⁵ For example, Productivity Commission (2021), 'Australia's prison dilemma', p8-9.

¹⁶ Ibid, p9.

¹⁷ Ibid, p10.

We believe the Tasmanian Government needs to recognise and address other factors which are likely contributing to increases in our prison population, including: sentencing and bail; the links between child protection and youth justice involvement; links between disadvantage and crime; and an increase in punitive responses to socio-legal issues.

Sentencing and bail

The Productivity Commission highlighted that the increase in prisoners across Australia could be linked to shifts towards punitive criminal justice policies which result in greater numbers of prison entrants, or longer periods in custody, noting that, ‘more punitive policy measures, such as increases in the likelihood of receiving a prison sentence and longer sentences, were important drivers of growing imprisonment rates... [as well as] an increase in the number of prisoners on remand due to changing bail laws and length of court cases’.¹⁸

Mandatory sentencing has been identified as one factor which may be contributing to a nation-wide increase in imprisonment,¹⁹ with many jurisdictions (including Western Australia, the Northern Territory and Victoria) introducing schemes for particular offences. A number of legal organisations have raised concerns about mandatory sentencing,²⁰ including the Law Society of Tasmania, who have noted, ‘a lack of persuasive evidence to suggest that the justifications often given for mandatory sentences – retribution, effective deterrence, incapacitation, denunciation and consistency – achieve the intended aim... mandatory sentencing regimes can produce unjust results with significant economic and social costs without a clear and directly attributable corresponding benefit in crime reduction’.²¹ This view was supported by the Sentencing Advisory Council of Tasmania (‘the SAC’) in their investigation and report regarding a potential mandatory sentencing scheme for serious sex offences against children.²² According to the SAC, ‘mandatory sentencing is inherently flawed. The Council has grave concerns that the introduction of mandatory minimum sentencing for sexual offences in Tasmania will create injustice by unduly fettering judicial discretion... [and] create unjustified unfairness without achieving its stated aims of deterring offenders and increasing transparency’.²³ TasCOSS shares these concerns and remains opposed to the introduction of mandatory sentencing schemes in Tasmania.²⁴

Reports have also highlighted the need for more extensive sentencing options. A wider range of alternatives to imprisonment would enable decision-makers to use the sentencing process as an opportunity to engage offenders in rehabilitation or programs which address underlying factors contributing to their involvement in crime. This was considered by the SAC in their 2016 report relating

¹⁸ Productivity Commission (2021), ‘Australia’s prison dilemma’, p28.

¹⁹ Ibid, p11-12.

²⁰ See, for example in relation to mandatory sentences nationwide, Jane Lee, ‘Law conference calls for mandatory sentences to be abolished’ The Age (3 December 2015) accessed at <https://www.theage.com.au/politics/federal/law-conference-calls-for-mandatory-sentences-to-be-abolished-20151203-gletyi.html>.

²¹ The Law Society of Tasmania ‘Law Society opposes Sentencing Amendment (Assaults on Police Officers) Bill’ (Media Release , 26 November, 2014), accessed at <http://lst.org.au/media-release-26-november-2014>.

²² Sentencing Advisory Council (2016), ‘Mandatory Sentencing for Serious Sex Offences Against Children: Final Report No. 7’, September 2016.

²³ Ibid, vi.

²⁴ TasCOSS (2017), Submission to Consultation on the Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017, April 2017.

to suspended sentences,²⁵ which recommended that, ‘courts should have the most flexibility possible to tailor a sentence to the offence and the offender’, and that ‘community-based sanctions should be available for a wide range of offending, including where imprisonment may also have been justified’.²⁶ TasCOSS supports this view, noting that alternative sentencing options – including home detention,²⁷ and expanded therapeutic models such as the Drug Treatment Order²⁸ – are more cost-effective, have lower recidivism rates, and promote rehabilitation and the development of stronger pro-social behaviours and networks.²⁹

Increasingly punitive and restrictive bail laws have been highlighted as a potential driver for an increase in imprisonment across Australia. The Productivity Commission notes that, ‘[c]hanges to bail laws in Australia since 2010 have seen a shift in emphasis to mitigating the potential risks of offending while on bail... [which] reverse the presumption of bail or create a presumption against bail in particular circumstances’.³⁰ Several reports have highlighted the nexus between increased imprisonment rates and bail reform,³¹ as well as the disproportionate impact of these reforms on communities already experiencing disadvantage (such as women and Aboriginal offenders).³² Recent data shows that there has been a significant increase in numbers of prisoners on remand, with 36.6% of the Australian prison population (over one-third) now made up of prisoners on remand.³³ As well as an increase in incarceration rates, increased remand numbers have significant consequences for offenders and the community more broadly. For example, education, training and rehabilitation programs in prison are generally only available for sentenced prisoners.³⁴ There is also a connection between increasing remand rates and short sentences, explored in a recent report from the Sentencing Advisory Council of Victoria (SACV),³⁵ which found significant increases in prisoners being sentenced to ‘time served’ (meaning the duration of the prison sentence imposed by a court upon finalisation of a criminal matter was equal to the amount of time that person had already spent on remand).³⁶ The report made the finding that, ‘Victoria’s increasing

²⁵ Sentencing Advisory Council (2016), ‘Phasing Out of Suspended Sentences’, March 2016.

²⁶ Ibid, xi.

²⁷ Explored at *ibid*, p59-79.

²⁸ Information about the Drug Treatment Order can be found at https://www.magistratescourt.tas.gov.au/about_us/criminal_division/drug_treatment_orders.

²⁹ For example, the Sentencing Advisory Council Tasmania noted that, ‘[h]ome detention is an effective sentencing option in other jurisdictions with high completion rates and low recidivism rates... able to address multiple aims of sentencing and provides an onerous sentencing order that both punishes an offender, deters the offender and others from committing offences and assists in addressing the offender’s rehabilitative needs’ - Sentencing Advisory Council (2016), ‘Phasing Out of Suspended Sentences’, March 2016, xi.

³⁰ Productivity Commission (2021), ‘Australia’s prison dilemma’, p11.

³¹ For example, Victorian Aboriginal Legal Service, ‘VALS Policy Brief: Fixing Victoria’s Broken Bail Laws’ (2022); Productivity Commission (2021), ‘Australia’s prison dilemma’, p39-41.

³² Data cited in article Adeshola Ore, ‘Complete, unmitigated disaster: inquest into Veronica Nelson’s death urges overhaul of ‘discriminatory’ Victorian bail laws’ The Guardian (30 January 2023), accessed at <https://www.theguardian.com/australia-news/2023/jan/30/inquest-veronica-nelson-death-urges-overhaul-victoria-bail-laws>.

³³ Maani Truu and Casey Briggs, ‘More than a third of prisoners are locked up without a sentence. For decades, that number has been growing’ ABC News (25 February 2023), accessed at <https://www.abc.net.au/news/2023-02-25/one-third-of-australian-prisoners-are-unsentenced-on-remand/102015092>.

³⁴ Australian Law Reform Commission (2017), ‘Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples’, p287–289.

³⁵ Sentencing Advisory Council Victoria (2020), ‘Time Served Prison Sentences in Victoria’, February 2020.

³⁶ Ibid, p59.

remand population is indirectly affecting sentencing outcomes... [as] time spent on remand seems to increase the likelihood that a court will ultimately impose a sentence of imprisonment'.³⁷

This is extremely concerning given the significant negative impact of short sentences on offenders, their families and their communities. Some of these negative impacts were explored in a recent report from the SACV, such as the difficulties involved for offenders in making post-release plans and being linked in to support services.³⁸ Those sentenced to short sentences are also often being sentenced for non-violent crimes which are linked to an offender's experience of disadvantage (such as substance use disorder or homelessness); as noted by the Productivity Commission, '[s]hort prison sentences for these types of offences disrupt family ties, housing, employment and treatment programs but are likely to offer little in terms of deterrence and rehabilitation'.³⁹ Consistent with our previous submissions in relation to bail reform in Tasmania,⁴⁰ TasCOSS is therefore strongly against the introduction of legislation which could further restrict opportunities for alleged offenders to be granted bail.

Links between child protection and youth justice involvement

The rates of children in out-of-home care in Tasmania are higher than the national average,⁴¹ which in turn can lead to involvement (particularly involvement at a young age) in the criminal justice system. Although most children who are involved with the child protection system do not engage in offending behaviours, there are demonstrated links between the offending of young people and early childhood experiences of trauma, which means many children who are involved in the child protection system are presenting with risk factors for offending.⁴²

Organisations supporting children in out-of-home care have highlighted that many children first become involved in the criminal justice system due to problems relating to their experiences in care, including police becoming involved when children are reported as missing, were understood to be missing by residential care workers, or had run away from their out-of-home care placements, at times due to safety concerns.⁴³ Children in residential care are also overrepresented in the youth criminal justice system, with many facing criminal sanctions for behaviours which would not necessarily trigger a police response if they had occurred in a home environment.

Research from other jurisdictions also indicates there are several parts of the out-of-home care experience which may contribute to further offending,⁴⁴ including the following:

- Placement breakdowns, which may prevent the formation of pro-social relationships;

³⁷ Sentencing Advisory Council Victoria (2020), 'Time Served Prison Sentences in Victoria', February 2020, p60.

³⁸ Ibid, p16.

³⁹ Productivity Commission (2021), 'Australia's prison dilemma', p38.

⁴⁰ TasCOSS (2021), 'Submission on the Bail Bill 2021', March 2021.

⁴¹ Productivity Commission (2023), 'Report on Government Services 2023 – 16A Child Protection Services', Table 16A.2.

⁴² Tasmania Legal Aid (2021), 'Children First: Children in the child safety and youth justice system'.

⁴³ For example, see Create Foundation (2018), 'Youth Justice Report: Consultation with young people in out-of-home care about their experiences with police, courts and detention', p3-4.

⁴⁴ Victoria Legal Aid (2016), 'Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system', p7.

- 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 support structures for young people leaving out-of-home-care.⁴⁵

We strongly recommend the Tasmanian Government urgently address the underlying causes contributing to the relatively high number of Tasmanian children in care, as well as the issues which may result in the criminalisation of young people in out-of-home care. This should include a greater investment in targeted interventions such as family support services as well as ensuring access to universal services including health and housing, which would help families to maintain a healthy and safe home for children rather than exposing families to the risk of child protection intervention.⁴⁶ We also recommend the Government introduce measures to reduce the rates of children in out-of-home care. This could include the decriminalisation of problematic behaviours in the residential care setting, as well as greater access to training in awareness of and responses to childhood trauma to ensure all workers across the child safety and youth justice systems (including both Government and community-based workers) can be supported to engage therapeutically to manage challenging behaviours.⁴⁷

Links between disadvantage and crime

There are demonstrated links between social disadvantage and crime, explained by theories which include the greater exposure of people within socially disadvantaged groups (such as those experiencing poverty) to criminogenic contexts.⁴⁸ Whilst it is important to recognise that most people who are experiencing disadvantage are not involved in either crime or the criminal justice system, studies have highlighted that those in prison are likely to have disproportionately disadvantaged backgrounds, with factors associated with disadvantage, including unemployment, lower educational attainment, intergenerational incarceration, previous imprisonment, substance abuse and mental illness, ‘are considered to be risk factors correlated with imprisonment’.⁴⁹ Lower educational attainment and poor communication skills, including low levels of language comprehension and literacy, are also risks associated with criminal justice contact and ongoing involvement. It is possible, then, that where these factors are increasing, there will be a commensurate increase in rates of imprisonment.

There are particularly strong links between imprisonment and homelessness. Homelessness can include sleeping rough or residing in unstable housing (such as improvised dwellings or tents), as well as living in

⁴⁵Victoria Legal Aid (2016), ‘Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system’, p7.

⁴⁶ See for example a recent news article on this topic – Liz Gwynn, ‘Children at risk of being removed from their families as Tasmanian housing crisis deepens’ ABC News (30 March 2023), accessed at <https://www.abc.net.au/news/2023-03-30/children-at-risk-of-being-removed-tas-housing-crisis/102158508>.

⁴⁷ For example, Catholic Care offers specialist ‘Therapeutic Crisis Intervention’ training – details can be found here: https://rccp.cornell.edu/TCL_LevelOne.html.

⁴⁸ Wikström, P and Treiber, K, (2016), ‘Social Disadvantage and Crime: A Criminological Puzzle’, *American Behavioral Scientist* 60(10), p1232–1259.

⁴⁹ Productivity Commission (2021), ‘Australia’s prison dilemma’, p20.

supported accommodation or temporary lodging, or staying temporarily with other households. Data shows that those entering prison are significantly more likely to be homeless than the general community, with a recent survey showing 33% of those entering prison reported being homeless in the four weeks immediately before being imprisoned.⁵⁰

Homelessness is also an issue which disproportionately impacts young people, as noted by the SAC in a recent report in which they highlighted links between young people's experience of homelessness and their involvement in the criminal justice system.⁵¹ Many young people in Tasmania and throughout Australia are committing offences out of necessity, or for reasons associated with unstable housing or poverty. This is reflected in statistics on the types of offences committed by young people, which show property offences (in particular, stealing) are offences for which young people are commonly charged.⁵² Homelessness is also a factor considered by the courts in deciding whether a young person should be released on bail or remanded into custody, and 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.⁵³

With more Tasmanians than ever experiencing homelessness – and as a result, potentially more Tasmanians at risk of being involved in the criminal justice system - we believe it is crucial for the Government to implement strategies to address the current housing crisis as part of the framework of community support Tasmanians need to stay safe and prevent involvement in the criminal justice system.

An increase in punitive responses to socio-legal issues

TasCOSS is concerned that governments including the Tasmanian Government at times adopt punitive, criminal justice-focused responses to issues better addressed through other means. For example, as part of their commitment to addressing family violence, the Tasmanian Government has proposed the introduction of a 'serial family violence perpetrator' scheme.⁵⁴ The objective of the scheme is to allow the Courts and community to recognise that 'serial family violence perpetrators present a high risk of repeat and escalating offending',⁵⁵ and to 'provide for a heightened justice response proportionate to the severity of a perpetrator's family violence offending and assessed risk of future family violence'.⁵⁶ TasCOSS has raised significant concerns with the scheme,⁵⁷ particularly in relation to the potential misidentification and criminalisation of victim survivors of family violence, a particular concern raised by our stakeholders.⁵⁸ We also raised concerns that the scheme is likely to increase the rates of imprisonment for family violence related offences, which can in turn have negative impacts for victim survivors of violence,⁵⁹ without addressing the underlying causes contributing to the offending.

⁵⁰ Australian Institute of Health and Wellbeing (2018), 'The Health of Australia's Prisoners', p22.

⁵¹ Sentencing Advisory Council (2021), 'Sentencing Young Offenders', p16.

⁵² Ibid, p7-9.

⁵³ Sentencing Advisory Council (2021), 'Sentencing Young Offenders', p16.

⁵⁴ For an overview of the scheme, see Family Violence Reforms Bill 2021 (Tas) s29A.

⁵⁵ Fact Sheet, Family Violence Reforms Bill 2021 (Tas).

⁵⁶ Ibid.

⁵⁷ TasCOSS (2021), 'Submission to Family Violence Reforms Bill 2021', October 2021.

⁵⁸ See, for example, see Hayley Gleeson, 'Tasmania's police family violence orders are supposed to keep victims safe. But experts say they're backfiring on women', ABC News (5 March 2023), accessed at <https://www.abc.net.au/news/2023-03-05/tasmania-police-family-violence-orders-misidentifying-victims/102037672>.

⁵⁹ Sentencing Advisory Council (2015), 'Sentencing of Adult Family Violence Offenders', Final Report, October 2015, p38.

Rather than relying on tertiary, criminal justice-focused responses to issues such as family violence, TasCOSS strongly recommends the Government invests in primary prevention programs which address the root causes contributing to offending behaviour (including family violence), as well as greater investments in community organisations that are developing and delivering these services.

Evidence-based strategies to reduce contact with the justice system and recidivism

TasCOSS strongly believes significant change is needed to better support Tasmanians who are involved in, or at risk of becoming involved in, the criminal justice system. That change must begin with greater investment in services and supports for Tasmanians, their families and their communities instead of more spending on prisons.

Greater support to address underlying factors contributing to crime

We believe funding should be directed towards supporting Tasmanians who are experiencing disadvantage, to better support individuals and families and address underlying factors which contribute to criminal offending. In particular, the Government should prioritise the funding of community organisations and programs working to support Tasmanians who are at risk of criminal justice involvement, including (but not limited to) the following:

- Those experiencing financial stress (including poverty and homelessness);
- Tasmanians with substance use disorders;
- Those experiencing mental ill health and/or who have one or more disabilities;
- Tasmanian Aboriginals;
- Accused persons (adults and children) on bail;
- Tasmanians with low educational attainment and communication difficulties; and
- Young people who are involved in the child protection system.

Strategies to proactively reduce involvement in the criminal justice system

As outlined above, we believe Tasmania's current approach to imprisonment as a response to crime is not meeting the needs of offenders, victims or the Tasmanian community. Imprisonment offers very limited opportunities for offenders to engage in rehabilitation, training and/or education programs, and the rates of recidivism suggest that imprisonment is failing to effectively deter individuals from committing further crimes. In fact, statistics show that prior incarceration increases, rather than decreases, the likelihood that a person will go on to reoffend.⁶⁰ We therefore strongly recommend the Tasmanian Government embrace targeted strategies to reduce involvement in the criminal justice system.

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

⁶⁰ Justice Reform Initiative (2021), 'State of Incarceration: Tasmania's Broken Criminal Justice System', April 2021, p 4-5.

opportunity to take responsibility their actions and engage in rehabilitation. It is a key feature of the Tasmanian youth justice system⁶¹ 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,⁶² 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.⁶³

TasCOSS recommends a range of reforms to increase the number of youth justice matters being dealt with by way of diversion including the following:⁶⁴

- 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);⁶⁵
- The development of 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;
- Removal of prohibited offences for pre-court diversion from the *Youth Justice Act 1997 (Tas)*;
- Measures to promote non-prosecutorial options within Tasmania Police;
- The development of specialist policing divisions or units to better support young people,⁶⁶ such as the New Zealand Police Youth Aid section;⁶⁷
- 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;
- Increased diversionary programs (ideally offered by community organisations); and

⁶¹ 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.

⁶² 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.

⁶³ 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 2018-2019.⁶³

⁶⁴ 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.

⁶⁵ 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](#).

⁶⁶ Victorian Aboriginal Legal Service (2021), ‘Submission to the Inquiry into Victoria’s Criminal Justice System’, p12.

⁶⁷ 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.

- Greater support for young people who may struggle to meet attendance requirements or comply with programs.⁶⁸

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,⁶⁹ as well as the Mental Health Diversion List⁷⁰ – 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 in light of studies which demonstrate that diversionary options are both extremely cost-effective⁷¹ and reduce recidivism rates.⁷² 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. A wide range of programs exist in other Australian jurisdictions and could be used as models for Tasmanian initiatives.⁷³

We also note that funding of other community-based services is needed to fully implement diversionary and/or support programs throughout Tasmania; for example, stakeholders have highlighted that lack of transportation is currently a significant barrier for clients who want to attend and participate in existing programs, particularly in regional Tasmania where public transport services are extremely limited and many people cannot afford to purchase and maintain a vehicle.

Justice reinvestment

Justice reinvestment approaches are an opportunity to divest from expensive and ineffective prison infrastructure by implementing community-based programs. A justice reinvestment model re-allocates funds which are usually targeted to tertiary justice interventions (such as prison and parole) towards early intervention and support. The programs adopt a whole-of-community and whole-of-lifetime approach, and seek to support all community members, rather than only those who are identified as needing support. A recent report has explored how this approach could be adopted in Tasmania,⁷⁴ recommending a justice mapping approach to identify key communities where intervention is needed, and to develop and tailor services based on the recommendations and requirements of the community.⁷⁵ The Tasmanian Government could also look to existing justice reinvestment programs in Moree, Mt Druitt and Bourke (NSW) for examples of models which could be implemented in our communities.⁷⁶

⁶⁸ 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.

⁶⁹ For information about this program see <https://www.holyoake.com.au/our-programs/initial-drug-diversion-initiative>.

⁷⁰ For information about the list see https://www.magistratescourt.tas.gov.au/about_us/criminal_division/diversion_list.

⁷¹ 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.

⁷² Payne, J, Kwiatkowski, M and Wundersitz, J (2008), ‘Police drug diversion: a study of criminal offending outcomes’, Australian Institute of Criminology, p40-46.

⁷³ For an overview, see Hughes, C and Ritter (2008), ‘A summary of diversion programs for drug and drug-related offenders in Australia’, National Drug and Alcohol Research Centre.

⁷⁴ Noetic Solutions Pty Ltd (2016), ‘Custodial Youth Justice Options Paper: Report for the Tasmanian Government Department of Health and Human Services’, p79.

⁷⁵ Ibid.

⁷⁶ For a general overview of existing justice reinvestment initiatives, see Allison, F (2022), ‘Redefining Reinvestment: An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW’, Just Reinvest NSW, accessed at <http://www.justreinvest.org.au/wp-content/uploads/2022/10/JRNSW-I-Reinvestment-Forum-I-Report.pdf>.

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,⁷⁷ 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 reductions in drug-related deaths and disease, hospitalisations and drug-related ambulance call-outs, and crimes involving actual or threatened violence.⁷⁸

Consistent with our previous recommendations in relation to drug reform in Tasmania,⁷⁹ we strongly support measures to decriminalise drug use in Tasmania. 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, possession and use of a small amount of cannabis (and potentially other substances) under s24 of the *Misuse of Drugs Act 2001* (Tas)⁸⁰ – 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.⁸¹

Raising the age

We welcome the recent commitment from the Tasmanian Government to raise the age of criminal responsibility from 10 to 12 years.⁸² While this a step in the right direction, we strongly encourage the Government to ensure their response reflects the evidence base and a child-focused approach to youth justice and commit to raising the age to 14. This change would be consistent with the recommendations of the United Nations,⁸³ other Australian jurisdictions who have committed to raising the age (such as the

⁷⁷ 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>.

⁷⁸ Ibid, p27.

⁷⁹ TasCOSS (2022), 'Submission to Department of Health – Tasmanian Drug Strategy', July 2022.

⁸⁰ *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.

⁸¹ 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.

⁸² Tasmanian Government (2021), 'States Agree to Develop Nationally Consistent Approach to Raising the Age of Criminal Responsibility', Media Release, 15 November 2021.

⁸³ 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>.

Australian Capital Territory), and several national and state-based organisations.⁸⁴ Raising the age to 14 would be consistent with medical advice and evidence in relation to brain development (which is linked to behaviour control, moral awareness and therefore criminal culpability). TasCOSS notes that most young children involved in the criminal justice system are experiencing significant disadvantage, and much of their offending is linked to vulnerabilities such as poverty, homelessness or substance use disorders.

An evidence-informed and child-focused response would also reduce future imprisonment rates, because children who are engaged with the criminal justice system at a young age are more likely to re-offend.⁸⁵

Although detention is already recognised as an option of last resort for children in Tasmania's legislation,⁸⁶ we believe a disproportionate number of young people still end up spending time in prison. Alongside raising the age of criminal responsibility to 14, TasCOSS strongly advocates for 16 to be the minimum age for detention in Tasmania, consistent with the recommendations of other community organisations.⁸⁷

Improving the prison service

Measures to actively reduce the rates of incarceration in Tasmania must be accompanied by improved services for those within the custodial environment, and underpinned by greater funding for and expansion of preventative and primary intervention, to support children and families and redirect people away from the criminal justice system.

Alternative models of detention

In relation to youth detention, we have previously advocated for a prison or detention environment which is primarily focused on offering opportunities for rehabilitation and, where possible, restoration: strengthening a child's relationship with 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 focused 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,⁸⁸ and international law guidelines.⁸⁹ We recommended the Government look

⁸⁴ 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'.

⁸⁵ Payne, Jason (2007), 'Recidivism in Australia: findings and future research', Australian Institute of Criminology, p88.

⁸⁶ 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.*

⁸⁷ 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.

⁸⁸ Victorian Aboriginal Legal Service (2021), 'Consultation on Victorian Youth Strategy', Department of Premier and Cabinet, p9-10; Victorian Aboriginal Legal Service (2019), 'Submission to the Commission for Children and Young People Inquiry: Our Youth, Our Way', p21.

⁸⁹ UN General Assembly, 'United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly', 2 April 1991, A/RES/45/113, available at: <https://www.refworld.org/docid/3b00f18628.html>.

to international best-practice models for youth justice facilities, including the Missouri Model, which has the following elements:⁹⁰

- ‘Detention’ of young people is to take place in the least restrictive environment possible – options include community placement, community, moderate, or secure residential;
- Young people receive treatment (and if needed, reside) in small groups ten to twelve, to participate in group therapy and education sessions;
- Young people are allocated a case manager or ‘service coordinator’ who is responsible for their care, and to ensure their treatment is appropriate and effective – this includes plans for how children can be best supported post-release; and
- At every stage, engagement with the family and community of a young person is promoted, offering services such as family therapy and community liaison councils.

Throughcare is another alternative for both adult and youth imprisonment, and ‘aims to support the successful reintegration of offenders returning to the community at the end of their head sentence’.⁹¹ Features of throughcare programs include intensive one-on-one support, individualised assessments of needs and case plans, and a focus on rehabilitation services in the community. Throughcare programs can link prisoners in with a wide range of community services, including health and wellbeing supports but also services to assist prisoners to develop and strengthen communication and literacy skills, thus providing greater educational and employment opportunities post-release and assisting with reintegration into the community. As noted by the ALRC, the programs are more likely to be successful if they are developed with the expertise of organisations already experienced in working with particular cohorts. For example, ‘models are more likely to be successful for Aboriginal and Torres Strait Islander people if they are culturally competent, strength-based, and utilise Aboriginal and Torres Strait Islander controlled organisations and/or ex-prisoner organisations’.⁹²

The throughcare youth justice model was another option explored in a recent report prepared for the Tasmanian Government;⁹³ this model focuses on the continuity of care for young people, offering targeted and individualised support from an early stage of the criminal justice process through to post-release (where detention is appropriate and justified). Intensive case-management is offered to young people, and support is tailored to a young person’s needs, appropriate to their personal circumstances (including age, gender and cultural identity), and based on a comprehensive assessment of both risk and protective factors.⁹⁴

Although this is a model which has been proposed for youth detention in Tasmania, there are throughcare models in the adult jurisdiction in other Australian states and territories, which could also be adapted for

⁹⁰ Described in Noetic Solutions Pty Ltd (2016), ‘Custodial Youth Justice Options Paper: Report for the Tasmanian Government Department of Health and Human Services’, p76.

⁹¹ Australian Law Reform Commission (2017), ‘Discussion Paper 84: Incarceration Rates of Aboriginal and Torres Strait Islander Peoples’, July 2017, p103.

⁹² Ibid, p103-104.

⁹³ Noetic Solutions Pty Ltd (2016), ‘Custodial Youth Justice Options Paper: Report for the Tasmanian Government Department of Health and Human Services’.

⁹⁴ Ibid, p79.

the Tasmanian prison system. One example is the Extended Throughcare Program, which operates in the Australian Capital Territory to support offenders returning to the community after the end of their prison term.⁹⁵ A recent evaluation of the program highlighted that the program had high uptake rates (despite being a voluntary program), and that it had assisted clients to meet their needs post release, including housing support and advocacy, mental health counselling, physical health treatments and drug and alcohol rehabilitation treatment. The data also showed reduced recidivism rates for participants, particularly for female Aboriginal clients.⁹⁶ Given the effectiveness of this program, as well as of programs from other Australian jurisdictions,⁹⁷ TasCOSS strongly supports the introduction of a similar model into the Tasmanian prison system.

Improved prison services

We also urge the Government to invest in improved health and support services for prisoners, both within the adult and youth jurisdictions. Research into prison populations demonstrates most inmates have complex health, mental health and social needs,⁹⁸ however most of these needs are going unmet while they are in detention.

AOD supports

In their recent response to the Tasmanian Drug Strategy 2022-27, Community Legal Centres Tasmania (CLCT) highlighted the crucial need for prison-based treatment,⁹⁹ citing research demonstrating that 46% of detainees who had used drugs attributed their detention to alcohol and/or other drug (AOD) use.¹⁰⁰ Their response also referred to a 2018 report from the Tasmanian Custodial Inspector which outlined the failings of the current AOD treatment service in prison to adequately meet demand,¹⁰¹ concluding that, 'the reality is there are a number of prisoners that enter custody and request support for alcohol and drug related issues but cannot access it due to staffing limitations'.¹⁰² The most recent annual report from the Custodial Inspector also identifies the lack of AOD treatment in prison as an ongoing issue of concern.¹⁰³ We therefore strongly support CLCT's recommendation for a residential alcohol and other drug program within the prison system. We also recommend additional AOD specialist workers, as well as greater opportunities for ongoing education in relation to AOD misuse and dependency within the prison environment.

⁹⁵ For information about the Extended Throughcare program see <https://www.correctiveservices.act.gov.au/reintegration-and-release/extended-throughcare>.

⁹⁶ Griffiths, A, Zmudzki, F and Bates, S (2017), 'Evaluation of ACT Extended Throughcare Pilot Program: Final Report', January 2017, p3-6.

⁹⁷ An overview of some Australian programs can be found at Day, A, Geia, L and Tamatea, A (2019), 'Towards effective throughcare approaches for Indigenous people leaving prison in Australia and New Zealand', August 2019, accessed at <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/effective-through-care-draft2.pdf>.

⁹⁸ For example, see Justice Reform Initiative (2021), 'State of Incarceration: Tasmania's Broken Criminal Justice System', April 2021, p8.

⁹⁹ Community Legal Centres Tasmania (2022), 'Submission to the Tasmanian Department of Health – Tasmanian Drug Strategy 2022-2027', July 2022, p2-4.

¹⁰⁰ Voce, Alexandra and Sullivan, Tom (2021), 'Drug use monitoring in Australia: Drug use among police detainees', Australian Institute of Criminology, p2 – accessed at https://www.aic.gov.au/sites/default/files/202106/sr35_drug_use_monitoring_in_australia-2020.pdf.

¹⁰¹ Office of the Custodial Inspector (2018), 'Inspection of Adult Custodial Services in Tasmania 2017 - Care and Wellbeing Inspection Report', October 2018, p106.

¹⁰² Ibid.

¹⁰³ Office of the Custodial Inspector (2022), 'Annual Report 2021-2022', p21.

Health and other services

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 those who may already be vulnerable to harm in the custodial environment. We believe this is an area which should also be urgently prioritised in Tasmania, given the serious consequences of prison health care failures in other jurisdictions.¹⁰⁴ The most recent Tasmanian report from the Custodial Inspector on prison health and wellbeing (which pre-dates the COVID-19 pandemic) flags that the increase in prisoner numbers has not been matched with corresponding health infrastructure and services, resulting in longer waiting times for treatment (or even a lack of treatment altogether for some prisoners).¹⁰⁵ The lack of health care services is also recognised in the most recent annual report as an ongoing issue of concern.¹⁰⁶

Alongside health services, TasCOSS also strongly advocates for greater opportunities for educational and professional development opportunities within the prison environment. This should include targeted and specialist programs to assist prisoners in developing language and literacy skills, which will in turn support prisoners post-release to engage in work and/or further training. We acknowledge the work of Tasmanian community organisations who currently provide supports in the prison environment, and strongly advocate for further resources and funding to continue and expand these programs.

Although the Office of the Custodial Inspector is currently engaged in inspections relating to mental health, wellbeing and physical health, recent reports have also flagged significant resourcing issues which are impacting the Office's ability to conduct inspections and provide reports within the three-year review cycle, resulting in a significant backlog.¹⁰⁷ We are also extremely concerned about the lack of cultural supports and programs within the Tasmanian prison system, noting both the overrepresentation of Tasmanian Aboriginal adults and children in detention, and the significant and disproportionate risks associated with their incarceration for physical and mental wellbeing.

TasCOSS believes there is therefore need for an urgent review of Tasmania's prison healthcare system. We strongly recommend the Government takes steps to ensure the Custodial Inspector can comprehensively assess the current health and wellbeing services within the prison system and commit to implementing any recommendations to ensure the prison health care system is fit-for-purpose. We also recommend the Government addresses the current staffing problems impacting the Office of the Custodial Inspector, as well as working collaboratively with Aboriginal health organisations to develop a model of cultural support and care within the prison service.

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. Two measures

¹⁰⁴ See Lachsz, A, Waight, N and Schwartz, S (2022), 'Victoria's prison health care system should match community health care', The Conversation, 9 May 2022, accessed at <https://theconversation.com/victorias-prison-health-care-system-should-match-community-health-care-180558>; 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.

¹⁰⁵ Office of the Custodial Inspector (2018), 'Inspection of Adult Custodial Services in Tasmania 2017 - Care and Wellbeing Inspection Report', October 2018, p5.

¹⁰⁶ Office of the Custodial Inspector (2022), 'Annual Report 2021-2022', p21.

¹⁰⁷ Ibid, p4.

that we believe could have a significant impact in relation to prisoners' rights are the full implementation of the Optional Protocol to the Convention against Torture ('OPCAT') in Tasmania, and the introduction of a Tasmanian Human Rights Act.

In relation to OPCAT, we have previously raised concerns about the current model, in which the Tasmanian Ombudsman (who is also the Custodial Inspector) is given the powers of the National Preventative Mechanism ('the NPM').¹⁰⁸ Our concerns are shared by several civil society organisations within Tasmania,¹⁰⁹ and are particularly acute given the current staffing and resourcing shortage in the Office of the Custodial Inspector (outlined above). We support the recommendation of the Tasmanian Law Reform Institute that the Tasmanian NPM should be an independent statutory body,¹¹⁰ rather than the current model in which the functions of the NPM are held by the Tasmanian Ombudsman. Whilst we support the implementation of standalone legislation to establish the NPM, we also advocate for the following:¹¹¹

- Amendments to the Act to reflect the wide and varied locations in which breaches of OPCAT can occur;
- Provisions and policies which allow the NPM to visit and report on the conditions in as wide a range of settings as possible – this should include settings which are already subject to independent oversight (such as detention centres) and should also be accompanied by further public awareness raising and education campaigns to ensure all Tasmanians understand OPCAT, their rights and the role of the NPM.
- The cultural attributes of the NPM should include the following:
 - A statutory body independent from all arms of government;
 - The NPM should engage in and provide public information and education around the requirements of OPCAT, as well as preventative work;
 - Adequately staffed to ensure a breadth of expertise and experience, including representation from the Tasmanian Aboriginal community;
 - Sufficient accountability measures, including regular reporting from the Tasmanian NPM to the Tasmanian Parliament; and
 - Ongoing, formal partnerships with civil society organisations, to contribute advice, expertise and feedback – this could include an OPCAT symposium as recommended by TOPCAT,¹¹² as well as the development of partnerships with other independent statutory authorities in order to better respond to particular circumstances that require specialised skills.

¹⁰⁸ TasCOSS (2023), 'Submission to the Tasmanian NPM in relation to Consultation paper 1 - Approach to OPCAT Article 4: identifying places of detention', February 2023.

¹⁰⁹ See, for example, TasOPCAT and the Australian OPCAT Network (2021), 'Submission on OPCAT Implementation Bill', 15 September 2021; and Commissioner for Children and Young People (2021), 'Submission on OPCAT Implementation Bill', 17 September 2021.

¹¹⁰ Tasmanian Law Reform Institute (2021), 'Submission on OPCAT Implementation Bill', 20 September 2021, p4-13.

¹¹¹ TasCOSS (2023), 'Submission to the Tasmanian NPM in relation to Consultation paper 1 - Approach to OPCAT Article 4: identifying places of detention', February 2023.

¹¹² Tasmanian OPCAT Network (2023), 'Response to Tasmanian National Preventive Mechanism Implementation Project Consultation Paper 1 - Approach to Article 4: identifying places of detention', 25 February 2023.

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.¹¹³ We note that human rights charters in other jurisdictions have proved 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.¹¹⁴ TasCOSS therefore believes that the Tasmanian framework for the recognition and protection of rights, including the rights of prisoners, would be greatly supported by the introduction of a Tasmanian Human Rights Act or Charter of Rights. We also believe the impact of a Tasmanian Human Rights Act could extend 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.¹¹⁵ As noted by the Human Rights Law Centre in a recent report:

Charters of Human Rights ensure the actions of our governments are guided by values of freedom, equality, compassion and dignity. Charters foster respect for human rights and help everyone, from school children to people who decide to call Australia home, to understand the rights and freedoms that we all share. Charters reflect our values and help to articulate the kind of society we all want to live in. Charters prevent human rights violations by putting human rights at the heart of decision-making when governments are developing laws and policies and delivering services. Importantly, they also provide a powerful tool to challenge injustice, enabling people and communities to take action and seek justice if their rights are violated.¹¹⁶

We therefore strongly recommend the Tasmanian Government prioritises the development and implementation of a Tasmanian Human Rights Act. This should be accompanied by action to raise awareness of, and promote understanding of, the rights of all Tasmanians and ensure the public are provided with education and information on how to take action to respond in situations where their rights, or the rights of others, may have been violated.

¹¹³ 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>

¹¹⁴ *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.

¹¹⁵ 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.

¹¹⁶ Human Rights Law Centre (2022), 'Charters of Rights Make Our Lives Better: Here are 101 cases that show how', June 2022, p2.

Recommendations

We strongly recommend the Tasmanian Government works proactively to reduce the rates of adult and youth imprisonment, through initiatives including (but not limited to) the following:

Sentencing/law reform

- Avoiding punitive policies in response to social issues (such as mandatory sentencing or bail law reform) which may increase the prison population without creating additional opportunities for offenders to address behaviours or circumstances contributing to criminal behaviour;
- Expansion of existing sentencing options consistent with the recommendations from the Sentencing Advisory Council of Tasmania;
- Phasing out of short sentences, which disproportionately impact and criminalise those experiencing poverty and/or disadvantage, as well as causing unjustified disruption to family, work and or study;
- Develop and invest in pro-social, community-based solutions to respond to social issues such as family violence and better support victim survivors and their families;
- Expand diversionary options for both children and adults;
- Implement strategies to reduce the number of youth prosecutions, including:
 - Increasing pre-charge diversionary measures and reducing the rates of arrest in relation to young people
 - Developing specific caution and charging protocols for children in out-of-home care
 - Removing prohibited offences for pre-court diversion from the *Youth Justice Act 1997 (Tas)*
 - Implement measures within Tasmania Police to promote non-prosecutorial options
 - Develop specialist policing divisions or units to better support young people, such as the New Zealand Police Youth Aid section
 - Implement 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
 - Provide funding for community organisations to better support for young people who may otherwise struggle to meet attendance requirements or comply with programs;
- Review the existing legislative framework in relation to drug use and possession, to consider whether certain acts should be decriminalised – for example, possession of a small amount of cannabis under s24 of the Misuse of Drugs Act 2001 (Tas);
- Expand existing diversionary options for drug offences and increase funding for community organisations to increase their capacity to provide support and education programs;
- Raise the age of criminal responsibility to at least 14 years; and
- Raise the age of detention to 16 years.

Support for families and children:

- Additional funding for initiatives to support families involved in, or at risk of involvement in, the child safety system, working proactively to reduce the rates of Tasmanian children in out-of-home care;
- The introduction of measures to reduce the rates of children in out-of-home care who end up in the criminal justice system, including:
 - the decriminalisation of problematic behaviours in the residential care setting and
 - greater access to training in awareness of, and responses to, childhood trauma;
- Investing in initiatives (and funding/resourcing community organisations) to support Tasmanians experiencing disadvantage to prevent future involvement in crime and/or the criminal justice system; and
- Engage in justice mapping to implement community-based justice reinvestment programs within targeted communities/areas of need.

Improving the custodial environment and promoting the rights of prisoners

- Implement throughcare models (with intensive case management and pre-and-post release support) within the adult and youth custodial environments;
- Fund and deliver a residential alcohol and other drug program within the prison system;
- Additional funding for specialist AOD workers and greater opportunities for ongoing education in relation to AOD misuse and dependency within the prison environment;
- Additional funding for programs to assist with literacy, communication and language skills;
- Identify and address current shortages within the prison health service;
- Address funding and resourcing issues which may be impacting the Office of the Custodial Inspector;
- Develop and fund a model of culturally appropriate care for Tasmanian Aboriginal prisoners;
- Improve the OPCAT framework within Tasmania to ensure the NPM is funded and structured to meet our international obligations, and increase awareness and understanding of human rights both within the custodial environment and the community more broadly; and
- Implement a Tasmanian Charter of Rights.