



Tasmanian Council of Social Service Inc.

Reforming Tasmania's Youth Justice System

Submission provided by TasCOSS supported by CREATE

Tasmania

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**INTEGRITY
COMPASSION
INFLUENCE**

About TasCOSS

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

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

Please direct any enquiries about this submission to:

Adrienne Picone
Chief Executive Officer
Phone Number: (03) 6231 0755
Email Address: adrienne@tascoss.org.au

About CREATE Foundation

CREATE Foundation is the national consumer body representing the voices of children and young people with an out-of-home care experience. We provide programs and services to children and young people with a statutory care experience and develop policy and research to advocate for a better care system.

Danni Ashton
Tasmanian State Coordinator
Phone Number: 0491 204 363
Email Address: danielle.ashton@create.org.au

Introduction

Thank you for the opportunity to make a 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' ('the Discussion Paper'). TasCOSS and CREATE Foundation support a comprehensive review of the existing legislative and support framework and the opportunity to ensure our laws and practices are aligned with our obligations under international law, as well as the stated objective of 'transform[ing] the youth justice system as a whole to better support the safety and wellbeing of Tasmania's children and young people, and our whole community'.¹

Our submission provides an overview of the current system and identifies the need for reform in several key areas. We have then outlined several priorities for reform, identified as areas where significant changes should be made to better support Tasmanian young people, their families and communities.

Guiding principles

Our submission is based on several guiding principles which we believe are crucial for the Government to recognise, explore and implement in any proposed law and/or social reform relating to youth justice.

Reforms should involve, and allow for, greater participation from children and young people

Effective participation of young people in systems and policies which affect them is a guiding principle of international law in relation to the rights of the child.² This principle is also reflected in the legislative provisions establishing services designed to protect and empower young people in Tasmania. For example, the *Commissioner for Children and Young People Act 2016 (Tas)* includes the following as general functions of the Commissioner for Children and Young People:

- promoting and empowering the participation of children and young people in the making of decisions or the expressing of opinions on matters that may affect their lives; and
- encouraging organisations to create appropriate mechanisms for children and young people to participate in matters that affect them.

Our stakeholders have urged the importance of creating opportunities for children to meaningfully participate in social and law reform and creating mechanisms of accountability to ensure the experiences and opinions of young people are considered, heard and reflected in reform proposals. This is reflected in submissions from our member organisations, such as the Youth Network of Tasmania (YNOT), who have advocated for greater opportunities for the participation of young people in planning and developing any proposed reforms, especially young people who may be marginalised in the current system (such as Aboriginal Tasmanians and LGBTQIA+ youth).³ This is echoed by the voices of young people in our community; for example, when participants were asked about participating in decision making processes

¹ Department of Communities, Youth Justice Reform, https://www.communities.tas.gov.au/children/youth_justice/youth-justice-reform.

² Convention on the Rights of the Child (CRC) 1989, (resolution 44/25), opened for signature 20 November 1989, entered into force 2 September 1990.

³ Youth Network of Tasmania (YNOT), Submission in response to the Reforming Tasmania's Youth Justice System Discussion Paper (2020), 4.

as a part of CREATE's *Having a say: Including young people in decision making* consultation,⁴ many suggested being empowered to make their own decisions, particularly around placement, and enabling young people to feel independent was reported to lead to increased well-being.

I feel I would be in a better place if I could make the decisions (Female, 17)

It (speaking up) will improve my life because people will understand me more (Male, 12)

Because I'll have the say to do something – I won't miss out on something I want. Will improve my health and wellbeing in the future (Male, 11)

The Tasmanian Government has also already recognised that providing children opportunities to meaningfully engage and participate in planning and decision-making has significant benefits not only for young people, but for the entire community.⁵

Reforms should be targeted towards providing comprehensive early and primary intervention, with a key goal of dramatically reducing the numbers of children who are involved in the criminal justice system

There is a wealth of evidence demonstrating both the ineffectiveness of the criminal justice system in addressing the complex needs of most youth offenders, as well as the criminogenic effect of involvement in the criminal justice system. All proposed reforms should therefore have at their core the key objective of reducing youth involvement in the criminal justice system and should be directed towards early intervention with children and their families to address the underlying factors which so often contribute to youth offending (including homelessness, poverty, childhood trauma, experiences in out-of-home care and the child safety system, substance abuse and mental health issues).

All reforms should be focused on providing trauma-informed and therapeutic interventions

We know most children involved in the youth justice system have complex needs. This means there is an urgent need for best-practice principles and methodologies for trauma informed practice to be imbedded at all stages of the system, including the underpinning principles of the *Youth Justice Act 1997 (Tas)* ('the Act') and the training provided to all professionals working with children across the sector. All programs and initiatives should be focused on providing therapeutic interventions with children and their families, in accordance with the principles of the Act (which include a focus on the rehabilitation of children and the strengthening of their community and family connections) and international best-practice principles in youth justice.

⁴ Create Foundation, 'Having a say: Including young people in individual and systemic decision making' (2018).

⁵ Department of Communities, 'Youth Matter – a practical guide to increase youth engagement and participation in Tasmania' (2019), 6-7.

Reforms should work across a ‘life course’ approach, supporting children at all stages of their development to provide timely, appropriate and (where possible) voluntary intervention

Even though there are several extremely effective community and government programs providing support to children and their families, the current Tasmanian youth justice model is still primarily directed towards tertiary intervention with children who are engaging in problematic or criminal behaviours. TasCOSS and the CREATE Foundation strongly recommend reforms which embrace a ‘whole of life’ approach to reform, identifying the needs and existing services for children at all stages of life (including post-natal support, early childhood and adolescence) and working collaboratively with communities to establish and fund programs and initiatives that are targeted towards their needs. This approach is consistent with justice reinvestment models, such as the Maranguka Justice Reinvestment Project in Bourke NSW,⁶ which provide support not only to at-risk families and young people but focus on programs and initiatives which can better support the entire community.

Reforms should focus on community led initiatives – where new services are established or programs implemented, they should draw on and use existing expertise

To reduce involvement in the formal criminal justice system, improve service delivery and encourage greater rates of participation in programs designed to support children and families, reforms should work towards empowering communities to develop and lead initiatives. All new programs should utilise community development principles (including consultation and co-design with young people, place-based supports and universal design) to improve accessibility of service and ensure supports are tailored to the particular needs of Tasmanian children.

Overview of Tasmania’s youth justice system

Most children in Tasmania are not, and never will be, involved in the criminal justice system. However, given the impact involvement with youth justice can have in the life of a young person, their family and their community, it is important to reflect on existing laws, practices and services and work towards improvements to better support Tasmanians.

Recent reports confirm the following:

- Youth crime rates are falling in Tasmania and across Australia.⁷ Despite this, a large and increasing number of Tasmanian children are involved in the youth justice system – in particular, recent statistics show the numbers of Tasmanian children who are supervised by Youth Justice is higher than the national average;⁸
- In the period from 2014-2015 to 2019-2020, most offences committed by young people in Tasmania were offences against property (31% of principal proven offences).⁹ This is consistent with research around young offending generally, with academics noting that, ‘certain types of offences (graffiti, vandalism, shop stealing and fare evasion) are committed disproportionately by

⁶ See, for example, Noetic Solutions Pty Ltd, ‘Review of Effective Practice in Juvenile Justice’ (2010), 53-54.

⁷ Sentencing Advisory Council, ‘Sentencing Young Offenders’ (2021), 4.

⁸ Productivity Commission, ‘Report on Government Services 2022 – 17 Youth Justice Services’, Table 17A.1.

⁹ Sentencing Advisory Council, ‘Sentencing Young Offenders’ (2021), xii.

- young people. Conversely, very serious offences (such as homicide and sexual offences) are rarely perpetrated by juveniles. ... On the whole, juveniles are more frequently apprehended by police in relation to offences against property than offences against the person’;¹⁰
- Many children become involved with the criminal justice system as a result of intersecting disadvantages, including but not limited to the following:¹¹
 - o Child protection involvement with families and being in out-of-home care, particularly residential care;
 - o Homelessness and poverty;
 - o Experience of mental illness and childhood trauma;
 - o Intellectual disability and/or cognitive impairment.
 - There is a body of evidence showing children who are engaged with the criminal justice system at a young age are more likely to re-offend. Reports have shown those children who enter the criminal justice system between the ages of 10-12 are almost three times as likely to be end up being sentenced to a term of imprisonment before the age of 22.¹² This highlights the need to redirect young people away from a system which not only fails to support young children and families, but can actually lead to further harm, stigmatisation and incarceration.
 - A very small number of Tasmanian children are in detention. On an average night over the last 12 months, only eight children could be found in detention,¹³ and Tasmania has the lowest rate of children in detention of all states and territories in Australia (equally shared with South Australia).¹⁴ However, there are many areas of concern relating to prisons and youth justice:
 - o a disproportionate number of those children who are in prison are Aboriginal: over the last year, 6.4 Aboriginal children per 10000 young people between 10-17 were in detention, compared with only 1.5 per 10000 for non-Aboriginal children;¹⁵
 - o most children who are in prison in Tasmania are on remand and are yet to be sentenced;¹⁶ and
 - o Despite servicing a relatively small number of children, Tasmania’s youth prison system is one of the costliest in the country, indicating resources could be better allocated to community-based programs and services.
 - Aboriginal children continue to be overrepresented in the criminal justice system, both within Tasmania and throughout Australia.¹⁷

Given the above, TasCOSS and the CREATE Foundation strongly encourage the Government to focus the reform of the Youth Justice system to address the following strategic priorities:

¹⁰ Kelly Richards, Australian Institute of Criminology, ‘What makes juvenile offenders different from adult offenders?’ (2011), 3.

¹¹ Sentencing Advisory Council, ‘Sentencing Young Offenders’ (2021), 9-22.

¹² Sentencing Advisory Council (Vic), ‘Crossover Kids’: Vulnerable Children in the Youth Justice System - Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children’s Court (2019), 32.

¹³ Productivity Commission, ‘Report on Government Services 2022 – 17 Youth Justice Services’, Table 17A.1.

¹⁴ Productivity Commission, ‘Report on Government Services 2022 – 17 Youth Justice Services’, Table 17A.1.

¹⁵ Productivity Commission, ‘Report on Government Services 2022 – 17 Youth Justice Services’, Tables 17A.1 and 17A.7

¹⁶ Justice Reform Initiative, ‘State of Incarceration – Tasmania’s Broken Criminal Justice System’ (2021), 10.

¹⁷ See, for example, Noetic Solutions Pty Ltd, ‘Review of Effective Practice in Juvenile Justice’ (2010), 56 – 61; Sentencing Advisory Council, ‘Sentencing Young Offenders’ (2021), 12.

- Greater recognition of the drivers of youth offending and provision of targeted, preventative supports
- Increase in the availability of early intervention programs and initiatives, particularly focusing on supports available for young people and families in early childhood
- Reducing the number of children who are involved in the criminal justice system
- Reconsideration of the principles of the Youth Justice Act, and accompanying legislative reform
- Implementation of alternative models to support young people and their families
- Changes to existing services (in particular, courts and prisons) to better support young people and uphold the principles of the Act

Greater recognition of the drivers of youth offending and provision of targeted, preventative supports

As noted above, many children who are involved with the youth justice system are experiencing significant and intersecting disadvantage, which is a significant contributing factor in much youth offending. TasCOSS and the CREATE Foundation support reforms which recognise disadvantage as a significant driver in youth offending, as well as additional services and supports needed to help children and families deal with these experiences.

Child protection involvement

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. The lived experience of Tasmanians highlights the significant impact the transition into care can have on a young person; for example, a recent participant in a Youth Advisory Group facilitated by the CREATE Foundation shared the following:¹⁸

When you first move into care it's kind of like a big thing, especially if you're going in young, but it can be even more of a big thing when you're older because you have lived with your parents for so long, so the attachments there. But, I think that getting mental health resources then is just really important, because you're going to have all these emotions that you're not gonna know what to do with because it's so new, and I think having a mental health facility or having resources there will help you understand how you're feeling and what you can do to prevent stuff. (Female 16)

Although it is important to note most children who are involved with Child Protection do not engage in offending behaviours, there are children for whom their trauma background can be a factor in their involvement in crime, at times due to challenging behaviours or presentations related to their early childhood experiences. These issues have been explored by Tasmania Legal Aid ('TLA') in a recent report, 'Children First',¹⁹ which outlines issues experienced by Tasmanian children in the child safety and criminal justice systems.

¹⁸ Create Foundation Youth Advisory Group, February 2022.

¹⁹ Tasmania Legal Aid, 'Children First: Children in the child safety and youth justice system' (2021).

A significant number of children first become involved in the criminal justice system because they are reported as missing, were understood to be missing by residential care workers, or had run away from their out-of-home care placements, at times due to safety concerns. The following examples were provided in a recent report from the CREATE Foundation:²⁰

A lot of interactions were either running away or suicide attempts. I ran away for the first time at five due to abusive carers (Male, 22)

... one of the workers dropped me off to see a friend at a park, so they were fully aware of where I was, after about an hour I started receiving phone calls from the resi saying that I had absconded and where was I... about 30-45 minutes later police showed up at this house (Female, 18)

I was kicked out of my foster placement but it was reported as absconding. The police called me and said I had run away, I told them this was untrue (Female, 22)

Children residing in residential care are also overrepresented in the youth criminal justice system. Many children who are charged with offences committed in this environment may face 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,²¹ including the following:

- Placement breakdowns, which may prevent the formation of pro-social relationships;
- Inability to access specialist support services to address underlying issues contributing to offending;
- Further traumatic experiences in care;
- Being co-located with other 'high-risk' and traumatised young people, possibly increasing exposure to problematic or criminogenic behaviours and attitudes; and
- Limited support structures for young people leaving out-of-home-care.²²

TasCOSS and the CREATE Foundation strongly believe the Youth Justice reforms must seek to reduce the number of 'crossover children', who are involved with both the child safety and youth justice systems. We recommend the Government explore measures to decriminalise behaviours in the residential care setting, which could include greater access to training in awareness of and responses to childhood trauma. We note there are existing examples of trauma-informed crisis intervention training currently being offered to staff in residential care units in Tasmania,²³ and we encourage the Government to explore and invest in further training opportunities to ensure all workers across the child safety and youth justice

²⁰ Create Foundation, 'Youth Justice Report: Consultation with young people in out-of-home care about their experiences with police, courts and detention' (2018), 3-4.

²¹ Victoria Legal Aid, 'Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system' (2016), 7.

²² Ibid.

²³ For example, Catholic Care offers specialist 'Therapeutic Crisis Intervention' training – details can be found here: https://rccp.cornell.edu/TCI_LevelOne.html.

systems (including both Government and community-based workers) can be supported to engage therapeutically to manage challenging behaviours.

Greater support to manage challenging transition points

The research highlights the challenges presented at various points throughout a child's life, and the connections between poorly managed transitions and potential problematic or criminal behaviour. Too often, children are left without the support they need to effectively manage these transitions, which can not only contribute to further trauma but may also lead to offending. This is a particular challenge for young people within the child safety system, most of whom have already been exposed to trauma (as outlined above) and may not be able to cope with the challenges presented by moments of change or be equipped with sufficient social supports. This is reflected in what we have heard from young people in their experiences of transitions – for example, participants in a recent Youth Advisory Group facilitated by the CREATE Foundation noted the following:²⁴

Primary to high school is you transitioning from a kid to a teenager basically, so I feel like knowing how you see your mental health, if you're understanding the changes that you're going to be going through. 'cause some people don't go through puberty until they're older. When I went to high school I was so scared I was like. 'Oh my God, this is such a big school' I didn't know there were older people there. So I just feel having someone to support you through it, is important and talk to you about what might happen. (Female 15)

Going to high school, the hormonal balance in your brain is going through a confusion stage 'cause some people hit puberty and your brain is just everywhere, And I just feel like... It can be a very hard stage in any teenager's life. (Female 13)

Even though moment of transition, such as transitions from out-of-home-care, have been recognised in various studies as a challenging moment in the life of a young person, our stakeholders have raised concerns that many young people struggle to find the support they need to manage these changes.²⁵ By adopting a 'whole-of-life' approach to mapping the needs of children and their families, the Government could better identify and work proactively to support children in the moments where they need the most assistance.

Homelessness and poverty

In their recent report, the Sentencing Advisory Council of Tasmania ('the SAC') highlighted links between young people's experience of homelessness and their involvement in the criminal justice system.²⁶ 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 relating to the types of offences committed by young people, which show property offences (in particular, stealing) are offences

²⁴ Create Foundation Youth Advisory Group, February 2022.

²⁵ See for example Dr Joseph McDowall, Create Foundation, 'Report Card: Transitioning from care' (2008), accessed at [04.-CREATE-Report-Card-Transitioning-From-Care-March-2008.pdf](#).

²⁶ Sentencing Advisory Council, 'Sentencing Young Offenders' (2021), 16.

for which young people are commonly charged.²⁷ Homelessness is also a factor considered by the courts in deciding whether a young person should be released on bail or remanded into custody. As noted by the SAC, lack of secure accommodation or other community support can significantly impact a child's ability to successfully engage with or complete a supervised order.²⁸

TasCOSS has previously advocated for 'expanded youth accommodation facilities offering medium-to-long term housing and support to transition for young people, combined with expanded intensive case management, outreach support and family mediation for young people at the risk of homelessness.'²⁹

Mental health, substance abuse, childhood trauma and cognitive impairment

Most children who encounter the criminal justice system are experiencing significant and intersecting social disadvantage. This is demonstrated by the high numbers of children who are involved in both the young justice and child safety systems, referred to in various reports as 'crossover children',³⁰ most of whom have experienced childhood trauma, abuse and/or neglect.

Drug and alcohol misuse has been recognised as a risk factor for criminal justice involvement for young people, with the SAC in their recent report noting that, '[r]esearch conducted by the AIHW... found that '[y]oung people under youth justice supervision were 30 times as likely as the young Australian population to receive an alcohol and other drug treatment service'.³¹ Tasmanian organisations working with criminalised young people, including TLA, have also recognised that many young people who are being apprehended by police have underlying substance abuse issues.³²

Similarly, mental health and/or cognitive impairment has been recognised as a factor contributing towards youth offending.³³ This is consistent with research demonstrating the high rates of cognitive impairment and/or acquired brain injury within the criminal justice system generally,³⁴ as well as studies from other jurisdictions which highlight the high rates of certain conditions (for example, FASD) in the youth justice population.³⁵

²⁷ Ibid, 7-9.

²⁸ Sentencing Advisory Council, 'Sentencing Young Offenders' (2021), 16.

²⁹ TasCOSS, Submission to Tasmanian Government, Tasmanian Child and Youth Wellbeing Strategy (2021) 16.

³⁰ For example, see Sentencing Advisory Council (Vic), 'Crossover Kids': Vulnerable Children in the Youth Justice System - Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court (2019).

³¹ Sentencing Advisory Council, 'Sentencing Young Offenders' (2021), 14

³² Tasmania Legal Aid, 'Children First: Children in the child safety and youth justice system' (2021), 8.

³³ Sentencing Advisory Council, 'Sentencing Young Offenders' (2021) 14-15; Tasmania Legal Aid, Children First: Children in the child safety and youth justice system (2021) 9.

³⁴ For an overview of the overrepresentation of adults with an acquired brain injury in the Victorian criminal justice system, see Centre for Innovative Justice and Jesuit Social Services, 'Recognition, Respect and Support: Enabling justice for people with an acquired brain injury' (2017).

³⁵ Bower C, Watkins RE, Mutch RC, et al., 'Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia' (2018) BMJ Open, accessed at <https://bmjopen.bmj.com/content/8/2/e019605>.

Aboriginal children

Aboriginal children are overrepresented in the criminal justice system in Tasmania. The rate of detention for Aboriginal children in 2019-2020 was 10.8 per 10,000 young people, compared to 1.9 per 10,000 for non-Aboriginal children.³⁶ This means Tasmanian Aboriginal children are almost ten times more likely to be in detention. Aboriginal children are also more likely to be subject to supervision in the community: in 2019-2020, 63.4 per 10,000 Aboriginal youth were subject to supervision, compared to 13.7 for non-Aboriginal young people.³⁷ Records from TLA show they are assisting a disproportionately high number of Aboriginal young people: 12% of all TLA youth justice clients, and 15% of 'crossover children', are Aboriginal Tasmanians.³⁸ TLA notes that 'almost half the Aboriginal children who were under 14 when first charged with a criminal offence were crossover children'.³⁹

The Tasmanian Government has committed to addressing the overrepresentation of Aboriginal young people in the criminal justice system, with an identified target of reducing the number of children aged 10-17 years in detention by 30 per cent.⁴⁰ Targets relating to the overincarceration of Aboriginal adults are also relevant - as noted above, research demonstrates the links between early involvement in the criminal justice system and the likelihood of ongoing criminal justice involvement, recidivism and incarceration.⁴¹ Tasmania has committed to addressing the issue of the overrepresentation of Aboriginal Tasmanians in the criminal justice system, with an identified target of reducing Aboriginal incarceration by 15% by 2031.⁴²

TasCOSS and the CREATE Foundation strongly believe that any proposed reforms in the area of youth justice must focus specifically on addressing the needs of Aboriginal children and families. There are existing programs and initiatives designed by and for the Aboriginal community,⁴³ and the Government must commit to ongoing funding and expansion of these programs. TasCOSS has previously advocated for a review of all Tasmanian government and government-funded programs working with children, as well as enacting cultural safety recommendations for Aboriginal children.⁴⁴ We also recommend the funding of Aboriginal communities and organisations to develop their own programs to support their communities and families. All law reform proposals must also acknowledge and take into consideration the potential impact on Aboriginal children, and work towards the goal of reducing the numbers of Aboriginal children in the criminal justice system.

³⁶ Productivity Commission, 'Report on Government Services 2022 – 17 Youth Justice Services', Table 17A.5.

³⁷ Productivity Commission, 'Report on Government Services 2022 – 17 Youth Justice Services', Table 17A.6.

³⁸ Tasmania Legal Aid, 'Children First: Children in the Child Safety and Youth Justice System' (July 2021), 4.

³⁹ Ibid.

⁴⁰ Tasmanian Government, 'Closing the Gap: Tasmanian Implementation Plan 2021-2023', 17.

⁴¹ Sentencing Advisory Council (Vic), 'Crossover Kids': Vulnerable Children in the Youth Justice System - Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court (2019), 32.

⁴² Department of Communities Tasmania, 'Closing the Gap: Tasmanian Implementation Plan 2021 – 2023', 17.

⁴³ For example, the proposed Bark Hut projects – see <https://plan4womenssafety.dss.gov.au/initiative/support-tasmanian-aboriginal-communities-to-deliver-targeted-primary-prevention-and-early-intervention-programs-and-to-improve-service-delivery-for-aboriginal-people-affected-by-family-and-sexual-viol/>.

⁴⁴ TasCOSS, Submission to Tasmanian Government, Tasmanian Child and Youth Wellbeing Strategy (2021), 26-27.

Increase in the availability of early intervention programs and initiatives

As noted above, most young people become involved in the criminal justice system due to a constellation of factors, many of which are linked to disadvantage and trauma. Numerous studies have highlighted the ineffectiveness of ‘tough on crime’ approaches to juvenile justice,⁴⁵ noting that such approaches can result in the stigmatisation of young people, reinforce problematic or criminal behaviours and fail to address the underlying factors contributing towards offending.⁴⁶ There is also a body of evidence demonstrating the positive impacts of well-planned early and primary intervention measures.⁴⁷

Other Australian and international jurisdictions have focused on the need for greater investment in preventative measures and initiatives as a way of supporting young children and their families; for example, the current Queensland Youth Justice Strategy focuses on primary prevention and early intervention, particularly with families, as a way of ensuring children are well-supported.⁴⁸ However, there is also a need to be cautious when planning primary prevention, to ensure measures are focused on providing support rather than merely identifying or labelling children and/or families as ‘problematic’, which can lead to further criminalisation.⁴⁹

TasCOSS and the CREATE Foundation strongly recommend reforms which prioritise early intervention and opportunities for preventative education and intervention, and have previously advocated for the expansion of collaborative, flexible, inclusive prevention and early intervention services for vulnerable families and their children.⁵⁰ Giving children and families better and more comprehensive supports (without criminalising behaviours or creating further social stigma) is likely to improve outcomes for young people – not only those who are at risk of criminal justice involvement, but throughout the community as a whole. In particular, we recommend reforms which utilise a ‘whole-of-life’ approach to planning, mapping and service delivery, allowing opportunities for intervention at various stages of a child’s life and in a way that best responds to their needs.

TasCOSS and the CREATE Foundation also recommend working with communities to develop or extend existing programs which are currently working, particularly programs developed by and for marginalised groups. For example, there are a number of early intervention programs run by Aboriginal organisations, such as the New Directions program (an early intervention support program offering a wide range of supports to new mothers, including transport assistance, supported referrals and outreach visits to participants’ homes),⁵¹ and the rarryna Playgroup for children aged 0-4,⁵² both run by South-East Tasmanian Aboriginal Centre.

⁴⁵ For example, Noetic Solutions Pty Ltd, ‘Review of Effective Practice in Juvenile Justice’ (2010), 52.

⁴⁶ Ibid.

⁴⁷ Australian Government, Australian Institute of Criminology, ‘Preventing the onset of youth offending: the impact of the Pathways to Prevention project on child behaviour and wellbeing’ (2015).

⁴⁸ Queensland Government, ‘Working together, changing the story: youth justice strategy 2019-2023’ (2019), accessed at <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/strategy.pdf>.

⁴⁹ McAra, L & McVie, S, ‘Delivering Justice for Children and Young People: Key Messages from the Edinburgh Study of Youth Transitions and Crime’ (2013), 12-13.

⁵⁰ TasCOSS, Submission to Tasmanian Government, Tasmanian Child and Youth Wellbeing Strategy (2021) 20.

⁵¹ Information about SETAC programs accessed at <https://setac.org.au/wp-content/uploads/2020/01/SETAC-Programs-Services-Booklet-20191231.pdf>.

⁵² Ibid.

Reducing the numbers of children involved in the criminal justice system

TasCOSS and the CREATE Foundation believe all reform efforts in the area of youth justice should aim to reduce the number of children who are involved in the criminal justice system. The following is a non-exhaustive list of priorities we believe the Government could consider as a way of engaging proactively and protectively with young children and their families, whilst at the same time minimising their involvement in systems which have failed to protect children from harm or address the underlying needs contributing towards their offending.

Raise the Age

The Tasmanian Government has recently committed to developing a proposal to raise the age of criminal responsibility from 10 to 12 years, citing the importance of a unified national approach to this issue.⁵³ However, TasCOSS and Create Foundation's view is the Government should commit to raising the age to 14, consistent with the recommendations of the United Nations,⁵⁴ the government of the Australian Capital Territory, and several national and state-based organisations.⁵⁵

There are several reasons why we consider 14 an acceptable minimum age for children to be considered criminally responsible, including but not limited to the following:

- Establishing 14 as the minimum age is more consistent with medical evidence in relation to brain development, linked to behaviour control and moral awareness, which relates to criminal culpability;
- Most young children who offend are experiencing significant disadvantage, and much of their offending is linked to vulnerabilities such as poverty, homelessness or substance dependency; and
- Children who are engaged with the criminal justice system at a young age are more likely to re-offend.

We note the ACT has committed to raising the age to 14, and recently commissioned a study which explored alternatives for youth justice reform.⁵⁶ TasCOSS and the CREATE Foundation believe many of these reforms, such as the development of a multidisciplinary therapeutic panel, or increasing the capacity of existing places of service delivery (such as schools) to engage in collaborative engagement

⁵³ Tasmanian Government, 'States Agree to Develop Nationally Consistent Approach to Raising the Age of Criminal Responsibility', (Media Release, 15 November 2021).

⁵⁴ United Nations, Convention on the Rights of the Child 2007, 'General Comment No.10: Children's rights in juvenile justice', Committee on the Rights of the Child, 44th Session, No. CRC/C/GC/10. p.11, Available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

⁵⁵ For example, see Human Rights Law Centre, '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' (2021); Victorian Aboriginal Legal Service, Submission to Council of Attorney Generals (COAG), Age of Criminal Responsibility Working Group (2020); Social Reinvestment Western Australia, 'Raising the Minimum Age of Criminal Responsibility: A Pathway to a Brighter Future for Western Australia's most at risk children' (2021).

⁵⁶ McArthur, M, Suomi, A, Kendall, B, 'Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory: Final Report' (2021).

with families, could be utilised to support all children throughout the state, not only those who are under 14. Options for reform will be discussed later in this submission.

Related to this issue is the question, posed by the Discussion Paper, of an appropriate age for the detention of young people. As TasCOSS and the CREATE Foundation strongly support raising the age of criminal responsibility to 14, this would also effectively mean a change to the appropriate age for children to be placed in detention. Detention is already recognised as an option of last resort in Tasmania's legislation;⁵⁷ however, we believe a disproportionate number of young people, and in particular Aboriginal and Torres Strait Islander young people, end up spending time in prison. This submission will address further reform possibilities which would significantly reduce the number of young people in detention (specifically focused on children on remand); however, we also note organisations have called for a legislated minimum age of detention of 16 years,⁵⁸ a proposal which TasCOSS and the CREATE Foundation support.

Diversion

Diversion is a way for offences to be dealt with away from the formal justice system, and it is a key feature of the Tasmanian Youth Justice system. Several reports highlight the effectiveness of diversionary programs as a response to youth offending.⁵⁹ Diversion can be a way to combat recidivism, both through the effectiveness of programs (such as group conferencing) which can provide young people an opportunity to take responsibility for their actions and engage in rehabilitation, and as a way of avoiding involvement in the formal criminal justice system.

There are three levels to the pre-court diversion system outlined in the Act:

- Informal caution – this is a warning given by police when a child has committed an offence, without any further action being taken. The discretion to issue an informal caution lies with the police, and it requires a child to admit to the commission of an offence.
- Formal caution – usually administered by a police officer, but can also be administered by a representative of a community or cultural group (for example, an Aboriginal elder can administer a caution for an Aboriginal child). This is a restorative process which is similar in some ways to a community conference – for example, there is an opportunity for a victim to be present – however the process is facilitated by Tasmania Police. As part of this process, a young person subject to the formal caution may be required to enter into an undertaking to engage in certain activities or pay compensation. If a child fails to comply with an undertaking, the police may decide to either take no further action or to instead issue charges to have the matter dealt with at Court.
- Community conferences – these are independently facilitated restorative conferences designed to give a child the opportunity to hear directly from the victim/s of an offence and to take

⁵⁷ 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*

⁵⁸ Victorian Aboriginal Legal Service, Submission to Council of Attorney Generals (COAG), Age of Criminal Responsibility Working Group (2020) 20-21; Victorian Aboriginal Legal Service, Submission to the Inquiry into Victoria's Criminal Justice System (2021) 77-83.

⁵⁹ Tasmania Legal Aid, 'Children First: Children in the child safety and youth justice system' (2021) 14-15; Noetic Solutions Pty Ltd, 'Review of Effective Practice in Juvenile Justice' (2010) 68.

responsibility for offending outside of the formal criminal justice process. Several people are invited to participate (including parents/guardians/relatives of the young person, representatives from any community organisations they are part of, the victim, or any other person considered appropriate). Following the conference, a broad range of ‘sanctions’ can be imposed, including a caution, making an apology to the victim, or entering into an undertaking to perform certain activities – where possible, there should be a consensus decision between conference participants about any sanctions to be imposed or action to be taken. If a child fails to attend a community conference or doesn’t comply with the undertakings imposed following the conference, the police can then file charges and have them listed at Court.

Aside from the above pre-court diversionary proceedings, the Court can also refer a matter to be dealt with by way of diversion: for example, the Court can order a community conference prior to sentencing.⁶⁰

Despite the wealth of evidence demonstrating the benefits of diversion, recent data shows there has been a decrease in the use of diversion, in particular informal cautions and community conferences.⁶¹ 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 2018-2019.⁶² Several possible reasons for this decline have been identified by the SAC, who noted the following in their report:

In consultations with stakeholders, there were several possible reasons provided for a decline in the use of diversion over time, including different policing priorities and the involvement of schools for lower-level offending behaviour. Some stakeholders expressed the view that the decline in the overall number of youth offenders, along with the corresponding concentration on a smaller cohort of more frequent youth offenders (‘frequent flyers’), meant that matters escalated through the system more quickly and that these offenders would be referred to the court with a larger list of charges. Stakeholders also reported that diversion numbers may be influenced by a ‘class’ factor with the response of young people to police and parental attitudes and support being factors in the use (or non-use) of diversion. Young people are generally dependent on parental support to be able to attend a formal caution or conference.

TasCOSS and the CREATE Foundation strongly recommend the Government invest in and promote measures which would increase the number of matters being dealt with by way of diversion, noting that a promotion of diversionary programs and initiatives would be consistent with the existing principles in the Youth Justice Act, and likely to further reduce youth offending. We recommend the Government explore the following:

⁶⁰ Youth Justice Act 1997 (Tas) s37.

⁶¹ Sentencing Advisory Council, ‘Sentencing Young Offenders’ (2021), xi.

⁶² Ibid, 100.

Increasing pre-charge diversionary measures (including informal cautions) and reducing the rates of arrest

The current Tasmanian system includes a combination of diversionary responses which can be offered either before or after a child is charged with a criminal offence. For example, a child who comes into contact with police can, in some circumstances, be offered an informal caution, rather than being formally charged. However, the Tasmanian framework predominantly focuses on diversionary measures which can be offered once a decision has been made to formally charge a child with an offence. Recent data also shows a decrease in the number of informal cautions given to children by Tasmania Police;⁶³ 53% of all juvenile files over the last year have been referred for prosecution, and in the last year 158 informal cautions were issued, compared to 169 in the previous year.⁶⁴

TasCOSS and the CREATE Foundation recommend reform in relation to the decision-making process by police when they are determining whether to formally charge and/or arrest a child, to decrease the number of children who are being charged with criminal offences. We recommend reform which models the system in other jurisdictions, such as New Zealand, where police engage in consultation with a child's family and/or other supports before deciding whether to formally charge a child. This has resulted in significantly lower numbers of charges being laid against children.⁶⁵ A similar model in Tasmania would also give police the opportunity to obtain more information about a child's background and family circumstances before deciding whether to proceed with formal action. In particular, TasCOSS and the CREATE Foundation strongly encourage the development of 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.

The legislation prohibits pre-court diversionary responses to certain offences, described as 'prescribed offences' in the Act,⁶⁶ which are generally serious offences. These offences can only be heard in the Supreme Court (and will be discussed later in this submission). Whilst acknowledging the need to recognise the seriousness of certain criminal offences, and the impact offending can have on victims and communities, TasCOSS and the CREATE Foundation recommend the diversion framework be amended to focus on the needs of children and young people, rather than a focus on the alleged offending, to determine whether diversion is appropriate. This would allow police and courts greater opportunity to reflect on the circumstances of a young person and whether they would benefit from engaging in a therapeutic program, including diversionary programs, as a way of promoting rehabilitation whilst also allowing a child to take responsibility for their behaviour.

We also highlight the 'gatekeeping' role of police, who are ultimately responsible for making very important (and often not reviewable) decisions about whether or not a young person should be offered

⁶³ Department of Police, Fire and Emergency Management, 'Corporate Performance Report' (October 2021), 40.

⁶⁴ Ibid.

⁶⁵ For an overview of the New Zealand model, see New Zealand Government, Ministry of Justice, 'Youth Crime Action Plan 2013 – 2023' (2013); anecdotal evidence about rates of youth being charged is also discussed here: [Lessons from NZ on what works to stop children and young people getting caught up in the criminal justice system – JYP Network](#)

⁶⁶ The definition of 'prescribed offences' is found in *Youth Justice Act 1997 (Tas)* s3 (1).

a chance to engage in pre-court diversion. Early reports indicated favourable outcomes – for example, in 2004, researcher Jeremy Pritchard noted the data indicated, ‘Tasmanian police have performed very well in exercising their gate-keeping role’,⁶⁷ and that ‘[i]n the 2001 period the police sent just 19% of young offenders to court’.⁶⁸ However, recent data shows a decrease in the number of matters dealt with by way of diversion, with the SAC noting that, ‘in 2018–19, 47.4% of youth files were diverted and 52.6% of youth cases were sent to prosecution’.⁶⁹ We therefore suggest there is a need for promotion of non-prosecutorial options within Tasmania police.

Community organisations have also recommended the development of specialist policing divisions or units to better support young people,⁷⁰ such as the New Zealand Police Youth Aid section.⁷¹ TasCOSS and the CREATE Foundation support this recommendation, noting that the development of a specialist police unit could support recommendations referred to earlier in this report, such as charging practices for children who are experiencing disadvantage or residing in out-of-home care.

Increased access to diversionary options

TasCOSS and the CREATE Foundation also recommend reforms which increase the possibilities or opportunities for diversionary measures once charges have been laid. Law reform proposals in other jurisdictions have highlighted the need for independent oversight in relation to the suitability of diversion,⁷² and we recommend legislative changes to create opportunities for the review of important charging decisions (such as whether a child has been offered an informal or formal caution) at later stages of criminal proceedings. This is already a feature of the Act; for example, a magistrate in the Youth Justice Division can order a community conference as a part of ongoing criminal proceedings. However, TasCOSS and the CREATE Foundation recommend additional legislative provisions which would allow for a 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. This would allow magistrates to intervene in cases more proactively where they deem it appropriate for a child to be afforded opportunities to engage in diversionary programs.

Increased diversionary options

For the provisions of the Act to work towards successfully diverting greater numbers of young people away from the criminal justice system, the Government must invest in a greater number of community-based programs to address the needs of Tasmanian youth. The lack of appropriate diversionary programs has been highlighted by several stakeholders; for example, TLA has previously noted that if more

⁶⁷ Jeremy Pritchard, ‘Juvenile Conferencing and Restorative Justice in Tasmania’ (PhD Thesis, University of Tasmania, 2004), 95.

⁶⁸ Ibid.

⁶⁹ Sentencing Advisory Council, ‘Sentencing Young Offenders’ (2021), xi.

⁷⁰ Victorian Aboriginal Legal Service, Submission to the Inquiry into Victoria’s Criminal Justice System (2021), 12.

⁷¹ For an overview of the policing practices in New Zealand, see New Zealand Government, Ministry of Justice, ‘Youth Crime Action Plan 2013 – 2023’ (2013), 21-27.

⁷² For a Victorian perspective, see Liberty Victoria, ‘Justice Diverted? Prosecutorial discretion and the use of diversion schemes in Victoria’ (2018).

programs were available, more matters may ultimately end up being diverted from the criminal justice system.⁷³

There are several programs being used by Tasmania Police as diversionary options, including programs run by key stakeholders (such as the PCYC and Tasmanian Fire Service). These programs include the Junior Firelighting Intervention Program, the First Tee program, and access to Men's Shed for programs.⁷⁴ However, programs which were successful and had demonstrated positive outcomes have been defunded or discontinued; for example, the U-Turn Program, a diversionary pilot program for young people aged 15-20 years who were committing, or at risk of committing, motor vehicle theft, had very positive outcomes in terms of engagement and recidivism,⁷⁵ however was ultimately not funded on an ongoing basis. Another example of a successful program that was later defunded is Project Booyah, a 20-week program run by PCYC.⁷⁶ We strongly recommend the Government work proactively with police and their key stakeholders to develop further initiatives, or re-implement previous successful programs such as U-Turn, to engage young people who are offending or at risk.

TasCOSS and the CREATE Foundation also recommend the Government look to developing and strengthening partnerships between the police and other community organisations, to encourage referrals to programs run by different organisations to better meet the needs of children and families. For example, there is a need for a greater range of culturally appropriate programs developed and led by or in partnership with Aboriginal organisations, and greater funding to support these groups. There are already examples of programs which are supporting Tasmanian children and their families – for example, the Out Bush On Country program,⁷⁷ a program designed to engage at-risk Tasmanian youth which combines bush adventure activities with therapeutic intervention. There are also several community agencies which are already working to support young people, and who are aware of the needs of children and families in their community, as well as the current gaps in service provision. Programs developed and run by local community organisations, rather than police or justice-related institutions, should be promoted, funded, and expanded to better address the needs of children and families.

We further note the concerns raised by stakeholders in relation to young people's ability to engage in diversion, and how disadvantaged children may struggle to meet attendance requirements or comply with programs.⁷⁸ TasCOSS and the CREATE Foundation recommend children and young people are provided additional support as needed to engage in diversionary programs, with consideration of their personal circumstances and how they may have impacted their ability to comply.

⁷³ Tasmania Legal Aid, 'Children First: Children in the child safety and youth justice system' (2021), 14 – 15.

⁷⁴ Sentencing Advisory Council, 'Sentencing Young Offenders' (2021), 51.

⁷⁵ For an overview of the U-Turn program, see Tasmanian Institute of Law Enforcement Studies, 'Young Recidivist Car Theft Offender Program (U-Turn): Local Evaluation – Tasmania, Final Report (2005).

⁷⁶ See Tasmania Police, 'Project Booyah – Abseiling to break down barriers between young people at risk and emergency services' (Media release, 10 November 2016).

⁷⁷ Information about 'Out Bush On Country' can be found on the Adventure Works website: <https://adventureworks.org.au/outbush/>.

⁷⁸ See, for example, the case study of 'Trevor' found at Tasmania Legal Aid, 'Children First: Children in the child safety and youth justice system' (2021), 15.

Legislative change to support principles of youth justice

The current Act strives to achieve a balance between restoring harm to victims, providing opportunities for young people to take responsibility for their behaviour and to engage in rehabilitation. Section four outlines the objectives of the Act, which include ensuring young people are aware of their rights and obligations under the law, to ensure young offenders have access to treatment and rehabilitation, and to make sure a young person's social and family background is recognised when they are being dealt with within the criminal justice system.⁷⁹ The Act also contains principles of youth justice,⁸⁰ which include the protection of the community from illegal behaviour, that young people are not to be treated more severely than adult offenders, and that any sanctioning of young people should be appropriate to their age, maturity, cultural identity and any previous offending history.⁸¹

The Discussion Paper acknowledges the need to review the principles contained within the Act, to ensure they are consistent with the community expectations, expert opinion and the stated objectives of the youth justice system. We support amending these principles, in particular to ensure they are trauma-

⁷⁹ The objectives of the Act are as follows:

- (a) to provide for the administration of youth justice; and*
- (b) to provide how a youth who has committed, or is alleged to have committed, an offence is to be dealt with; and*
- (c) to specify the general principles of youth justice; and*
- (d) to ensure that a youth who has committed an offence is made aware of his or her rights and obligations under the law and of the consequences of contravening the law; and*
- (e) to ensure that a youth who has committed an offence is given appropriate treatment and rehabilitation and, if necessary, is appropriately sanctioned; and*
- (f) to enhance and reinforce the roles of guardians, families and communities in –*
 - (i) minimising the incidence of youth crime; and*
 - (ii) sanctioning and managing youths who have committed offences; and*
 - (iii) rehabilitating youths who have committed offences and directing them towards the goal of becoming responsible citizens; and*
- (g) to ensure that, whenever practicable, a youth who has committed, or is alleged to have committed, an offence is dealt with in a manner that is culturally appropriate and recognises and enhances his or her cultural identity; and*
- (h) to ensure that, whenever practicable, a youth who has committed, or is alleged to have committed, an offence is dealt with in a manner that takes into account the youth's social and family background and that enhances the youth's capacity to accept personal responsibility for his or her behaviour; and*
- (i) to ensure that, wherever practicable, a youth who has committed an offence is provided with appropriate opportunities to repair any harm caused by the commission of the offence to the victim of the offence and the community and to reintegrate himself or herself into the community.*

⁸⁰ Youth Justice Act 1997 (Tas) s5.

⁸¹ The principles outlined in s5 (1) are as follows:

- (a) that the youth is to be dealt with, either formally or informally, in a way that encourages the youth to accept responsibility for his or her behaviour;*
- (b) that the youth is not to be treated more severely than an adult would be;*
- (c) that the community is to be protected from illegal behaviour;*
- (d) that the victim of the offence is to be given the opportunity to participate in the process of dealing with the youth as allowed by this Act;*
- (e) guardians are to be encouraged to fulfil their responsibility for the care and supervision of the youth and should be supported in their efforts to fulfil this responsibility;*
- (f) guardians should be involved in determining the appropriate sanction as allowed by this Act;*
- (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;*
- (h) any sanctioning of a youth is to be designed so as to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;*
- (i) any sanctioning of a youth is to be appropriate to the age, maturity and cultural identity of the youth;*
- (j) any sanctioning of a youth is to be appropriate to the previous offending history of the youth.*

informed, consistent with the realities of the youth justice system and that they appropriately recognise the disadvantage experienced by many young people who become involved in the system.

Trauma-informed principles and practices

Concerns have been raised about the suitability of the principles outlined in the Act. The SAC notes that, 'it has been observed that the *Youth Justice Act 1997 (Tas)* framework is not trauma-informed and does not reflect contemporary evidence-based understandings of youth offenders. Instead, the legislative framework focuses on young people taking responsibility for their behaviour and does not sufficiently focus on the need to treat youth offenders differently from adult offenders with the associated recognition of the trauma experienced by children.'⁸² The need for trauma-informed principles to be embedded within the Act has also been highlighted by TLA, who note the need to, 'explicitly reflect the different approach to be adopted for children and focus on early intervention and diversion',⁸³ with 'proper recognition and response to trauma experienced by children and the impact this has on offending, rehabilitation and recidivism'.⁸⁴

A trauma-informed youth justice system requires legislative recognition of the impact trauma can have on young people and their ability to take responsibility for their decisions, as well as how effectively they can engage in rehabilitation. TasCOSS and the CREATE Foundation believe greater emphasis should be placed on the personal circumstances of young people and how their background (including a trauma history) may have contributed to their offending. As well as reshaping the principles to be trauma-informed, we also recommend ongoing training in trauma-informed practice for all youth justice stakeholders (including police, lawyers, youth justice workers and judicial officers).

General deterrence

One significant difference between sentencing principles in Tasmania and other Australian jurisdictions is the consideration of general deterrence. General deterrence is a sentencing principle which 'uses one offender's sentence as the vehicle to deter others from committing similar offences'.⁸⁵ This means decision-makers can make an example of an offender, to send a broad message to the community and hopefully deter others from committing similar crimes.

Other Australian jurisdictions do not consider young people to be appropriate vehicles for general deterrence for the purposes of sentencing. For example, general deterrence is not included as a matter to be considered for the purpose of sentencing young offenders in Victoria,⁸⁶ and a number of Victorian higher court decisions have confirmed general deterrence is not a relevant sentencing principle for children.⁸⁷ This is not the case in Tasmania, as demonstrated by the findings of the SAC in relation to sentencing practices for children. Although their report does not include information about sentencing in

⁸² Sentencing Advisory Council, 'Sentencing Young Offenders' (2021),

⁸³ Tasmania Legal Aid, 'Children First: Children in the child safety and youth justice system' (2021), 18.

⁸⁴ Ibid, 18.

⁸⁵ A discussion of general deterrence can be found at Judicial College of Victoria, Victorian Sentencing Manual (2021), 61, accessed at <https://resources.judicialcollege.vic.edu.au/article/669236>.

⁸⁶ *Children, Youth and Families Act 2005 (Vic)* s362.

⁸⁷ For example, *R v Angelopoulos* [2005] VSCA 258 or *CNK v The Queen* [2011] VSCA 228.

the Youth Justice Division (as those decisions are not published), the report does include remarks from decisions in the Tasmanian Supreme Court and Court of Appeal, which make it clear general deterrence is a relevant sentencing consideration for decision-makers. For example, the report cites the case of *DPP v NOP*,⁸⁸ in which Evans J wrote that ‘whilst rehabilitation is ordinarily the primary consideration for youthful offenders, this does not mean that the Court must disregard the needs of general deterrence and denunciation’; the case of *LWR v Lusted*,⁸⁹ where Porter J stated, ‘where rehabilitation seems unlikely, or where the offending or course of offending is serious, or the character and antecedents of the offender justify it, deterrence becomes a significant consideration once more’; and the case of *Director of Public Prosecutions v JSP*,⁹⁰ in which Estcourt J (quoting *TAP v Tasmania*)⁹¹ noted that ‘the importance of rehabilitation of a youthful offender is usually far more important than general deterrence, but that there are cases in which just punishment and general deterrence become at least equally important.’

TasCOSS and the CREATE Foundation strongly recommend legislative reform to remove general deterrence as a sentencing consideration for young people, noting this approach has already been adopted in both Victoria and South Australia. This change could be implemented alongside our earlier recommendation for greater training in trauma-informed practices for judicial decision-makers, to raise awareness of the impact of childhood trauma and provide guidance for decision-makers as to how they can appropriately weigh and consider the personal circumstances of young people when imposing a sanction for criminal behaviour.

Changes to the Bail Act

Although the Act expressly states detention is a measure of last resort,⁹² recent reports have confirmed a large proportion of children are still spending time on remand. The SAC reports that on a given day in 2019-2020, there were 14 youths aged 10-17 in detention in Tasmania, a rate of 2.8 per 10,000 children (higher than the national average of 2.7 per 10,000 children).⁹³ Most of those young people had not been sentenced.⁹⁴ TLA have also raised concerns about the high proportion of children on remand and the impact this can have on sentencing outcomes (as well as the general impact of custody on children’s wellbeing).

We urge the Government to implement changes to both the *Bail Act 1994 (Tas)* and *Youth Justice Act 1997 (Tas)* to ensure that, where possible, children are not detained in custody. Express bail provisions which state that children are not to be remanded except as an option of last resort would be consistent with existing principles outlined in the Act and would hopefully reduce the numbers of children on remand. We recommend the introduction of a provision similar to section 3B of the Victorian legislation,⁹⁵

⁸⁸ [2011] TASCRA 15.

⁸⁹ (2009) 19 Tas R 233.

⁹⁰ [2020] TASCRA 3, [45].

⁹¹ [2014] TASCRA 5.

⁹² *Youth Justice Act 1997 (Tas)*, 5 (g).

⁹³ Sentencing Advisory Council, ‘Sentencing Young Offenders’ (2021), 92.

⁹⁴ *Ibid*, 94.

⁹⁵ *Bail Act 1977 (Vic)*.

which lists a number of factors which must be taken into consideration by a bail decision-maker (which includes both a Bail Justice and judicial officers):

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

The Victorian Act also expressly stipulates that bail decision-makers cannot refuse bail on the sole ground that a child has no appropriate accommodation.⁹⁶ TasCOSS and the CREATE Foundation strongly recommend the introduction of a similar provision into the Tasmanian legislation.

The final proposal related to bail concerns s24C (2)(b) of the Act. This provision outlines that a child cannot be charged with breach of bail (except for failing to appear at court), however the Court can take instances where a child is alleged to have breached bail into consideration for the purposes of sentencing. We believe this provision is not focused on offering opportunities for rehabilitation, and that this provision may lead to disproportionately punitive outcomes for children. We therefore recommend this provision be withdrawn from the legislation.

Prescribed offences

Children who have been charged with particular offences in Tasmania (such as murder) cannot have their charges heard in the Youth Court. Instead, the Act contains provisions which mandate the hearing of these matters in the Supreme Court of Tasmania.⁹⁷ These offences are referred to as 'prescribed offences' and depend on the age of the child – for example, there are a number of offences which can only be heard in the Supreme Court, regardless of the age of the child, as well as a number of offences which are prescribed offences only for children who are over 14 (such as armed robbery or aggravated armed robbery), or 17 and over.

The purpose of the Youth Justice Division is to operate as a specialist list, with a focus on therapeutic jurisprudence and interventions which are designed to support children and their families. TasCOSS and the CREATE Foundation believe the current model outlined in the Act in relation to prescribed offences is unjustly punitive and fails to recognise the objectives of the Act, which are focused on the rehabilitation of children rather than punishment. The Supreme Court has limited sentencing options for children,⁹⁸ and

⁹⁶ *Bail Act 1977 (Vic)* s3B (3).

⁹⁷ The definition of 'prescribed offences' is found in *Youth Justice Act 1997 (Tas)* s3 (1).

⁹⁸ For an overview of sentencing practices in the Supreme Court relating to young people, please see Sentencing Advisory Council, 'Sentencing Young Offenders' (2021), 87 – 91.

is not designed to be a therapeutic or rehabilitative space. Whilst we acknowledge the need to appropriately balance the views and wishes of victims and the broader community in relation to certain behaviours, our view is a youth justice system which allows for certain offences to be dealt with in a manner that is inconsistent with the Act is not appropriate.

Stakeholders have also raised concerns relating to situations where young people are jointly charged with adults. If a child is charged with an indictable offence as a co-accused, and the co-accused is an adult, the matter will be heard in the Supreme Court (even in a situation where the offence would otherwise not be a 'prescribed offence'). For example, a 13-year-old has been charged with being involved in an armed robbery, and the co-accused is 20 years old and pleading not guilty. In this situation, the 13-year-old would automatically have their matter heard in the Supreme Court, which in many instances results in significant delay. We recommend the withdrawal of this provision to allow children to have their matters heard and finalised in the Youth Justice Division.

We recommend the removal of prescribed offences from the Youth Justice Act, to allow all youth offending to be dealt with by the Youth Justice Division. We also recommend legislative reform to better support young people who are charged as co-accused with adults. Proposed changes to the Youth Justice Division will be explored later in this submission.

Alternative models to be funded and implemented to support children and their families

TasCOSS and the CREATE Foundation do not support a criminal justice-focused response to trauma, disadvantage and problematic childhood behaviour. We encourage the Government to investigate and implement alternative models to better support children, their families and caregivers, as well as improving existing systems to ensure they are meeting the needs of Tasmanians.

As noted above, there is a body of evidence documenting the detrimental impact of 'over-servicing' children and their families. However, we need to make sure there are systems in place to make sure children are not 'falling through the cracks', and to respond appropriately to children and families who may need additional support. We support models which exist independently of the youth justice system and do not require police/criminal justice involvement for young people and families to receive support and/or referrals as needed.

Multidisciplinary panels

The development of a multidisciplinary panel is currently being explored in the Australian Capital Territory, following their commitment to raise the age of criminal responsibility to 14. As noted in a review of the existing service system in the ACT,⁹⁹ such panels 'can be effective structures that monitor, problem solve and authorise a system of care for children with complex needs, including emotional and behavioural challenges – especially if they are adequately resourced'.¹⁰⁰ Multidisciplinary panels can allow for comprehensive assessment and management of a number of different needs; for example, the

⁹⁹ McArthur, M, Suomi, A, Kendall, B, 'Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory: Final Report' (2021).

¹⁰⁰ Ibid, 51.

Multiple and Complex Needs Initiative (MACNI) in Victoria is a panel providing interventions for clients with a combination of needs including mental health, substance dependency, and cognitive impairment and/or ABI.¹⁰¹ The recommendation for the development of a panel to address the needs of young people and their families has emerged in the ACT from stakeholder consultations, which identified ‘the need to organise mental health, education and other children’s services into comprehensive service networks that can better respond to the varied and complex needs associated with emotional and behavioural disabilities’,¹⁰² and ‘to reduce the fragmentation and silos of traditional service provision’.¹⁰³

We note there are already existing examples of multidisciplinary supports in Tasmania. For example, the Intensive Family Engagement Services (IFES) run by Save the Children as part of the Strong Families, Safe Kids program, is a program offering short-term, intensive support for families who are involved with the formal Child Protection system.¹⁰⁴ The Targeted Youth Support Services (TYSS) program, run by Baptcare, is another example of a program offering targeted interventions from a wide range of professionals to young people who are at risk of or experiencing homelessness, providing support and casework services to young people in an attempt to re-engage them in education, training, employment and housing.¹⁰⁵ However, we note both these programs provide relatively limited support for specific cohorts (for example, families who have already come to the attention of the Child Safety Service).

TasCOSS and the CREATE Foundation strongly recommend the Tasmanian Government explore the development and implementation of a similar panel to address the needs of young people who are coming to the attention of the police and other services (such as teachers or education providers) due to their challenging behaviours. A multidisciplinary panel which sits alongside (rather than being embedded within) the criminal justice system would allow for referrals to be made for a range of supports and/or interventions, depending on the complexity of the needs of the child. It would also allow for early intervention to take place with children and families, hopefully reducing the likelihood of later involvement with Youth Justice supervision or detention.

Targeted AOD support for young people

As outlined above, many stakeholders have raised the need for targeted AOD interventions for young people. We believe extended funding for AOD services who work with children could have a direct and significant impact in the youth justice space. Ideally these services would be provided by community organisations with existing knowledge of and links to the community. The Government should also explore hub-style services where children and young people can receive a range of supports. If new services are to be designed and implemented (for example, residential rehabilitation services), we

¹⁰¹ Victorian Government, Department of Health and Human Services, ‘Getting it together A guide for individuals, carers, and services on accessing the Multiple and Complex Needs Initiative’ (2019).

¹⁰² McArthur, M, Suomi, A, Kendall, B, ‘Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory: Final Report’ (2021), 51.

¹⁰³ Ibid.

¹⁰⁴ Information can be found at: <https://www.strongfamiliesafekids.tas.gov.au/service-directory/intensive-family-engagement-services-ifes>.

¹⁰⁵ Information can be found at: <https://www.baptcare.org.au/services/family-youth-and-foster-care/tasmanian-services/youth-targetted-youth-support-services-tyss>.

highlight the importance of co-designing services with young people and ensuring all staff are provided with appropriate training to engage in therapeutic and trauma-informed practice.

Trauma-informed mental health programs and supports

As highlighted above, TasCOSS and the CREATE Foundation support reforms which focus on multi-disciplinary approaches to addressing the needs of young people and their families, which includes mental health supports. Our stakeholders have highlighted the need for wraparound services, which could include models of case coordination (where workers engage with young people to identify needs and facilitate referrals), or hub-style services where young people can access a number of supports. We also note that in mental health, as with criminal justice, early intervention models are more likely to be therapeutic and effective,¹⁰⁶ and should therefore be prioritised over crisis or tertiary interventions.

If a specialist service is to be developed to offer inpatient mental health services to young people in Tasmania, we highlight the need for the service to be integrated with existing community supports, and to offer a coordinated, through-care model where young people are actively supported to transition from acute to community mental health care. The same principles would apply to any proposed forensic mental health facilities, noting the need to create environments which strengthen supports available for young people from marginalised groups.

We also highlight the need for communities to be empowered to make decisions around their healthcare, including mental health, which requires free, accessible information and education focused on health and wellbeing. We echo the recommendations of the Mental Health Council of Tasmania, who have called for a whole-of-population mental health literacy approach,¹⁰⁷ which could be delivered alongside other services in a HUB-model of service provision as well as using existing community organisations and programs to promote better mental health for young people.

Alternative models for education providers and schools

Education settings have been recognised in the Discussion Paper as key for the recognition of challenging behaviours and timely and appropriate referrals for children and families. Education is also a strong protective factor which is linked to positive outcomes for children, including reducing the likelihood of later incarceration or involvement in the criminal justice system.¹⁰⁸ However we know many children are excluded from school due to their presentation or challenging behaviours, many of which may be a direct result of their trauma experiences.¹⁰⁹ A joint project from 2015 (between the CREATE Foundation and the Commissioner for Children and Young People) contains reflections of young people on their educational experience and how schools responded:¹¹⁰

¹⁰⁶ For an exploration of the complex needs of adolescents, see Catherine Robinson, Social Action Research Centre, Anglicare Tasmania, 'Too Hard? Highly vulnerable teens in Tasmania' (2017).

¹⁰⁷ Mental Health Council Tasmania, Submission in relation to Tasmanian Youth Justice Reform (2022), 4-5.

¹⁰⁸ Sentencing Advisory Council, 'Sentencing Young Offenders' (2021), 17.

¹⁰⁹ Catherine Robinson, Social Action Research Centre, Anglicare Tasmania, 'Too Hard? Highly vulnerable teens in Tasmania' (2017), 115-121.

¹¹⁰ Create Foundation and Commissioner for Children Tasmania, 'Educational experiences of children and young people in care' (2015), 17-18.

Whenever I got bullied I tended to get in trouble because I got stressed really easily so I would hide away from everyone. I didn't know how to handle my stress. (Male, 13)

I would run out of the class angry and confused. Once I got angry at a student and then the teacher got in the way and I ended up punching her. I had to say apologies to both people. The teacher and the student. And had to write a sorry letter to the teacher. I actually didn't mean to physically punch her. I got a suspension for it. (Female, 17)

I think teachers need to know what's going on for you so they know why you're behaving a certain way. One time in grade 5 or 6 I cut a girls hair with scissors and wouldn't give them back so they called the cops and they chased me around a table while I sprayed them with white board cleaner. They dragged me into the kindergarten room and told me how bad and ridiculous I was, I was just angry. (Female, 22)

The above examples demonstrate the need for greater awareness of and training in responses to trauma in children across all sectors engaging with young people, although we are conscious of placing additional responsibilities on teachers and schools. TasCOSS and the CREATE Foundation strongly recommend the Government invest in comprehensive training for teachers and education staff in trauma awareness, to better equip school staff to engage with children who may be at risk of becoming involved in the criminal justice system. We also recommend schools adapt their policies and procedures relating to behaviour management, to ensure these practices do not result in traumatised children being unfairly excluded from school.¹¹¹

We note there may be scope for the Government to explore alternative models for education for at risk children, or children who are struggling to cope with a mainstream school environment. There are examples of alternative schools in other jurisdictions which could be further explored to assess their suitability for the Tasmanian context. One example is The Pavilion School,¹¹² a government funded school in Victoria working with young people who are disengaged from mainstream education. The school aims to 're-engage young people who are currently disengaged from any form of education, by providing students with a relevant and individually tailored education program'.¹¹³ The school offers the Victorian Certificate of Applied Learning (VCAL), as well as providing students with additional support and training in areas including youth work, counselling and mediation. Classes are structured to best support students to engage, and the school also offers pathways to assist students who wish to engage in further study and/or education.

The Government should also reflect on available information and experiences of families in relation to early childhood education, including pre-primary programs to support families with their transition into school. There are several existing programs throughout Tasmania (for example, community playgroups,

¹¹¹ For examples, see Tasmanian Government, Department of Education, 'Good Teaching: Trauma informed practice' (2020).

¹¹² Information about The Pavilion School can be found on their website: <http://pavilionschool.vic.edu.au/>.

¹¹³ Ibid.

Children and Family Centres,¹¹⁴ and specialist programs, such as HIPPY,¹¹⁵ working with families). These programs provide an example of voluntary, community-based supports focused on early intervention that are effective and responsive to the needs of the families accessing their services.

Changes could also be made to mainstream schools to better support children who are engaging in problematic behaviours. The Working Together initiative for children in the year before school is another example of how non-educational supports can be provided to children and their families to make it easier to engage in early learning.¹¹⁶ TLA have previously advocated for the development and implementation of a school-based lawyer program,¹¹⁷ noting the stated benefits such schemes have had on children in other jurisdictions. For example, the school lawyer program run by WestJustice, a community legal centre in Melbourne's western suburbs, has a lawyer embedded within a local state school, The Grange P-12 College. The lawyer forms part of the school's wellbeing team and provides legal advice and assistance to students, as well as conducting community legal education for students, teachers and staff.¹¹⁸ A review of this program identified multiple benefits, including increased knowledge and understanding of legal issues, improved health and wellbeing and improved learning, for both students and staff.¹¹⁹

Stakeholders have also raised the need for greater access to social work support for students. Although all students at government schools have access to a social worker (either on site or on call), anecdotal evidence from our stakeholders indicates this support is limited. Given the crucial role played by school wellbeing teams in particular in identifying children who might be at risk, TasCOSS and the CREATE Foundation support extended funding to increase the level of social work support offered to students and encourage the Government to engage with non-Government-funded schools to ensure students at these institutions also have access to social work support.

Changes to court, sentencing and prison practices

Courts

TasCOSS and the CREATE Foundation strongly support the development of a specialist, therapeutic Youth Justice Division or Court in Tasmania. We make this submission noting extensive research highlighting the effectiveness of alternative or 'problem-solving' courts,¹²⁰ as well as the existing principles of the Act which are focused on rehabilitation and strengthening community connections.

A therapeutic list or court for the Youth Justice Division

¹¹⁴ For information please see the Department of Education website: <https://www.education.tas.gov.au/parents-carers/parent-fact-sheets/brochure-child-family-centre/>.

¹¹⁵ Information about HIPPY can be found on the Rural Health Tasmania website: <http://www.ruralhealthtas.com.au/programs-services/hippy/>.

¹¹⁶ Information about this program can be found on the Department of Education website: <https://www.education.tas.gov.au/working-together/>.

¹¹⁷ Tasmania Legal Aid, 'Children First: Children in the child safety and youth justice system' (2021), 19.

¹¹⁸ Information about the school lawyer program can be found at WestJustice's website: <https://www.westjustice.org.au/community-development-and-law-reform/community-development-and-law-reform-projects/school-lawyer>.

¹¹⁹ Westjustice and SVA consulting, 'School Lawyer Program Framework' (March 2018), 12.

¹²⁰ See, for example, Michael S King and Kate Auty, 'Therapeutic Jurisprudence: An emerging trend in courts of summary jurisdiction' (2005) *Alternative Law Journal* 30:2, 69.

Problem-solving courts are informed by the principles of therapeutic jurisprudence, which has been defined as, ‘a new way of looking at the law based on the development of our understanding of the psyche and human behaviour and their relationship to legal processes’,¹²¹ and which recognises that ‘legal processes can impact on the wellbeing of participants, whether party, witness, juror, judge, court officer or other participant’.¹²² Examples of problem solving courts include specialist courts developed to support offenders with mental illness or cognitive impairment,¹²³ courts which work with offenders to address the substance misuse and dependency issues contributing to their offending,¹²⁴ or offer culturally appropriate sentencing options to Aboriginal offenders.¹²⁵ The following have been identified as hallmarks of ‘problem-solving’ courts:¹²⁶

- The ‘goals’ or ‘objectives’ of the court are wider than a legal resolution – the court process also seeks to identify and address underlying issues (such as homelessness, mental health issues or substance misuse);
- Whereas judicial authority is usually wielded to ensure compliance, problem solving courts often utilise a ‘case management’ approach, where a participant appears before the same judicial officer on multiple occasions, which creates accountability and an incentive for participants to work towards any identified objectives and comply with court orders;
- Legal issues are viewed not in isolation but alongside non-legal issues, such as the health, social circumstances or financial situation of the participant;
- Problem-solving courts offer opportunities for creative partnerships with local treatment and community agencies to support the work of the court (such as AOD service providers, health workers or local community organisations); and
- Professionals in problem-solving courts (including judicial officers, lawyers and police/prosecutors) work in non-traditional ways and often collaborate as a team to support participants. In particular, judicial officers take an active role and speak directly to participants (rather than through their lawyer/advocate).

There are several reasons why the Youth Justice Division in Tasmania could benefit from a problem-solving approach. As most youth offenders are presenting with multiple and often complex issues, a problem-solving approach could create opportunities for intervention throughout the court process (for example, meetings with a court-appointed case manager, or referrals made at court for treatment in the community from local service providers). Creating greater opportunities for court professionals to be aware of and respond to the needs of children who are attending court could also benefit children and

¹²¹ Michael S King, ‘Applying Therapeutic Jurisprudence in Regional Areas – the Western Australian Experience’ (2003) Murdoch University Electronic Journal of Law 10:2, para 15.

¹²² Ibid.

¹²³ Information about the Assessment and Referral Court (ARC) in Victoria can be found on the Magistrates’ Court of Victoria website: <https://www.mcv.vic.gov.au/about-us/assessment-and-referral-court-arc>.

¹²⁴ Information about the Tasmanian Drug Court can be found on the Magistrates’ Court of Tasmania website: https://www.magistratescourt.tas.gov.au/about_us/criminal_division/drug_treatment_orders; for an overview of drug courts generally see Tasmania Law Reform Institute, ‘The Establishment of a Drug Court Pilot in Tasmania’, accessed at https://www.utas.edu.au/_data/assets/pdf_file/0003/283818/Drug_Court_17nov06_A4_Final.pdf.

¹²⁵ For information about the Koori Court in the Magistrates’ Court in Victoria, see <https://www.mcv.vic.gov.au/about/koori-court>.

¹²⁶ Dr Michael S King, ‘Judging, judicial values and judicial conduct in problem-solving courts, Indigenous sentencing courts and mainstream courts’ (2010) 19 JJA 133, 135.

their families in a variety of ways, including ensuring decision-makers are aware of a child's personal circumstances and rehabilitation needs at sentencing.

There are several models for therapeutic or problem-solving courts. TasCOSS and the CREATE Foundation strongly recommend the Government consider the following as possibilities for Tasmania:

- Re-designing the approach of the Youth Justice Division of the Magistrates' Court to operate in a more therapeutic, problem-solving way

This option would involve a shift away from a traditional court model to a more therapeutic approach and could involve several small or large changes. Some elements of a therapeutic model could be implemented almost immediately: for example, having children and other stakeholders (defence lawyers, prosecutors and any support workers) seated at the bar table across from the Magistrate, to encourage active participation between decision-makers and young people and remove a level of formality from the court process.¹²⁷ This model could also include greater training for all court stakeholders in therapeutic and trauma-informed engagement with young people, as well as a commitment to embedding trauma-informed principles into court processes. For example, the court process should include opportunities for children to receive information about their rights and court processes in a way that is developmentally appropriate, as well as ensuring that the professionals working with young people are trained to correctly identify and respond to trauma.¹²⁸ There should be a greater level of awareness of existing pro-social community programs which support children, and court staff should be encouraged to work collaboratively with external organisations to make referrals where appropriate. It could also involve the appointment of court-based specialist staff, such as the Court Support Coordinators of the Melbourne Children's Court,¹²⁹ to provide intensive case-management support to children with complex needs.

- Development of a specialist, community-based problem-solving court

Many of our stakeholders highlighted the need for hub-style services to be offered to young people. Another model for how the Tasmanian Youth Justice Division could operate is the development of one or more community-based courts, modelled on the Neighbourhood Justice Centre (NJC) in Collingwood, Victoria. This model features embedded specialist services, with several professionals across a wide range of service areas (including lawyers, AOD workers, family violence support workers, counsellors and others) based at the court. This provides a number of benefits to clients who are accessing the court, including a single point of entry for access to services and reducing the number of appointments clients must attend.¹³⁰ There are also multiple benefits for professionals working within the court, who can work collaboratively to share information, knowledge and skills to better support people attending the court.¹³¹ The court also provides opportunities for restorative

¹²⁷ Dr Michael S King, 'Judging, judicial values and judicial conduct in problem-solving courts, Indigenous sentencing courts and mainstream courts' (2010) 19 JJA 133, 141-143.

¹²⁸ Create Foundation, 'Youth Justice Report: Consultation with young people in out-of-home care about their experiences with police, courts and detention' (2018), 8.

¹²⁹ Information about this program can be found at the Children's Court of Victoria website:

<https://www.childrenscourt.vic.gov.au/find-support/support-services-court/court-support-coordinators>.

¹³⁰ Further information about the NJC can be found at their website: <https://www.neighbourhoodjustice.vic.gov.au/>.

¹³¹ Ibid.

practices to be utilised throughout the court process; for example, many clients participate in restorative conferences (similar to community conferences in the Tasmanian Youth Justice Division), or have their sentence deferred to give clients an opportunity to engage in rehabilitation programs prior to being sentenced for a criminal offence. The court itself is a community resource that can be used by community residents and includes a social enterprise café which offers free tea and coffee, as well as low-cost meals. The NJC has been evaluated as highly successful in reducing crime and responding to the needs of residents of the City of Yarra (where the court is located).¹³²

Expansion of community-led bail support programs

Along with our earlier recommendations in relation to bail reform, we urge the Government to invest in community-based programs to support young people on bail. This includes the expansion of existing programs, such as the ‘Supporting Young People on Bail’ program offered by Save the Children,¹³³ as well as exploring options for further programs to be developed and delivered by community organisations.

In making the recommendation for greater availability of support programs, we highlight the need to provide services in a way that ensures young people are not spending excessive time on remand. Stakeholders have raised concerns about the practice of Magistrates (and Youth Justice) requiring the preparation of a ‘bail support plan’ prior to the release of a child from detention, noting that this is a requirement in almost all instances involving a young person in detention who has matters listed in the South. The experience of our stakeholders indicates this requirement can cause significant delay as reports usually take two weeks to prepare, which means a young person is spending two additional weeks in custody. We recommend the Government implement reforms to ensure children are not on remand awaiting the preparation of a ‘bail support plan’; these reforms could include funding and support for local organisations to prepare reports, or the funding of a specialist court-based service to assess children and provide bail plans/reports. There should also be a requirement for a bail support plan to be provided on the same day of a first remand hearing, as well as provision for assessment to take place in the community post-release if a same-day report is not available.

We also recommend the further development of voluntary and therapeutic programs which aim to link young people in with the supports they need, rather than punitive programs focused on compliance which could lead to further criminalisation.

Greater availability of programs to address criminogenic needs

Whilst the primary focus of our submission is on early intervention with children and families, we also recognise the need for specialist programs to intervene with young people who are already involved in the criminal justice system. Further funding and expansion of these programs could lead to a reduction in the number of young people subject to supervision or detention. There are examples of local programs providing targeted interventions for challenging behaviours: for example, the Step Up program run by

¹³² For an evaluation of the effectiveness of the NJC, please see Stuart Ross, ‘Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program’ (2015); Victorian Government, Department of Justice, Evaluating the Neighbourhood Justice Centre in Yarra 2007–2009 (2010).

¹³³ Some information about the Supporting Young People on Bail program can be found on the Strong Families, Safe Kids website, accessed at <https://www.strongfamiliesafekids.tas.gov.au/service-directory/supporting-young-people-on-bail/>.

Colony47 aimed at young people engaging in recurring violent behaviour,¹³⁴ or the PAST program run by the Sexual Assault Support Service in collaboration with Mission Australia, which is focused on children and young people who are displaying harmful sexual behaviours.¹³⁵ As part of the mapping exercise to identify the needs of Tasmanian children and families, the Government should identify further areas where targeted interventions are needed, and explore potential collaboration with community organisations to develop further programs and initiatives.

Sentencing

TasCOSS and the CREATE Foundation believe the recommended reforms outlined above (particularly those relating to therapeutic court processes and legislative reform) could have a significant impact on sentencing practices for young offenders.

As well as the above, we reiterate our earlier comments on trauma-informed practice, and the need for trauma-informed principles to be imbedded within every stage of the court process. In terms of sentencing, ongoing judicial training and education in therapeutic practices may be beneficial, as well as the appointment of specialist Children's Court or Youth Justice Division magistrates who have an interest and professional expertise in youth crime and related issues. Although trauma may already be considered as part of the sentencing process, the SAC report highlights that, '[c]omplex issues arise as to the role of a young person's background in the sentencing process and the weight to be given to an offender's traumatic background',¹³⁶ and that, 'there is limited legislative guidance on the relevance of childhood trauma under the *Youth Justice Act 1997 (Tas)* and limited case law guidance from the Supreme Court on its relevance in the sentencing process for young offenders in the context of serious offending'.¹³⁷ As per the SAC report, the Victorian Sentencing Advisory Council has identified four ways in which childhood trauma could be relevant:

- The impact of trauma on a young person's ability to engage effectively in rehabilitation;
- The impact of trauma on a young person's moral or legal culpability;
- The impact of trauma on a young person's ability to understand community expectations or control their own behaviour; and
- Current and repeated trauma, which may be ongoing at the time of sentencing and be contributing to ongoing criminal or challenging behaviours.

We recommend the Government engage with legal experts to explore the best ways to incorporate the above principles into existing legislation, as well as raising awareness of trauma and its impact among legal and judicial professionals.

Stakeholders have raised concerns about sentencing practices which may inadvertently contribute to young people spending more time in custody. Many of these examples relate to the operation of periods of detention with community-based orders. For example, if a young person receives a sentence of 6

¹³⁴ For information about the Step Up program, please see the Colony 47 website, accessed at <https://colony47.com.au/step-up/>.

¹³⁵ For information about the PAST program, please see the SASS website, accessed at <https://www.sass.org.au/index.php/past-program-0>.

¹³⁶ Sentencing Advisory Council, 'Sentencing Young Offenders' (2021), 63.

¹³⁷ Ibid, 65.

months detention with 3 months suspended, and they breach their suspended detention order, they end up spending 6 months in custody. If that child had initially been sentenced to 6 months detention, they would have been released after 3 months on a supervised release order. In practice, this means that sentences which are designed to reduce the amount of time a child is in custody and promote community connection (such as partially suspended sentences) can in practice end up being more onerous. TasCOSS and the CREATE Foundation recommend reforms to support changes to sentencing practices; these changes could include a change to the minimum period a youth is to be detained prior to being eligible for supervised release under the Act,¹³⁸ and a requirement for decision-makers to consider the principles of the Act (including the objective of young people being detained for the shortest period possible), as well as time spent in the community without offending, in instances where young people may have breached orders (such as suspended sentences or supervised release orders).

We also believe the availability of programs which directly address challenging or offending behaviours could also have a significant impact on sentencing. Magistrates in the Youth Justice Division already have the option to defer sentencing to allow young offenders the opportunity to complete programs prior to sentencing,¹³⁹ or to include a program as part of a sentence (for example, as part of a release and adjournment with conditions).¹⁴⁰ A greater number and range of specialist programs therefore offer a tangible and effective alternative to custody or youth justice supervision, which could in turn be more effective at providing opportunities for rehabilitation and community connection.

Prison

As outlined previously in this submission, TasCOSS and the CREATE Foundation strongly believe the current reform should be primarily directed towards greater funding for and expansion of preventative and primary intervention, to support children and families and redirect young people away from the criminal justice system. Our primary recommendation in relation to prison services is for the Government to seriously consider whether the ongoing detention of children is justified, particularly given recent research which highlights the damaging effects of incarceration on children and families, as well as the failures of the prison system to offer opportunities for rehabilitation.

If detention is to be an element of the youth justice system, we acknowledge the need to improve policies and practices in youth detention to ensure these facilities are fit for purpose and able to meet the needs of Tasmanian children. We encourage the Government to explore options which are aligned with the stated principles in the Youth Justice Act, as well as international and national research about what works to support young people who are engaging in criminal behaviours. As with all other elements of the youth justice system, the prison or detention environment should be primarily focused on offering opportunities for rehabilitation and, where possible, strengthening a child's relationship with the family and community. Services should be delivered in a way that is trauma-informed, with staff who are trained to work with

¹³⁸ The minimum period of detention prior to supervised release is established in the 'interpretation' section of the *Youth Justice Act 1997 (Tas)* s3; 'earliest release date' is defined as 'the day immediately following the completion of 50% of the period of detention during which a youth is liable to be detained or 3 months, whichever is the longer'.

¹³⁹ *Youth Justice Act 1997 (Tas)* s56A (3).

¹⁴⁰ *Youth Justice Act 1997 (Tas)* s47 (1) (d).

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.¹⁴¹

The Custodial Youth Justice Options Paper,¹⁴² produced in 2016 for the Tasmanian Government, outlines various international examples of best-practice models for youth justice facilities. These include the following:

- The Missouri Model

This model is based on four pillars:

- o 'Detention' of young people is to take place in the least restrictive environment possible – options include community placement, community, moderate, or secure residential;
- o Young people receive treatment (and if needed, reside) in small groups ten to twelve, to participate in group therapy and education sessions;
- o 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
- o 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.¹⁴³

In relation to how such an approach could inform the Tasmanian system, Noetic in their report noted:

'There are many lessons that DHHS can learn about designing and implementing a creative and compassionate approach to custodial youth justice from the Missouri Model. This includes approaches for:

- *designing a robust approach which fits within Tasmania's unique social and economic circumstances*
- *implementing a durable model which is not limited by the structure of government and inspires enduring political support*
- *supporting interventions that address community needs across the youth justice continuum.*¹⁴⁴

- Through-care model

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

¹⁴¹ Victorian Aboriginal Legal Service, Department of Premier and Cabinet, Consultation on Victorian Youth Strategy (2021), 9-10; Victorian Aboriginal Legal Service, Submission to the Commission for Children and Young People Inquiry: Our Youth, Our Way (2019), 21.

¹⁴² Noetic Solutions Pty Ltd, 'Custodial Youth Justice Options Paper: Report for the Tasmanian Government Department of Health and Human Services' (2016).

¹⁴³ Noetic Solutions Pty Ltd, 'Custodial Youth Justice Options Paper: Report for the Tasmanian Government Department of Health and Human Services' (2016), 76.

¹⁴⁴ Ibid, 77.

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.¹⁴⁵

In their report, Noetic reflects that, '[a] through-care model would directly support the implementation of a therapeutic approach in a new custodial youth justice model. However, this model requires the establishment of trusting, robust relationships with key service providers while young people are in detention, which can be maintained after release.'¹⁴⁶ TasCOSS also reiterates the need for support programs, including intensive case management, to be provided by community-based organisations, who are best placed to support the needs of children in their particular community.

- Justice Reinvestment model

Justice reinvestment approaches adopt a whole-of-community and whole-of-lifetime approach, and seek to support all community members by using funds which are allocated to tertiary justice interventions (such as prison and parole) and re-allocating funds towards early intervention and support. As noted by Noetic,¹⁴⁷ this model involves four phases:

- o identifying communities of interest through analysis of data and trends;
- o developing options to generate savings;
- o quantifying savings to reinvest; and
- o measuring and evaluating the impact on identified communities.¹⁴⁸

In relation to how this model could be used in the Tasmanian context, Noetic notes that, 'justice mapping methods could identify communities of interest through cohesive data sharing arrangements between government agencies and service providers. This allows government agencies to tailor interventions based on actual community needs. The principle of re-investing savings from a smaller, more fit-for-purpose detention facility into early intervention and prevention is also consistent with this approach.'¹⁴⁹

TasCOSS and the CREATE Foundation understand the current proposal is to create two smaller youth detention facilities in Tasmania. We strongly urge the Government to consider the following:

- Engaging in consultation with the communities where facilities are to be located as early as possible, to identify the needs of these communities, develop partnerships with existing organisations and support any existing initiatives;
- Engaging in comprehensive service mapping (guided by the needs of the community) to scope existing services and areas where greater support is needed;
- Engagement which highlights the needs and experience of young people with lived experience of the youth justice and detention system, to identify their priorities and co-design services;
- Development of services and structures which are designed to provide therapeutic services, including comprehensive training for all staff, embedding social workers and intensive case

¹⁴⁵ Ibid, 79.

¹⁴⁶ Ibid, 80.

¹⁴⁷ Noetic Solutions Pty Ltd, 'Custodial Youth Justice Options Paper: Report for the Tasmanian Government Department of Health and Human Services' (2016), 79.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

- managers in the system, and consideration for how all services can be integrated into the community; and
- Implementation of HUB-style supports to support children who are transitioning into and out of the criminal justice system, to provide easy access to services and reduce the risk of having specialist needs addressed.

Recommendations

Guiding principles

- Reforms should involve, and allow for, greater participation from children and young people
 - o This could include further funding for projects which support youth participation, as well as legislative changes to embed youth participation in Government decision-making relating to young people
- Reforms should focus on comprehensive early and primary intervention
- Reforms should be focused on providing trauma-informed and therapeutic interventions
- Reforms should embrace a 'whole of life' approach and provide opportunities for intervention and support to children at all life and developmental stages
- Reforms should focus on community led initiatives

Greater recognition of the drivers of youth offending and provision of targeted, preventative supports

- Reduce the number of 'crossover children', who are involved with both the child safety and youth justice systems
- Develop cross-sector protocols (for example, between residential care staff and police) to decriminalise behaviours in out-of-home-care
- Greater availability of trauma-informed crisis awareness training for professionals in the child safety system
- Better supports for parents, guardians and professionals to manage challenging transition points
- Funding for additional housing for children and young people, as well as homelessness support services
- Ongoing funding for the expansion of targeted programs to support Aboriginal children

Increase in the availability of early intervention programs and initiatives

- Increase opportunities for children and families to engage in voluntary education and primary prevention programs, as well as pro social community activities designed to support families and young people
- Expand existing community programs to support individuals and families with particular needs

Reducing the number of children who are involved in the criminal justice system

- Raise the age of criminal responsibility to at least 14 years
- Establish 16 as the minimum age for detention in Tasmania
- Establish clear protocols with Tasmania Police relating to the charging practices for young people
 - o Set clear targets to reduce the number of arrests or matters involving young people referred to prosecution
 - o Establish a system of review of charging decisions relating to young people

- Establish a process of community or family consultation with police prior to arrest or charge of a young person
- Specialist protocols for children in OOHC to reduce the number of arrests and/or charges
- Establish a specialist youth division or unit of Tasmania Police
- Removal of legislative provisions prohibiting diversion for ‘prescribed offences’
- Additional legislative provisions allowing for magistrates to recommend diversionary options without prosecutorial or police approval
- Increase in number of diversionary programs throughout the State, particularly programs developed and led by community organisations with specialist knowledge and expertise

Reconsideration of the principles of the Youth Justice Act, and accompanying legislative reform

- Amend the principles of the Act to ensure a focus on the recognition of trauma and importance of rehabilitation
- Clear legislative provisions to remove general deterrence as a sentencing consideration for young people
- Additional legislative provisions in relation to bail outlining factors to be considered by bail decision-makers, and prohibiting a refusal of bail on the ground that a child does not have appropriate accommodation
- Remove provisions which allow for the consideration of breaches of bail at sentencing
- Removal of ‘prescribed offences’ framework (and provisions relating to youth people who are jointly charged with adults) so all youth offending can be heard in the youth list or youth court

Implementation of alternative models to support young people and their families

- Develop a multidisciplinary panel to sit alongside the formal criminal justice and child safety systems, which can receive referrals and offer a range of voluntary, multidisciplinary supports
- Design of HUB-style, multi-agency and wraparound support services for children and young people, offering assistance for issues including homelessness, AOD support and mental health
- Adoption of a Health in All Policies policy, framework and action plan, and a whole-of-population mental health literacy approach
- A coordinated, integrated, person-centred, lifespan-focused mental health service system that includes mental health and wellbeing initiatives for children in infancy, preschool and school age as well as young people
- Models which include step-down, throughcare supports and ongoing collaboration with community organisations to be considered if inpatient mental health services are developed
- Expanded youth accommodation facilities offering medium-to-long term housing and support to transition for young people, combined with expanded intensive case management, outreach support and family mediation for young people at the risk of homelessness
- Increased training for teachers and education staff in trauma and therapeutic intervention
- Review of behaviour management policies and police referral protocols
- Explore alternative schooling models to support children who have been excluded from mainstream education

- Develop a school-based lawyer program
- Increase access to school-based social work support

Changes to existing services to better support young people

- Create a therapeutic list or court for young people
 - o Using therapeutic justice principles and practices from existing therapeutic courts
 - o 'problem-solving' approach
 - o Greater training for all court staff
 - o Case management models to support children with complex needs
 - o Embed and promote community programs and initiatives as part of the court experience
- Develop a community-based youth court
 - o HUB-style with a number of different services offered
 - o Therapeutic model
 - o Specialist training for magistrates and court staff
- Expand community-based bail support programs for children, and ensure any bail support plans required can be provided on the same day as a first remand hearing
- Change the minimum period to be spent in custody before children are eligible for supervised release
- Expand existing programs to address criminogenic needs across the State
- Detention facilities to use best-practice models from other jurisdictions and should include the following:
 - o Throughcare programs to assist with transitions into and out of the custodial setting
 - o Collaboration with community-based programs and integration of community programs within detention
 - o Treatment-focused models
 - o Intensive case management support
 - o Promotion of community and family connections
 - o Comprehensive training in trauma-informed practice for all staff
 - o Co-design with young people, particularly those with lived experience of supervision and/or detention