

# PUBLIC

## THE LEGISLATIVE COUNCIL GOVERNMENT ADMINISTRATION COMMITTEE B MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY, 10 AUGUST 2023

---

### INQUIRY INTO TASMANIAN ADULT IMPRISONMENT AND YOUTH DETENTION MATTERS

**The Committee met at 9:00 am.**

**CHAIR** (Ms Rattray) - Good morning everyone, I want to welcome everyone here today and declare our broadcast commencing for our next hearings for the Legislative Council's Government Administration Committee B Inquiry into Adult Imprisonment and Youth Detention Matters.

Before I welcome Mr Connock, I will introduce you to the members of the Committee.

To my right we have Josh Willie, Rosemary Armitage, Tania Rattray, Rob Valentine and Meg Webb, our Committee Secretary support is Simon Scott, Ali Scott in the back, and we have Terence on Hansard.

Mr Connock, we would like to advise the Committee is taking sworn evidence and we will ask you to take the statutory declaration shortly. All evidence is protected by parliamentary privilege, but I remind you that any comments that you make outside of this hearing may not be afforded such privilege. We will be recording and a *Hansard* version will be available at a later time and published on the Committee's website.

You are well aware of the process of the Parliamentary Committee system. I ask you to take the statutory declaration and then provide any overview you might like, and then we will open it up to questions.

**Mr RICHARD CONNOCK**, CUSTODIAL INSPECTOR, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**Mr CONNOCK** - I really do not have a large overview. I am not sure what the Committee wants from me. As the Committee is aware, it is not my position to be offering comment on policy and that sort of thing, but I am happy to answer any questions the Committee might have.

**CHAIR** - Thank you very much, we do appreciate your position here. I would like to open then with some questions on your role at both the Ashley Detention Centre and the Risdon Prison Complex you and your Office do and the work you undertake. It would be useful to have that on the public record from your perspective.

**Mr CONNOCK** - There are three jurisdictions I administer relevant to that. Dealing with the first one is the Custodial Inspector, which I understand is the capacity in which I have been called here today.

**CHAIR** - That is correct.

## PUBLIC

**Mr CONNOCK** - And that is to inspect both adult prisons and youth detention facilities against a suite of established standards. That is an objective assessment against those standards. It is distinct from my role as Ombudsman and Health Complaints Commissioner, and it is not involved with individual prisoner or detainee complaints. It is inspecting against a set of established standards to see whether facilities - adult and youth - are compliant with those and, if not, to make recommendations.

**CHAIR** - Are they national standards?

**Mr CONNOCK** - They are not. When the Tasmanian inspectorate was established, we called in the Western Australia Custodial Inspector for assistance, which is the longest-standing independent custodial inspector in the country. We had some great assistance from the Deputy Inspector there, who was also working at the same time with New South Wales, which was establishing an inspectorate.

We tried to get some commonality in the standards, but the jurisdictions varied so greatly that we were unable to do that, except at a very high level.

Tasmania has only got a very limited number of facilities. New South Wales has thousands of prisoners and a number of facilities. Western Australia is the same. And those two jurisdictions too are geographically challenged. They have facilities spread out over a wide area. Tasmania is comparatively small.

We got as much commonality as we could and based our standards on the Western Australian ones, but we had to tweak them for domestic purposes.

**Ms WEBB** - I do note the 2021-22 Annual Report from the Custodial Inspector mentions a need to review the inspections standards to keep abreast of national and international changes. That was planned, as stated in that report, for the 2022-23 financial year. I wanted to check in with you whether that review occurred in that financial year and if so, what the result has been. Will there be an update of the standards or some changes?

**Mr CONNOCK** - There will be. It is happening at the moment. As you know, I have also been appointed the National Preventive Mechanism for Tasmania for the purposes of the Optional Protocol to the Convention against Torture (OPCAT) and we are having to develop standards for inspections there. We are calling those expectations in line with His Majesty's Inspectorate of Prisons in the UK, which has been OPCAT-compliant for some time. We are reviewing our custodial inspection standards at the same time as we are introducing those expectations to try to make our inspection standards OPCAT-compliant as well. That is occurring at the moment and when that process is completed, there will be an announcement.

**Ms WEBB** - Could you describe for us the process that is being undertaken? What has been involved in the review? For example, who has been involved in feeding into that or providing expert advice?

**Mr CONNOCK** - It's being driven by the OPCAT implementation program. As you know, we had funding to scope the implementation of OPCAT because no-one was entirely clear about what was going to be involved in that. We have had a number of consultants involved in that. We have had Leaf Consultancy, which is a local organisation, reviewing the organisational structure and strategy and so forth. We have had an expert consultant in relation

## PUBLIC

to youth detention. We have had another one in relation to courts and police cells and we have had a former Western Australian custodial inspector to work on the prison standards. That is in progress. We are almost at publication but not quite.

**Ms WEBB** - Thank you. That's all I have on that.

**Mr VALENTINE** - You say you don't want to get involved in the policy stuff and I can understand that.

**Mr CONNOCK** - I can't.

**Mr VALENTINE** - I can understand that. These inspections happen every three years, is that correct?

**Mr CONNOCK** - We have to get around every facility in this state within a three-year period.

**Mr VALENTINE** - Do you have any difficulty in making that happen?

**Mr CONNOCK** - We managed to do it the first time around. Other inspectorates do a full-on inspection with a huge team of people who go in and do a prison against all standards. We have only done that once in relation to the Mary Hutchinson Women's Prison, but as a general proposition we are not resourced to do a full-on inspection of each facility. So, we break it down into inspections against a specific set of standards. We do custody. We do environmental health and wellbeing, and break it down and do those inspections. We've managed to get around every facility in the first three years. We have had staff resourcing issues - and this Committee knows because in other capacities I have spoken to you about it - which have slowed the process down.

We have three extant inspections that are still waiting on a report. We will probably be struggling to get around in the three years this time around because of those matters, but we are not doing badly. It is just that those resourcing challenges - and we are not alone in this - are posing a difficulty across the board.

**CHAIR** - Can I ask, is that still relating to the appropriately qualified persons applying for the position?

**Mr CONNOCK** - We now have appropriately qualified people. I am very happy with the team I have now. It has not been there for very long and there have been some unforeseen absences as well which have not helped things, but even with that full establishment it is still pretty tight.

**Mr VALENTINE** - Doing the inspections is one thing; writing it all up and publishing it is another.

**Mr CONNOCK** - Yes, and there are constant calls on the inspectorate to visit and inspect. One of the things that is coming out of this commission of inquiry is the suggestion that there should be a greater presence of the Custodial Inspectorate at the Ashley Youth Detention Centre, which we would be happy to do, but we are not resourced to do that at the

## PUBLIC

moment. We get up there when we can but we can't increase that presence without additional resourcing. As you say, the report writing is a substantial diversion away from inspections.

**Mr VALENTINE** - Are you able to put a number on staffing required that might improve that situation?

**Mr CONNOCK** - We have recently been in contact with Justice and the Department of Education, Children and Young People - because it affects them - to see if they will support a funding proposal. I am suggesting another Band 7 assistant principal inspection officer, who would then be able to provide more time for Ashley. They would be at an appropriately senior level.

One of the things about the visits is that it is my preference that inspection officers don't attend alone. There have been issues in the past with things and they should be together. Even if I get an extra officer, I'm going to have to take one of my other officers to accompany that person if they're going to Ashley more often, but there are a lot of things that an additional officer can do other than the physical inspections. I'm keen not to over-inspect facilities; I don't want to add to the burden - there are a lot of issues with youth detention at the moment.

**CHAIR** - You do an announced and an unannounced inspection?

**Mr CONNOCK** - We've done one unannounced; yes, we can do announced or unannounced. I can't remember the title, I think it was Food and Nutrition which we did unannounced at Risdon a couple of years ago and that was very successful, and we got no resistance at all to it. Marched into the kitchen one morning and everybody was - 'Oh, yeah, all right'.

**CHAIR** - Hello.

**Mr VALENTINE** - Just a further one on that, given that there's this vision to close Ashley and to have other centres doing the work, one presumes that you would be charged with inspecting those facilities as well. So, are you talking about an increase in that load up front?

**Mr CONNOCK** - And we've had the new Southern Remand Centre open which also requires inspection and when we get the northern prison, that will add to our load as well so current resourcing is barely adequate. We will need more when these new facilities come on line and I'm not sure on the timing of the Ashley change. It doesn't look like it's going to happen in the projected time frame. It's like a bit like a piece of string.

**Mr VALENTINE** - I don't think anyone is at this point.

**CHAIR** - It's 2028, 2029 now for the northern correctional facility, that's what I read in the local *Gazette*.

**Ms WEBB** - I have a supplementary on those staffing questions, if I may.

I want to be clear in terms of the additional role that was put into the Ombudsman's Office for the TNPM under the OPCAT. Were extra resources provided for that role beyond your custodial inspection resources that were already there?

## PUBLIC

**Mr CONNOCK** - Hopefully, they will be. A couple of years ago I was asked to - it was always mooted that I would be the National Preventive Mechanism but there wasn't a lot of work done on what was actually required. As you may be aware, the UN guidelines for an NPM are detailed and specific about the sort of expertise that's required of an NPM and the sort of inspections that they're going to be carrying out.

I was asked to do a budget bid and my response was simple: 'I can't; I've got no idea what's involved and nobody else has either'. We got funding to scope what would be required to implement OPCAT so I've had a program manager for the last 12 months who has just been renewed for another 12 months and who has been engaging with the various consultants that I mentioned before, scoping what's actually going to be required to make Tasmania compliant with OPCAT.

At the end of that process I'm hoping to be providing a report to Government saying this is what you need to do; this is the staffing level, this is the business model, this is the strategic objective, this is what you're going to have to address, because nobody has done that to date. The Government has been supportive of OPCAT, consistently, which is great but we're still not absolutely clear what's going to be involved. There are various things - OPCAT's a very broad purview. We can do the prisons because we're doing that now, but there are secure mental health facilities and there are a lot of small clinics and facilities around the State that can go secure at any moment if they have - if I can say the 'right patient' - that's not really - you know what I mean.

**CHAIR** - An issue.

**Mr VALENTINE** - The right circumstances.

**Mr CONNOCK** - They can switch to secure so they need to be inspected.

Aged care: we've been looking at New Zealand because they've been OPCAT-compliant for a while. They've got aged care. It's largely federally managed in Australia, but there are a few facilities that are state-managed so we will have to inspect those.

We recently did a road trip with three of our consultants - the prison, youth detention and police in custody - going around the State and looking at the various places of detention, including small prison cells on King Island the King Island Hospital and things like that. We were looking at how broad the brush is going to have to be, and that's going to be included in our report.

**Ms WEBB** - The expectation for the time line is that we will have a plan about what resourcing is required put to the Government. The Government will then decide and then we will hopefully see those resources put in place to then begin to undertake the role. What is the time line for that?

**Mr CONNOCK** - I was hoping to have the report done by now, but that has not been possible; the work is continuing - as I said before, on the brink of being able to publish some of the consultant's reports. I am hoping soon. We have had the funding renewed for the implementation program for another 12 months, which is great. We have also the funding for a permanent director at the NPM, which we will be recruiting for shortly.

## PUBLIC

It is starting to happen. Even though it has been big, cumbersome and slow, we are well ahead of the rest of the country.

**Ms WEBB** - We have been laudably first movers in this in Tasmania, which has been very pleasing. Taking the time to get it right is not a bad thing. Perhaps in next State Budget, we will see some clarity there.

**Mr CONNOCK** - We might see some clarity there. It is new for all of us. Even though we are used to inspecting prisons, there is a lot of nuance to this. There are international obligations that need to be met. It is not a simple thing to say, 'Okay, we will go and do that'. There are a lot of instruments we need to be compliant with, a lot of non-binding ones we still need to take notice of. It is not just like walking up and saying, 'Okay, we are going to have a look at that mental health ward', and the suite of - we are calling these 'expectations'. The standards in line with the UK model are far more detailed than just inspection standards.

I met with the Sub-Committee on Prevention of Torture. We have a proactive role in the custodial inspectors' jurisdictions down here and one of the questions that arose there was: what is the difference between that sort of proactive inspection and monitoring against expectations? It is not a simple thing.

**Ms WEBB** - When you had constrained staffing in recent years and were having to recruit, how did you prioritise how to meet your responsibilities during that time?

**Mr CONNOCK** - We got the additional funding a few years ago.

**Ms WEBB** - What I am asking is, beyond your actively trying to recruit, so putting that aside, in terms of meeting the responsibilities under the act of the custodial inspector, while there was constrained staffing, did you have to prioritise what you were able to do or was everything on hold?

**Mr CONNOCK** - Across jurisdictions we had to prioritise. When we were under-resourced, there were a lot of challenges in each jurisdiction.

**Ms WEBB** - What process and principles did you apply to prioritising the responsibilities to be met at that time?

**Mr CONNOCK** - We focused on monitoring and inspection rather than report writing. It is important to maintain a presence, to maintain a role and to monitor what is actually happening and that affected the production of reports.

What we are trying to get to is to perhaps produce shorter reports rather than the big ominous ones. That did take a back seat while we were under-resourced. It was important to me that we maintain a presence, do the inspections and liaise with management, with the Tasmania Prison Service and the Department.

**CHAIR** - It almost wore you out.

**Mr CONNOCK** - It was challenging. The recruitment market has not helped. We have problems I never thought we would have. That is now coming good, but it has taken a long time.

## PUBLIC

**Mr VALENTINE** - In relation to inspections, looking at something in particular like mattresses on floors and the health aspects of this, the potential for mould to develop, I noticed it in your Environmental Health and Hygiene Inspection Report for 2021. When you discover that these inspections are not happening by correctional staff, do you then go straight to management and let them know that or do you go away and basically write your report?

**Mr CONNOCK** - I go away and write the report. In the one you are referring to, we did make recommendations about checking mattresses, replacing, cleaning and so forth. We have discussed those with the Department, who have agreed in principle with most of the recommendations. What we have not been able to do and what we should be doing is monitor compliance with those. We are doing that as best we can but, again, it has been resourcing issues there. We do follow up with recommendations. The Department employed someone, an assistant director I think the title was, and one of whose principal roles was to monitor compliance with recommendations.

**Mr VALENTINE** - I asked because if you did not touch base straightaway -

**Mr CONNOCK** - I do not have coercive powers in any of my jurisdictions, only recommendatory. If we determine a recommendation is going to be made, we will make that recommendation but we will liaise with whichever department to say this recommendation is going to be made. You are not going to influence that, but how best can you be compliant with that, so when we make a recommendation we are looking for a constructive outcome. We get very little resistance to our recommendations, apart from questions of money, resourcing or infrastructure. They are the sorts of things that can be difficult. We still make aspirational recommendations when we think that is necessary, but we would prefer to recommend something that can be complied with, so we will confer.

We have, in terms of the custodial inspectorate, a close working relationship with the Department and the Director of Corrective Services. Before we publish a report, we will make it available and we have been meeting with them to discuss the contents of the report. They do not seek to change the contents, but they have an input into it.

**CHAIR** - How they might resolve it.

**Mr CONNOCK** - Yes, they will respond to the contents and we will include in the final report their comments, but we discuss the recommendations and how they can be achieved.

**Mr VALENTINE** - It was the time lag I was concerned with in terms of the health and welfare.

**Ms WEBB** - It is also not hard to support a recommendation and then do nothing about it because, as you say, there are no compelling powers to come back and require they did it.

**Mr CONNOCK** - There is naming and shaming, which I do not think makes many people comfortable. As I said before, we do not get a lot of resistance to our recommendations.

**Ms WEBB** - Well, no, if you are not going to be able to compel them then it is probably -

## PUBLIC

**Mr CONNOCK** - They are complying with a lot. I am not suggesting that people are non-compliant. They are not.

**Ms ARMITAGE** - With regard to the increase of capacity in the prisons, some bunk beds are being added, mattresses on sealed floors and, obviously, a lot of this is ongoing. It is not changing. The majority of prison cells, the 2021-22 report states, do not meet the SGPFAN - if you can tell me what that is in a minute - minimum cell area for single and double cells.

**Mr CONNOCK** - I will have to take that on notice.

**Ms ARMITAGE** - And also that no formal risk or profile assessment is performed when determining which prisoners should be housed in single cells that have been converted to double or triple cells. This is a question you might not want to answer, but do you consider that is a risk in itself, that there is no assessment? What was the response to that, that no assessment is done when they are putting someone or putting a couple of people into a cell that was previously single, now become double or maybe one double and it takes three? What teeth do you have to make some changes that perhaps they do at least a profile risk assessment on the prisoners they are putting in together? I have noticed in your 2021-22 report it was not happening.

**Mr CONNOCK** - All we can do is make the recommendations and follow them up. As you know, prison numbers at the moment are massive. They are the biggest they have ever been, which is creating a lot of challenges for the adult prison.

**Ms ARMITAGE** - Is it important to assess who is going in together?

**Mr CONNOCK** - In the abstract, yes, it is, but I am not comfortable going into too much detail about this.

**Ms ARMITAGE** - That is fine.

**Mr CONNOCK** - Prisoner numbers mean that things have to be done that otherwise would not ordinarily be done.

**Ms ARMITAGE** - It does not meet the standards for the cell area?

**Mr CONNOCK** - It does not necessarily meet the standards, no, but there is not a lot. That is perhaps an example of an aspirational recommendation. Given the numbers and at the moment there are 760 something prisoners in the Risdon campus, take out the SRC and the Launceston Reception, it is still a significant number, more than they're really designed to cope with. So, accommodation - I was going to say shortcuts but I do not think that is appropriate - but compromises have had to be made. Now, we continue to monitor this and continue to raise it -

**Ms ARMITAGE** - But you have no teeth to do anything about it.

**Mr CONNOCK** - I do not have any coercive powers, no.



## PUBLIC

**Ms ARMITAGE** - And to me that is a concern that you are a custodian of the sector and you can make recommendations, but there is actually no power to make sure those recommendations are carried out. To me, that is a bit of a concern.

**Mr CONNOCK** - Yes, but on the other side of that, that is the same in my other jurisdictions. I do not have coercive powers in any of them. I am not like a court. We do have courts for that sort of thing. We do have other facilities that can direct how things are done. My roles are effectively monitoring.

**Ms ARMITAGE** - To find the situation it is in for someone else to take action.

**Mr CONNOCK** - Someone else needs to take action. It is not for me to take action -

**Ms ARMITAGE** - On the issues you find or discover.

**Mr CONNOCK** - On the issues I find, but it is my job to pursue those and as far as I can, to ensure that the recommendations are complied with and that systems are improved. The role of the Custodial Inspector is to monitor and improve the running of prisons. That of the Ombudsman is to improve the administration of government. It is a broader brush.

**Ms ARMITAGE** - I just see it is hard though if you cannot enforce it.

**Mr CONNOCK** - Look, it is, it can be incredibly frustrating but there are often reasons that things cannot be complied with and in this instance, one of the things is prisoner numbers.

**Ms ARMITAGE** - Too many prisoners.

**Mr CONNOCK** - Yes, too many prisons, too many prisoners. I do not make comment about alternatives to that. I know there has been a lot of evidence before the Committee about that but yes, we do have too many prisoners and -

**Ms ARMITAGE** - I guess as you have recommended, simple things like an assessment of profiles before people are put in together is certainly something that could be easily undertaken.

**Mr CONNOCK** - Comparatively easily, I would have thought, yes.

**CHAIR** - I have a question in regard to the working relationship, or the relationship at all, between the Commissioner for Children and Young Persons. I was coming south last week and I met the Children's Commissioner heading north. It made me think about the visits that role has and then your relationship with the Commissioner relating to the work that they do, particularly at the Ashley Youth Detention Centre.

**Mr CONNOCK** - I think we have a very good relationship with the Commissioner for Children. As the Commissioner has said, we have been a bit of a double act before the Commission of Inquiry and various other places. We have a symbiotic relationship. The Commissioner has defined functions, as do I. The Commissioner does not have a complaints handling function but she does have an advocate who is up at Ashley quite a lot and we do have an understanding that the advocate can facilitate complaints to us.

## PUBLIC

The Commissioner plays her role but if someone wants to make a complaint, they make it to the Ombudsman, and we have been getting a few more complaints than we have in the past. It has been interesting. I must compliment the advocate. She assists the young people by writing out the complaints but she uses their voice so that it comes in then not homogenised, they are not, you know -

**CHAIR** - You know it is their words.

**Mr CONNOCK** - You know it is their words. So, we actually get that contact from young people -

**Mr VALENTINE** - It is so important.

**Mr CONNOCK** - Absolutely, which they are not necessarily able to articulate themselves or to do - they cannot write it out. We are working on phone access at the moment that has been limited in the past. We are trying to get my jurisdictions onto the call list but that is a work in progress; we are not getting resistance but it has not happened yet -

**CHAIR** - It takes time to set those processes up.

**Mr CONNOCK** - So that they can call us directly. We have that facility with the adult prisons. As you are probably aware, we are on their phone system. It is just a hash and a number and those calls are not monitored or I am satisfied they are not monitored. As I have said to this Committee before, I think there is a little cohort of prisoners who will not believe that it is not being monitored, but I am pretty satisfied that it is not. We are looking for that sort of communication with young people in detention at Ashley as well.

But this advocate has made a difference and we are now getting more complaints from young people, and it's very pleasing that it is in their own words because, as you said, I think it is very important - not somebody else translating what they think the young person wants to complain about.

**Ms WEBB** - Following on from that, it relates to where jurisdictions lie and relates to the Commissioner for Children and Young People as well as the Custodial Inspector, your role, the watch house environment. We know that even though young people come into the system through the watch house, it is not an area where the Commissioner for Children and Young People has any oversight or jurisdiction. Does that come under the purview of the Custodial Inspector or is that an aspect of the system that is covered by neither oversight mechanism?

**Mr CONNOCK** - We can look at it. There is a jurisdictional question because it is not controlled by the Prison Service. Watch houses are police, normally, and they do hold people there for short periods of time. We do look at that. When OPCAT comes in, that will all be covered. All that will be gone.

**Ms WEBB** - Under the National Preventive Mechanism?

**Mr CONNOCK** - Yes, that is right. That will cover everything. We are not bound by what's a prison or a youth detention, what is a police cell. All of those things will be covered.

## PUBLIC

**Ms WEBB** - But currently that's not an area that you are actively monitoring as Custodial Inspector?

**Mr CONNOCK** - We will look at it and we take complaints from the Ombudsman about the treatment of prisoners and detainees in watch houses.

**Ms WEBB** - To clarify that, you will look at it. Is that if something is raised with you or is it part of a regular inspection?

**Mr CONNOCK** - When we go through the Hobart Reception Prison, we go around the watch house in there. It is all part of that facility, the same in Launceston Reception, so we do look at it.

**Mr WILLIE** - I'm interested in your office's interaction with prisoners. The phone line is available to them. Is that a set period of the day?

**Mr CONNOCK** - It is now. It wasn't initially and we had to put some parameters on it. We were getting hundreds of messages on the answering machine. They were calling at all hours of the day and night and weekends so we had to put office hours restrictions on it and they are used to that. We don't have any issue with it now.

**Mr WILLIE** - Are there any sort of trends, given that there is a large number of prisoners at the moment within the Risdon complex in particular?

**Mr CONNOCK** - There are the standard sorts of things like accommodation, where I am being put, classification, food not so much anymore but that used to be -

**CHAIR** - Since your unannounced visit?

**Mr CONNOCK** - Since the unannounced visit, which I must say, when we walked into the kitchen the second time it was a huge difference. A lot of happy workers.

**CHAIR** - Banter?

**Mr CONNOCK** - Well, they were working and they were working well together and the smells were great and it was all really good. When they call it tends to be immediate complaints and the standard things, as I say - accommodation, classification, access to services, particularly health services. Our biggest cohort of complainants in Ombudsman and health complaints are prisoners. They have a lot of issues; things are writ very large when you are in a confined environment. There are restrictions on the services that are available.

**Mr WILLIE** - How does your Office deal with something that is particularly serious or urgent?

**Mr CONNOCK** - We can investigate it. This is primarily the Ombudsman's jurisdiction. If it comes through to custodial they don't deal with individual complaints but monitor systems. We have full access to prison and youth detention facilities, so that is another thing we do - constant monitoring of numbers, movements and placements, and that sort of thing.

## PUBLIC

With complaints we have the power under the Ombudsman Act to make preliminary inquiries in order to determine whether something should be formally investigated. In general, 95 per cent of complaints are resolved in that way.

If we get a prisoner call we say, 'All right, there is your complaint'. We don't necessarily make them put it in writing. 'Call back in a couple of days and we will see if we have an answer for you' and we get on to the prison and talk to them and often we can resolve things that way. If it is really serious we would prefer to get a formal complaint, still make preliminary inquiries. Investigation can be cumbersome. There is a lot of formal toing and froing involved. We would rather try to resolve things quickly than go through that, but if it is particularly serious, we will investigate. We haven't done it for a long time.

The last time was more than 10 years ago when we reviewed the operation of the Tamar Unit which, sadly, when we looked at it a couple of years ago, still hadn't improved, so we have been talking to TPS about that and they are receptive to change. Again, difficult - infrastructure and resourcing - but that was one that we had a number of complaints about from prisoners and issues being raised by prisoner official visitors, so we decided we would investigate that. If it is an important systemic issue like that, we would prefer to do it on our own motion rather than on a complaint, so we do not have to deal with the individual complainant's expectations, which can be - I am not being critical of the complainant - out of line with what can be achieved.

If there is a system issue we really think needs to be looked at, we will investigate that on our own motion. We still report back to the people who made the complaint or raised the issue, but they are effectively witnesses rather than a complainant with an expectation of having their personal issues addressed.

**Ms WEBB** - There is a function under the act for the custodial inspector, as section 6(1)(e) of part of the Act:

To report to the responsible Minister or Parliament on any particular issue or general matter relating to the functions of the Inspector if, in his or her opinion, it is in the interest of any person or public interest to do so.

There have been times where you have raised particular issues out of sequence to your standard report. The issues raised around dental care, prisoner pay scales, lockdowns, prisoner assaults.

Is there documentation? Do you report on that in your annual report when you have these out of sequence individual issues you raise?

**Mr CONNOCK** - As a general proposition, yes. We have the reporting obligation on inspections, but we can, as you note, report on other things. We do report to the department on those and seek a response. Yes, we do put it in annual reports.

**Ms WEBB** - In the comprehensiveness of that reporting in your annual reports, for example, if I were to look to the annual report, would I be able to confidently know all the instances where you have investigated individual matters under this function, that would be reported on and visible to me as a public member of Member of Parliament?

## PUBLIC

**Mr CONNOCK** - One way or another, not necessarily all in the annual report. I think we published the lockdowns report separately, because that was an important issue.

We do regularly report and that is an important part of our functions. Things do not get swept under any carpet. If there is an issue of significance, we will report on it.

**Mr VALENTINE** - To clarify some operational things, in respect to 'overhousing', we might have multiple beds in a cell and have a single bed in a cell. A single-bed cell might have a mattress put on the floor for an extra occupant. Can you give us an understanding of the percentage of overhousing?

**Mr CONNOCK** - Not really. The prison publishes a report regularly listing the number of prisoners, where they are housed and what circumstances there are. That is dynamic, it changes. No, I cannot really give you an answer to that. I am happy to take it on notice.

**Mr VALENTINE** - It would be useful to the inquiry to know the percentage.

**Mr CONNOCK** - I cannot give you one off the cuff.

**Mr VALENTINE** - The other aspect we do hear a lot about is lockdowns. Is that where an individual is actually held in their cell or held within the unit their cell is in?

**Mr CONNOCK** - It varies. In medium, they have independent units, which have a number of cells in them. They can be confined to that unit.

In maximum security, they are in their cells. Lockdowns can be whole day or half day and they are normally resource-related, like staffing issues.

I do know TPS has been working on a new rostering system to try to anticipate staffing levels, so if there are lockdowns, and I think at the moment they are probably a necessary evil given the staffing levels, they can be predicted. The services can be maintained so prisoners maintain access to education and various other things. I know Mr Thomas has been working on that for some time. I think it is now coming into effect and will make a difference.

I think given the number of prisoners, which is huge, and the number of staff, I do not know if we are going to be able to rule out lockdowns completely.

**Mr VALENTINE** - In regard to some recommendations to undertake an ongoing review of the pay scale for increase in line with at least the Australian Consumer Price Index, can you comment on that?

**Mr CONNOCK** - Not really. That, again, is a policy issue. I cannot comment beyond the comments I have already made.

**CHAIR** - Thank you. I have a clarification here from the member for Launceston, who has done her homework.

**Ms ARMITAGE** - You do not need to take it on notice. I have looked it up on Goggle and SGPFANZ is Standard Guidelines for Prison Facilities in Australia and New Zealand from 1990. You can leave that one.

## PUBLIC

**CHAIR** - This Committee is always here to help.

**Ms WEBB** - Another question on that recommendation we made of pay scales, for example, is that we cannot see your follow-up reporting on implementation because you have not put it on the website yet.

**Mr CONNOCK** - Not yet.

**Ms WEBB** - Your office is making the change from doing it in annual report format to having an ongoing reporting. What is the time line on that?

**Mr CONNOCK** - I cannot tell you. As I say, it was not expected, unplanned-for staffing absences at the moment which have had a significant effect on output. We will do that as soon as we can, but I am afraid I cannot give you a time line.

**Ms WEBB** - It is difficult, in the absence of any powers the Custodial Inspector has, to compel that public exposure about action on recommendations is the only way to bring pressure to bear.

**Mr CONNOCK** - I would like to be more active on that front. It has not been possible.

**Ms WEBB** - Can I ask a question on the Act itself? We have now had it in place since 2016 and we have gone through a couple of theoretical cycle periods in that. I know COVID-19 has interrupted completing full cycles of the inspections. You have, in some of your reports, made some recommendations for legislative amendment, some particular ones, but do you have a view whether it is timely or beneficial to consider a more comprehensive review of the act that relates to the custodial inspectorate role?

**Mr CONNOCK** - Potentially yes. All pieces of legislation, when they come in - we have seen this with the Integrity Commission Act and with various other pieces of legislation - it is only when you start using it you realise what the shortcomings are. It is not a bad piece of legislation but as a general proposition, any comparatively new act could do with tweaking. As you work with it, you learn the shortcomings and what can be added to it to enhance the functions of, in this instance, the inspector.

**Ms WEBB** - Could there be benefit seven years in to be looking at that now?

**Mr CONNOCK** - A lot of the legislation I administer could stand reviewing.

**Ms WEBB** - I am not disagreeing with you. On the specific recommendations you have made in some of your reporting on legislative amendment relating to improving the actual and perceived independence of the custodial inspector, has there been any particular response to or interest from the Government in progressing those particular legislative reforms?

**Mr CONNOCK** - Not really, but no opposition either. Everybody does now respect the independence of the office. One of the things I do have some concern about is that, as in my other jurisdictions, my officers and the custodial inspectorate are Department of Justice officers.

## PUBLIC

**Ms WEBB** - Employees of the Department of Justice, yes.

**Mr CONNOCK** - That was the old ombudsman model where Justice administers the Ombudsman Act and the secretariat has an obligation to make available to the Ombudsman sufficient officers to carry out the function. That model has just been translated to all of the other jurisdictions as they have been added. I am not entirely comfortable with it, particularly in relation to the custodial inspectorate, because people think you are part of Justice and they are the ones running this joint. I am not sure it is optimal.

**Ms WEBB** - It looks like a department investigating itself.

**Mr CONNOCK** - It does a bit.

**Ms WEBB** - What was your suggestion then for an alternative arrangement?

**Mr CONNOCK** - If you look at other jurisdictions, I am not resourced and I do not know that it is viable for my separate jurisdictions to run their own human resources departments. That would be a bit over the odds.

**CHAIR** - Unachievable?

**Mr CONNOCK** - One of the things I have been thinking about is perhaps custodial in particular would better suited to DPAC, because that's the head of the State Service and that would enhance the perception of independence.

**Ms WEBB** - Is it simply a policy decision of Government to make a change like that, or is there a mechanism by which that change could be made?

**Mr CONNOCK** - I am not sure about that. I have made some veiled suggestions, but I have not put up a formal proposal. I think that this will be influenced too by the National Preventive Mechanism report. I think there will be some recommended changes to structures as a result of that implementation.

**Ms WEBB** - If those two roles are very much in alignment, the custodial inspector and the NPM, and the NPM is broader than just the justice system, then perhaps it even points you towards an alignment more with a central agency like this.

**Mr CONNOCK** - Or perhaps it indicates also that the custodial inspector should be NPM for prisons and that it then be a separate output with other qualified personnel to be looking at mental health and aged care and things like that.

**CHAIR** - Food for thought. Mr Connock, we absolutely appreciate the time you have provided to the Committee today. This is an important aspect of work that the Committee is undertaking and, again, we thank you.

We will suspend the hearing until we have our next witnesses at the table.

**The Committee suspended from 9:46 am to 9:48 am.**

## PUBLIC

**CHAIR** - I would like to thank you both, Rowena and Greg, for being here today. After I have introduced the Committee, I will ask you to take the statutory declaration and will have a couple of things to say.

Members of the Committee are: Josh Willie, Rosemary Armitage, Tania Rattray, Rob Valentine and Meg Webb, our Committee Secretary Alison Scott and Simon Scott and we have Terrence on *Hansard*. We also have an apology from Jane Howlett, who was unable to make it today.

This is an important Committee taking sworn evidence today in regard to the Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters, and your attendance today is much appreciated. All evidence in this hearing is protected by parliamentary privilege, but I remind you that any comments made outside of this forum may not be afforded such privilege. If there is anything that you would like the Committee to hear in camera, not in an open forum, please request that and the Committee will consider that as it is an important aspect of our Committee work. The transcript will be provided on the Committee's website at a later time.

Greg, you are familiar with this, but I am not sure about Rowena's history. We will ask you to take the statutory declaration. Make any overview comments you might like to and then we will launch straight into questions, thank you.

**Mr GREG BARNS SC**, CHAIR, PRISONERS LEGAL SERVICE TASMANIA, AND **Ms ROWENA MacDONALD**, TASMANIAN PRESIDENT, AUSTRALIAN LAWYERS ALLIANCE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**Mr BARNS** - I also should declare I am a member of the Australian Lawyers Alliance, but I am here for the PLS. I might make some opening remarks. What we have decided to do to help the Committee is that I am going to focus on the adult imprisonment issue and Rowena is going to focus on youth detention.

Firstly, we rely on our witness submission.

**CHAIR** - I am sure we have all got lots of tags and lots of highlighters on.

**Mr BARNS** - Sure, I will not labour the point. I just want to highlight some general issues.

I know the Institute of Public Affairs gave evidence here and it is of course a right-of-centre think tank. What this is telling us is this is not a left-right issue, it is not a political issue. This is about a systemic failure of overnment policy to deliver value for money for taxpayers. I do not think there can be any doubt about that. We have cited some figures which show the average number of prisoners since 2012 has gone from 473 to 642. Richard tells me now it is over 700.

The real net operating expenditure has almost doubled in the last 10 years, and yet recidivism rates are at 51 per cent. That is telling us that one in two prisoners is returning within two years.



## PUBLIC

If this were a health system and you had people coming back with another heart attack within two years, it would be front page news.

The other difficulty is, as we know, there is the broader cost to the community because incarceration is linked to many chronic diseases and geriatric syndromes. I am going to give you an example which might shock you, but it goes to this issue and also the way in which Community Corrections were increasingly concerned about its breaching of people.

We were alerted yesterday to the fact that a returning citizen, a former prisoner who has essentially motor neurone disease or something very like that and who is very unwell, was breached two weeks ago for having a pen knife and the Parole Board insisted he be returned to prison and he is in the prison hospital. Why is that happening? And we are about to address it today with a submission.

This is an example of what I am talking about. That person's illness will not get better, it is terminal. They cannot get the adequate treatment and care that they need, given the severity of their illness. And yet, the Board says you have to come back into prison because you have breached a parole.

The other issue, is and Richard addressed it this morning, which is what is effectively solitary confinement. We get reports constantly of prisoners who have been locked down five or six days in a row. That is solitary confinement.

The prison objects to the use of that term. The Government objects to the use of that term. But, if you look at the definition of solitary confinement under the Nelson Mandela Rules, it is 20 or more hours in your cell on a daily basis. That is a serious breach of International Human Rights Law and in fact a breach of the Australian Correctional Guidelines, and yet, it happens, as we have heard this morning from the previous witness, weekly, not just occasionally, it is happening weekly.

We have addressed the issue of the northern prison, and the Chair and I have had many discussions. We take a slightly different view, and I know Robert Tickner will be here for the Justice Reform Initiative later, of which I am patron. The JRA is opposed to a new prison. The PLS view is, unless it is a wellness centre, and that is a term we use deliberately, there is no point building a northern facility because you will simply fill it with a Risdon-type culture.

Unless there is a Norwegian-style facility which emphasises empowering of people, it provides educational opportunities on a systemic basis and better health opportunities and throughcare, forget it. We will not support it. People say, and I had this discussion last night with someone, Norway is Norway and it is very different. That is nonsense. As we have said in our submission, in the United States, which has high incarceration rates, we are seeing Scandinavian-style ventures established; particularly we have referred to North Dakota, Oregon, Alaska, Idaho and Wyoming, looking at northern European prison systems. There is no reason why it can't be done here.

The other issue I want to address and I think the IPA address this, we think that prison sentences of six months or under should be abolished. The problem with prison sentences of six months or under is that they serve no purpose in terms of rehabilitation or reducing recidivism. They simply mean that if a person is employed, probably they will lose their job,

## PUBLIC

their families are dislocated, they get no support in the prison system because they're not there for a long enough time and there is no evidence that they reduce recidivism, as I say.

This is not the only jurisdiction where the issue has arisen. In Western Australia of all places, in 1995, prison sentences of three months or less were abolished and the threshold was increased to six months in 2003. In Scotland, as we have said, there is now a presumption against short sentences being given by the courts and it is intended to encourage greater use of community sentences, to help break the cycle.

The other issue I'd raise, and then I will hand it over to Rowena, is that we have talked about the cost to taxpayers. It is an important point because I talked to Rob Hulls, the former Victorian attorney-general, about this - and Josh would appreciate this as a Labor Party member - he was talking about the Bracks and Brumby governments. I said, 'How did you get your reforms through because Rob was a very reformist attorney-general?' He said, 'I would go to Brumby, who was the treasurer, and I would say, this will save money, and now I am interested'.

It is an important point. One of the issues is that we have people in prison who don't need to be there. Non-violent offenders don't need to be there. We are also taking out of the labour market, when we have shortages, young people in their 20s, 30s and 40s. Ian Thomas, the director, said to me once he had an electrical contractor. We are desperate for workers and he said, 'I am calling you because I want to see is there any capacity to employ some of your guys, even if it is on a daily basis and they come back to prison?' Ian made the point to me that we have this entity here with all these people and there are serious employment opportunities that could be taken advantage of. We would go further and say you are warehousing young individuals, taking them out of those opportunities in the labour market and that, again, is costing society because there is a tendency, when they go out, to go back onto Newstart.

I will stop there and hand over to Rowena.

**CHAIR** - Thank you. On the youth detention area of this focus of the inquiry, thank you Rowena.

**Ms MacDONALD** - Thanks for this opportunity. It is appreciated. You have our witness submission so page 9 is where we have addressed the issue of the age of criminal responsibility, and then pages 18 and 19 have addressed post-release core programs which are critical, and youth justice mentoring schemes, as well as youth conferencing.

I would like to make a few general comments by reference to a previous submission of the Australian Lawyers Alliance (ALA) to the then Department of Communities in relation to youth justice and we're happy to make that report available to the Committee if that would be helpful.

**CHAIR** - We seem to have gathered quite a lot of reports through our time. I did mention to the Secretary this morning, are there any more reports you want me to read?

**Mr BARNES** - Well, we've got one for you.

**Ms MacDONALD** - I don't have a clean copy of it unfortunately, but I will get one to you today.

## PUBLIC

**CHAIR** - If you could send it through to Simon and he will distribute it, thank you.

**Ms MacDONALD** - Sure. The ALA makes note in its submission that we endorse the submissions of the Prisoners Legal Service and we also note, partially on point at least, that the commission of inquiry will be handing its report to the Government on 31 August and recommendations from that, certainly I would suspect, would help inform addressing the issues of youth detention.

We say raising the age of criminal responsibility to 14 is a crucial first step and very much a preliminary step in reducing youth detention. That is obvious. You are taking out an age bracket of people that could potentially be detained. Closing Ashley is an excellent start.

Drawing from the other paper that I've mentioned, there was a Committee of inquiry into what Ashley was then known as, State Farming School for Boys, in 1925. In that report it was stated that as far as practicable, every juvenile delinquent shall be treated not as a criminal, but as a misdirected and misguided child and one needing aid, encouragement, help and assistance. That thread ran through the objectives of the legislation from 1918 right through to 1997 with the Youth Justice Act.

The second reading speech in respect to the Youth Justice Act was that the philosophical framework of the Child Welfare Act does not encourage a system where young people are held accountable for their actions. The act focuses on the needs rather than the deeds of young people who offend. Consequently, there are limited options available to children's courts for sentencing young people.

So, first, children's courts were taken away and I think quite disturbingly, under the general principles of the Youth Justice Act, section 5, subsection (c), it stated the youth should not be treated more severely than an adult would be. To me, that is quite a disturbing objective: don't treat the children worse than you would treat the adult.

We welcome the establishment of the Department of Education, Children and Young People, because that is then bringing child safety, youth justice and education all under that one umbrella and then key legislation such as the Youth Justice Act, the Education Act and the Children and Young Persons and their Families Act can be looked at and amended in a manner that is consistent.

**Mr VALENTINE** - That's more coherent.

**Ms MacDONALD** - Yes. We can look then at a focus on diverting young people away from the criminal justice system in the first place and/or rehabilitating young offenders to become participating members of the community.

In the report that we will be providing to you there is a reference to a Victorian youth outreach program that has been shown to be successful. It is called Embedded Youth Outreach Program and it aims to enhance the police force's ability to support the complex needs of young offenders and work with youth support advocacy workers. It takes that holistic approach to youth offending rather than just locking them up and waiting until they move to 18 and shift across the river to Risdon.

## PUBLIC

Bringing back expertise into the courts, a dedicated children's court with that level of expertise. Again, courts with specialisation, police with specialisation and interaction with community organisations that can assist in looking at those issues that sit outside, why. Young people don't offend for no reason. Generally speaking, there will be other factors that need to be considered and that's where we say a dedicated children's court, bring that back. That is not new, it was there for many decades before the Youth Justice Act came into force in 2000.

Funding diversionary programs and legislative reform across those acts that I mentioned before to bring about collaboration and cooperation between different departments and different stakeholders. Again, we really welcome the merging of the department. Often, when we hear about merged departments, we think, oh God, but this one seems like it is really quite meaningful to bring about. I know the focus of this inquiry is into youth detention, but that move enables more of a focusing to preventing youth detention in the first place, which surely would be the overall objective. That concludes my opening.

**CHAIR** - Thank you and we appreciate that. Have you addressed your mind at all to the proposed new model for youth detention in our state? Is that something that has taken some time while you have been doing your work? I am interested.

**Mr BARNES** - I'm going to put my ALA hat on.

**CHAIR** - We don't mind which hat you have on.

**Mr BARNES** - We have, and the Prisoners Legal Service has as well. We are very supportive of the therapeutic model. I am opposed philosophically to the idea of youth detention.

**Mr VALENTINE** - You're what?

**Mr BARNES** - I am philosophically opposed to the idea of youth detention and many in the ALA would be, but there is a recognition that there are some young people who do commit serious crimes. They are few and far between. The therapeutic model should be about secure housing and again I use that term 'wellness', because it encapsulates everything that we are talking about. For example, we would like to see working with education so that kids aren't being suspended or expelled, which happens far too often with troublesome behaviour.

Great first step by the Government to say 'close Ashley'. We would have liked to have seen it done more quickly and we think it should have been, but the therapeutic model, depending on what it looks like, Chair, will be a great improvement if it is the model we envisage, which is, as I say, small, secure housing close to urban centres so that people are still connected to families, health and education.

**CHAIR** - It appears from the early conversation that it is not necessarily going to be easily accepted by the community. I have been watching the news.

**Mr BARNES** - Was there something at Risdon Vale? It was a protest about -

**CHAIR** - Otago Bay. Where do you get these facilities?

## PUBLIC

**Mr BARNES** - Governments have to stand up and educate communities. This is not uncommon that people say, and you and I both know from experience.

**CHAIR** - We have been at those meetings.

**Mr BARNES** - Government needs to explain. It needs to stand up to those who use these issues for their own political gain or community gain, and needs to point to examples of where this works. Youth detention does not exist as we know it in most parts of Europe and it is part of the furniture. You are going to get communities saying we don't want it here. Nimbyism is alive and well, but you do have to stand up to it because if you don't, you allow everybody a right of veto.

**CHAIR** - And nothing happens.

**Mr BARNES** - And nothing happens. The community needs to understand if you want safety, if you want to improve community safety, then you have to treat people with respect. You have to ensure that those who are vulnerable, that is young people but also adult prisoners, if you treat them with respect and you work on underlying issues, you are enhancing community safety.

**Ms ARMITAGE** - With regard to youth detention, one of the issues that I noted recently when we were having some hearings is that with the new youth detention centre, all of a sudden, the custodial part was going to be in the south, which I found a little confusing because here we were talking about a northern detention centre so that people can be close to their families.

**Mr BARNES** - Are you talking about adult or youth?

**Ms ARMITAGE** - Well, I am talking about both. When we had the recent hearings to do with Ashley, when we were talking about those, what we were told now with the new ones that are proposed is that the actual custodial section, where at the moment Ashley is located in the north, that will be located in the south. To me, this is a little bit at odds with the fact that all of a sudden, we are talking about a northern detention centre so that people can be close to their families.

Here we are with youth, who you would think would benefit from being close to their families, being located in the south because, as we were told, that's where most of the facilities are that they will need. I want your opinion on that with the latest we have heard. We have these other areas where they are not so much custodial but the one custodial for the kids that have done some bad things will be totally southern.

**Mr BARNES** - It is absurd.

**Ms ARMITAGE** - But it's totally different to what they are talking about with the adult prison.

**Mr BARNES** - Exactly, and it doesn't make any sense. Essentially, it is a cop-out because what it is saying is we are not going to resource Launceston and the north-west coast. We are going to keep it all in Hobart. There was a dinner last night, and they will be here shortly, the Justice Reform Initiative (JRI). Pat Burton was making this point that the north and the

## PUBLIC

north-west are stretched so thin because government won't spend the money up there. They are sort of second-class citizens.

The other point is that if you look at the best models, so in the United States again, some states are closing youth detention centres and they are moving to a model where you have a range of urban centres like you have in Tasmania, where you have the same facility. They are tiny facilities, duplicated in all three. That makes sense. Putting them all down in Hobart, if you are from the north-west coast, makes things worse.

**Ms WEBB** - To be clear, bail facilities are in various parts of the State is what they are suggesting.

**Ms ARMITAGE** - The bail facilities are, but the long term - I am talking about the custodial where they are locked up for a period of time, they'll be southern-based as opposed to what they are talking about with the adult prison; let's split them up so they can be near their families. I would have thought that young people, more so than the adults, should be close to their families.

**Mr BARNES** - I don't understand the logic. We thank you because we weren't aware of that.

**Ms ARMITAGE** - It came up at our recent hearings.

**Mr BARNES** - We will consult on it.

**Mr WILLIE** - On that, there may be some flexibility. We don't know how they use Launceston Reception Prison for adults for some longer-term sentences and things so those bail houses might give some flexibility. It is yet to be determined. In terms of your comments about governments standing up to the public and educating the public, do you think there needs to be a change in language from advocates? Governments only have a certain amount of political capital or they get permission to implement reforms from the public.

Talking about value for money for taxpayers is a good thing. If I think about my own electorate in particular, there are constituents who come to me. They think there is a youth crime issue. There are elderly people who don't want to go out at night because they don't feel it is safe and if they hear advocates and governments talking about rehabilitation, wellness centres, a therapeutic approach, they don't want to hear it.

**Mr BARNES** - I agree with you. That is why value for money and community safety is important.

**Mr WILLIE** - Being tougher with the language though, so saying we are going to take this youth offender and we are going to make them do the hard work to stop their offending, to change their behaviour - what I am saying is it is a nuance in the communication.

**Mr BARNES** - I hear you; I find it hard to use that language but I understand the point.

**Mr WILLIE** - I am a politician and you have to get permission from people to change things, and sometimes that is a communication issue. That is the basis of my question. Is there

## PUBLIC

an issue here, a disconnect between where the public is at and where advocates and reformists are?

**Ms MacDONALD** - Briefly, more reading for you and you can look it up if you like, Legal Aid 2021, the report Children First, makes a good point at page 5. I will read the whole quote:

Many children are successfully diverted from the justice system, supported by those working within the system - police, child safety, the Court and support services. However, the data shows that more needs to be done for some of the most vulnerable and marginalised children in our community.

Reducing the involvement of a young person in the justice system not only benefits the child, it also reduces the number of victims of crime and is a more cost-effective response.

And then, finally:

It is important that these young people are recognised as children first. Children in need of support and protection in order to improve their chances of fulfilling their potential.

I think people hear the word 'child' and they have a vision in their mind and then they hear 'young offender' and they have a completely different vision in their mind.

**Mr BARNES** - The other thing I would say about it, Josh, is my experience has been in these discussions with communities, when people are engaged in the issue and facts are presented and they meet young people, for example, their views shift. There is a lot of evidence about that and I know Kate Warner did all that work on juries.

I take your point and community safety has to be front and centre of any conversation, I agree. However, I will give you an example. I got the shock of my life the other day when I was reading the *Mercury* - I don't just read it on Mondays. I saw an article by Brendan Bromley, the Mayor of Clarence and Liberal Party apparatchik, where he was talking about this issue of the Rosny bus mall and some of the communities in youth crime. He made a point which, as I say, I nearly fell out of my chair when I agreed with him. He said, 'the solution is not punitive, the solution has to be working with young people et cetera'. I am assuming he is getting that from the police. When we talk to the police, not that often, but there are some good people in the police who say it is a bottomless pit. If you give in to every community demand, the community would rather have 10 police officers patrolling a bus mall, but it is a waste of resources. All it does is shift the crime around the corner. You cannot have a punitive response. It does not work. Actually, I think, Josh, if they are engaging with local police and if police say it, there is sometimes more acceptance. If I say it, they say it is predictable. If police say it and engaging with local police, I think is often reassuring to the community.

**Mr WILLIE** - I am talking about a communication issue, not a change in approach.

**Mr BARNES** - I am talking about communication as well. What I am saying is, those who communicate it are important in this debate. I would accept the Prisoners Legal Service

## PUBLIC

and probably the ALA are not the people to communicate it because we have a particular view. When I do talk to people about youth crime et cetera, if people are prepared to engage, attitudes shift. But I get your point it is easy to whip up fear about crime. We have incredibly low crime rates in Tasmania, and yet, you're right, some people think their perception is that there is a lot of crime.

**Mr WILLIE** - It is very real.

**Mr BARNES** - Sometimes it is real. It is the same in Victoria. It is the same in every state in Australia. But we know that pursuing a law and order approach has been a disaster in Australia, an unmitigated disaster. Victoria is a classic example of that where they tightened up bail laws after offending and we saw the tragic death of an Indigenous women who was in there for a shoplift.

I understand the point you are making. We would be very happy to work with you on this, Josh, because this is a complex issue and you are the one at the coalface, I am not. We would be more than happy to work with you on what works.

I think when you hear from Robert Tickner and others - as you know, Robert spent many years in politics - it would be a good question to ask Robert because I would be interested in his views on this, because that what's jail rise [inaudible] is all about, trying to shift that conversation.

**Mr WILLIE** - I have found with constituents where you talk about making young people do the hard work to change their offending to engage with education again, that works.

**Mr BARNES** - We do not disagree with that. I think the point to make here, if you talk about children, people start to get it in their mind, they soften up a bit rather than talking about youth offenders. You are right, there is no problem with using the term, there has to be some structure in this so people do engage and that they do have to do the hard work. If you use that sort of language, I think that is right, I think you can shift people.

**Mr VALENTINE** - In regard to the Norwegian model you spoke of, there would be a lot of people who would think it seems to be quite relaxed compared to the model we have here in Australia. Whether it is true or not, a lot of people think there is a lot of gang mentality with inmates.

**Mr BARNES** - You are talking about here in Australia?

**Mr VALENTINE** - Yes. How does the Norwegian model address that? Do they only allow certain classes of prisoners to have this level of better freedom or not? Can you describe that?

**Mr BARNES** - It is what they call normalisation in prisons and it operates right across the prison system. Firstly, they imprison a lot less people. If you are a non-violent offender, you are unlikely to go to jail. They also have much lower sentences.

**Mr VALENTINE** - That is a Justice Reform Initiative matter, too? They advocate for that.



## PUBLIC

**Mr BARNES** - That is right. The other thing is they focus on outcomes so what they are seeking to do is make sure that person does not come back. What we do is warehouse people.

**Mr VALENTINE** - Do they wear their own clothes?

**Mr BARNES** - They are responsible for their own clothes. They are responsible for their own washing. They are responsible for their own cooking and they have a much higher quality of living in the prison system. The attractiveness of it is their recidivism rate is 20 per cent, more than half of ours, so it works. It was the case that people used to say, well, Scandinavia is different, but what we are seeing is that other jurisdictions - Scotland, some American states - learn from those experiences and say, well, let's do it for a certain type of prisoner.

We have made some attempt here in the TPS implementing the halfway-house living that prisoners do on the way out. We would like to see that expanded right through the prison. I do not think gangs is a particular problem in Tasmania. It is not our experience. It is in Victoria and in New South Wales. Part of the reason people belong to gangs is 1) they might have belonged to a gang on the outside; but 2) it is a sense of cohesion and welfare they get by belonging to a group. That says that the prison system is failing.

**Mr VALENTINE** - The second question, you mention preventive lawyering programs and legal health check. Can you describe that?

**Mr BARNES** - We are very excited by that. Whilst I have had my issues with the Attorney-General, including trying to get appointed to TASCAT, I will say this about her. She gave us \$80,000 for this project. Claire, who runs it, unfortunately cannot be here because she is out running it. The way it works is this and it does go to recidivism. We will talk to prisoners who are on their way out, three to six months before, and we will say, 'What matters do you have that are outstanding?' Often what happens is that the prisoner will have, for example, a family violence order or a restraining order in place. They have either lost a copy of it or they do not know the terms of it. We had one the other week where in fact the partner was ringing the prisoner and they were exchanging phone calls. We said to the prisoner, you can't do this under the order, don't do it. What happens is they get out and they go and visit and then, of course, the police get called and they are back inside.

The other issue is outstanding warrants. We have one this week where this guy has three matters that have not been dealt with for some reason - driving matters - we will go to court with him, get them cleaned up, get him time served so he can come out without warrants. The third area is fines and along with Anglicare, we are working on getting agreements with monetary penalties, so if a certain amount is paid off they can get their licence back.

Preventive lawyering is like we go and get a health check from our GP. This is a legal check and the idea is to try to make sure these triggers for offending, when they come out, are diminished. One of the things we have found is the language of court documents - family violence orders, restraining orders - is such that given the high rates of illiteracy, a lot of prisoners do not know what is in it. They say, 'I didn't know I couldn't do that, I didn't know I couldn't do this', so that is an issue we eventually will take up with the courts.

**Mr VALENTINE** - Thank you for that. I appreciate it.

**Mr BARNES** - It is a good program.

**Ms WEBB** - You mentioned, when you were giving your overview, the dispensing with short imprisonment terms and the opportunities that provides to better deal with people in community sentencing environments rather than in prison environments. You mentioned Western Australia having moved down that path already, initially in 1995, and increasing the terms to six months or less being abolished subsequent to that. Do we have any Australian-based research that tells us what the impact of those changes have been in Western Australia?

**Mr BARNS** - I will take that on notice and get back to you. What I can say is the overlay, of course, in Western Australia are high rates of Indigenous incarceration. It is a difficult model to compare.

Also, at the other end of the scale, what they have is a lot of mandatory sentences at a higher level, so people get more than six months in order to get that mandatory sentence.

But we will have a look at that. We will also have a look at what is happening in Scotland with the presumption against short sentences, which gives some flexibility to courts, but basically, don't jail someone for a short period of time, it is a waste of time.

**Ms WEBB** - In Western Australia, does having a higher degree of mandatory sentencing in different spaces lead to perverse outcomes from looking to put in place no short sentences? Is that likely to drive perverse outcomes by prompting governments of the day to pursue mandatory sentences that are longer? Can you comment on the risk there?

**Mr BARNS** - Correct. We are fundamentally opposed to mandatory sentencing because it offends the rule of law in a range of respects and that is a risk.

In Western Australia, mandatory sentencing - most of it implemented by Christian Porter when he was the Western Australian AG - is out of control and, of course, impacts on Indigenous communities.

I will take it on notice to give you some more information on that.

**Ms WEBB** - I am interested in whether that has been researched and investigated in any way or what have been the impacts and outcomes.

**Mr BARNS** - I am sure it has.

**Ms WEBB** - If we were to contemplate in Tasmania going down a pathway of abolishing shorter sentences and having them dealt with as community sentences instead, just as a matter of course, what do you see as the greatest barriers to that being put in place in Tasmania?

**Mr BARNS** - Resource and supervision. You would have to resource community corrections.

**Ms WEBB** - Is there the opportunity for a fairly overt shift of resources from the prison environment, knowing there will be less people going into prison to community sentencing?

**Mr BARNS** - You save money doing it. The problem with imprisonment is that it costs \$300 a day per prisoner.

# PUBLIC

**CHAIR** - \$330, actually.

**Mr BARNES** - Community corrections are around \$130-\$140 a day, so there are savings in doing it.

The problem with short sentences, for example, take a person who is on their third drink-driving charge. Obviously, they have an alcohol problem. They are at risk of getting one, two or three months. No addressing of the alcohol issue. I know Michael Hill has proposed, in addition to a drug court and a mental health court, a drink-driving court, which is a great idea because what you could do is divert that person. People think that is soft, it is actually a lot harder. To be in a therapeutic justice setting, rather than getting two months, is a lot harder. You get two months, some guys go, 'I will just take the two months and then I come out, don't have to do all of these courses and supervision'. It is actually a lot harder. That is how you replace it with a greater emphasis on therapeutic jurisprudence diversions in courts.

Secondly, your resource shift. Also, you need the right people. One of our concerns at the moment is increasingly punitive culture in community corrections. We have seen people come back into prison for relatively minor matters.

We have given an example here of a guy we worked with where she got him an ABN and he had this little cartage business. He had drug-driving where he was on the back of a motorbike, and they breached him. When I tried to argue it with the Parole Board, I got an arrogant response. In fact, we have heard the feedback we get from Community Corrections people when we talk to this, they say that Prisoners Legal Service has no role in this. Well, we do actually. Everybody is entitled to representation. I do not know if they are coming in to speak with you, but we are very concerned about the increasingly punitive culture and the risk aversion and breaching people for minor matters. Breaching people for serious offending is different.

Like the guy I just mentioned to you, he had a pen knife.

**Ms WEBB** - Can I clarify that with you? Is this a change in approach you are observing and, if so, when does that date from?

**Mr BARNES** - Yes, probably in the last 18 months or so. I do not know if it is a change in personnel but we have got nowhere in talking. We talked to the Chair of the Parole Board and got nowhere. We talked to the Secretariat and got nowhere. Last Friday Rowena and I had an issue and, to be fair to Christopher Carney, he has addressed it straightaway, but this was a separate issue. It was about the power of Community Corrections and parole.

One of Rowena's clients has an abuse claim they are pursuing. Rowena commissioned a report from a psychiatrist.

**Ms MacDONALD** - Yes.

**Mr BARNES** - Community Corrections said to this guy: 'Give us a look at that report. It is privileged. It is used for a different purpose. Give us a look at that. We will put it in the report about you going to the Parole Board.' It is just wrong.

## PUBLIC

**Ms MacDONALD** - It was framed in a way too that was missing the point of the report and more towards home detention not being an option for him. It also worked against him, but they have agreed to remove any reference to it.

**Ms WEBB** - Can I clarify?

**Ms MacDONALD** - I might be going off topic but housing is another issue.

**CHAIR** - That is completely on topic.

**Ms MacDONALD** - We have another client who has been eligible for parole for some time. He is so keen to get back out there. He has done everything he can, everything available to him to rehabilitate while he is in there. He is just waiting. He does not have anywhere to go. He is in there for months beyond when he could have been out because he doesn't have an address.

**CHAIR** - That brings me to my question on section 42 leave. I believe it is a component of being able to apply for that and that is one of the points that have been raised. Although this is our coffee break, I am happy to forgo mine to have an answer, and I hope others will stay with me at the table for a few more minutes.

**Mr BARNES** - On section 42, for those who do not know, it is under the Corrections Act. It basically says you can get day leave, you can go out, do a job and come back. It works well. It is a good system. The reason it has been reduced is because of lockdowns. I know because we got that quote from Richard Connock.

We are talking to prisoners, and particularly women prisoners it is problematic for. The issue is they will be ready to go out to work and 'sorry, lockdown, no-one to take them'. It is debilitating.

**CHAIR** - Section 42 is not related to housing then?

**Mr BARNES** - No, section 42 though is very important in providing people with some job skilling, but also resocialisation with the community and it has become more difficult because of resourcing.

**CHAIR** - Another resourcing issue. We are always mindful there is never enough time. Is there anything you want to leave us with, Greg, Rowena, or both? We are well aware of the real challenges around housing so it is not lost on the Committee at all. Thank you for that.

**Ms MacDONALD** - The report I will be providing to you to read will give you -

**Mr BARNES** - The last point I would make is on throughcare. Housing is one, but also the lack of mental health and physical health supports. Appointments are not made for people. To persons going out, they should say, 'Who is your GP? Let's get a mental health plan set up.' We don't set them up because we can't but we often say to guys, 'Have you got a mental health plan? Who is your GP?' and see if we can facilitate something. It is not hard. The Commonwealth provide six or 10 sessions as a start, to get them into that mental health system. A lot of people in prison - around 70 per cent - either have a combination of acquired brain injury and mental illness or, alternatively, mental illness.

## PUBLIC

**Mr VALENTINE** - Getting enough medication on the way out.

**Mr BARNES** - Also getting medication in there, and I have addressed this previously. One of the issues is taking them off medication. I know this from personal experience. I take antidepressants and have been for many years and I know, if you come off them quickly and you stop them, they have a very short half-life and it messes with your brain very quickly. We hear a lot of stories about that. To be fair, it has improved.

Can I leave this last point? We get on well with the TPS and there has been a big cultural shift. We used to get a lot of complaints about prison officers, a lot of complaints. We get very few now.

**CHAIR** - It is more the facility?

**Mr BARNES** - It is more the facility and we have great respect for Ian Thomas. He has established an outreach Committee which has us and the Supreme Court, so no criticism here of the TPS and its staff. There is criticism at the political end, which is the resourcing issue.

**Ms MacDONALD** - One very final quick point - drug rehabilitation, more investment in that. Anecdotally, another client of ours developed a drug problem whilst incarcerated, gets out, wasn't accepted into the program.

**CHAIR** - I'm not sure how, I couldn't get a magazine in there.

**Ms MacDONALD** - He couldn't find a drug rehabilitation program that would accept him because he had been incarcerated, so he ends up back inside. Another area of underfunding.

**CHAIR** - Thank you, it is very much appreciated. We will continue on this journey. We will do whatever we can to make a difference. I know that all of us want to make a difference in this really important area.

**Mr BARNES** - We appreciate the inquiry because it is overdue.

**THE WITNESSES WITHDREW.**

**The Committee suspended from 10:36 am. to 10:51 am.**

## PUBLIC

**Dr MINDY SOTIRI**, EXECUTIVE DIRECTOR, **Mr PATRICK BURTON**, ADVOCACY AND CAMPAIGN COORDINATOR, AND **Mr ROBERT TICKNER AO**, CHAIR, JUSTICE REFORM INITIATIVE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIR** - Welcome to those who have joined us at the table for these hearings for the Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters. As you may or may not know, the hearing is recorded and it is protected by parliamentary privilege, but I should remind you that any comments that you make outside of the hearing may not be afforded such privilege. If there is any evidence that you would like to have taken in the Committee in camera, please request that. The Committee will consider that request. The *Hansard* will be available at a later time on the Committee's website.

Somebody might like to provide just a brief overview and then we will launch into questions. Who has been designated the lead speaker?

**Mr TICKNER** - Chair, if it is permissible, I am going to lead off but my leader is Mindy Sotiri, Executive Director, supported by Patrick Burton. Both of them will introduce themselves when they are asked their first question. I will start by introducing myself and just a little bit of quick background. I have been involved in these issues really most of my life. My very first work after graduating was as a volunteer with the Aboriginal Legal Service. Then, I taught law for six years for a tertiary institution. I went back to the Aboriginal Legal Service. Then, I was elected to the Federal Parliament. Like you, I have a track record of having the world's most socially unacceptable occupation.

**CHAIR** - I think we have gone below car salesmen now, haven't we?

**Mr TICKNER** - My Dad was a car salesman, but anyway.

**CHAIR** - A fine, upstanding person.

**Mr TICKNER** - That being said, one of the privileges I had and responsibilities when I was Minister for Aboriginal and Torres Strait Islander Affairs in the Hawke and Keating Governments was to prepare the national response to the Royal Commission into Aboriginal Deaths in Custody. This was an absolutely hands-on process, working with state and territory governments of all political persuasions and departments across the whole of the Commonwealth. We were able to get this tremendous positive support for those recommendations.

After parliament I went on to head a not-for-profit employment network working in pilot programs for people coming out of prison in Victoria and people on correctional orders. I then went to Red Cross and I see that Red Cross is still continuing a lot of the work that I have tried to steer and push and innovate when I was CEO of Australian Red Cross.

The Justice Reform Initiative is an organisation I really want to outline to you in the most practical, down-to-earth way. There is nothing, I can assure you, that has happened here other than this amazing, diverse array of people who are from different political parties and widely divergent backgrounds who have come together and put all their differences aside to say to Australia and the parliamentarians, at all levels of government, that it is time we focused on evidence-based practice in the criminal justice system.

## PUBLIC

We take an oath and we are able to say on oath that all our research, all our work shows us that we have a really old-world criminal justice system with this huge over-reliance on incarceration. If you follow our advice, we believe that Australia and Tasmania in particular will be a safer place, a better place and that, importantly, victims of crime will get a better deal. Those who are currently caught up in the system will have an opportunity to break that cycle of repeat offending and go on to have good lives outside the criminal justice system.

Our submission revolves around all these issues and we will deal with it. Mindy will lead and deal with the questions you ask. I want to make a couple of quick points in the overview. I was struck, when I read the inaugural speech of one of your Committee members, by the following words. I hope the person does not mind if I quote them. The words are:

The idealist has the essential vision. The realist has the essential focus. For good progress to occur, one must be tempered by the other.

I truly believe that is what we are trying to say in the way that we are advocating. We are, by no means, starry-eyed. While we believe very much that the system can be better, we are grounded in mainstream thinking and in advocating the best practice around the world which we think should be followed. That is why people like Quentin Bryce, Sir William Deane, this most esteemed Australian, is prepared to put his name behind us. They stand behind us, they are with us.

Every one of those patrons knows the objectives of what we are trying to do. We have got former corrections commissioners, four or five of them from around Australia, former federal police commissioners. We have former Liberal, Labor, Greens and Independents, people who have huge experience. Former High Court judges, the Australian Catholic Bishops who do not throw around their support without a lot of very careful consideration. The Law Council of Australia, the AMA, and so it goes on.

I merely say those things because you need to know that this is a safe space for you as parliamentarians who really have such an important role to play in charting a course for the future Tasmanian approach to the criminal justice system. This is a safe space. It is an evidence-based process that we are advocating.

The final thing that I would say in opening up is that you do need to go back to my quote. You do need to also think about idealism to a degree. You need to chart a course because Tasmania can become the leader in moving forward to a reformed and improved criminal justice system.

Nothing fills us with greater optimism than to see the Government committing itself to move to a therapeutic approach in relation to youth offending. We absolutely applaud that and we stand ready to work with them going forward in helping shape that. However, we say to them that the same thinking that drives support for a therapeutic approach for children and for young people is really the same thinking that should drive a very different approach in relation to people in adult prisons or at risk of going into adult prisons.

I will pass to my colleague, Dr Mindy Sotiri.

## PUBLIC

**CHAIR** - Any overarching statement or comment that you would like to make before we get into questions?

**Dr SOTIRI** - No, Pat and I are very happy to engage in conversation. The only thing that I would say is that additional to the submission, just yesterday we released a report which expands on some of the thinking in the submission. There are a couple of additional programs and a little bit more substantial mapping of some of the Tasmanian programs in the report that we've just released.

**CHAIR** - You will provide a link for that to our Secretary?

**Dr SOTIRI** - That is correct.

**CHAIR** - Thank you, and that will be handed out for additional reading.

**Mr TICKNER** - And they will explain their background when they're asked a question.

**CHAIR** - Thank you. I am going to ask Mr Willie to ask the first question because this was suggested that his previous earlier one would be well placed with you today.

**Mr WILLIE** - It's a matter of communication. I will use my electorate with the previous witness as an example. I represent the northern suburbs of Hobart. There is a perception among some of my constituents that there is a youth crime issue. I have elderly constituents who don't want to go out at night because they don't think it's safe and I'm interested in the disconnect between advocates and reformists, where the public is at and how we bridge that gap through communication.

I talked to a previous witness about some of the language he was using, like 'therapeutic approach, wellness centre, rehabilitation'. Some of my constituents don't want to hear that so I'm interested in whether some work can be done to change the language to be a little tougher. It's hard to change behaviours so maybe talking about that. I found with some of my constituents, if you talk about making youth offenders do the hard work to change their behaviour, to start engaging with education - that's really hard work. You can have a way in that way, but I am interested in how we bridge that gap to get change because political systems and governments only have a certain amount of political capital and goodwill from the public to make change.

**Dr SOTIRI** - I will go first, and Robert and Pat may want to add to this. I think it is a really important question, how we actually communicate; what it is that might look differently without appearing to be soft on crime or airy-fairy. Almost every time we put out a report we absolutely get some response from the public saying similar things like, 'You've got to hold people accountable'.

There are two things in response to that question of how do we do it. The first is we've had the good fortune of being able to do some market research, which I'm very happy to share with the Committee, that really assisted with our campaign in the kinds of messaging that we might want to use. Certainly, saying things like 'This is not being soft on crime; this is being smart on crime', and really starting to think about how that might land with members of the community who have quite legitimate concerns about their safety -



## PUBLIC

**Mr WILLIE** - Real experiences.

**Dr SOTIRI** - The other thing that is really important with all of this is to talk about alternatives always through the lens of community protection and community safety. I'll share the market research which goes through the things that people in the community are concerned about when it comes to this particular issue.

The second thing is that we have a couple of victims' advocates who are very connected with the work that we are doing. Also, one of our patrons has a fairly high profile as a victims' advocate in New South Wales. We do a lot of engagement with victims of crime. Trying to have these conversations with people who have genuine concerns about the safety within their community is really important.

One of the things that we know is that victims often say - and I wouldn't presume to speak for all victims because of course there are so many different experiences - most of the victims we engage with, our victims talk about not wanting what happened to them to happen to anyone else. The way we are trying to frame the alternative picture is by saying we know that currently prison protects the community for a small amount of time. If someone is a prolific offender and is in the community doing a lot of crime, then there is no doubt that while that person is locked up the community may feel safer for that period of time. Unfortunately, the evidence is absolutely clear that this is a very short period of time. We need to expand our lens of what community protection and community safety actually means because we also know without a doubt that when somebody is released from prison, they are more likely to commit crime - in fact, often more likely to escalate in terms of the kinds of crime that are being committed. That is the case even if someone is on remand, like you have heard of people in Tasmanian prisons or whether -

**CHAIR** - Is it because they are angry about what has happened to them? What sits behind that, if you have anything?

**Dr SOTIRI** - I guess there are a number of different factors in the research which talk about why recidivism rates are so high. One is because of the experience of prison itself. Unfortunately, around Australia, despite the best intentions of prison administrators, what we do know is that the experience of imprisonment is dehumanising; it's disconnecting in terms of identity. People often go to prison and they are stripped of their identity in terms of their position in the community and their employment.

People lose a whole lot of stuff aside from their liberty. We know the loss of liberty is the punishment, but we know the experience of imprisonment is punishment in many other ways. When that happens to any individual, people become very institutionalised, they become very used to being in prison. They know what the rules are in prison, they know how to be in prison and often their identity becomes partly tied up with being in prison.

That is not an identity that works in the community. I should have introduced my background, but I worked in post-release for 20 years and did my doctorate looking at what is the purpose of imprisonment and why do we put people in prison. During that time, working with people coming out of prison in New South Wales, what was very clear is that people come out of prison feeling very ashamed, feeling very isolated, often without housing, often with no employment - all of the things that we have been sort of keeping track of how people been presenting. They experience a number of losses.

## PUBLIC

This is in no way to minimise the crimes people have committed, but just to provide that context. To finish up on this, when people leave prison and they do not have access to housing, to employment and to an identity outside of the justice system, whether that is through a family connection or through a great relationship with a case worker or through a sporting association - it can happen in a number of different ways, but if people do not have any of that and the reality is in Australia, and certainly in Tasmania, most people leaving prison walk out with less than what they had when they walked into prison - then it is very, very difficult and, in my experience, almost miraculous when people manage to build a life in the community on their own. I know when we are thinking about change and making change, all of us in terms of big changes that any of us have tried to make in our lives - whether that is ending a relationship or stopping smoking or whatever that might be - most of us require some sort of support or somebody in our corner to make those changes.

At the moment, people walk out of prison often with nobody in their corner and yet, we expect them to make all of those changes, move away from alcohol and other drugs, move away from the communities that often have created that pathway into the justice system. The thrust of the submission and of our report and of what the Justice Reform Initiative is saying is if we invest in those kinds of evidence-based alternatives, programs and services that are in the community and we know work, then we are going to see significant reductions in crime.

**Mr WILLIE** - Do reformists need to tell more of those stories where there has been a change in behaviour and a reduction in crime from a particular individual? A lot of my constituents would not have a clue what programs are being provided at the moment to try to change offenders' behaviour.

**Dr SOTIRI** - Absolutely. What we know from the market research we do is that most people in the community think prison is pretty good or they think that prison works to rehabilitate, they think it works to deter and it works to protect the community. For communicators, our job is to say to the public that actually none of the research bears that out. Prison does not work to rehabilitate, it does not work to deter. Absolutely, what we are also wanting to do is, we do not get rid of prisons - it is not as straightforward as that - but there are these evidence-based alternatives, many of which are in the submission and more in the report we have released that do tell a very different story about what can happen. Having people that have themselves experienced prison, having family members of people that have been to prison, explaining how it is they have managed to stay out of prison, what are the factors required, is a really important part of painting that different story.

**Mr WILLIE** - Value for money for the taxpayers is the other one that is seen to be successful in other jurisdictions.

**Dr SOTIRI** - Again, the market research bore that out. What we found in the headline of the market research was that people were very concerned about the economic cost of incarceration. Not just the economic cost though, alongside the fact it did not work to do the things people expected they would. I guess people were less concerned about the human rights of people in prison, but more concerned about that pragmatic fact that when people leave prison, they are more likely to reoffend. People were really shocked to hear people walk out of the prison gates with nothing or, in some jurisdictions, just a rubbish bag full of their clothes. No medication, half a Centrelink cheque that has got to last them for three weeks, nowhere to live, no access to alcohol and other drug treatment. People think that there is a narrative that

## PUBLIC

you go to prison, you do your time and during that time you are rehabilitated. What we are trying to do is really - again, this is not to dismiss the good work that happens in corrections - but to say that structurally, the system does not support that kind of work. That sort of work needs to happen in the community, but we are not funding it at the moment.

**Mr WILLIE** - Do you want the Committee to write to you about the market research?

**Dr SOTIRI** - Yes, that is fine. I will remember to send that on.

**CHAIR** - I am pretty sure that your question was asked to all three presenters, so Pat Burton, we have you down as Campaign Coordinator.

**Mr BURTON** - Advocacy and Campaign Coordinator of Justice Reform Initiative. I have had a few different incarnations in this area over the years, I am sure you are aware. Just briefly, I fell out of the cabin of a truck many years ago and into youth work, did that for three years in New South Wales. I was a prison officer in the New South Wales for 26 months, after which I moved down here. I ended up at Bethel House, where I worked with a great team there in developing and delivering reintegration programs for people coming out of prison over time, so I've always had a foot in this area and it is amazing to just be part of an organisation that is taking a national approach to criminal justice reform. That is a little bit about who I am.

Josh, in response to your question, I think Mindy summed it up particularly well. I would probably take some of you back to 2017 where, as a member of JusTas, we had a forum at Glenorchy all about community safety. We introduced, as part of that forum, a legislator. They've got a term in the US, they are not parliamentarians, they are called legislative people

**Mr VALENTINE** - Legislators.

**Mr BURTON** - Anyway, pardon me for not getting that right. His name was Jerry Madden and he was in that role in Texas and they had slated three new prisons to be built. During his term he decided he was not going to build those prisons and he said no, we have got to build communities. Leon Compton was facilitating that conversation at the time and he asked Jerry, 'How do you go about this?' This is not about communication. He said, what we do is we bring the community along with us and we make sure we have bipartisan agreement. A lot of these reforms were brought about through Republican, through conservative means. Essentially, what we're advocating for when we're talking about communication is getting the communication to the people on the ground, the punters, and to the three levels of government, to say that this is about community expectations based on really good evidence. That's a little bit about where I'm coming from in answering your question, Josh, about communication and how we get it across.

One thing that Mindy summed up very eloquently is the issues about people coming out of prison. I've had to deal with these as an advocate and as a practitioner for many years, but something that we're going to be talking about later on today is when people are sentenced, they are sentenced to a term of maybe two or three years in prison. We don't take into account when their sentence expires. It might happen to be on a Friday. It might happen to be on a public holiday and they come out. The law deems that they come out on that particular day. These sorts of things aren't thought about but they are being addressed.

## PUBLIC

I was talking to a colleague in Scotland the other day. They've introduced legislation to the Parliament over there to make sure that when people come out, they come out on a day where they have support. I thought I'd throw that in because Mindy filled us in on the circumstances.

**CHAIR** - Okay, we have a lot to get through - short and sharp, thank you. You'll know short and sharp from your previous time.

**Mr TICKNER** - Firstly, I think that parliamentarians have a huge role to play in educating the public. We were set up to change public discussion about prisons in Australia and it's a big challenge, but you can help. We can give you really good, hard evidence to show that there's no relationship between high levels of incarceration and deterrence. We can give you hard evidence to categorically prove to you that sending someone to prison doesn't create safer communities.

Putting people away in a fairly brutal system - and that's what prisons are - it is tough. Basically, people come out - in our respectful opinion - worse than they went in so short-term lock-away doesn't give you long-term safer communities.

Thirdly, in relation to rehabilitation, the stats speak for themselves that people are coming back in very large numbers, something almost approaching 70 per cent.

Final point, please, if you do one thing, have a look at page 42, footnote 175, which shows you a program that Mindy used to work in, giving intensive support to people coming out of prison, that you can really sell to your communities. It shows - hand on heart and in line with the declaration - a 65 per cent reduction in repeat offending. It's a fabulous program. You don't have it in Tasmania. You should.

**CHAIR** - Thank you, I appreciate that.

**Ms WEBB** - Thank you so much for the submission provided by JRI. It's excellent. It's a really helpful overview of programs and things in Tasmania plus you've made a very cohesive substantial recommendation.

I'm interested to tie back to some of the comments you've just made. What I interpret that you have done here is to identify that we have a Jerry Madden moment here in Tasmania, essentially, because we have a plan to build a new prison and funding has been identified for that. Usually the reason that it's hard to convince governments to invest in alternative approaches is because they have to do it alongside the regular approaches that they have in place.

If there's this extra bucket of funding you've identified in your recommendations, let's just take that, above and beyond what we're already spending in the regular service, and invest it in a coordinated fashion. You've mapped that out.

My question about that, acknowledging that I think that's a very cohesive recommendation to have made to us, you've recommended that that \$270 million, that bucket that's there, be taken and spent over a four-year period in a coordinated way. Do you think,

## PUBLIC

realistically, that is enough to make a difference over four years in Tasmania, to help set us on a different course?

Can you comment on that, knowing that, as you acknowledge, there is a risk in starting things off and not being able to continue to deliver on them?

**Dr SOTIRI** - I do think the investment of \$270 million would make a substantial difference in reducing recidivism and reducing reoffending over that period of time. We've had the opportunity to do a bit more mapping about what is and isn't happening in Tasmania through the process of putting out the report that came out yesterday.

What I've been surprised at - and I am based in New South Wales but have a national focus in the work that I do - is the absolute absence of funding for the kinds of programs and services in Tasmania that we know will make a difference when compared to other jurisdictions.

We started looking at the services and the funding of the services that we have noted in the submission. In this report, we note how much some of those services are funded for and it is things like \$100,000 for two years; \$15,000 over two years. Prisoners Legal Service are delighted that they have an extra \$80,000. This is a problem, in how we are imagining what it is that is actually going to take in Tasmania to make a difference.

The \$270 million over four years - we've focused on those areas which have a strong evidence base: post-release, diversionary programs, the opportunity to invest in children who are at risk of criminal justice system contact. The size of Tasmania is quite small so there is this real opportunity to genuinely make a difference. There is no reason in Tasmania why every single person walking out the prison door tomorrow should not have access to the kind of service that we outlined in the submission.

We have done some costings in New South Wales and down the track we would love to do some more substantial costings in Tasmania. The evidence that has come out of New South Wales in the reduction in reoffending, the reduction of days in custody and the reduction in other criminal justice court costs, including court and policing costs, the University of New South Wales has costed that. We have used that sort of cost model to guide our thinking about what it would take in Tasmania if every person coming out of prison was able to actually touch a service.

The \$270 million, I think, although I don't know what the total amount would be that is currently being spent on post-release, but from what I can gather in what is publicly available, ACNC data and so on, it looks like it is less than \$1 million, in the kinds of things that we are actually investing on in Tasmania.

If we know there is money to build a prison, if we know that all of the research shows us that despite the good efforts and intentions of administrators, prisons do not work to rehabilitate, why on earth would we commit that sort of funding to something that we know is not going to bring about community safety? We know we are not investing in the programs around Australia and internationally that have an evidence base that will reduce crime.

**Mr VALENTINE** - It's interesting, as a comment on that, it is one-off capital funding as opposed to ongoing recurrent funding.

## PUBLIC

It would be interesting to know how much it would actually take to fund those programs that you were talking about on an ongoing basis. I don't know if you have a comment on that.

**Dr SOTIRI** - Just that we would love to spend some time putting that together. We haven't had the resources to do that today.

**Mr VALENTINE** - Thank you for that. My interest is about the statements you've made with regard to First Nations place-based approaches. We have a significant number of Aboriginal people in custody, we're talking about 30 per cent or so. They are over-represented. And at Ashley, 50 per cent - of small numbers, but it is still 50 per cent.

I am interested to know, with the experience that you have, what the programs that they should be participating in look like, as opposed to other cohorts. What is so different about them and what can we do to improve those programs?

**Dr SOTIRI** - In this new report we did not get into enough detail in the submission, but we have outlined a number of First Nations-led organisations.

**Mr VALENTINE** - I have not had a chance to read that, I am sorry.

**Dr SOTIRI** - That is fine. Just to say there are a number of First Nations-led organisations in Tasmania who are doing amazing work in this area. The place-based approaches that do have an evidence base are often framed in terms of this idea of justice reinvestment, regardless of whether or not there has been any reinvestment as yet in Australia in terms of that concept, but they are led by the community. There is a lot of community control. By that I mean, a lot of the time when governments fund programs, there are quite strict criteria about what can and cannot happen on that program. A lot of the time, a post-release program will say you can only work with people who have come out of prison who have done sentences of more than six months or have drug and alcohol issues or that fit into whatever these categories are.

What works in terms of the First Nations' programs that we outline is there is a lot more flexibility in terms of how the support is provided and where that is directed. There is an acknowledgment the community is the best place to determine what that support looks like in their community. That is one of the key differences. There is a flexibility in the kind of support provided. The other thing about place-based approach is there is a focus on the specific cultural needs of that particular community.

**Mr VALENTINE** - I appreciate that. There is no question about that. People need support programs and community-based programs as you are outlining in your submission. I too would like to thank you for the submission. It has a lot of things in it that deserve great consideration. I was trying to get those points of difference between how you would deal with other cohorts compared to First Nations people. Is it fair to say though that with the other cohorts of people, exactly the same focus should be occurring? Is it community-based as opposed to trying to do things in an incarceration context?

**Dr SOTIRI** - Absolutely. What we can see, especially for Aboriginal and Torres Strait Islander people in Australia, is we have historically built these kinds of systems where people are managed in prisons rather than having access to the resources and supports that are required

in the community. Again, what the evidence shows is if those supports are provided in the community then people tend not to go back to prison. It is getting the policy settings right, but yes, absolutely, the principle in terms of what court looks like, being community-led and community-based, is the same of Aboriginal and non-Aboriginal communities, but there are some additional elements.

**Mr VALENTINE** - Some elements in the way the programs are delivered.

**CHAIR** - My question is on the suggestion you do not need a new prison in Tasmania, yet on page 18 you say there may be a need for a new small remand centre in the north, and you talk about getting the community on board. We have already seen in the Tasmanian community the decision to close the Ashley Youth Detention Centre. There is already pushback in the community about putting regional centres around the state. We have heard this morning that governments have to get tough. How do you marry up all that and still meet the needs of the community safety aspect and then still provide some secure facilities? You would probably be well paid and somewhere else if you had the answer to that.

**Dr SOTIRI** - We thought about whether or not to include that point in there. If there is a legitimate idea that there needs to be something easier for people who are physically located in the north in terms of incarceration then perhaps there could be a centre of some sort there. The point with that is that 270 beds is never going to be a rehabilitation prison. Anything that is maximum security is never going to be a rehabilitation prison. If the issue is that kind of the need for there to be a local place, again, we say in the submission - we have seen that around Australia where that argument's been put forward. It almost never works. We have seen that in the northern prison in New South Wales and the prison on the south coast, both intended to address overcrowding and provide a better service for the local community so families would not have to be travelling. They have never worked like that. The reason is that most people are going to prison on remand for short sentences. The overcrowding issue does not tend to solve that problem of people being shipped around to prisons that are not close to where their loved ones are. In order for it to work, there would have to be a huge navigation of the existing system. Again, I cannot emphasise enough that large prisons do not work in terms of any rehabilitative ambitions. There is no evidence to suggest they could because of the nature, again, of what happens inside institutions when there are lots of people and certainly what happens in maximum-security institutions and if there are any remand prisoners then they will have to be in maximum-security institutions.

**Mr TICKNER** - I will add that over all those years, in all those prisons all around Australia and all those programs, where is the evaluation that says that something has worked in all of those years? Unfortunately, the evidence is, if you read the reports, for example, of the Bureau of Crime Statistics and Research, which is probably the most advanced of the state criminal research jurisdictions, they are scathingly critical of these in-prison programs. I can promise you and I should also declare, I have not been in a political party since 1996, so I am clean but -

**Ms RATTRAY** - Is that how long it takes to clean you?

**Mr TICKNER** - It takes a while. But like a lot of you, because I know your backgrounds, I am a community sector person. That is where my life has been and I know the strengths of the community sector in really being able to work with marginalised and

## PUBLIC

disadvantaged people. That is why we are placing so much emphasis on investment in that sector because that is where the evidence is. I think it really does turn people's lives around.

**CHAIR** - That's where the rubber hits the road.

**Mr TICKNER** - Yes.

**CHAIR** - Pat, is there something you would like to leave the Committee with?

**Mr BURTON** - On the youth justice side of things, we have closed Ashley and we do not know yet if we are going to replace Ashley with five different institutions around the state.

**CHAIR** - One secure; we are not sure what else.

**Mr BURTON** - Essentially, it has always been a concern of mine that there is a budget for Youth Justice every year and it is swallowed up substantially by institutions, which does not leave a lot for the good work that has been done in the community.

**Dr SOTIRI** - Thank you so much for the work this Committee is undertaking. Part of my job is trying to be optimistic about the possibility of change. I genuinely think there is such an opportunity in Tasmania to shift gears and policy settings with this one. As Robert has said, it does not need to be a radical move and in a lot of ways we do not note it so much in the report but there are so many countries around the world we can look to that do things very differently. We know the law and order options that have historically defined policy making in this area have served absolutely nobody in building community safety so there is a real opportunity to do things differently here.

**Mr TICKNER** - It is a pity and I understand that, unfortunately, your Liberal member of the Committee could not be here today. Were she here, my message would go to her that this is absolutely consistent with what I understand to be Liberal principles. Mr Dutton is on the public record in the last couple of months talking about the criticality of early intervention programs for young people. In your closest state of Victoria, the opposition leader there has created the first position ever for criminal justice reform, the shadow minister. I can tell you the things they are saying in the Liberal Party in Victoria are very much in the direction of what we are advocating.

We work with people in all the different political parties and among Independents, because we do believe that getting the politics out of this is very much going to be in the community interest. When I see Liberals doing beautiful things I literally - it is a scary thought, do not take the imagery too far - feel like hugging them because it is a terrific thing where we can break out of that old political party 'law and order' auction. It has been a real disservice to our Australian communities. We do have a responsibility as people in public life and in parliament to take the community with you.

I will finish on this note. During the lifetimes of pretty much all of us here, perhaps not Mr Willie's, but think of the things that have happened in the transformation of the rights of people with disabilities in our lifetimes, and the changes that have happened for women. It has only been since 1980 there has been a continuous presence of women in the House of Representatives. 1980! In the field of the environment, I remember when there were virtually no environmental organisations, we were still having debates about it, but we should. The



## **PUBLIC**

transformation and the level of community awareness and government action across the political parties has changed our whole country for the better.

This is one of the next cabs off the rank: criminal justice reform. We can do this and Tasmania can really help lead the nation. Good luck.

**CHAIR** - Thank you and on behalf of the Committee we very much appreciate all of your time and the excellent submission. I have to endorse the words already been put on the record in regard to this submission, it is absolutely excellent. I would like to acknowledge the Attorney-General and Minister for Corrections, and she has added Corrections and Rehabilitation now to that, a small step but still a while to go.

**THE WITNESSES WITHDREW.**

**The Committee suspended from 11:38 am to 11:41 am.**

## PUBLIC

**CHAIR** - I welcome to the table representatives from TasCOSS, Adrienne Picone and Meg Tait. Thank you for being with us today. Obviously, you are aware the Committee is inquiring into the Tasmanian Adult Imprisonment and Youth Detention Matters. We look forward to hearing from you today and thank you for the submission you have provided. I need to introduce members of the Committee: Josh Willie, Rosemary Armitage, Tania Rattray, Rob Valentine and Meg Webb, with Committee secretariat support by Simon Scott and Alison Scott. This is recorded and you may or may not know the evidence we take is protected by parliamentary privilege. We remind you that any comments you make outside of this hearing may not be afforded that same privilege. Please be aware of that. If there is anything you would like to have in camera that you feel the Committee should be aware of but do not want it public, please just request and the Committee will consider that request. I will ask you to take the statutory declaration each and somebody might like to make an opening statement and then we will launch into some questions.

**Ms ADRIENNE PICONE**, CHIEF EXECUTIVE OFFICER, AND **Ms MEG TAIT**, POLICY OFFICER, TasCOSS, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**Ms PICONE** - Based on our submission, I would like to give a bit of a statement to set the scene about some of the things I would like to talk about today. Prison policy, and criminal justice policy more broadly, involves a difficult balancing exercise of several objectives. The incarceration of people who have harmed us is presented in the current framework as an option which both prevents us from harm by protecting us from individuals we see as dangerous, but also helps us to guard against future harm but acting as a disincentive to engage in crime, both in an individual and community sense. Prison also seeks to rehabilitate those who have harmed us, through providing prison-based and post-release supports, as well as programs structured around elements of external accountability, such as parole, to ensure people are accessing the treatment they need.

We are concerned, however, that the current prison model in Tasmania is not achieving these aims. Recent reports highlight the high recidivism rates in Tasmania, suggesting those who have been to prison are returning to the community, only to offend again. Research also shows that not only is prison not working as a deterrent, it may actually be causing crime, particularly for young people. Research also shows us people in prison are overwhelmingly experiencing other forms of disadvantage. Rates of homelessness, alcohol and substance dependency, significant mental health issues and trauma are all high within the prison population. Aboriginal children and adults are still over-represented within the justice and prison systems. Children who have spent time in out-of-home care, or who have parents who are incarcerated or have spent time in prison, are also more likely to end up within the criminal justice system. We know those in prison aren't receiving the treatment or support they need to change their behaviours and keep away from crime post-release, so now is the time to embrace the changes. We need to keep Tasmanian families safe, connected and supported. As the peak body representing community service organisations - many of them working to support Tasmanians involved in, or at risk of being involved in the criminal legal system - TasCOSS strongly supports a shift away from costly punitive models towards greater community-based supports. This includes programs and incentives to work with Tasmanians at several crucial points through the system.

Firstly, it's about working proactively with children and their families or guardians to make sure they're getting the support they need to access and engage in education and post-

## PUBLIC

social activities. Secondly, to address issues underlying criminal offending at the earliest opportunity, for children and adults, with an expansion of diversionary and non-prosecutorial options to respond to crime. Thirdly, to embrace therapeutic models of justice with the expansion of programs such as the drug court and the mental health list; the implementation of alternative court models such as community courts; and expanded services to support children and adults within the criminal justice system - including bail support services and culturally safe services for Aboriginal people and their families. Finally, to consider alternative prison models to promote better integration of offenders into the community post-release, and provide effective therapeutic services to ensure those in prison can address their physical and mental health needs, and better prepare for their life post-release.

**CHAIR** - Thank you very much. Anything to add, Meg?

**Ms PICONE** - I'm going to hand over to Meg for most of this hearing session today because Meg is the author of our submission. She also has extensive experience in community legal centres and across the justice system, so is able to provide very detailed information and thoughts. So, I'll hand over to Meg, who will give a bit of a background about her level of experience and how we would like to present our evidence today.

**CHAIR** - Thank you, Meg.

**Ms TAIT** - Thank you, Adrienne, and thank you to the Committee for providing us with this opportunity. As Adrienne said, I wrote the report. I just want to flag with the Committee that as well as my role as a policy officer in TasCOSS, prior to moving to Tasmania I worked for several years as a solicitor in Western Australia and Victoria - mainly in regional Victoria. I worked predominantly in criminal defence, at legal aid and community legal centres, in therapeutic courts including the drug court and the Victorian equivalent of the mental health list, the Assessment and Referral Court. Most recently, before I moved here, I was at a community legal centre called the Law and Advocacy Centre for Women, which is a service that was providing wraparound criminal and other legal supports to criminalised women, but also victims of crime who identify as women or are gender non-binary. The evidence that I will be giving today will draw on our submission, but also my experiences from those jurisdictions and that practical experience.

**CHAIR** - Those jurisdictions' loss is Tasmania's gain.

**Ms TAIT** - Thank you, Chair. We have identified four key areas that we would like the Committee and the Government to focus on. Obviously, we are happy to answer questions, but we could also, if it's suitable to the Committee, address the Committee on those four areas, and then offer opportunity for question and discussion - whatever is most convenient to the Committee.

**CHAIR** - That would be good. There will be some questions, so I'd like you to leave some time for that; but certainly you might launch into that now.

**Ms TAIT** - Thank you. Everything that we are about to say is also as the peak body for community services. We are viewing this from the lens of what the community needs, and we will be advocating at each of the four stages that we are about to outline the need for strengthened community-based support. So, you might hear me saying that a lot, apologies in advance.

Firstly, we believe and we think there is very strong evidence that there is a need to strengthen community engagement and pro-social supports - not just for people who are at risk of engagement in the criminal justice system, but more broadly. Obviously, Tasmanians are already engaging with each other in a wide variety of activities. There is a number of organisations, such as sporting organisations and faith-based organisations, that present really fantastic opportunities for increased engagement. We believe that the evidence is clear that early engagement really is the answer. Programs that work include parenting support programs, strengthening the services that present us with unique opportunities to address underlying issues and also reduce involvement in the criminal justice system. For example, education is an area that I know several members are familiar with. It is a fantastic opportunity, but our teachers are already struggling with the very high workload they have. How can we strengthen our schools and other education centres to make sure that teachers and the children and families who are engaging with those institutions are afforded every opportunity to be engaging in support and receiving treatment if needed?

Interestingly, I know that there have been recommendations from Tasmanian-based organisations for programs such as the school-based lawyer program to be implemented here in Tasmania. That is a program run by a community legal service in Victoria in which a lawyer is embedded within the school. They not only provide legal support to students and staff, but also raise awareness about issues that are likely to lead to young people's involvement in the criminal justice system. They also create smoother referral pathways for children and families who might be identified at a very early stage as needing further support, both within the legal system and the social system.

**CHAIR** - Are there any negatives? For example, 'I've already got somebody in my corner, so if I act up or mess up, I'm okay'. Do you see any negative with that?

**Ms TAIT** - Do you mean behavioural issues?

**CHAIR** - Having a lawyer based in schools.

**Ms TAIT** - The role is not as an advocate for students. It is seen as a separate, supplementary service. The lawyer isn't engaged to act as an advocate for each of the individual children. It is more a program designed to provide referral pathways in education in a more general sense.

**Ms WEBB** - Is it like the Health Justice Partnership?

**Ms TAIT** - It is similar to Health Justice Partnerships, where having co-located services increases understanding and awareness of issues that might be presenting - something like financial disadvantage, for instance. It might give children an opportunity to disclose something in a legal education session that might result in a referral to a financial counselling service for that child's family, for example.

**Mr VALENTINE** - To clarify that, are you talking about a high school environment here or primary?

**Ms TAIT** - The model in Victoria is a high school program. It is a high school in the western suburbs of Melbourne that was identified as a high-need area.

## PUBLIC

I should have said at the start, I would be very happy to send through to the Committee our supplementary materials and reports if that would be of assistance. There has been an evaluation of that program, it is my understanding, and with positive findings.

**CHAIR** - I'm sure that would be welcomed. Well, I hope it would be welcomed; we have a lot of reports to read.

**Ms TAIT** - I appreciate that. I'm sure the Committee has also heard about the desperate need in Tasmania for comprehensive alcohol and other drugs (AOD) supports for children and young people. That is a need that has been identified by many community organisations and that the Government has also identified in the recent Tasmanian Drug Strategy. It is something we believe could make a real difference to Tasmanian children and their families. In our submission, children should not be ending up in the criminal justice system because they have not been able to access the support that they need to deal with substance abuse issues in the community.

**CHAIR** - Does that include alcohol?

**Ms TAIT** - Yes, I think that would include alcohol; and possibly also consideration of conditions such as fetal alcohol spectrum disorder (FASD). That has been recognised in other jurisdictions as a key driver for children and young persons in prison in jurisdictions like Western Australia, where levels of FASD are extremely high. That is a cohort of children that has been recognised by the Western Australia Government as a priority cohort for their Youth Justice Blueprint.

**CHAIR** - Do we have any numbers in Tasmania for that?

**Ms TAIT** - I am not aware of that. The difficulty with FASD is that it is a condition that has been diagnosed or recognised relatively recently, so I am not sure.

The other idea that we wanted to highlight in this section is the idea of hub-style supports and how effective those can be.

For example, in Melbourne there is a service run by Our Front Yard, which is a youth service. It is a drop-in centre, it is not staffed 24 hours, but it has significantly extended open hours. I think it might be open until 10:00 p.m. It is a location where children and young people aged up to 25 can access a safe bed to sleep if they've been kicked out of home or they are not feeling safe where they are living. They can access a meal. During work hours they can be referred to support services including government services such as Centrelink. There is a co-located mental health service and health service. There is a legal service. These are supports especially useful for children and young people who may struggle for various reasons to access more traditional supports. We think a hub style model could be a great way of increasing community engagement in those kinds of support services, not just for those who are at risk of criminal justice involvement, but to increase community engagement more broadly.

**CHAIR** - Even given that Tasmania is such a decentralised state and we have really poor public transport options, do you still see that model fitting for Tasmania?

## PUBLIC

**Ms TAIT** - I think it could fit for Tasmania. It is interesting, aside from Tasmania being small, Tasmania is an outsider; it seems to be a place where people have a -

**CHAIR** - Thirty years and you will be in.

**Ms TAIT** - Thank you, I look forward to that.

**Mr VALENTINE** - Unless you're famous.

**Ms TAIT** - It seems to me that people in Tasmania - certain parts of Tasmania in particular - have a very strong sense of regional identity. A regional-based hub service might actually speak to that need more than the services currently offered, which I would note are centralised anyway. We have centralised court services; it is not like we are presenting an alternative that is any different to what is on offer in that way.

The second area we identified as a key area for intervention would be for the Committee and the Government to consider ways to reduce involvement in the formal criminal justice system. Firstly, looking at ways to support the Tasmanian police service to do the job they are doing, which is a difficult job to engage proactively with communities and to increase community safety. There are already several options for police to engage with children and with adults in a non-prosecutorial way. Police have the option of issuing cautions, they have the option of not proceeding with prosecution, they have the option to refer people to support service when they are found engaging with crime.

However, the data is showing us that cautions are actually going down, and more and more people are being referred to prosecution. Clearly, there is a failure there and we are not exactly sure what it is. Perhaps it's due to resourcing, both for Tasmania police and also a perceived or actual lack of support services that police can refer children and adults to. There are several models we would highlight have been extremely successful in other jurisdictions when we are looking at how police can interact with the community in ways favourable to the community and also reduce crime.

One example is the New Zealand model, which I am sure you may have heard about already. It is what I would call a community-based model. Where a young person is found engaging in criminal activity, before deciding whether or not to charge that young person, the police must engage proactively with that child's family, with their guardian, with support services. It is really a collaborative approach to how that child is going to learn from their behaviour. It is an opportunity for several members of the community to get involved in the lessons we want to teach that child, but also to identify gaps that might exist in the child's life, in their wellbeing and to provide them with an opportunity for support.

The Committee I heard was asking questions about culturally appropriate responses. This has been incredibly successful in the Maori community in particular, and it has resulted in a significant decrease in the crime rate for young people in New Zealand. We would also highlight there are local models. In the Australian Capital Territory there was an extensive report that was provided from the government as part of the commitment to raise the age of criminal responsibility to 14, which has recommended a model that is a type of multidisciplinary panel. Again, police acting as first responders can notify this panel which can get together to make decisions about how best to support children under 14, who would have previously been going through the court system but are now going to be referred out to

receive those supports in the community instead. We have models in Tasmania of that working already; the IFSS<sup>1</sup> hotline is a good example of multidisciplinary supports being provided to families in the child safety sector.

This is a model we are already doing in Tasmania. We already know how to do that. We would say there is a scope for co-responder models to be broadened. Again, in Tasmania we have the Police, Ambulance and Clinician Early Response model where police, when they are exercising their function as first responders under the Mental Health Act, instead of bearing that burden of responsibility for interacting with those individuals or groups alone, they work with the support of a mental health specialist or with a social worker who is able to help the police with their specialist knowledge and expertise, de-escalating that situation and making sure the person they are engaging with is referred to appropriate supports. We believe this is an example of a model that could be expanded, for example, to the youth jurisdiction. Maybe there is a co-responder model that could work with youth support of officers providing outreach support to the children or families who are having issues with young people. There are even successful models in Australia of police responsibility being put to the side and community taking responsibility for that first response.

When I lived and worked in Kununurra in the Kimberley, there was a very successful program called the Miriwoong Community Patrol. It was an Aboriginal community-led program where people from the community provide out-of-hours support to families who may have had family or friends who were engaging in antisocial behaviour, including a lot of family violence. Instead of calling the police for support, they could call this local group of people who could come, provide outreach support, provide transport if needed for people to be taken to the sobering-up shelter or taken out of community. It was quite a successful model in reducing negative interaction between that community and police.

There are also some changes. The Committee is going to hear from the Commissioner for Children and Young People, who we understand will speak extensively on the issue of raising the age of criminal responsibility. We would like to take this opportunity to formally support that recommendation. We believe it is a significant and important way we can take a proactive step to reduce involvement of young people within the criminal justice system. We would also like to highlight there has been extensive evidence demonstrating the nexus between experiences in out-of-home care and later involvement in the criminal justice system or concurrent involvement in the criminal justice system.

We have previously advocated in our responses to the Youth Justice Blueprint for the development of specialist charging protocols or practices between Tasmania Police and Child Safety and with residential units to make sure the children who are in those units are not being subjected to excessive criminalisation, that they are not coming to the attention of police. We think it could be worked on as a matter of priority, particularly given the findings of the recent Tasmania Legal Aid report into crossover children.

We also note recent inquiries in other jurisdictions - mainly in Victoria - have highlighted the need to review the Summary Offences Act and consider opportunities for decriminalisation to reduce involvement in the criminal justice system for particular cohorts. That would include, for example, consideration of decriminalisation of public space offences which could have significant impacts on our Aboriginal community, on young people, and culturally and

---

<sup>1</sup> Integrated Family Support Service

## PUBLIC

linguistically diverse communities - all those communities that are coming to the attention of police in disproportionate ways. There is also an opportunity for Tasmania to look to other Australian and international jurisdictions and consider changes to drug decriminalisation in relation to use and possession of currently illicit substances. We believe that is also something that could contribute significantly to reducing the rates of involvement in the criminal justice system here in Tasmania.

**CHAIR** - How are you going, Meg? I am mindful there is a question or two.

**Ms TAIT** - Would anyone like to ask me some questions at this point? I have a little bit more to say.

**CHAIR** - Anything to date, members?

**Mr WILLIE** - Regarding raising the age of responsibility, you do hear people who have opposing views saying it could create a loophole where criminals use children to commit organised crimes and crimes because they know they are not going to be held criminally responsible for that. What do you say to that? That comes from people who are well intentioned.

**Ms TAIT** - I would say already that loophole exists, at least in theory because our Tasmanian legislation already recognises that children are different to adults. They are sentenced in ways that are different to adults. It is something that could already be happening. A child, if they were to be caught committing an offence under our current Tasmanian legislation. They need to be given a more lenient sentence than an adult, at least in theory. That's what our legislation already says. I don't really see that raising the age of criminal responsibility would cause that much of a difference in that respect.

If anything, the models that are being proposed by the Commissioner for Children and Young People, which includes a strengthening of community-based supports, in our view are only more likely to protect children from engagement in criminal behaviour such that you're referring to. I would say that's the most likely outcome.

**Mr VALENTINE** - You've answered a lot of questions in your presentation.

**Ms TAIT** - That was my hope.

**Mr VALENTINE** - Thank you. There's one that you mentioned, decriminalisation of public space offences. Can you drill down a little bit more into that and tell me how that works? Quite clearly, in some public space offences, others get hurt.

**Ms TAIT** - When I'm talking about public space offences, I'm not talking about people committing offences such as assault in the public space. I'm referring to public space offences which result in the criminalisation of use of a public space that wouldn't otherwise be criminal: things like offensive behaviour in a public place, disorderly conduct in a public place. These are offences that have been found in other Australian jurisdictions to disproportionately impact Aboriginal people.

**Mr VALENTINE** - There are no victims except the person who's actually being charged, in effect.



## PUBLIC

**Ms TAIT** - There could be people who feel that they're a victim of offensive language for instance. I don't want to take away from an experience that might be distressing for someone to have that happen to them in the community. The point is, it's behaviour that, unless it's occurring in a public space, wouldn't be criminal.

I'm originally from Queensland. Another example would be public space offences there, such as public urination. Obviously, these are offences which target people experiencing homelessness. These are people who have no options, unfortunately, but to engage in certain behaviours in areas outside of their home. To criminalise those activities we would say is really a criminalisation of disadvantage, which we think is inappropriate.

**Ms WEBB** - To clarify that further, if I may. I presume that at the same time as advocating decriminalising what may be disruptive behaviour in a public space, you would also be advocating that there are more appropriate ways to support the person who's experiencing that behaviour and exhibiting that behaviour.

**Ms TAIT** - Yes.

**Ms WEBB** - It's not 'we ignore it and do nothing'; it's decriminalised to keep it out of criminal justice and deal with it in more appropriate and effective ways.

**Ms TAIT** - That's right. Tasmania Police already have that opportunity, in theory; it's whether or not it's being exercised and whether the way in which it's being exercised is subject to any kind of public scrutiny.

**CHAIR** - Do we know?

**Ms TAIT** - It's extremely difficult to know, and I think that police oversight is also something that the Committee could consider. I know that other jurisdictions are advocating - and we have advocated in a recent submission in relation to privacy laws - that there is a need for perhaps an entity such as a police ombudsman that might be seen to strengthen public confidence in institutions such as the police. We're relying on Tasmania Police to release data in relation to the number of prosecutions and cautions. There would be advantages to having that data publicly available.

**CHAIR** - Yet you've already told us that cautions have decreased - the number of cautions.

**Ms TAIT** - That's right. Based on the data that we have, that is correct.

**CHAIR** - I was listening. We have about 15 minutes.

**Ms TAIT** - If I could move to points three and four. The next opportunity that our system presents us with is the moment that people are within the court system. We should be using the court system as an opportunity to really wrap services around that person.

**CHAIR** - It is a slow system.

## PUBLIC

**Ms TAIT** - It is an extremely slow system, but we can use that delay to our advantage. If we were to have more court-based bail support services, for example - which, in our view, should be provided through a combination of state-based services and strengthened community funding - we could use the delays in the court system as an opportunity for the person who is engaging with that system to receive support.

In Victoria, there is a program which I think is now operational in all Victorian courts. It is called the Courts Integrated Services Program. It is available to people who are on bail. If someone is on remand, they can get application for bail; or someone who is presenting at court for a first hearing can be referred to be assessed for the program. The person who completes that assessment is a case manager who is employed by the Magistrates Court of Victoria - a state service employee. If found suitable for the program, they participate in case management with the court. So, updates to the courts are regularly provided and judicial officers can request, if they deem it necessary, judicial monitoring to provide an additional layer of accountability to that process. The person is also referred out to support services in the community. While that person is awaiting trial or awaiting sentence they can receive AOD support; they can be linked in with a GP to get a mental health care plan; they can start accessing services for homelessness support. It is using the court system to our advantage, to work with the people who need it most. It's also about trying to support community services to increase their presence at court so that people know what services they can access.

Another example is the family violence space. There are specialist courts in other jurisdictions but I think there are also specialist workers in most courts in Victoria now - respondent and applicant support workers - who are available to give family violence support and counselling, not just to people who are at the court for family violence but to any person who is deemed to be needing supports of that nature. Referrals can be made from judicial officers, from lawyers, from police prosecutors or from court staff. It is also a way of increasing awareness around family violence within the whole court structure, to make sure that everyone who is working within the court is aware of the patterns of behaviour that family violence might be demonstrated, and to make sure that everyone is aware of the support services that exist.

**CHAIR** - That is the first time I have ever heard of any positive aspects around our very slow justice system, thank you.

**Ms TAIT** - There are also therapeutic courts, and there are examples of that here in Tasmania. I am sure the Committee has heard about these courts already. We would strongly recommend an expansion of those existing programs, including the drug court and the mental health list. We would support the recommendation that the mental health list be embedded in legislation to give a greater degree of the certainty and the accountability. I believe the Committee has heard that recommendation already.

We would also encourage the Committee to consider further alternatives such as community courts. This is an example that exists in Victoria at the Neighbourhood Justice Centre in Collingwood. This is a hub-style support, similar to what I was speaking about earlier, where services are co-located at the court. It has been incredibly successful in the City of Yarra in transforming relationships between the police and the court, and community relationships more broadly. It has had a significant impact on recidivism. I can see that I am running out of time, but I can provide a report to the Committee on the effectiveness of that approach and any questions in relation to that.

## PUBLIC

Finally, on that point. We believe there is a need for trauma-informed services for everyone involved in the criminal justice system. We would particularly highlight that judicial officers are doing an incredibly difficult job and that in Tasmania, in particular, many judicial officers are performing a difficult job in remote, regional and isolated locations. There is, from my understanding, a lack of support services for them as well; perhaps a need for judicial education and training to make sure that they are supported to do the work that they are doing in a safe way, but also to make sure that the job they are performing is consistent with community expectations and rapidly developing evidence around how best to engage in a trauma-informed and culturally appropriate way.

Finally, I might turn to changes to the prison system, which is our fourth opportunity. There are ways that we can make our existing prison system more therapeutic, safer and more effective. I know you have already heard from the Justice Reform Initiative in relation to some of these approaches but we wanted to address the Committee specifically on an initiative that has come from Hawaii. I am not sure if the Committee is aware of this, but up until a few years ago, there was a significant youth crime problem in Hawaii, particularly with young girls. One of the offences that was leading to a lot of girls being locked up was the offence of truancy - girls running away from family environments or out-of-home care environments that were not sexually safe for them, in a majority of cases.

The Hawaiian government committed to reviewing the charging practices for children in Hawaii. That resulted in such a significant decrease in the prison population that they were able to transform the facilities that they had for children - the detention facilities - into a co-located school, vocational educational training facility and halfway house - a type of shelter for children experiencing homelessness. Most shockingly, they removed all locks from the doors and transformed it from a maximum-security centre to a centre where children could come and leave as they pleased. Despite some initial cynicism that it wouldn't work, it has been incredibly effective.

Most children, even when it was not compulsory to be engaging with the services, were engaging with the services because they were services that they needed - principally, a safe place to sleep and food on the table, which, unfortunately, as we know, in Tasmania so many of our young people do not have.

This is an example of a way. As with my last report I read in 2022, there were no girls in prison in Hawaii and the youth crime rate had reduced significantly. With the closure of Ashley, we say there is such an opportunity to transform these facilities into something that is going to be useful, to make sure that Tasmanian kids get the support they need, somewhere safe to sleep.

**CHAIR** - How useful, though, would a centre like Ashley, where it is located, be for the youth of Tasmania who are looking for that safe place? Because it is in the middle of farmland and I don't think the bus stops there.

**Ms TAIT** - That is an issue and, again, with the new facilities being proposed, it is a real opportunity though -

**CHAIR** - Those facilities become those places - is that your idea? The new facilities become those places.

## PUBLIC

**Ms TAIT** - Yes, the new facilities could become those places. And looking to other jurisdictions in Spain, for example, youth offending is not totally decriminalised, but all prisons are essentially education facilities. There are so many models we could look to for different approaches to how we can reshape our youth justice system and make sure they are actually being used for the purposes they are intended for. I can see I have run out of time, but if I -

**CHAIR** - If you have something left there, let's have it.

**Ms TAIT** - I am sure the Committee has heard there need to be more comprehensive services offered within the prison environment and those services should be evidence-based. For example, harm reduction strategies for alcohol and other drugs in prison, which has been identified as a key need for the Tasmanian population. Also, to highlight the incredible work done by existing community organisations and programs which are providing that throughcare support. Organisations like Connect 42 and the Salvation Army are supporting people in Tasmania in prison and post-release. There are not enough programs and they are not able to do the programs they are doing. There are not enough beds, it is extremely difficult. We are asking the Committee to commit to funding those services and to expanding them. Perhaps, aligned with other jurisdictions, such as the Australian Capital Territory, which have expanded their throughcare model to make sure prison is being used for what it is really intended for, to protect the community, to transform those people in our community who need it.

**Mr WILLIE** - We can only make recommendations, we cannot commit to funding.

**CHAIR** - We would love to be able to make more decisions, but we can make recommendations and then we can continue to question where those recommendations are.

**Mr VALENTINE** - With the Justice Reform Initiative, is there anything you do not agree with?

**Ms TAIT** - I apologise, I have not had time to fully read the report, but I have read most of it.

**CHAIR** - I cannot believe it, Meg, with all you have just given us.

**Mr VALENTINE** - No, it is okay. I wanted to give you the opportunity in case there was something being advocated you think may not work.

**CHAIR** - You can always come back to us, Meg, we are not finishing today, sadly. It is going to take a bit longer.

**Ms PICONE** - I think we will. We will come back to you on that one. I guess just one thing, which is not about not agreeing with, but I did hear at the end of their providing evidence, the strength of their statement on investing community services and the importance of early intervention programs and how we can see it is not just jails failing, but I think it is the system that is failing, particularly our young people and also our older people who are at risk.

**CHAIR** - I think we would have appreciated that comment.

**Ms PICONE** - What a great segue.

## PUBLIC

**Ms WEBB** - I do not think it is mentioned in the JRI submission, but certainly mentioned in the TasCOSS submission and I appreciate it being there. You do, at the end of your submission, point to the benefit of a human rights framework in the state. I presume you would see as underpinning this whole opportunity to reform the way we approach these topics and would then provide cohesive principles to that.

**Ms TAIT** - We would say that. I would say, particularly in relation to the prison cohort, the human rights acts that has been implemented in other jurisdictions have actually been instrumental in key decisions in promoting and upholding the rights of people in prison. Notably, in Victoria as one example, it was the Victorian charter that enabled the Supreme Court to remove the children who had been kept at Barwon in a way not consistent with their human rights. Having those human rights charters is incredibly important. There is also really great evidence from the Human Rights Law Centre, which has commissioned a report where professionals at various levels of the system talk about the impact of the charter on their lives. What really struck me is that transformational nature. There is an interview with some mental health service providers talking about how it has affected the advocacy they engage with in other service providers in trying to advocate for their clients.

Having the Human Rights Charter there, you think about the human rights charter as something very lofty being debated in the Supreme Court, but it is being used every day with case managers who are trying to advocate for their clients to get AOD services. People trying to get a young homeless woman into a house. Those are the decisions I see human rights charters as being extremely effective in that it creates a culture of human rights where people are able to understand and articulate their rights and the rights of others, which is incredibly important.

**CHAIR** - You are preaching to the converted down that end.

**Ms WEBB** - It was a Dorothy Dixier, for sure. It has gone on the record as my support for a human rights charter in this state, yes.

**CHAIR** - Meg, you have just endorsed my comments earlier that Tasmanians gain is another jurisdiction's loss, thank you. You would have been very impressed with that contribution, I am sure.

**Ms TAIT** - Absolutely, yes.

**CHAIR** - On behalf of the Committee, not only the work you did on the submission but your presentation to the Committee this morning has been exceptional. Thank you very much.

**THE WITNESSES WITHDREW.**

**The Committee suspended from 12:22 pm to 1:15 pm.**

## PUBLIC

**The Committee recommenced at 1:15 p.m.**

**CHAIR** - We now welcome to our table our Children's Commissioner, Leanne McLean, and the Director, Isabelle Crompton. Before I ask you to take your statutory declaration and make any overarching statement that you might like to make, I will introduce the Committee to you. We have Josh Willie, Rosemary Armitage, Tania Rattray, Rob Valentine and Meg Webb. The Committee support is Simon Scott and Allison Scott. Thank you all.

This is a public hearing and it is a parliamentary hearing, and it's protected by parliamentary privilege. I want to remind you that comments that you make outside of this may not have that same privilege, so please be aware of that.

If there is anything that you feel the Committee would benefit from having in camera, in this Committee, then please request that and we'll make that assessment.

The *Hansard* will be available at a later time on the Committee's website.

**Ms LEANNE McLEAN**, COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE, AND **Ms ISABELLE CROMPTON**, DIRECTOR, OFFICE OF THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**Ms McLEAN** - I have some very brief opening comments. I will begin by acknowledging and paying my respects to the palawa people of lutruwita/Tasmania. In particular, I recognise that Aboriginal people are best placed to determine and deliver services to meet the needs of their children and I'd like to acknowledge elders past and present, and any Aboriginal people who are listening in today.

Many of you know this role quite well by now. I am an independent statutory officer enacted through the *Commissioner for Children and Young People Act 2016*. My role is to advocate for all children and young people in Tasmania, and to act as an advocate for youth detainees under the *Youth Justice Act 1997*. I research, investigate and influence policy development in areas relating to children and young people, including a very strong interest in the youth justice system. I promote, monitor, and review the wellbeing of children and young people, and I promote and empower children and young people to participate in the making of decisions and to express opinions about matters that affect their lives.

I also help to make sure Tasmania meets its national and international obligations in respect of children and young people - for example, the United Nations Convention on the Rights of the Child - and I encourage organisations to establish child-friendly mechanisms to assist children. In performing these functions, a unique feature of the commissioner's role, unlike any other role really in Tasmania, is that I'm required to undertake the functions according to the principle that the wellbeing and the best interests of children and young people are paramount, and that I must observe any relevant provisions of the United Nations Convention on the Rights of the Child. I also need to give special regard to any children and young people who are disadvantaged or vulnerable for any reason.

It is important to start with a bit of context in relation to children and their interaction with the criminal justice system. Fewer than 2 per cent of our children aged 10 to 17 come into contact with the criminal justice system due to their behaviour. If we think about that in relation

to the most recent ABS recorded crime statistics - for 2021-22, of the 55 860 children and young people who are aged 10 to 17 in Tasmania - so, that's within the scope of our youth justice system - 888 were proceeded against by police. That is 1.65 per cent of that population. The number of youth offenders aged 10 to 17 has been steadily declining since 2008-09 in Tasmania. However, in 2021-22 there was a 5 per cent increase in the number of children and young people aged 10 to 17 proceeded against by police. That contrasts with a 7 per cent overall decrease in total offenders in Tasmania. In 2021-22, the number of children and young people in youth justice detention on an average day in Tasmania, was 9.1 children. Over the five years to 2021-22, on an average day in Tasmania, the number of children and young people in youth justice detention actually fell by 22 per cent and the rate decreased from 1.9 to 1.5 per 10 000. Now, based on my observations of youth detention over the course of the last 12 months, I would anticipate that when the 2022-23 data is released, we will see an increase in the number of children in youth detention.

In my experience, children and young people in youth justice detention generally come from lower socioeconomic areas in Tasmania, are disengaged from education and have been for some time, have experienced family breakdown and homelessness, are known to child safety services, have experienced chronic childhood trauma and disadvantage, have mental health needs and/or a disability, and have drug and alcohol issues. Aboriginal and Torres Strait Islander children and young people are overrepresented in the age bracket of 10-17, which is the scope of our youth justice system. Aboriginal or Torres Strait Islander young persons are about six times more likely than their non-Indigenous counterparts to find themselves tangled up in the youth justice system.

As you know, I have a legislated role as an advocate, and a legislated role to be the individual advocate for these children. In practice, this means that children and young people who are on remand, or who are serving a period of sentenced detention - noting there are very few of those; the majority of children in detention are on remand or in an adult prison - can request my advocacy services on any matter affecting their rights and their wellbeing. Importantly, young people who are held in police watch houses or reception prisons - which they frequently are; and I note to the Committee that these are adult custodial facilities where they are under the custody of police or a correctional officer while waiting to be taken to court - cannot access my individual advocacy services. They only kick in once a young person has been sentenced or remanded under the Youth Justice Act.

However, I can advocate at a systemic level for any issues that can be raised. Section 10 of the Commissioner for Children and Young People Act outlines how I undertake those functions. I visit Ashley approximately every three weeks and have done so since I was appointed commissioner in 2018. I try, in those visits, to meet with every detainee in a face-to-face way. My visits are unstructured. I arrive, I have free access around the facility. I literally move around corridors, in and out of units, and have discussions with children and young people about how they are going. Sometimes we play a bit of basketball, sometimes we might play some cards, sometimes we might sit down and have a chat. And, if those young people flag an issue with me, we can try to make an arrangement to have a more confidential discussion so they can raise that issue in an advocacy sense. Confidential discussions within the detention environment are really difficult to have.

**CHAIR** - You actually walk around freely? Are you unaided? Unsupported?

## PUBLIC

**Ms McLEAN** - I do - unaided, I always have been supported. When I arrive at the facility I am provided with a set of keys and a radio that I wear on my belt and I'm not accompanied. Since February last year - 2022 - my advocacy function has been supported by the addition of an advocate for young people in detention. That is a full-time role, and the advocate has substantially increased advocacy services for young people in detention by being on site on a more regular basis. They're there about three days a week. The advocate can establish more effective rapport with children and young people, witness their living environment, facilitate access to services, assist them to raise concerns or to access complaints processes, and monitor any emerging systemic issues. The advocate role is a fixed-term role, it is not a permanent role in my office, and that will expire at the end of 2024 or beginning of 2025.

The other part of my work is systemic advocacy. Since providing you with my submission, which was some months ago now, I think the biggest addition I have to make is that I have now provided advice to the Tasmanian Government on raising the minimum age of criminal responsibility in Tasmania. I would like to table that advice to the Committee today. I have brought copies for you all.

In addition to this advice, I have also released the beginnings of what I think will be a powerful suite of work.

**CHAIR** - I might ask our secretariat support, Allison, to distribute those, thank you.

**Ms McLEAN** - This work is underpinned by work we have done with children and young people with experience of the youth justice system in Tasmania. We have undertaken a project which has included sitting down with them and having structured discussions with them to seek their feedback on their experience of the system, what led them to engage with the system in the first place, and how it is they think the system could be different to meet their needs.

In the pack you have just been provided, I have included the first output of that work, which we call the Voices Project. It is called 'Listen: This is my voice'. These are the views of children who have had an experience of the justice system, and they are experts in this system. There is a bit of a trigger warning on the document. I have not edited the language; these are the unedited views of young people, but we can learn an enormous amount from what they have to tell us about the system.

I don't have a lot more to add, other than that I can summarise my advice around the minimum age of criminal responsibility for you. You will have heard from other advocates and research organisations about the need to do things differently if we are to keep young people out of the justice system in the first place. We have had, for a long time now in Tasmania, policy objectives which operate around the notion of a public health approach to looking after children, a public health approach to youth justice. The position I formed after giving it quite a bit of consideration is that all the goodwill in the world won't result in a public health approach. It is legislative and policy triggers of government which embed these changes in practice.

My view is that raising the minimum age of criminal responsibility from the currently appalling low level of 10 to at least 14 would provide us with one of the most powerful policy and legislative triggers to embed a real public health approach to the safety and wellbeing of children, including our most vulnerable children, in Tasmania. It requires legislative reform; but more importantly, it requires a new approach to the system that supports children and young



## PUBLIC

people to thrive. A system should acknowledge that when we can intervene for a child, the first moment we find that there is an issue, that is where we have the biggest chance of making a difference in the life of that child. That begins in their first 1000 days of life and then flows through to the rest of their life.

If we look at the trajectories of the lives of children who end up in youth justice detention, for many of them, our opportunities to intervene in their lives within the context of their families have been many, and they have been frequent for years and years. We have missed many of those opportunities because our service system is not set up in a way that we can intervene earlier. I am proposing in my advice to Government that we review and adjust and enhance our service system to be able to do just that. In doing so, we will no longer need to rely on a criminal justice system to support children displaying harmful behaviour, and instead we can help them to change that behaviour in a supported way. I am happy to take any questions that any of you have on that, or other matters relating to my role.

**CHAIR** - Thank you, Leanne. I appreciate that contribution. About the advocacy role that you have indicated will expire late 2024, early 2025, and the benefit you have seen from that advocacy role - three days a week at one centre, if that role is expanded or receives ongoing support from the Government, how do you see that working with a possible five centres? Do you see that advocacy role being able to be put in place and see the same positive results if there ends up being five centres around the state for youth in the new Government arrangements?

**Ms McLEAN** - The short answer is yes, we will need advocacy services for children and young people who are in the youth justice system.

My view is they should be broader than they are now and encompass children who are in custody who have not yet been sentenced or remanded under the Youth Justice Act.

We are having this conversation in the context of a commission of inquiry finalising their recommendations to Government. Once they are known, we will be in a better position to work together to design what oversight mechanisms are required across youth justice in Tasmania.

My position on this is already public and clear. I believe we need a commission for children and young people in Tasmania that includes the ability to provide individual advocacy to vulnerable children across the youth justice area and the out-of-home care area and perhaps other vulnerable groups of children.

There is going to be a need to expand those functions as we come to a different arrangement for youth justice in Tasmania.

**CHAIR** - With the proposal the Government has put forward on the new system, are you supportive of what has been put forward? You are on the record as saying the Ashley Detention Centre is not fit for purpose. Is the proposed model something you see as appropriate?

**Ms McLEAN** - Like you, I know a limited amount about the model that is proposed.

**CHAIR** - I thought you might have known more than me.

## PUBLIC

**Ms McLEAN** - What I know is there are five facilities proposed. Only one of those will be a custodial facility in the south. We certainly know there is a desperate need for providing young people with supported accommodation.

Arguably, there are people on remand at the Ashley Youth Detention Centre on any given day, who are there partly because there is no other safe accommodation for them to go. I have certainly advocated for children in my time as commissioner, in relation to that.

I am very supportive of additional supported accommodation for young people. When it comes to the model of detention, detention should only ever be an absolute last resort for any child. In my view, it should certainly not be for any child under the age of at least 14.

What we have seen in Tasmania over the years is that as our ability to provide solutions through welfare-based responses and as a homelessness crisis and cost of living has really impacted communities, the likelihood of children ending up in detention appears to be rising. That is because, in part, we are not able to support families to manage the harmful behaviour of children in the community. That is a terrible concern. It is something we should be deeply worried about. We certainly do not want to see that 5 per cent rise go any further. We want to see it go backwards.

**Ms ARMITAGE** - With regard to the proposed changes, obviously for Ashley and the fact the one custodial centre will be in the south, my concern was that they are talking about having a northern prison facility for people to be close to their families. Yet, here we are only proposing to have one custodial centre in the south. They tell me that is because that is where all the services are.

Do you have an opinion on that? Do you think it does not have to be large, obviously, or whether one of the other centres could be set up to have some custodial sentences, or is it just to have it in the south? What are your thoughts on that? On one hand we are saying for adult prisoners, we need to have a northern facility so they can be close to families. Yet on the other hand, we are removing Ashley and while having the other centres is a good thing, the one custodial area for young people, if anyone needs to be close to their family, it is them, but it will just be in the south. Your thoughts on that?

**Ms McLEAN** - My first thought is I would like to see the numbers of young people in detention reduce to an extremely small number. If we have a service system response able to support young people in the community, that is possible. I have detailed what that would contain in my advice to Government and also in my previous submissions on youth justice. Working under that presumption we have a very low number of children in detention, what we see from the numbers at the moment is the numbers are skewed to the south. The vast majority of children and young people in detention do come from the south and in the majority of that 5 per cent rise, there is also a southern skew in those figures.

Once you are dealing with those two pieces of information, the first question you ask yourself is: do we need a large detention facility at all anywhere, or are we able to provide similar levels of security in different, smaller community settings around the state? That is something, if we are serious, we could open up a discussion about.

The second part of the question is about economics, which is not my forte. The Government's position is to build a larger youth detention facility. The economic question is,

## PUBLIC

can you sustain two of those? The fundamental question about whether or not young people should be close to their families is important. I hear from young people in detention that they do need to be close to their families. They want to maintain family connection, and maintaining family connection for children in the south at Deloraine has been incredibly difficult.

**Ms ARMITAGE** - Interestingly, the answer given, from memory, was not that the majority of offenders were from the south, it was that the facilities and the programs they needed were located in the south.

**Ms McLEAN** - Workforce is another issue. Staffing issues have plagued Ashley Youth Detention Centre and they are continuing. The location of the facility has perhaps added to people's ability to undertake employment there because it is some drive away.

**Ms ARMITAGE** - They also have problems at Risdon Prison fairly easily located, so I am not sure about that. Thank you for your response.

**Ms McLEAN** - I cannot think of a human service at the moment that is not struggling with staffing.

**Ms ARMITAGE** - I appreciate your response. Thank you, Leanne.

**Mr WILLIE** - We have discussed this recently, Commissioner; I have two questions about raising the age of criminal responsibility. The first one - I know your responses are good to this and it would be good to get them on the record - is: what do you say to people who are well intended and say raising the age will create unintended consequences where criminals use children to carry out organised crime and crime because they know they are not going to be held responsible criminally? The second question is: what does a response look like for, say, a 12-year-old that commits a serious crime where they are not held criminally responsible? What does an ideal response look like?

**Ms McLEAN** - To the first question, that situation exists now, where an adult may have interactions that encourage a young child to undertake criminal behaviour. There are provisions within legislation at the moment to deal with that.

**Ms CROMPTON** - Certainly, that instigation of offending would be covered by some existing provisions. For example, in our advice we talk about the Tasmania Law Reform Institute's consideration of legislation and potential amendments that might allay concerns in that regard.

**Ms McLEAN** - And what we have seen in some other jurisdictions - it is either the Scottish or the Welsh, I can't remember - we saw significant strengthening of those provisions under the criminal code in relation to adults at the same time the age of criminal responsibility was adjusted. That sends an incredibly clear message to the community it is absolutely not okay to have those sorts of interactions with young people.

The second question is, what do you do in relation to the harmful behaviour of a 12-year-old who may commit a crime? The first thing I would say is you could almost guarantee at the point that crime is committed that it is not the first interaction that young person will have had with police. In the advice, what I am saying is the first interaction that a young person has with the police should be a gateway to an expanded service system to help understand and respond

## PUBLIC

to their behaviour. At the moment, our system is limited in how much support we can provide a child at that point; and how much we are limited in even how much understanding we can have for that child in the context of their family, and what kind of support they might need - let alone provide the support.

If we are able to provide that support and intervene early, it is much less likely that we get to that point in the first place. But, if we do - and we might - my view is that our obligation is to uphold the rights of that child, while at the same time helping them be accountable for their behaviour, to change their behaviour, and to receive the support that they need to do so. Assessments need to be made, but they need to be in a safe place for that to occur. I have included in my advice that we need to establish these safe places around Tasmania.

What we don't need to do is put that child within a youth justice detention model where they are locked in their room on any given day for periods of times that are detrimental to their wellbeing, and that impinge on their ability to get the services that they need to be well and to change their lives. What we should not be doing is setting them on a trajectory for a life in the criminal justice system. Unfortunately, the way we respond at the moment to these types of crimes does just that for these young people. We need to do it differently.

**Mr WILLIE** - The current system puts them with other young people who are offending, it's almost like a university of crime, isn't it - the environment they are in?

**Ms McLEAN** - Before we do that, the pathway to youth justice detention is via an adult custodial facility. This is something that is often forgotten. If you are a young person and you are taken into the custody of police from 10 years old, you will be taken to an adult custodial facility, an adult reception prison. These are no places for children, no places at all.

**Mr WILLIE** - We visited the reception centre in Hobart just after a child had been in one of the cells there. They spoke to us about that experience for that young person. It was pretty eye-opening and shocking.

**Ms McLEAN** - It's harrowing. I draw your attention to the voices in the youth justice system paper, and you will hear from children themselves what it is like to spend time in an adult custodial facility.

**CHAIR** - Thank you.

**Ms WEBB** - About the advocate role that has been put in place - it's a fixed-term role, as you described it. It's probably fairly important if we are to anticipate it being extended beyond the end of 2024 to be able to demonstrate its effectiveness and as an essential component. What have we got available to tell us about the effectiveness of that role? Have we got data? Are we collecting information about the activities?

**Ms McLEAN** - We do now. The advocate is roughly three days a week on-site at Ashley Youth Detention Centre, but they are also able to manage a record-keeping system, which we weren't able to do prior to them coming on board. It's not the most comprehensive of record-keeping systems, but nevertheless it is there and I can provide you some data. In-person visits to youth detention centres from 15 February 2022, which was the commencement date, to about 2 August, which is the last data I have, so just under 18 months, we have had 160 visits to Ashley Youth Detention Centre; to adult custodial facilities, we have had five visits to the

## PUBLIC

Hobart Reception Prison, two visits to the Launceston Reception Prison and one visit to Risdon Prison; out-of-hours visits is at least 14 - that is popping in in the evening or on a weekend - so, seven weekend and seven evening visits. At least 702 requests for individual advocacy have been made to the advocate between 15 February and 2 August, and within each of those requests, multiple issues could be raised, so that doesn't capture the full scope of each advocacy issue; it is the requests.

**CHAIR** - Can we have an example of an issue?

**Ms McLEAN** - The most common individual themes during this period include restrictive practices and isolation. That is, the use of lockdowns, unit-bound practices, isolation of young people, and restricted movements around the centre. There have been 236 advocacy requests about that. Other requests include:

- health, safety and wellbeing, mental health support, access to medical treatment, access to exercise - 230 requests;
- complaints or requests of assistance to lodge a formal complaint to chase up the outcome of a complaint - 210 requests;
- 202 requests relating to Ashley staff;
- exit planning and accommodation on release - 182 requests;
- programs and school - 180 requests;
- legal and court matters - 166 requests;
- contact with family, friends and members of their social and support network - 131 requests;
- support services and support agencies - accessing NDIS, NGO support services - 126 requests;
- the physical environment within detention - 115 requests for advocacy;
- the use of force and/or assault - 101 requests; and
- issues with other residents - which are not uncommon - 72 requests.

**Ms WEBB** - I was interested to hear you speak in your opening remarks about beyond the public health approach, and that to make a public health approach work you need the legislative triggers to have a government act in a policy and investment sense.

Yours is a rights-based role. Do you see, as another legislative trigger, a more explicit rights-based approach in our state - like a charter or an act of human rights? Do you see that as being complementary and aligned; and how that would make a difference, both to your role and also to children in this state?

**Ms McLEAN** - The short answer to this is, yes. I do think it would be complementary and aligned. I am supportive of the development of a human rights charter and an act around human rights in Tasmania - particularly because the rights of children are so often unheard and underestimated. And they exist because it is far more difficult for a child to exercise their rights and have a say in the decisions that are being made about them every day. They don't vote, so, anything that we can do to bring those rights to the fore through a charter of rights or something of that ilk. In my view, that should be related to child impact statements. What impact is the legislation that is under consideration at the moment, or the policy that is under consideration, going to have on the rights of children in Tasmania?

## PUBLIC

**Ms WEBB** - One more thing on the legislation side of it. We have the youth justice reforms underway in this state. I am not clear on whether reform of the act is part of the reform process. Is that an explicit undertaking as part of that process? If so, where is that up to?

**Ms McLEAN** - It is my understanding that it is, and that it has been committed as part of the reforms. Both the Youth Justice Act and the Children, Young Persons and Their Families Act are slated for review. The latter has begun.

In a complex environment at the moment - including the public service preparing to receive the recommendations of the commission of inquiry - there is merit in understanding what those recommendations are, prior to proceeding with any review of either of those pieces of legislation. I think that we would probably see those reviews proceed later in 2024.

**Ms WEBB** - You don't see it as a problematic mismatch if we are progressing a youth justice reform framework and designing a new system, without waiting until we look at reforming the act? Those things don't have to happen in concert?

**Ms McLEAN** - They should be happening in concert. We haven't seen a finalised blueprint from Government on what the youth justice reform agenda actually will be. The legislative implications for that are, as yet, unknown.

**Mr VALENTINE** - In your opening acknowledgement of country, you said 'I recognise that Aboriginal people are best placed to determine and deliver services to meet the needs of their children'. I am certainly well aware of the percentage of children that are of Aboriginal descent that are currently being held at Ashley, are residents of Ashley. Have you had much interaction with the Aboriginal community, in terms of either gauging what services they might be able to provide and exactly how they ought to be treated differently to what might be the case today? Are you able to expand on that?

**Ms McLEAN** - I am. My advice to Government on raising the minimum age focuses on three core principles. The first is that it should be child-centred, which stands on its own. The second is that it should be culturally sensitive, and that underlies my firm view that Aboriginal people are best placed to make decisions around what is in the best interests of Aboriginal children in their community. That is my way of describing what I think the state Government has agreed to in the principles of self-determination that are underpinning the Closing the Gap agreements. What I am saying is that we need to get on with that, by providing that kind of opportunity to Aboriginal organisations to be able to come up with alternative solutions for their children and support them in their communities.

**Mr VALENTINE** - So, is it fair to say at this point in time that area has not really been fully explored in terms of the types of programs that could be offered by that community for their children?

**Ms McLEAN** - It is beginning to be further explored and I would encourage you to seek advice from Aboriginal organisations on exactly what that looks like; but the Closing the Gap implementation plan has afforded a mechanism to build capacity for Aboriginal organisations to explore that space further. We can learn a lot from palawa people and the way they already are working in their communities.

## PUBLIC

The third principle in my advice is that when we consider appropriate supports for children, we should do it within the ecological model of childhood development - which is that a child exists as a person in their own right but within a family and within a community, within a society. As policy makers, we often think about interventions for children, targeting the child alone. They are usually quite unhelpful, because a child exists within a family within a community within a society. If we need examples of where that is done well, we can look to the palawa community because they do it naturally. It is exactly what they do all the time.

**Mr VALENTINE** - A further question with respect to your statements in opening. You mentioned that there were children in Ashley with nowhere to go. Can you give us a bit more of a picture of that and the age of the children you are talking about in that circumstance? Are they young? Are they 16- to 17-year-olds, 14- to 15-year-olds? Can you give us an understanding there?

**Ms McLEAN** - In my experience, these children could be aged from 13, 14, right through to 17 or 18. I have had experiences across the age cohort. What it looks like is that prior to being taken into custody, they may have been what you would call effectively homeless or an unaccompanied homeless child for some time. That means they might be staying with a friend here and there, sleeping on the street here and there, with their mates here and there. Again, I encourage you to go to the Voices Project, because this is detailed by children themselves, what that is like.

When they arrive in detention - if they are on remand, they might be there for one or two nights, or that might extend to two or three months, depending on a range of circumstances - but fundamental to that is that child is highly unlikely to be bailed without there being an address for them to go to. If that address can't be located or it is not deemed to be safe, what's the likelihood of that child leaving? They are more likely to be remanded for a further period until that occurs.

When you overlay the context of a housing crisis, and the context of the availability of therapeutic placements for these children that can be provided by the state - which is extremely limited and is retreating - the likelihood of young people needing to be detained for longer because of a lack of accommodation is a real issue that I have seen increasing.

**Mr VALENTINE** - In your advocacy role, you are now collecting statistics, but have you been able to get other statistics that might assist your role from the department, or have they not been able to deliver on some of your requests for statistics such as the circumstances the children might be coming from?

**Ms McLEAN** - When I make direct requests for information of departments - usually depending on what is available - we can come to an arrangement on what I can be provided. Obviously, that is limited by the input of data in the first instance. What I can say is in the instances when I have raised the personal circumstances of a child I am advocating for at the senior levels of the department, all efforts are made to try to find a safe place for that child to go on their release. There are factors at the moment influencing that, including the ability of non-government providers to be able to provide those safe placements within the realms of their limitations, which include work health and safety considerations for their staff. That is ongoing.

## PUBLIC

**Mr VALENTINE** - Are there statistics you would like that are not being kept by the department?

**Ms McLEAN** - The short answer to that is yes. I would always advocate for a much richer set of data to be able to inform my advocacy work on the rights and wellbeing of children. There is a discussion currently open with the department. I think there is a general agreement we would like to work together to have a more collaborative and shared data set on the wellbeing of children.

**CHAIR** - Commissioner, when you talked about the Indigenous community being best placed to provide for their young people and their needs, does that not already happen now they have the opportunity to find somewhere safe for those Indigenous members of their community? Is that not something they are able to do at this point in time to the extent of what is needed?

**Ms McLEAN** - I think in some cases yes, and I do not want to speak for the Tasmanian Aboriginal community, I am not an Aboriginal person. There are instances where young people are in detention and the very strong view of the Aboriginal community is they should not be there, they should be with their own, with their community, and their behaviour should be being supported to turn around within the realms of their own community.

**CHAIR** - Following on from the member for Hobart's question about there being nowhere to go, I wrote down earlier, 'foster home'. Is that something not necessarily readily available in the Tasmanian community at this point in time, to have some of those short-term placements for people with no safe place to go?

**Ms McLEAN** - The Tasmanian out-of-home care system - because a child is in youth detention and has no safe place to go does not necessarily mean they are under the custody or guardianship of the state; they may be, they may not be. Setting that aside, our out-of-home care system relies on foster carers. I have released data reports recently which show we currently have a decline in the number of foster carers available in Tasmania. That is of concern. There was a net loss of 14 caring families over the period of that report. Given we rely so heavily on foster carers, who are - can I just put on record - an absolutely extraordinary bunch and we need to value them more -

**CHAIR** - We all know some of them, I am sure.

**Ms McLEAN** - I bet you do. I am amazed by the incredible work they do every day. It would be unlikely for a young person to exit detention into a new foster placement; it would be more likely, under the current system, for a young people to exit detention into a supported, therapeutic care placement, in either a group home or a special care package, until such time they were settled and then perhaps able to be transitioned to a foster placement. That is going to be limited by the availability of either of those placements.

**Ms WEBB** - And only if they are on orders.

**Ms McLEAN** - That is right, only if they are on orders. If they are not on orders, then it is more likely an emergency accommodation provider for children. They exist around the state. It may be seen as the most effective means to house a child on exit from detention.



## PUBLIC

**CHAIR** - Thank you. I appreciate that clarification. That was a question I had written down earlier.

**Ms WEBB** - Maybe you touched on this already and I missed it, but when you mentioned in your opening comments a spike we have seen since the 2021-22 financial year, you mentioned that you anticipated the increase will be continuing into 2022-23 when we see the data from that most recent year. Is there work being done to locate some causes or identify what has driven the spike in the number of children coming into the criminal justice system?

**Ms McLEAN** - To clarify, my anticipation of data I said was in relation to numbers of children in youth detention. My observation is it has increased in the last 12 months, including some of the highest numbers I have seen. I would not like to extend that anticipation to the numbers of children proceeded against by police. We will need to wait. During budget Estimates we heard from police they were increasing their presence and arrests of children in hotspot areas. Some areas in the south were mentioned during that time.

The underlying factors of this go to our service system, our ability to understand the needs of children and to respond to their needs, and the needs of their families, in communities. When we are not able to do that, children fall through the gaps. Every child is seeking a place to belong. When that place to belong becomes a group of children together exhibiting harmful behaviours, that can become problematic.

**Ms ARMITAGE** - When you were talking about children having a fixed address, was that simply from the coming out of detention they need a fixed address or was it also when they have been charged? They have been picked up. They have gone to the police station - and I should declare here I do independent person and have been doing it for 30 years and am quite well aware of it. When they give an address, is it necessarily checked they can go to that address? From my perspective, when I am sitting there and they say their name and an address, it might be mum's or dad's or a friend's. They are released on bail, not apprehended. Are you aware whether the police check with the homeowner or the person at that address that the child is going to go there or can they just give an address and then they are released?

**Ms McLEAN** - My understanding is there are checks; certainly, when exiting detention there are checks.

**Ms ARMITAGE** - I am wondering about at the police station.

**Ms McLEAN** - My understanding is there is a level of checks undertaken, particularly if the address is also that of the guardian of the child. Ideally, you would expect the guardian of the child to be present during those discussions of court proceedings.

**Ms ARMITAGE** - Generally, they are not there when I am there. I have never asked them and am wondering, if they give an address and are released, whether the police check, whether they are aware when the person is released they might not be living there. They may have left home. Is it, in your opinion, just a matter of giving an address and then maybe being released, as opposed to going into detention if you say 'I have nowhere to live'?

**Ms McLEAN** - You would have to check with police to get the accurate answer, but my understanding is it is checked and it certainly should be. It would be in the best interests of the child for it to be checked.

## **PUBLIC**

**CHAIR** - On behalf of the Committee I would like to thank you both, not only for your time today but for the submission you provided to the inquiry. It is very much appreciated. We will continue this journey and we know, as you well know, there is a lot more work to do.

**THE WITNESSES WITHDREW.**

**The Committee suspended from 2:04 pm to 2:06 pm.**

## PUBLIC

**CHAIR** - We would like to welcome Brett Smith, who is on Webex. Thank you and we appreciate the opportunity to have a discussion about the submission that you have provided.

You are well aware of the Committee processes and understand that this is being recorded. After I introduce members of the Committee, I will invite you to take the statutory declaration that has been provided to you. You would have read all the witness information, I expect, and again, have a very good understanding of how a parliamentary Committee works. I remind you of the protection of parliamentary privilege and that the comments you make outside of this place may not afford you such privilege. Thank you very much, Brett.

We have Josh Willie, Rosemary Armitage, Tania Rattray, Rob Valentine and Meg Webb. Our Committee secretary support is Simon Scott and Allison Scott.

Thank you, and I ask you to take that declaration.

**Mr BRETT SMITH** APM, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED VIA WEBEX.

**CHAIR** - We've received your submission. We ask if you would like to point to any specific matters or points of the submission, or anything that you would like to add. Thank you for taking the time to give us a lived experience of your time as an Ashley Youth Detention Centre youth support worker.

**Mr SMITH** - Thank you, Chair, and thank you everyone for the opportunity.

I was encouraged to put in this submission by a number of others after detailing some specifics about my experiences in the short time that I was working at Ashley. My submission is largely scoped to include just those experiences and observations only. I have based some other comment - and it is only comment - based on my experience as a police officer for quite a number of years, and some work got done in the education space also.

I don't want anyone to read it and be offended or take personal affront at what I have said. They're just my views and observations. The submission is focused internally on what is happening on the inside at Ashley that I observed, and it's very worker-centric.

I suppose the biggest issue for me at my time at Ashley - and I was only there for a very short time, unlike a couple of others who stayed a fair bit longer - was that my expectations were somewhat different to what I experienced, and I experienced that in a very short space of time. That is probably what prompted me to raise the concerns and observations that I did. I thought, with 40 years as a police officer under my belt, having had some broad range of experience, that I have just about seen everything. Well, I actually hadn't, and that's probably what's prompted me to provide what I had done, and it's with that in mind that I did provide that submission.

It's pretty detailed. I've provided some tactical level suggestions of what I've observed, but I've also focused on what are probably considerations to move forward. Underlying it all is that this is a wicked problem. I'm not convinced that we're going to solve this, as a lot would like. I think the best we'll do is progress towards making the situation better. I found my experiences inside the facility itself quite concerning. That's not a reflection on any one

## PUBLIC

individual or group, but probably the consequence of systems, structures and process failings over many years.

When you think about it, all the issues with Ashley have been around for quite some time. If you look around the country just about every other state has experienced similar issues with youth justice, so we shouldn't be surprised that we continue to experience the same issues here. But that's just a generalisation on where I'm coming from with this. I have been out of frontline policing for a couple of years. Any questions you might ask about that would probably not be all that contemporary, given that the policing space does move very quickly. But I have been involved, working on a contractual basis nationally across other jurisdictions, at our central education facility in Manly, so most of my work in keeping with touch with what's happening around the country has been in the leadership and management space. With that in mind, I am happy to take questions about the submission itself.

**CHAIR** - Thank you. The member for Launceston would like to commence the questioning - it'll be a tough one!

**Ms ARMITAGE** - No, it's not. Thank you, Brett, and I appreciate you speaking with us today and putting the submission in. We are hearing from many people that the age of criminal responsibility should be 14 or higher, and that nobody under 14 should be detained. You have been at Ashley and you have been a police officer for 40 years - what are your thoughts on that, having seen many young people under 14 that have committed some fairly serious crimes and also having been at Ashley very recently?

**Mr SMITH** - I understand the philosophy behind it. It's very commendable, it's very aspirational. One thing that the community doesn't pay a lot of attention to are victims of crime. I just wonder what the general community, usually as victims of crime, would be thinking about this. I'm not convinced that increasing the age of criminal responsibility will reduce crime; in fact, I think the literature says that it probably doesn't. There is room for an open debate about it, but whatever decision is made, it must be well informed and there must be suitable support structures around it, particularly for young people, to do the best we can right from the get-go, in order to invoke that behavioural change, which ultimately is what we're about.

I have an open mind about increasing the age of criminal responsibility, but a number of discussions need to be had with that and about what works in a practical sense.

As I reiterated before, quite often we don't talk about the victims of crime in all this, and the last thing we want is to have more of the community victimised through the commission of crime.

**Ms WEBB** - You mentioned that you thought that the literature said that raising the age of criminal responsibility won't necessarily reduce crime. Can you point us to something on that?

**Mr SMITH** - No, I can't. I have read that in some research I did some time back through the college. If you like, I will try to find it and get back to you.

**Ms WEBB** - Are you aware that the Commissioner for Children and Young People has recently released formal advice to the Government on this matter? Have you looked at that?

## PUBLIC

**Mr SMITH** - No, I haven't. But, whichever way we go, we have to properly consider it and consider it with all stakeholders in mind.

It is very frustrating, from the policing perspective, that victims of crime - and even with our reporting stats, we talk about victimisation rates per 10 000 members of the community. But when you think about it, if an offender breaks into a house - regardless of age - there is more than one victim. The whole family essentially are victims, but we only ever report the one person because that is the reporting person. That is how our national accounting stats work.

So, when we talk about true victims of crime - and the impact of crime on victims can be lifelong - that part of the equation and that part of the conversation needs to be had when we talk about this.

**Ms WEBB** - You would be aware that no-one who is suggesting that raising the age is the right thing to do would be suggesting that therefore nothing is done. There is a presentation of a whole range of other approaches that are not criminal justice-based but are still active responses that would be put in place.

**Mr SMITH** - Yes, definitely. That is really important, that it is about accountability as well, particularly with young people. If we are keen to integrate young people into society that have unfortunately fallen off the rails, then part of that is integration into accountability as well.

**CHAIR** - Can I take you to page 8 of your submission, under 11. Residents (term of reference 5, point 3, where you talk about the need to provide more structured engagement by youth workers on behaviour and expectations with clearly understood consequences that, in effect, replicate community standards and life generally.

Can you expand on that? That's one of the issues; we've got the youth workers and the residents of the Ashley Youth Detention Centre and there are different expectations from both parties.

**Mr SMITH** - The interaction that a youth worker will have can be relatively ad hoc. It can be relatively unstructured and very conversational. Where I was coming from with that is, once a young person is moved to the facility at Ashley, what I observed with the induction process was that they were taken into a room, they were searched and then walked around the facility.

What I was getting at there is that there is a more formal conversation about behavioural expectations at the facility so that the young person knew what the go was. It seems to be very ad hoc conversations around behaviour. There doesn't seem to be much in the way of consequences for behaviour and so forth. To give you an example, there was one young fellow there scribbling on the wall at Ashley and I spoke to him, 'Do you really need to do that?' and he said 'No, I'm allowed to do that' and he continued to scribble, so I let it go. I tried to engage with him later on, talking about damage to property and the consequences of that, and the cost to government and this, that and the other. He did not seem to have a lot of engagement at all. But there seems to be lots of things happen where there is nothing structured around providing that opportunity for immediate education to hopefully invoke behavioural change. It is ad hoc. There could be more in a structured way in which we can engage with young people in that facility. There are good opportunities with the right people to engage in that type of conversation, but it is largely unstructured.

## PUBLIC

If we are going to have support officers or whoever in there providing this so-called therapeutic approach, there has to be some type of structure on behaviour and behavioural standards, otherwise there is no consequence. It is probably part of my experience that some of the violence directed towards me and also others there, I might add, it was largely felt there would not be any consequence for it. I think before they get there, we have a conversation with them and we talk about expectations, but that does not happen.

**CHAIR** - A thought came to mind when you were talking about that. Another version of what is we call in the rural area a toolbox meeting, where people understand the rules of engagement and then we get on with the work we do. I will ponder a bit more on that.

**Mr SMITH** - To add a bit more, again to pick up on your word, Chair, 'rules'. It is about changing and having a solid conversation around values. That is the type of educative approach needed and pushes on to one of the other points I made. For our support officers, the better opportunity we have to provide people well educated in this area and fully appreciative of the role they are undertaking. I am not saying they are not at the moment. There is space there for better personal development of the employees that work there to give them better tools to be able to have those conversations. They are a bit underdone.

**CHAIR** - We appreciate that. We have heard a bit today and in previous presentations on community policing. With your former policing hat on, you might like to make a comment about how you see the community policing as it is at this point in time, and how that might look somewhat different into the future to support some of these younger offenders and, to some extent, repeat offenders in the adult population. Is there more of a role for what they class as community policing?

**Mr SMITH** - That is a good example of a term that has broad interpretation. If you talk to the AFP, they will say everything they do is community policing. I think what you are getting at is, is there a broader role for the police to do some of the - and I don't use this term loosely - softer options for police to be more integrated into the community, particularly around young people and other offenders? That can be programs, and the PCYC is a good example. Correct me if I am wrong, but I am not sure if the hub development out at Mowbray is still going ahead. That was always mooted as being an opportunity to get a greater involvement with police and other services in the early intervention of youth, whether that be in a proactive or reactive sense. There probably is, but it comes at the cost of resourcing. I know my former colleagues agree that a lot tends to get lumped into the laps of police to do and the demands are much greater. That thin blue line has become thinner. There probably is, but whatever the police do, it has to be resourced. Any additional work has to be resourced. We have found over the years, the police quite often have wanted to say yes to do things, but it has come at a significant resourcing cost and something has to fall off at the other end. That has been quite common over the years. Does that answer your question?

**CHAIR** - It does. As you said, there is a trade-off. If you are going to be doing more of that, then something else has to suffer, unless there are additional resources put in. Absolutely it does and I am probably a bit in your camp. The community policy word might be a bit overused and what does it mean?

## PUBLIC

**Mr SMITH** - There are certainly roles to play and creating better relationships, particularly with vulnerable groups and groups that are perhaps incongruent to what police do, has always been official, but at what cost to other core policing functions? That is the question.

**CHAIR** - Before I move to the member for Launceston, I acknowledge the work of our members of Tasmania Police. They do an outstanding job.

**Ms ARMITAGE** - Thank you, Brett. I was reading a couple of the other parts of your submission. You mentioned you were involved in several incidents of violence directed at you by residents and followed up with sound, but you have also said when you saw the young guy with the graffiti, there is not a lot you can do. Were you physically assaulted? Did you see other staff being physically assaulted? When you say followed up with sound, what can staff actually do? What can happen? Is it just that they lose privileges? There is nowhere else they can send them. They cannot move them on to an adult prison. What is the situation after you have had violence directed at you? Are they locked in their room or what is the situation that occurs there to try to maybe point out to them that it is not the right thing to do but also, as you say, about victims of violence?

**Mr SMITH** - I can tell you what happened, to put a bit of context around it. There were three instances over the course of two days that ultimately caused me to decide it is not a safe place, certainly for me, to be there. The first instance occurred where there was a young fellow. I engaged with him when I first started the shift and his first comment to me was that 'I am going to stab you before the end of your shift', and he was quite a solid young man. I did a bit of background. I knew there were some mental health issues involved, but he was quite a solid fellow that did cause me concern, and you can sense in there that something was not right.

**Ms ARMITAGE** - His age, would he have been under 14 or over 14?

**Mr SMITH** - He might have been 15, maybe. I cannot remember at all.

There was another guy. I was making breakfast for one of the residents. I mistakenly, and through my own inexperience, left one of the locks of the kitchen cage sitting on the bench and he went and grabbed it, put it in his jumper and then flung it around. He said, 'I'm going to knock your head off.' We had to get a heap of people in to negotiate him to put that down. This young fellow was making the point I shouldn't have left the lock around. That was true, but he threatened to take my head off with it.

The third is what ended it for me. It was two of them, who asked me if I wanted to go outside and kick the football, to which I said yes, it sounded like a good idea. Little did I know one of the other youth workers said they are going to take you out there and do what they call a 'two-pack', where they take you out there and there are only the three of you out there and they attack you. That necessitated a conversation with one of them, who got angry and started to throw things. We called a code black and ultimately the people concerned were restrained. It got quite violent and volatile. Most of us had made it back into the secure area of the facility itself. At the end of that particular one, everyone involved was put in their rooms for a period of time.

I don't know what happened after that because I rang the General Manager up and said, 'That's it, I'm going home, I've had enough.' That was for a couple reasons. Firstly, it felt very

## PUBLIC

physically unsafe. There is always the risk of mental health harm out of that sort of thing, but it did certainly feel physically unsafe.

More importantly, I am big enough and ugly enough to look after myself. My concern was, what protections did I have to protect myself in those situations? What could have gone wrong was that I could have been the story in all of that.

**Ms ARMITAGE** - Do you think some of that, Brett, was because they knew you were a former police commander?

**Mr SMITH** - Yes, they definitely knew that most of us in there were police officers. I am not sure if they knew what our roles were. They may have done, with me.

Having said that, I had number of instances where I had been outside playing basketball, playing football with a couple of them over the course of a couple of days, without issue; except there was one particular guy, Sam, who I played chess with. He wasn't bad; he knew how to beat me - not that I'm very good at it. There was some really good interaction, but what concerns me is that all of a sudden you can be in a particular position and things just turn really quickly.

**Ms ARMITAGE** - Interestingly, we heard today from Leanne McLean, Commissioner for Children and Young People, that she goes unaccompanied, gets a set of keys and just wanders around on her own. Yet, from hearing what you're saying, that might not be the safest option.

**Mr SMITH** - I can't comment on that. There were a number of people that I observed who did have free range, but they were people that I observed that didn't pose any type of risk to the residents at all. The support workers probably pose a risk or a perceived risk to the residents themselves, and for whatever reason we were taken. I wasn't the only one that was injured that week. There was a lady I was working with; I understand that she had her hand jammed in a door and was off work with an injury as well.

I don't think it was my former role, specifically. I understand that most of the other former police officers that were there had issues themselves and there were acts of violence. The violence across the board towards the staff is pretty consistent.

I remember being in one of the managers' offices at one point and there was a list of people on the whiteboard. The whiteboard had about a dozen names of all the people who were working and on duty, and then there was another list of all the people who were off on workers compensation and/or on leave - and that list was three times as long as the first list. That ought to be a concern.

**CHAIR** - Thank you, Brett, I appreciate the comments.

**Mr SMITH** - That is as it was. Even though I went out there with the intention of providing some help and support, it is just not the place for me.

**Ms ARMITAGE** - You're not going back?

**Mr SMITH** - Definitely not.



## PUBLIC

**Mr VALENTINE** - Thanks, Brett. I had my own experience with Ashley because, in the late 80s, I put in the first computer network there. And so, I have seen the sort of kids that are residents in that place. In a lot of the cases there is no respect for authority, I appreciate that. They are recidivists, they come and go for various reasons.

I was reading through pages four and five of the security aspects that you point to being needed to improve the circumstances, do you think that all that might do is actually trigger unacceptable behaviour from these young people? A more psychological approach, call it therapeutic if you like, might work better than trying to tighten security and make them feel more restricted and kick against authority even more so. Can you see what I'm getting at and do you have any comment on that?

**Mr SMITH** - Look, this is a case of which way you go with this. My whole focus was workplace health and safety, hence what I talk about there. A lot of that was some observations I've seen in an adult custodial facility. You have got to have staff feeling safe and confident in the workplace to be able to do that. I get it, that you try to create an environment that is open, non-threatening and so forth with young people. I get all of that, but the reality is that these people, these aren't just your normal, you know -

**Mr VALENTINE** - I appreciate that -

**Mr SMITH** - These people are young; most have got an immature mindset; and just about all - and particularly the males - are physically adult strong and it creates a very dangerous environment. My argument is, what do you put first here? Shouldn't we be putting staff safety and the young person's safety at a parallel here?

**Mr VALENTINE** - Some might say that, for the amount of money that is spent on a place like Ashley, if there was a more one-to-one approach where you don't have groups of these residents together that might incite various behaviours, that it would be a better approach; if there was more one-on-one and the money still being applied in a different way rather than at a centre like Ashley.

**Mr SMITH** - I have said in my submission that there needs to be more of the one-on-one stuff. What I saw and what I experienced was largely a group mentality. These particular guys, I felt that they wanted to do it for a bit of fun - which is fine. I tend to agree that if the interaction can be more one-on-one in a more controlled environment, you might not need all of the stuff that I am talking about. I do accept what you say; but, having said that, the state still has an obligation to look after its workforce -

**Mr VALENTINE** - I'm sure, and I can understand some aspects of that.

**Mr SMITH** - Having been with workplace standards and hauled over the coals with our people at random breath test sites not wearing an orange vest, then when I go and look at the working conditions here, I see quite a dichotomy.

**Mr VALENTINE** - Okay.

**CHAIR** - Thank you.

## PUBLIC

**Mr WILLIE** - G'day Brett. You were there to fill staff shortages, and I'm interested in whether that was impacting the young people's engagement with education or being able to go out into the community and participate in programs, and what you observed in that regard.

**Mr SMITH** - They were very short on staff. They were very appreciative that we were able to come in. There was a whole heap of risk with it, but the department did the best they can to mitigate it. Yes, it did. There was definitely a number of times where young people were kept in their rooms because there wasn't enough staff around to adequately look after them. You had to bring them out on an hourly basis to feed them, let them have their time out, let them have their time on the phone. Some of the programs were cancelled because of that. All of that does have an impact on staffing. What I am concerned about is that, given all that's happened and all that has been publicised about all the issues at Ashley, how are you going to build a new workforce? You can build a new building and have a whole heap of new structures, but unless you change your systems, structures and processes, I am not convinced you are going to get a workforce that is going to be high-quality. This is what this needs, a high-quality workforce.

**CHAIR** - He has just frozen. Have we still got you, Brett? We lost you for a couple of minutes.

**Mr SMITH** - Yes, got you back.

**Mr WILLIE** - In terms of supporting young people to go out into the community and participate in programs, did you do that too?

**Mr SMITH** - No, I did not get the opportunity, but I knew that others did and happened when there was opportunity with sufficient staffing on. That was great. Any of those types of activities does keep things settled, particularly the beneficial one-on-one. When you have reduced staffing levels, that does create all sorts of tensions. How do you get a sustainable workforce to work in an environment that currently exists at the moment? That is a huge challenge. A new facility or new facilities alone certainly is not a panacea here.

**Mr WILLIE** - Was being able to leave the facility and go out into the community and participate in work programs or whatever used as a reward?

**Mr SMITH** - No, not that I observed, bearing in mind I was only there for a short term. But I do understand it does happen from time to time. Again, it is all staffing dependent. I am all for that. It is great.

**CHAIR** - Any closing remarks, Brett? We have appreciated your time today and the submission. Anything you would like to leave with the Committee?

**Mr SMITH** - I believe everyone involved in this process genuinely wants the best outcomes for these young people that unfortunately find themselves on the wrong end of the law. There has to be some type of agreement between each of the viewpoints about what Ashley should be or a facility like Ashley or the other facilities going forward. There has to be some common agreement around the table about what it is and what it produces. There has to be a commitment that everyone tries to work together in order to get the best outcomes, rather than firing shots about one another. That is not helpful. It has happened from time to time and

## **PUBLIC**

the staff at Ashley themselves have been victims in this process. As a state we cannot ignore the fact they are employees and the state has obligations towards them in this.

I would like to think that in going forward the systems, structure and processes that need reviewing and having a different focus and a different model, that there some thought goes into this around providing an environment that encourages good people to want to work in this environment.

**CHAIR** - Thank you and I earlier acknowledged the Tasmania Police force, but I would also like to acknowledge the work of those that staff the Ashley Youth Detention Centre and provide those services. I sincerely hope that in the outstanding matters, issues still there at the centre get resolved as soon as possible. It is not good for anyone's health and wellbeing. That is a statement, not a question, and I always remind myself I am supposed to ask questions.

Thank you, Brett. We appreciate your time today and please accept our best wishes to all your family.

**THE WITNESS WITHDREW.**

**The Committee adjourned at 2:44 pm.**