



Your Ref:  
Our Ref:

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Simon Scott  
Committee Secretary  
Legislative Council Government Administration Committee 'B'  
Parliament House  
Hobart, TAS 7000

By Email: [csjs@parliament.tas.gov.au](mailto:csjs@parliament.tas.gov.au)

Dear Committee Secretary

## **RE: Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters**

Thank you for the opportunity to provide a submission to the Legislative Council Government Administration Committee 'B' Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters.

This submission provides a high-level overview of the role of the Commissioner for Children and Young People, particularly as it relates to children and young people in youth justice detention, and highlights publications and previous work which I believe are pertinent to the Committee's Inquiry.

My comments are not intended to be exhaustive, and I would welcome an invitation to participate as a witness in any Committee Hearing to discuss my work and my views in more details.

## **Role of the Commissioner for Children and Young People**

The Commissioner for Children and Young People (the Commissioner) is an independent statutory office established under Tasmania's *Commissioner for Children and Young People Act 2016* (the CCYP Act). The functions of the Commissioner, which are set out in s.8 of the CCYP Act, include:

1. advocating for all children and young people in Tasmania;
2. acting as an advocate for youth detainees under the *Youth Justice Act 1997*;
3. researching, investigating and influencing policy development in areas relating to children and young people;
4. promoting, monitoring, and reviewing the wellbeing of children and young people;
5. promoting and empowering children and young people to participate in the making of decisions, and to express opinions about matters, that affect their lives;
6. helping ensure Tasmania meets its national and international obligations in respect of children and young people; and
7. encouraging organisations to establish child friendly mechanisms to assist children and young people to participate in matters that affect them.



In performing these, and other functions, I am required to:

- do so according to the principle that the wellbeing and best interests of children and young people are paramount;
- observe any relevant provisions of the United Nations Convention on the Rights of the Child; and
- give special regard to the needs of children and young people who are disadvantaged or vulnerable.<sup>1</sup>

## Children and young people in detention

The Australian Institute of Health and Welfare (AIHW) publishes data relating to the numbers, rate, and trends of children in youth justice detention in Tasmania. I draw the Committee's attention to the AIHW's most recent publication, *Youth Justice in Australia 2021–22* (published 31 March 2023), which includes data by age, sex, Aboriginal and Torres Strait Islander status, legal status, and time under supervision.<sup>2</sup>

In 2021–22, the number of children and young people in youth justice detention on an average day in Tasmania was 9.1.<sup>3</sup> Over the 5 years to 2021–22, on an average day in Tasmania, the number of children and young people in youth justice detention fell by 22 per cent and the rate decreased from 1.9 to 1.5 per 10,000.<sup>4</sup>

In my experience, children and young people in youth justice detention have generally experienced chronic childhood trauma and disadvantage. While these factors are by no means causal, children and young people are also more likely to be male, come from lower socioeconomic areas, to be disengaged from education, to have experienced family breakdown and homelessness, to be known to child safety services, to have mental health needs and/or disability, and to have drug and alcohol issues. Aboriginal and Torres Strait Islander children and young people are over-represented.

I refer the Committee to the Sentencing Advisory Council's 2021 report *Sentencing Young Offenders* for more detailed information regarding the characteristics of children and young people in the youth justice system.<sup>5</sup>

## Advocacy for children and young people in detention

### *Individual advocacy*

As noted above, I have a legislated role to advocate for individual children and young people detained under the *Youth Justice Act 1997* (YJ Act). In practice, this means that children and young people on remand or serving a period of sentenced detention at Ashley or an adult prison, may request my advocacy services on any matter affecting their rights and wellbeing.

Section 10 of the CCYP Act provides guidance on how the role is performed. This includes listening and giving a voice to any concerns and grievances, seeking information to facilitate support, assessing whether a child or young person has been provided with adequate information about their rights, and assessing the physical and emotional wellbeing of a child or young person.

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<sup>1</sup> CCYP Act, s3.

<sup>2</sup> [Youth justice in Australia 2021–22, Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22-summary)

<sup>3</sup> [Youth justice in Australia 2021–22, Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22-summary). Table S137c.

<sup>4</sup> [Youth justice in Australia 2021–22, Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22-summary). Table S83a.

<sup>5</sup> [Sentencing Advisory Council Sentencing Advisory Council, \*Sentencing Young Offenders\*, Research Paper No. 6, October 2021.](https://www.sac.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22-summary)



In performing this role, I visit the Ashley Detention Centre approximately every three weeks, endeavouring to meet every detainee at the centre on each visit. My visits are unstructured which means that the children and young people can meet me in a space and at a time that works for them.

In September 2021, the Tasmanian Government provided fixed-term funding for three years for an additional resource to assist me in carrying out this role. The Advocate for Young People in Detention commenced with my office in February 2022. The regular presence of the Advocate at Ashley has substantially increased advocacy services for young people in detention. By being onsite on a regular basis, the Advocate can establish 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.

It is important that individual advocacy for children and young people in youth justice detention is sustainably resourced on an ongoing basis, independent and child-centred to ensure that children and young people are given the space and time necessary to raise concerns with someone they trust.

For further information regarding advocacy for children and young people in detention, I refer the Committee to the *Commissioner for Children and Young People Annual Report 2021-22*.<sup>6</sup>

### *Systemic monitoring and advocacy*

I regularly seek and monitor data and other information relating to children and young people in detention. For example, I receive data in relation to personal searches, use of restrictive practices, incidents, use of force and restraints, isolation, and complaints. This information assists to inform my systemic advocacy on behalf of children and young people in contact with the youth justice system.

Further, I seek the views of children and young people with lived experience of the youth justice system in Tasmania including through the *Youth Justice Consultation Project*. While this project is ongoing, with data collection only recently completed, I anticipate the findings from these consultations will provide invaluable insights into the views of children and young people in conflict with the law in Tasmania, including the views of young people with experience of detention.

The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings explored during public hearings my individual and systemic advocacy roles for children in youth justice detention. Please see my witness statement to the Commission which provides relevant information: [Statement-of-Leanne-McLean,-Commissioner-for-Children-and-Young-People,-12-April-2022.pdf](https://commissionofinquiry.tas.gov.au/Statement-of-Leanne-McLean,-Commissioner-for-Children-and-Young-People,-12-April-2022.pdf) ([commissionofinquiry.tas.gov.au](https://commissionofinquiry.tas.gov.au)).

## **Matters relevant to the Terms of Reference**

In the below section, I briefly outline matters relevant to the Committee's Terms of Reference, focusing in particular on the terms of reference 2-5.

### *2. The use of evidence-based strategies to reduce contact with the justice system and recidivism*

Reducing children and young people's contact with the youth justice system and tackling recidivism requires an evidence-based public health approach with strengthened and sustained investment across the entire youth justice continuum, including youth justice detention.

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<sup>6</sup> [Commissioner for Children and Young People \(Tas\) 2022, Commissioner for Children and Young People Tasmania Annual Report 2021-22, Tasmanian Government, Hobart](#)



I refer the Committee to my March 2022 [submission on the Reforming Tasmania's Youth Justice System Discussion Paper](#) (Youth Justice Submission) which details my views on what is required to reduce children and young people's contact with the youth justice system, including:

- Improved prevention and early interventions;
- Strengthened targeted interventions; and
- Reforms to tertiary interventions.

Further, it is my view that raising the minimum age of criminal responsibility to at least 14 years, with no exceptions, together with broader service system reform, will serve to immediately and significantly reduce the involvement of children and young people in the criminal justice system. For further information, I refer the Committee to:

- my submission to the Council of Attorneys-General Working Group (available [here](#)),
- a background paper to inform community discussion on the minimum age of criminal responsibility (available [here](#)),
- my March 2022 Youth Justice Submission (available [here](#)),
- a April 2022 research report of the Tasmanian Law Reform Institute, *Raising the Minimum Age of Criminal Responsibility – Law Reform Considerations* (available [here](#)), and
- my December 2022 feedback on the Final Draft Youth Justice System Blueprint 2022 (available [here](#)).

I also note that in 2021 I joined an expert panel of Tasmanian practitioners and academics to explore what raising the minimum age of criminal responsibility might mean for Tasmania. The University of Tasmania hosted forum included a discussion of alternative ways to address children's problematic behaviour, meet their underlying needs and promote community safety. Further information is available [here](#), and a recording of the forum is available [here](#).

### *3. The provision of, and participation in, services for people in prison and leaving prison (health housing and legal services)*

Many of the above publications and resources are relevant to this aspect of the Term of Reference. Additionally, when I speak with children and young people in detention, they tell me that they need:

- A safe place to live on transition from detention, and someone to support them;
- Regular contact with family and the people who are important to them;
- Access to health services, programs and activities, including better access to mental health supports;
- Access to timely legal advice and representation;
- To feel connected to their communities and lives outside of detention; and
- To be treated fairly and to be and feel safe and respected.

I continue to advocate for a child-centred therapeutic approach to the treatment of children and young people in detention and as they transition from detention. This includes:

- access to criminogenic needs programs,
- proper access to mental health and drug and alcohol detoxification services,
- access to specialised and individualised therapeutic intervention programs,
- access to timely legal advice and representation,
- access to appropriate supports and assistance for cross-over children moving between out of home care and detention,



- access to a supportive, integrative and responsive referral pathways and the ability for these to continue upon release,
- the development of effective throughcare,
- access to housing and recreational activities,
- access to NDIS case managers and treatment plans both within detention and upon release.

#### *4. Training and support initiatives for corrective service staff related to increasing individual well-being, professionalism, resilience and reduced absenteeism*

Realising a truly therapeutic approach to youth justice requires a highly qualified, trained and resilient workforce across the youth justice continuum that is committed to supporting children and young people in and out of detention, using trauma-informed and developmentally appropriate practice.

For further information, see previously mentioned submissions, including my Youth Justice Submission.

It is also important to remember that children and young people who are detained following arrest by Tasmania Police are routinely held in adult reception prisons managed by the Tasmania Prison Service (TPS) pending interview/investigation or court. In my view, a reception prison is neither a child-centred nor therapeutic environment in which to hold a child even for a short period of time, and TPS staff do not currently have appropriate trauma and child development training to support and respond to the complex behaviour that children and young people may exhibit in this environment.

#### *5. Innovations and improvements to the management and delivery of corrective services that may be applied in Tasmania, including to future prison/detention centre design*

Informed by evidence and my experience as the independent advocate for young people detained under the YJ Act, the physical environment of a detention facility is a significant but by no means the only factor in helping, or hindering, a young person's rehabilitation.

Any detention facility for the very small number of young people who may be detained must fully adopt a therapeutic, child-safe, culturally safe and trauma-informed approach. See for example the matters set out in former Commissioner Morrissey's advice to the Tasmanian Government (available as an attachment [here](#)).

In reimagining future prison/detention centre design there is an urgent need to address the use of adult custodial facilities as the 'front door' to the youth justice system. Reception prisons are neither child-centred nor therapeutic environments in which to hold a child as young as 10 even for a short period of time.

I note the Tasmanian Government is currently pursuing reform of the entire youth justice system. This includes a commitment to closing Ashley Youth Detention Centre, the development of a new therapeutic model of care across the entire continuum, and the construction of five new purpose-built facilities which, in my view, should be focussed on a therapeutic approach to supporting young people exhibiting harmful behaviour. I would strongly encourage the Committee to seek up to date information specific to these reforms directly from the Department for Education Children and Young People



## 6. *Any other incidental matters*

I would urge the Committee to also consider as part of its Inquiry the impact of imprisonment on children of prisoners. Almost 2 in 5 (38%) of prison entrants have child dependants.<sup>7</sup> Incarcerations impact communities but can be especially harmful to children where the parent-child relationship is affected.<sup>8</sup>

Tasmanian sentencing law does not specifically mention the likely impact of a parent's incarceration on a dependent child. Children's wellbeing can be deeply impacted by the incarceration of a parent including their mental health, social behaviour, education outcomes, and cause financial hardship. They can also experience social isolation and stigma. While no means determinative, children of incarcerated mothers are also more likely to be in out-of-home care and have contact with the criminal justice system.<sup>9</sup>

I look forward to engaging further with the Committee during its Inquiry and, as indicated above, would welcome an invitation to participate at a witness in any Committee Hearing.

Yours sincerely

**Leanne McLean**

Commissioner for Children and Young People

cc    *The Hon Roger Jaensch, Minister for Education, Children and Youth*

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<sup>7</sup> [AIHW 2018, The health of Australia's prisoners.](#)

<sup>8</sup> AIHW 2018, The health of Australia's prisoners.

<sup>9</sup> AIHW 2018, The health of Australia's prisoners.