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Parliament House
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Submission to:
Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

Civil Liberties Australia thanks the Committee for the opportunity to contribute by making this submission. As Members of Parliament likely know, CLA has had a strong membership active in liberties and rights matters in Tasmania for decades.

We also thank the Committee for establishing such widely-cast Terms of Reference, which allow an unusual opportunity to analyse and present concepts across a range of entities and systems that, together, comprise much if not most of the "ethical infrastructure" of Tasmania.

CLA believes this Committee has the opportunity, because of such Terms, to make a significantly meaningful difference to a more positive future for the people of the State, particularly in terms of their "getting a fair go".

1. Factors influencing increases in Tasmania's prisoner population and associated costs:

Firstly, because it is an issue at the top of list of matters being considered by Attorneys-General of all Australian States and Territories currently, we observe that bail conditions are not fit for purpose.

Repetitive changes by politicians trying to demonstrate they are "tough on crime" have proved ineffective Australia-wide.

The Tasmanian bail laws need rewriting ab initio.

Criminals are criminals because they ignore the law, including bail law.

So, making bail "tougher", or increasing penalties in terms of fines and jail time for crime, will have no effect on preventing rates or types of crime. Preventing and deterring crime takes much more effort than parliaments have so far been prepared to give to the challenge, in terms of funds and people.

Significant factors affecting imprisonment/detention rates in Tasmania include:

- law enforcement;
- the current state of forensic science including a lack of independence from police;
- legislation and mandatory sentencing provisions;
- issues within the legal profession/legal aid and the courts (including a lack of support for vulnerable witnesses); and
- a system which blocks access to information, does not inspect/ investigate appropriately and therefore fails to ensure accountability and the taking of necessary corrective action.

We have concentrated in this submission on areas of concern in Tasmania that other submitters to the Inquiry may not be as aware of as we are. We offer these comments in the hope that the justice-legal-corrections system in Tasmania can be improved significantly: we see no reason why Tasmania should not seek to be world's best practice standard. We have been and are close observers of the problems with two important and recent criminal cases in Tasmania: those of Sue Neill-Fraser and of Jeffrey Thompson, both with ongoing aspects.

Police are the gatekeepers to the system (as investigators and forensic practitioners in the areas of ballistics, fingerprints, tool marks, crime scene investigation and photography, etc) and if they are getting it wrong, for a wide variety of reasons, then the wrong people are ending up in prison. Unethical behaviour, incompetence, over-zealous policing, unvalidated/improper forensics and tunnel vision are some of the reasons identified in research worldwide which lead to wrongful convictions and miscarriages of justice. We refer you to a seminal article on the causes of miscarriages of justice here in Australia: 26.pdf (austlii.edu.au) and the US Innocence Project at www.innocenceproject.org

There is no sense, or proof, that Tasmania Police (TasPol) is free from these problems.

In fact, the failure to hold TasPol to account by any public inquiry into the force/service, ever, makes it more likely than not that TasPol may be more likely than not to have more than its fair share of such cultural and organisational problems.

For example, TasPol was singled out for bad practice in recent Reports of the Commonwealth Ombudsman (into the handling and management of stored communications and telecommunications data). TasPol was the subject of numerous recommendations and better practice suggestions after being found to lack a proper culture of compliance.

None of these issues have been mentioned in the annual reports for Tasmania Police, despite attention to compliance with the law being an important issue for a police entity. When senior police give hollow assurances to the Tasmanian public about their culture of compliance in the electronic surveillance domain, it displays denial and lack of accountability.

The Committee may care to refer to the report by the CEO of Civil Liberties Australia on 26 September 2022: https://www.cla.asn.au/News/tas-police-secret-illegal-keepers-of-the-dark-arts/

Note, an earlier report not analysed by CLA in the above article was the March 2019 report of the Commonwealth Ombudsman which found 53 instances of "destruction related non-compliance" regarding stored communications, which coincided with the time of the "Thompson matter" (1 July 2016 to 30 June 2017) (Commonwealth Ombudsman 2019, 81).

(The Thompson matter – possible illegal surveillance of privileged lawyer-client conversations at Risdon Prison in 2017 – is subject to a special review currently by a former Tasmanian Solicitor-General. The Tasmanian Government is currently struggling with how to permit a retired outsider to access secure and legally-protected information for the purpose of analysing possible illegal police behaviour).

The non-compliance with Commonwealth surveillance legislation is but one example of a culture of non-compliance with critical legislation by TasPol and its inability to be transparent about such failures in a key document like its Annual Report. Such actions diminish trust and confidence in TasPol and raise issues about compliance with professional standards and other legislation.

In criminal cases, a different type of legal obligation to disclose all relevant material to the defence by the Crown (TasPol and the Office of the Director of Public Prosecutions, ODPP) can be another key source of wrongful conviction and imprisonment/detention, as well as lengthy and costly delays to courts at all levels.

There are enormous economic and social costs to the State in relation to wrongful convictions. The Sue Neill-Fraser case illustrates the point. There has been close to $2m in direct imprisonment costs: on top of that substantial sum, there have been significant costs to the Crown involved in maintaining the conviction through various appeal processes and the collateral investigations and prosecutions where the State has sought to attack those who have spoken up about injustice or alleged inappropriate actions by the Crown.

We refer the Committee to the Etter/Selby papers tabled by the Hon. Mike Gaffney in the Legislative Council on 31 August 2021 and his adjournment speech – https://www.parliament.tas.gov.au/lc/proceedings/2021/LCDaily31August2021.html – (from page 78) to illustrate the deficiencies in police investigations and the important issue of failure to disclose.

Key items that were not disclosed in the Sue Neill-Fraser matter include:

1. Police Disclosure Folder 13, including the Youth Justice Action Report & Complaint relating to Ms Meaghan Vass whose DNA was found in a large luminol positive area on the deck of the Four Winds yacht;
2. Information concerning the associates of Meaghan Vass who were known to break into boatyards and steal from boats, as publicly stated by former Inspector Peter Powell on film in June 2012;
3. The 21 page Offence Report 357150 of 2009, relating to "Destroy/Injure Property" of the Four Winds yacht, which was added to over the years;
4. The handwritten contemporaneous notes of Sinnitt's conversation with Mr Peter Lorraine on 27 January 2009, regarding the sighting of a dinghy, yacht and man at the critical time of 5 pm on Australia Day 2009 which were not disclosed until August 2018;

5. The failure to advise of the loss of the critical red jacket in a police car park for 3 days – instead presenting it in court as an exhibit with a continuous chain of custody; and
6. The Disclosure Report – Intel Submission re Occurrence TA10900448380 which relates to the search of premises in Derwent Park on Wednesday 11 February 2009 and which appears, given additional information in the form of a sworn affidavit, that the search (involving Inspector Peter Powell) may have involved a search for a fire extinguisher – an item that formed an important part of the Crown body disposal theory.

In relation to forensic issues, Tasmania lacks a truly independent and impartial forensic science service when it comes to forensic exhibit management, forensic biology, DNA testing, toxicology and chemistry. FSST claims to be independent but it is administratively within police, under the Commissioner. See Forensic Science Service Tasmania (FSST) - Tasmania Police. The website actually states *"FSST is impartial and is operationally independent of Tasmania Police"*, which is misleading at best. FSST is currently headed by a career police officer and not a mainstream forensic scientist.

CLA can point to what we believe are examples of a lack of impartiality and independence over the years, particularly relating to the Sue Neill-Fraser case.

Crime scene investigation and reconstruction are said to be "the most intellectually challenging and demanding activities within forensic science" (Roux et al 2022 at p.6 at The Sydney declaration – Revisiting the essence of forensic science through its fundamental principles - ScienceDirect). Yet, Police Forensic Services (PFS), a section of policing which is within Tasmania Police, is one of the few (if not only) Australian police forensic bodies that does not hold appropriate NATA accreditation like their counterparts in other States and Territories (eg. For SA see: Forensic Response Section and Fingerprint Bureau - Accredited Organisation (Site No. 15871) - NATA. For NSW see: Sydney Police Centre Forensic Services Group - Accredited Organisation (Site No. 15749) - NATA. For Victoria see: Victoria Police Forensic Services Centre, Macleod - Accredited Organisation (Site No. 14226) - NATA. For Queensland see: Forensic Services Group, Brisbane - Accredited Organisation (Site No. 15472) - NATA). For the AFP see: https://nata.com.au/accredited-organisation/forensics-canberra-office-10821-10814/.

FSST (the laboratory and scientist section of TasPol), which is physically separate to PSF (ballistics, fingerprints, photography, the critical first crime scene examination, etc) currently holds NATA accreditation in ISO/IEC 17025 which relates to laboratories.

The recent Sofronoff Inquiry in Queensland (Commision of Inquiry into Forensic DNA testing in Queensland - Final Report (health.qld.gov.au)) has also highlighted significant issues in forensic science, including DNA testing. This includes quality management and accreditation and the importance of strong and honest leadership/administration and independence and impartiality.

Sofronoff was commissioned to report on whether the methods, systems and processes used in the collection, testing and analysis of DNA samples in Queensland were consistent with best practice. If there was any deficiency, he was required to identify the reasons for that failure (2022, p.xii).

His Inquiry has had enormous consequences for the criminal justice system in Queensland. See $95 million in immediate measures to address Forensic DNA Commission of Inquiry findings - Ministerial Media Statements.

The Queensland Government will provide an initial investment of more than $95 million to establish a new framework to drive significant reforms to DNA and forensic services as part of its response to recommendations from the Commission of Inquiry into Forensic DNA Testing in Queensland. There are also implications for those whose cases have already been dealt with (with thousands of cases under review) and for those people currently in prison with the recent emergence of appeal applications.

Sofronoff looked at the location of the Queensland DNA laboratory as an appendage of the Department of Health and said it was an "inapt fit" (p.xii). He recommended structural change and stated that the laboratory should sit as an independent office within the Department of Justice and Attorney-General (p.xiii).

Sofronoff further stated that there must be an independent and quality-minded scientist at its head, who keeps the scientific integrity of the laboratory and its purpose to serve the criminal justice system squarely in mind. The laboratory had to be "the independent provider of DNA evidence to the criminal justice system" (p.xiii). He stressed the importance of independence at p.27. He further stated at p.28:

> An underlying principle that has emerged from all sources of expert evidence is the need for scientists who are evidence gatherers to be independent of prosecution authorities and be seen to be independent and impartial.

Sofronoff looked at External Quality Assurance (pp.142-148) and stated that there were two types of external review undertaken i.e. NATA accreditation and proficiency testing. Outside of the NATA accreditation process, Sofronoff noted that the Queensland laboratory had not engaged in any in-depth external review of its scientific processes in the past 20 years (p.142). Importantly, Sofronoff stated that confidence based on NATA accreditation was "misconceived". **The accreditation did not establish that the systems and processes were best practice or even appropriate** (p.301).

Sofronoff commented that the ISO/IEC 17025 standards for "testing and calibration laboratories" is a broad and generic standard for laboratories. It is not specifically written for forensic laboratories (p.142). He further stated that the standard would not consider the integrity of the forensic science aspects of the laboratory. It is not part of the NATA accreditation process to determine whether the laboratory is actually operating in accordance with best practice (p.143). Sofronoff stated (p.144):

> In my view, the current NATA assessment, against ISO 17025 alone, is not sufficient external review for a forensic service provider and does not guarantee the scientific integrity of the work of an organisation.

Sofronoff went on to recommend further accreditation against the four Australian Standards for Forensic Analysis (p.144). He could see no reason why the laboratory should not be accredited to the Forensic Analysis standards (p.145). He also went on to make recommendations for change in relation to Proficiency testing (p.146). FSST in Tasmania, like Queensland, currently only holds accreditation against ISO 17025.

Sofronoff found that the lack of adequate quality management has had adverse consequences for the scientific integrity of the work of the Queensland laboratory. He found that there were insufficient resources dedicated to the quality function, given the challenges facing the laboratory, the complexity of DNA work and its importance in the criminal justice system. He found that the quality management of the laboratory must be appropriately funded and resourced (p.148).

All is not well in forensic science in the State of Tasmania: this important area needs to be examined to ensure that Tasmanian forensic services (both within Police and within FSST) are contributing accurately and reliably – to appropriate legal and scientific standards – to the criminal justice system and legal imprisonment.

An error through lack of quality, competence or appropriate care – allowing, say, contamination between two samples – can cost a person 20 or more years wrongfully in jail, with all the add-on costs to the person, their family and the State that can flow from a simple mistake.

A number of leading Australian and international forensic scientists recently stated in *Forensic Science International* (Roux et al Vol.332 March 2022 111182 at p.1 – see https://www.sciencedirect.com/science/article/pii/S0379073822000123):

> Forensic science is seen as a mainstay of the criminal justice system. This view is contrasted by ongoing and sometimes significant debates about its effectiveness and reliability that have developed over the last decade [1], [2], [3], [4]. Critical issues that have been identified and are most discussed include backlogs [5], quality management [6], [7], [8], [9], bias mitigation [10], [11], and evidence evaluation and communication [13], [14], [12], [15]. Many partial solutions have been proposed over the years; however, **forensic science remains in an intractable state of crisis** [16], [17], [18], [19]. (emphasis added)

Such criticisms also follow two **major** international reports which are still resonating throughout the forensic community: National Research Council (US) *Strengthening Forensic Science in the United States: A Path Forward*. The National Academies Press, Washington DC 2009 and President's Council of Advisors on Science and Technology (PCAST) (2016). *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature Comparison Methods*. Washington DC.

The problem is exacerbated in Australia, and therefore in Tasmania, with the lack of a Forensic Science Regulator such as in the UK and the lack of publicly accessible forensic standards for Australia which are open to public inspection and scrutiny. The current National Institute of Forensic Science (NIFS) sits under ANZPAA, the Australia New Zealand Policing Advisory Agency. It is essentially controlled by police: members are the Police Commissioners from each jurisdiction in Australia and New Zealand, and the Chief Police Officer from the ACT (although an Australia New Zealand Forensic Executive Committee (ANZFEC) with broader membership was added as an advisory body in more recent years – see Governance NIFS - ANZPAA Website).

The Hon. Frank Vincent in reviewing NIFS in 2014 indicated that such a body should sit

outside of police and act as an independent organisation. See Independent Review of The National Institute of Forensic Science (1).pdf

The Vincent Review found at p.4 that the Institute is ideally a stand-alone, independent body and that this should be the ultimate goal. This has not yet occurred and the financial commitment given to the coordination and oversight of quality management and research and innovation in Australia is inadequate.

Sadly, it seems that forensic science has not improved significantly since Lindy Chamberlain in 1980 and the Morling Inquiry in 1987. One only has to consider the ongoing forensic debacle of Henry Keogh in South Australia, which is still playing out in the SA Parliament from a case begun in 1994.

The Sue Neill-Fraser case in Tasmania has identified a myriad of local issues in forensic science including:

- false and misleading evidence in relation to luminol testing and "blood in the *Four Winds* dinghy";
- the issue of lost and missing critical forensic exhibits (including the red jacket which was lost in the police car park for several days but still presented as an exhibit of integrity with a continuous chain of custody);
- the flawed winching “reconstruction”;
- basic crime scene management errors (contamination, failure to keep a crime scene log, failure to preserve the crime scene appropriately);
- the lack of proper “expert” evidence (including adequate written expert reports) from FSST in major criminal cases;
- loss of key exhibits including a small blue towel and possible vomit rags and the disappearance of a number of logged-in exhibits without explanation from the major Forensic Biology Report;
- flawed use of controls in the luminol testing of the dinghy;
- the claim that a 14 kg fire extinguisher would effectively weigh down a dead body (see 2010 T 861-862); and
- non-disclosure of key email communications between police and an FSST scientist regarding the Meaghan Vass DNA sample prior to trial.

Legislative provisions which involve mandatory sentencing and provisions which effectively reverse the onus of proof may also be contributing to additional burdens on a struggling prison system. For instance, there appear to be problems with the legal concept of possession under the current Tasmanian firearms legislation. CLA is aware of a case involving possession of a loaded firearm charges where it is alleged that police planted the subject firearm and cartridge and achieved a conviction. It is claimed that all the relevant body camera footage and other relevant information was not disclosed.

In relation to the legal system, there has been significant discussions in the media in Tasmania in recent times about the lack of practising criminal lawyers which is impacting on the ability to deal with matters expeditiously. Not being able to secure a competent criminal lawyer would also, no doubt, be impacting on the quality of defence provided to those charged.

An article in *The Mercury* by Blair Richards dated 2 February 2023 quoted the Law Society as saying that the State is in the grip of a defence lawyer shortage with no end in sight to the pressure causing the backlog of court cases. The President of the Law Society was quoted as saying that the Law Society offered a rebate on practising certificates for private practitioners who performed more than 50 per cent criminal work. Only 14 practitioners claimed the rebate and certified that they spent 50 per cent or more of their time in criminal practice (which did not include the separate bar or Legal Aid). That was out of about 750 practitioners in firms or 2.5% of lawyers in private practice.

Lack of appropriate funding within the Legal Aid system must also contribute to the State's imprisonment problem. Legal Aid funding has been in decline nationally, and in Tasmania, for decades.

The court system in Tasmania has long been criticised over a range of issues. With no Judicial Commission, as exists in other States and Territories, to allow for the investigation of judicial conduct and practice, there is no mechanism to correct problems.

There is clearly inadequate support for vulnerable witnesses in major crime cases in the Supreme Court as evidenced by what occurred with Meaghan Vass in the witness box in the Sue Neill-Fraser appeal in 2021. Support mechanisms must be in place to ensure that vulnerable witnesses can give their evidence fully, truthfully and without the fear of retribution (by the proper use of suppression orders, etc). If witnesses in our criminal justice system cannot give full and frank evidence without being in fear, the criminal justice system will end up imprisoning the wrong people or continuing to imprison the innocent.

The legal-justice-corrections system is also not able to identify errors and take corrective action while it has an ineffectual Integrity Commission which refuses to investigate legitimate complaints of wrongful conviction and unethical and inappropriate practices by key players within the criminal justice system.

Within TasPol, the quality of police professional standards investigations "into their own" is consistently criticised by members of the public who come in contact with what they strongly believe is inappropriate – or worse – police behaviour.

The same can be said for inspection entities, such as the Ombudsman's Office, when it comes to fundamental issues such as the proper/legal use of surveillance devices by police.

Systemic failures such as those outlined are further exacerbated by the RTI system in Tasmania where there are significant delays (of years) in appealing decisions, and little accountability for dismissive approaches to applications by agencies such as TasPol.

Overall, national observers believe there is a clear lack of transparency and accountability in the criminal "justice" system by comparison with other States and Territories. Sadly, the Tasmanian system is less than fit for purpose and is considered well and truly "broken" because it is seldom refreshes itself by importing progressive external developments implemented "on the Mainland".

All of the above factors operate to increase imprisonment/detention costs and the associated and significant social and economic costs. They also act to decrease trust and confidence in Tasmania's criminal justice and legal system.

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

Getting it right in the first place will save everyone time, money and angst.

Identifying and correcting cultural problems by a series of inquiries into aspects/entities comprising "the system" (including policing and forensic services) should be a recommendation of this Inquiry.

Tasmania needs a thorough review of its "ethical infrastructure", that is to say the entities and connected systems which ensure the rule of law is working properly across the justice-legal system.

Just like physical infrastructure – roads, bridges, ports, electricity and water supply, for example – there is an ethical infrastructure that needs regular inspection and maintenance. Tasmania has fallen down in ensuring its ethical infrastructure is kept fit for purpose and updated for the 21st century.

Investing more money in crime prevention initiatives will reduce crime much more effectively than creating longer sentences, introducing further mandatory sentencing or restricting bail or parole without evidence from elsewhere that the measures taken will make a difference.

Ensuring police concentrate their efforts on the crime the community most wants attended to will improve the relationship between the police and public. In this regard, it is important for the Parliament to confirm, or otherwise, that the people's priority is chasing minor drug offences and offenders involving personal use and carriage crimes, rather than putting saved resources in that area into closer and quicker attention to domestic violence matters. The entire question of allocation of priority to the employment of police resources in Tasmania should be opened up for public debate and decision-making in conjunction with the people, rather than simply by TasPol custom.

It is essential to ensure a highly trained, competent and ethical police service (as free as possible of known cultural problems which sadly infect police organisations) and a competent and impartial and independent forensic services system as a starter.

There also needs to be a cadre of highly trained criminal lawyers within the legal profession in Tasmania and appropriate funding for legal aid (along with criteria for eligibility that allows proper representation for appropriate people).

The Parliament needs to commission a research report into the best 10 strategies worldwide that have worked in the areas of prime interest to the Inquiry. The Inquiry should recommend strongly that the Parliament adopts 5-7 of them to Tasmania's situation, and implement them with sufficient budget funds and staffing to make a difference.

Steps should be taken to measure the impact after 2 and 5 years. Keep – and fund and staff adequately – the ones that are working well and then discard the rest.

The 'justice system' is like the wheel of a bus that transports society towards a better place. But like the bus wheel, it won't roll along properly and efficiently unless it is suitably and strongly aired internally, integrated as efficiently as possible and smoothly functioning on both inside and outside. If any aspects of the legal elements or services that operate jointly to deliver the wheel of 'justice' are lumpy, they will make the ride uneven, uncomfortable, unfair on individuals and dangerous to society as whole. There are clear signs of lumps in Tasmania's legal services delivery. Police are the gatekeepers of the "justice system", which is why our analysis and suggestions begin with them.

Police:

There has never been an inquiry into the efficiency and effectiveness of Tasmania Police. No-one can say whether or not TasPol operates to a high standard relative to other Australian and world equivalent (NZ, Canada, Scotland say) police forces.

Indications are they don't. From actual experience of following two major cases closely and issues that have arisen from them, Civil Liberties Australia can say with confidence that TasPol operates less than ideally in some areas: Basic police competence, such as securing a crime scene (Four Winds yacht), evidence handling and chain of custody (red jacket), staging a" reconstruction" (winching a body) or proving a contention made in evidence (fire extinguisher will weigh down a body) or filling in a surveillance device warrant application correctly and ensuring that legally privileged conversations are not recorded.

There is also the matter of Failure To Disclose (FTD) relevant information to courts (including in a timely way) (such as the loss of a key exhibit for some days (red jacket)). Note, FTD is an ongoing and current problem. See the exchange of messages by Hobart barristers in March 2023, and the complaint by the Law Society of Tasmania, in Appendix A: "a backlog of 600 cases".

In addition, there are issues with Right To Information, including with Tasmania Police. Across the Tasmanian government, RTI applications are treated with disdain by bureaucrats. With RTI frequently the only way to secure information to assist with a legal case, an unresponsive, slow and reluctant bureaucracy can be like a brake on the wheel of the justice bus.

Overseas experience indicates there are a range of well-established, evidence-based strategies which could enhance policing and reduce contact with the justice system in the first place. Sadly, Tasmania has not continued to embrace such developments in policing over decades, and possibly therefore requires going back to fundamentals (see for instance basic failings in doorknocking and call-taking and keeping records of key briefings and meetings in the Sue Neill-Fraser case).

Forensic science:

The Queensland Sofronoff Inquiry (2022), as discussed above, provides a useful blueprint for beginning reform in forensic science services in Tasmania and in Australia. A malfunctioning forensic laboratory has enormous implications for the broader criminal justice system.

Tasmanian forensic services should abide by national Codes of Conduct and proper regulation as in the UK under a Forensic Science Regulator scheme. Note: CLA has recently asked the federal Attorney-General, Mr Mark Dreyfus, to introduce such a scheme to Australia.

Another important evidence-based strategy is the need for defence to be able to access independent forensic testing including DNA testing. Sofronoff recently made strong recommendations in this regard (see pp. 474-479).

See Appendix A for this matter also: If forensic science incompetence by a government laboratory – Australian Sports Drug Testing Laboratory (ASDTL) – can destroy an athlete's career (as was happening in the case of Peter Bol), and that is considered publicly as a major issue, how much more important is it that forensic science laboratories servicing Australian police forces/services are suitably tested regularly and independently for their quality levels and subject to much more stringent independent comparison and regulation. Forensic Science Service Tasmania can send people to jail for decades, without necessarily being able to demonstrate that it is as competent as the laboratory that nearly cost Bol's career, or that it is sufficiently independent from TasPol. The Bol case also demonstrates the critical importance of independent forensic testing.

In the criminal justice area, Australia should follow the lead of the US where 50 states now have post-conviction DNA testing access statutes. Before the passage of post-conviction DNA laws in the USA, it was not uncommon for an innocent person to exhaust all possible appeals without being allowed access to the DNA evidence in his/her own case.

As of January 2020, the Innocence Project has documented more than 375 DNA exonerations in the United States. Twenty-one of these exonerees had previously been sentenced to death. See Research Resources - Innocence Project

As of February 6, 2020, the National Registry of Exonerations has 2,551 known exonerations in the United States since 1989. See National Registry of Exonerations - Wikipedia

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

See solution to 1. above: pick the best 2 examples in these areas, fund and staff properly.

Ask the Parole Board, which seems to be one of the most practical and successful entities in the Tasmanian 'justice system', for ideas.

Ask prisoners themselves (consider remissions for the best ideas put forward, and further remissions for prisoners who make their own ideas work).

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

Allow staff to train alongside inmates to achieve TAFE qualification certificates, leading on after a number of years evaluation into university study schemes.

Provide meaningful and rewarding 'work' such as building small houses to help solve homelessness problems.

Encourage the learning and use of computers and technology in jails, by inmates and staff, in particular to undertake courses of education and training.

Ask the staff and inmates what their ideas are.

Survey the best innovations for prison staff worldwide in the past 5-10 years.

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;

Look to the Scandinavian models of prison building and management. Research the latest prisons built and modernised in the USA, as their approach to cost savings in prison management has improved dramatically. Adherence to human rights principles is essential in any cost cutting exercise.

6. Any other incidental matters.

We have included recommendations in the text above. However, here are the over-arching reforms that we believe are needed to be started urgently, and to be completed within 10 years:

- Create a Judicial Commission for Tasmania. Seek advice from other States and Territories as to its setting up and operation.
- Hold the first-ever inquiry in Tasmania into the general functioning, quality and integrity and priority-setting of TasPol (Note: there have been inquiries into individual matters, but not a service-wide analysis, which should be undertaken at least every 25 years).
- Review particularly all Tasmania Police surveillance-enabling laws, rules and guidelines, simplify them and ensure they meet world's best practice in relation to human rights and civil liberties. Bring in people from outside Tasmania to be at least 50% of the inquiry panel, and include social society-human rights-civil liberties people on the panel.
- Undertake a review by an independent entity of the Tasmanian Police Manual.
- Conduct a major review of FSST and TasPol Forensic Services in light of the Queensland Sofronoff Inquiry (particularly in relation to accreditation and quality management) and the need for independence and impartiality.
- Implement a legislative basis for post-conviction DNA testing as in the USA. See Access to Post-Conviction DNA Testing - Innocence Project and implement a recommendation re defence testing as outlined in the Sofronoff Inquiry (see above)
- Urgently reform disclosure requirements, rules and guidelines in Tasmania and make it a requirement in serious crime that there is some form of certification by the Crown that full disclosure has occurred.

- Re-acculturate, by actively changing the attitude of the Tasmanian Public Service as to its responsibilities in relation to RTI.
- Do not employ private prison or juvenile detention contractor companies.
- Upskill existing and future corrections staff by much increased in-house, at work, training and education program availability and study time allocation.
- Bring in a Human Rights Act for Tasmania, along with a 'No Rights Without Remedies' approach as is being introduced in the ACT over 2023-2024, and is likely for introduction in relation to federal matters in 2024. (The basis of such Human Rights Acts already operate in the ACT, Victoria and Queensland).

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Appendix A:

1. Legal complaints about TasPol by local lawyers

Tasmania's police don't take disclosure seriously: barristers

Recently, Tasmanian lawyers who face the FTD problem regularly before that state's magistrates and higher courts have spoken out in *Twitter* exchanges:

Here is Tasmanian barrister Cameron Scott, discussing the issue of police FTD with other barristers in late February and early March 2023:

1. "Long story short, they have 1 person whose job it is to make disclosure in about 12000 cases each year. Tasmania Police doesn't take disclosure seriously…

2. "This was the message today from (TasPol) to a local solicitor chasing up a request for full disclosure: *'Therefore all Magistrate files are on hold until further notice.'*

"Summary cases are in chaos."

3. Fellow Tasmanian barrister Greg Barns replied: "Disgraceful."

4. Another barrister, Fabiano Cangelosi (photo), described how the problem was "hidden" from the public, whereas magistrates wanted it publicised, and fixed by the government:

"Magistrates often remark on how police treat the court with contempt because of disclosure practices – and sadly observe that the media box* is empty, and that government still has not brought into force the Magistrates Court (Criminal & General Division) Act."

("media box is empty": that is, there's no reporter in court to inform the people when TasPol fails to live up to its obligations to disclose which, according to numerous sources, including barristers and lawyers who deal with the problem almost daily, is not uncommon).

Lawyers call for police to act responsibly

Law Society of Tasmania President Amanda Thompson has written to Tasmania Police to speed up their disclosure of evidence to defence lawyers to hasten court processes.

"The letter addresses an issue that summary matters were on hold for disclosure and only indictable matters were being dealt with," Ms Thompson said, as reported by Nick Clark in *The Examiner,* Launceston.

The Supreme Court has a backlog of more than 600 indictable cases. Lawyer's Alliance president Greg Barns said tardy disclosure had three dire consequences for defendants.

"One, they can't get their case heard; two, they have to pay for their lawyer to go to court for a mention of the matter, and most seriously, in some cases, people are languishing on remand [in custody]," Mr Barns said.

He said some defendants had to pay $50 to get the evidence against them.
https://www.examiner.com.au/story/8114703/lawyers-want-police-to-speed-up-the-provision-of-evidence/?cs=7661

– both items, CLArion newsletter of Civil Liberties Australia, April 2023

2. Peter Bol case

Peter Bol's lawyers claim 'blunder of epic proportions' after independent labs find no EPO

- Legal team sent runner's sample to two independent labs

Kieran Pender *Wed 29 Mar 2023 The Guardian (Australia edition)*

Lawyers for the Australian Olympic star Peter Bol have blasted anti-doping body Sport Integrity Australia (SIA) as "completely wrong", in a letter alleging that Bol's sample which tested positive for synthetic erythropoietin (EPO) never actually contained the performance-enhancing drug.

The letter declares that Bol "is innocent and always has been". It calls on SIA to publicly end the ongoing anti-doping investigation and admit its mistake.

Peter Bol: what does an atypical doping test result mean for the Australian athlete?

Bol, who rose to prominence with his heroics at the Tokyo Olympics, tested positive for the prohibited substance in his A sample in January. But last month his B sample returned an atypical finding, which saw his suspension from competition lifted, although SIA's investigation remains ongoing.

The saga has now been reignited by the letter, from Bol's American lawyer Paul Greene of Global Sports Advocates. In the correspondence, sent to SIA last week, Greene alleges that the government body was "wrong" to conclude that Bol's A sample contained synthetic EPO, "wrong" to conclude that the testing had complied with international standards, and "wrong" to continue the investigation "when there is no evidence whatsoever that Mr Bol ever used synthetic EPO".

https://www.theguardian.com/sport/2023/mar/29/peter-bols-lawyers-claim-blunder-of-epic-proportions-after-independent-labs-find-no-epo

ENDS