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Dear Committee members,

Thank you for the opportunity to make a submission to the *Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters*.

Background

In 2014 the Liberals came into office with a 'tough on crime' agenda.¹ These sorts of policies have been long understood to be populist and ineffective.^{2,3}

Unsurprisingly, after nine years of 'tough on crime' policies, the system is at breaking point. Figure 1 shows the imprisonment rate has increased by 33% on

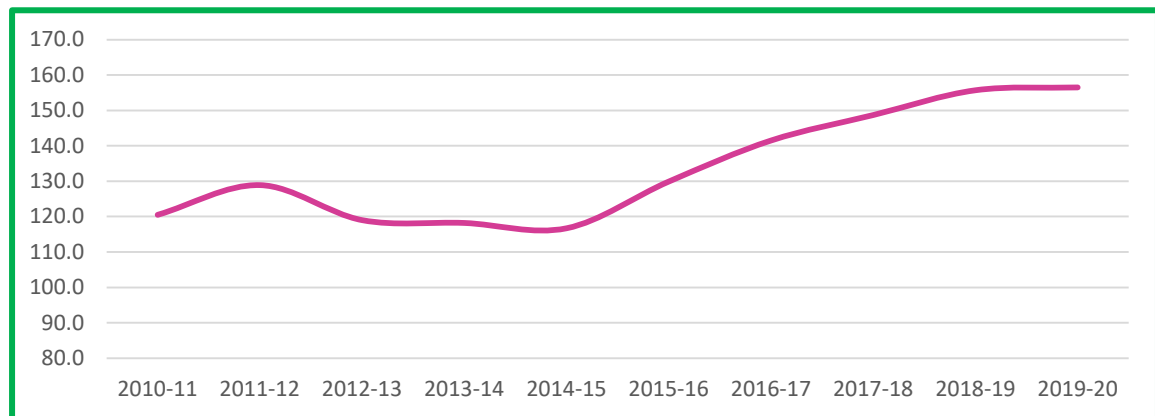
¹ Tasmanian Government, [Getting Tough on Crime](#), 2014.

² Mauer, M, [Why Are Tough on Crime Policies So Popular](#), Stanford Law & Policy Review, Vol 11, no. 1, 1999.

³ Hickman, M, [Crime in the streets – A moral panic: Understanding "get tough" policies in the criminal justice system](#), American Journal of Criminal Justice, Vol. 7, 1982, 2016.

2013-14 levels. As a result, prison design capacity utilisation in 2019-20 averaged at 93%, up from 77% in 2013-14.⁴ This has led to many harmful flow-on effects. The time spent out of cells has decreased from nine hours a day to seven, leading to greater isolation, boredom, less physical exercise opportunities – and a consequent increase in assaults.⁵

Figure 1: Imprisonment rate per 100,000 adults⁶



The prison system has been plagued with problems. Prisoners are ‘double bunked’ when space is limited, with no formal risk assessment taking place.⁷ There are poor behaviour management practices, and no dedicated facilities for the protection of prisoners.⁸ Sentences are calculated incorrectly, resulting in some prisoners being released early and others being incarcerated longer than their lawful sentence.⁹

These are just a sample of 90 odd issues identified in one inspection report of Tasmania’s custodial services.¹⁰

The punitive response to crime has significant negative financial implications as well. In real terms (excluding indexation), prior to 2014 the costs of corrective services were increasing by, on average, slightly over 2% a year. Since then, the

⁴ Productivity Commission, [Corrective Services](#), Report on Government Services 2021, Part C, Section 8, 2021.

⁵ Ibid.

⁶ Ibid.

⁷ Office of the Custodial Inspector Tasmania, [Inspection of Adult Custodial Services in Tasmania](#), 2018.

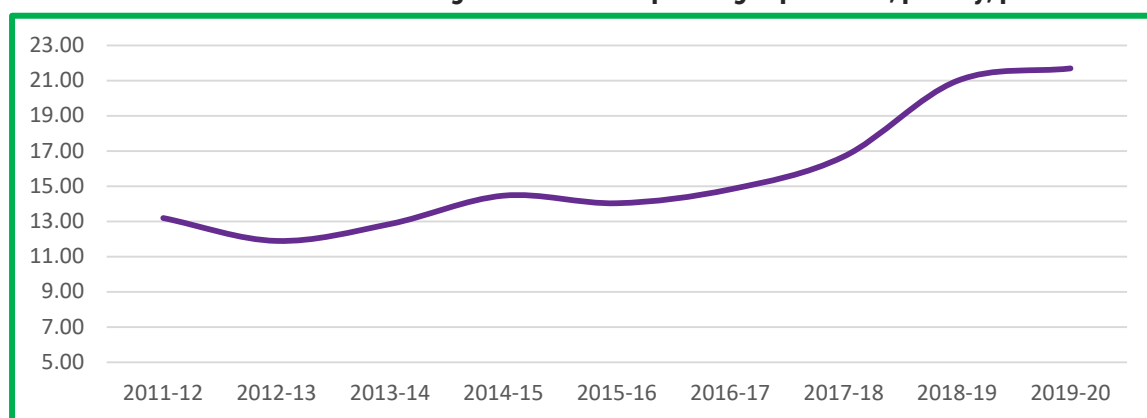
⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

average increase has been 6% a year.¹¹ Annual expenditure on corrective services has increased from \$56 million (2013-14), to \$81 million (2019-20). The costs per person are also increasing. Figure 2 shows the daily cost to house an inmate has increased by almost 70% since 2013-14.

Figure 2: Real net operating expenditure, per day, per offender¹²



The increase in resourcing by the government – although significant – has been inadequate. An audit by the Tasmanian Audit Office (2019-20) on the use of resources found the Tasmanian Prison Service failed to accurately predict, and allocate, appropriate resources to meet the needs of increasing inmate population.¹³

These all point to an unsustainable system that is needlessly costing the community, and is having the effect of increasing offending.

Prison Programs

The tough-on-crime approach adopted by the government has virtually eliminated restorative justice effort. One audit noted *“activities directed at rehabilitation of prisoners were almost non-existent in all facilities.”*¹⁴

¹¹ Productivity Commission, [Corrective Services](#), Report on Government Services 2021, Part C, Section 8, 2021.

¹² Ibid.

¹³ Tasmanian Audit Office, [Tasmania Prison Service: use of resources](#), Report of the Auditor-General No. 3 of 2019-20, 2019, p. 3.

¹⁴ Office of the Custodial Inspector Tasmania, [Resources and Systems Inspection Report](#), Inspection of Adult Custodial Services in Tasmania, 2019.

This is a failure of public policy, as inmates are released into the community without the skills, therapy or support to enable them to take a non-criminal path.

Putting the lack of programs aside, many fundamentals are not occurring. For example, correctional staff are not trained for case management, and don't have the time to provide it. As a result, prisoners don't have assistance for basics, including preparation for work when they leave prison.¹⁵

In 2016 the government released *Breaking the Cycle – A Safer Community: Strategies for Improving Throughcare for Offenders 2016-2020*, a continuation of a 2010 corrections initiative.¹⁶ In 2018 a progress report was released: of 74 initiatives, only 4 were marked completed.¹⁷ There has been no subsequent report on progress.

As it stands, the previous *Breaking the Cycle* strategy finished three years ago, and the government has no stated direction or strategy.

Despite this, in October of 2020, the Attorney-General and Corrections Minister argued in an opinion piece that this government is focused on rehabilitation and reintegration.¹⁸ The Attorney argued that *"Prison populations across the country are increasing and Tasmania is not immune from this trend."*

While there is some truth to this, between 2014-15 and 2021-22 Tasmania has experienced the largest increase in prisoner population in the country, at a rate almost double the national average. Prison populations grew in that period by 27% in Tasmania and 15% nationally. The next highest state was Queensland, at 25%. Every other jurisdiction was much lower, and increased between 6% and 15%.¹⁹

Unsurprisingly, adult recidivism in Tasmania increased from 39% (2014²⁰) to 47% (2020²¹). In the same time youth recidivism increased from 30% to 58%.²² Figure 3

¹⁵ Office of the Custodial Inspector Tasmania, [Rehabilitation and Reintegration Inspection Report](#), Inspection of Adult Custodial Services in Tasmania, 2018.

¹⁶ Department of Justice, [Strategies for improving throughcare for offenders](#), Tasmanian Government, n.d.

¹⁷ Department of Justice, [Breaking the Cycle progress report](#), Tasmanian Government, n.d.

¹⁸ Archer, E, [Talking Point: My focus more than ever is on prisoner rehabilitation, says Elise Archer](#), the Mercury, 2020.

¹⁹ Productivity Commission, [Corrective Services](#), Report on Government Services 2023, Part C, Section 8, 2023.

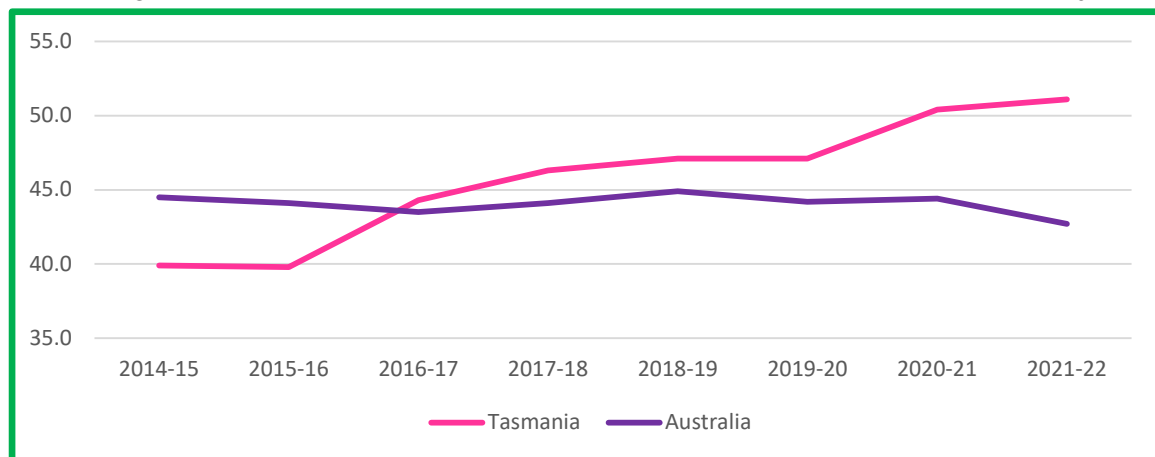
²⁰ Department of Justice, [Annual Report 2013-14](#), 2014.

²¹ Department of Justice, [Annual Report 2019-20](#), 2020.

²² Productivity Commission, [Youth Justice Services](#), Report on Government Services 2021, Part F, Section 17, 2021.

shows that our adult recidivism rates used to be about 5% less than the national average, but have grown to being almost 10% higher. That is dramatic by any measure, and evidence of the impact of government policies away from therapeutic justice on a return to offending from ex-inmates.

Figure 3: Adults released from prison who returned to corrective services within two years²³



Other than periodic evaluations by the custodial inspector, there is a paucity of data on rehabilitation programs in prisons. The Department of Justice reports annually on enrolments and completions through the *Family Violence Offender Intervention Program*, *EQUIPS Programs*, and *Sober Driver Program*.²⁴

These programs are community corrections programs (although some are also held in prisons) and form part of sentencing²⁵. They do not provide much information about the availability or effectiveness or restorative justice initiatives in prisons.

Recommendation 1: The government should prepare an updated long-term strategic plan for corrections. This should include, and be informed by, an update on the status of initiatives from the 2010-2020 plan. The plan should include commitment to substantial investment in restorative justice initiatives and programs.

²³ Productivity Commission, [Justice](#), Report on Government Services 2023, Part C, 2023.

²⁴ Department of Justice, [Annual Report 2021-22](#), 2022, p. 31.

²⁵ Department of Justice, [Community Corrections Programs](#), Tasmanian Government, n.d.

Recommendation 2: The government should provide clear and transparent reporting on restorative justice initiatives in prison. This should include enrolment and completion metrics, as well as data on the number of sessions delivered and the number of sessions cancelled.

Debt

Debt can be a significant contributor to re-offending.²⁶ This, combined with the fact that many offenders who are sentenced to imprisonment are also issued substantial fines as part of their sentencing,²⁷ creates an inherent risk of reoffending.

In 2020 the Monetary Penalties Enforcement Service (MPES) and the Tasmania Prison Service (TPS) initiated a trial of a system that allowed for the establishment of a payment plan prior to release.²⁸ MPES also offers a Monetary Penalty Community Service Orders (MPCSOs) program that allows court-imposed fines to be converted to community service.²⁹

This service is not available to everyone, and there are many hurdles to jump.

If the Director determines a person has the means to pay the fine, then they must refuse the MPCSO application.³⁰ Detailed eligibility criteria are not available, but MPES notes *“your application will only be accepted if you are assessed as having absolutely no capacity to pay. If you are employed or receiving benefits it is very unlikely your application would be successful.”*³¹

This suggests it is a strict income assessment, rather than an assessment of income and expenses, and whether or not a person has a reasonable capacity to pay.

²⁶ Community Justice Coalition, [Recidivism: The Way Forward, 2022](#), p. 58.

²⁷ Archer, E, [Helping Tasmanian prisoners reintegrate back into the community](#), Tasmanian Government, 2020.

²⁸ Ibid.

²⁹ Department of Justice, [Monetary Penalties Community Service](#), Tasmanian Government, 2022.

³⁰ Ibid.

³¹ Monetary Penalties Enforcement Service, [Monetary Penalty Community Service Orders \(MPCSOs\)](#), Tasmanian Government, n.d.

Even if an applicant meets the strict financial threshold assessment, they may still be rejected when the application is referred to the Director of Community Corrections. The Director has discretionary power, and can reject the application if they believe the applicant is not suitable for performing community service.³²

Even if an MPCSO is granted, failure to comply with MPCSO conditions, or the directions of a Probation Officer, could result in a court ordered term of imprisonment.³³

If a person is assessed as ineligible for an MPCSO, and it is determined that the debt *“cannot realistically be discharged”*, a warrant of commitment may be issued, which could lead to imprisonment.³⁴

In 2019-20 and 2020-21 only one MPCSO was issued each year, and in 2021-22 there were just four.³⁵ In these years there were 13 085, 12 121, and 3 023 debts deemed uncollectable, respectively.³⁶ The details of these uncollectable debts are unclear, as are the number of warrants of commitments issued.

A failure or refusal to repay can also result in MPES taking enforcement actions, which can include: publishing their details in a name and shame list, even for very small amounts of money owing (this action has been temporarily suspended by the government); suspending a driver’s licence; or suspending a vehicle registration. In 2021-22, the government suspended 10,587 drivers’ licences and 713 vehicle registrations were suspended as a result of enforcement sanctions.³⁷

These sanctions can make it more difficult for ex-offenders to acquire stable accommodation, employment, and maintain a support network. These sanctions also directly increase the risk of further offending, for example for driving without a licence.

³² Tasmanian Government, [Monetary Penalties Enforcement Act 2005](#), Section 32.

³³ Monetary Penalties Enforcement Service, [Monetary Penalty Community Service Orders \(MPCSOs\)](#), Tasmanian Government, n.d.

³⁴ Tasmanian Government, [Monetary Penalties Enforcement Act 2005](#), section 103.

³⁵ Department of Justice, [Annual Report 2021-22](#), 2022, p. 32.

³⁶ Ibid.

³⁷ Ibid, p. 33.

Related to this matter is the issue of fair compensation for the work prisoners do in prison. In 2018 the Custodial Inspector noted the prisoner pay scale had not changed for 11 years. The Inspector recommended it be adjusted to, at least, account for changes in the consumer price index. In Inspector's 2021-22 annual report, he noted the Department has still not made any changes, but has been increasing the cost of canteen items.³⁸

There is inherent injustice. Prisoners perform under-valued labour, at a rate of just \$67.50 per week for the highest allowance offered, while also being unable to work to pay off fines.

Recommendation 3: The government should request that the sentencing advisory council conduct a review of court-issued fines, with particular reference to equity of outcomes based on capacity to pay, and impacts on reoffending rates.

Recommendation 4: The government should consider MPES reforms, including the potential extension of MPCSO, and mechanisms for deferring, or entirely retiring debt, for ex-offenders in circumstances where pursuing that debt may significantly undermine the capacity of an ex-offender to reintegrate into the community.

Recommendation 5: The government should review prisoner wages as per the recommendations of the Custodial Inspector. Consideration should also be given to an MPCSO-like program that allows prisoners to work-off debt while incarcerated.

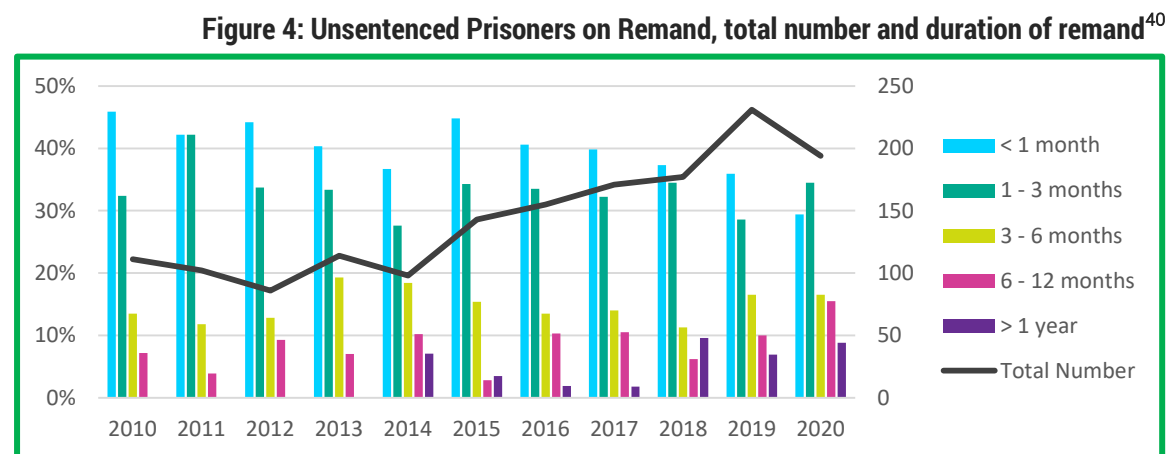
³⁸ Office of the Custodial Inspector Tasmania, [Annual Report 2021-22](#), 2022, p. 20.

Remand

A lack of stable accommodation can contribute to a court declining to grant bail for an individual.³⁹ This means a defendant without stable housing – who has not been convicted of a crime – is imprisoned on remand.

A person on remand is someone who has yet to be found guilty of a charge. Remand can fundamentally invert the principle of innocent until proven guilty in the instance described above. In a justice system struggling to meet increased pressures, this issue has been exacerbated. In 2020, 9% of remandees were in remand for over a year – before 2014 the rate was 0% (figure 4).

Figure 4 shows the number of prisoners on remand has increased since 2014, and the duration of remand is also increasing.



Imprisonment is costly; in 2020 the operational expenditure per prisoner was \$334.64 per day.⁴¹ Based on the data presented in Figure 3, this has likely cost around \$7.7 million in 2020 – an increase on an estimated \$3.2 million in 2014, at present costs. This is ignoring the significant infrastructure costs that have gone into upgrading remand facilities in recent years to cope with increased utilisation, estimated to cost \$85 million.⁴²

³⁹ Willis, M, [Bail support: A review of the literature](#), 2017.

⁴⁰ Australian Bureau of Statistics, [Prisoners in Australia](#).

⁴¹ Productivity Commission, [Corrective Services](#), Report on Government Services 2021, Part C, Section 8, 2021.

⁴² Tasmanian Government, [Budget Paper No 2, Department of Justice](#), 2022-23 Tasmanian Budget, 2022.

In the 2022-23 State Budget additional operating funding was allocated to the southern remand centre. The budget paper notes the funding provides for *“rehabilitation and reintegration staff”*, and that *“the operating model will support remandees to **adjust to life within the prison environment** and also to prepare for future release, recognising that people are capable of change”*.⁴³

We emphasise that people on remand have not been convicted of a crime. This language assumes guilt, and is inconsistent with Articles 10(2)(a) and 14(2) of the *International Covenant on Civil and Political Rights*. These require accused people be given treatment appropriate to their status as people who have not been convicted, and the presumption of innocence, respectively.⁴⁴

Bail hostels have been suggested as a possible means to address some of the issues surrounding bail,^{45,46, 47,48} with the added benefit of reducing costs.⁴⁹

A bail hostel provides for secure hostel-like accommodation, with support staff visits to assist in the maintenance of bail conditions. They are generally not used as an option for people charged with serious violent or sexual offences.

In 2020, in response to a question from the Greens about a bail hostel, the Attorney-General indicated she would not rule out any options in relation to bail reform. The Attorney at the time pointed to upcoming bail reforms.⁵⁰ The proposed bail reforms she referred to were from a 2018 consultation that only related to legislative reform.⁵¹ Consideration of a bail hostel was not part of this consultation process.

A draft *Bail Bill 2021* was released in 2021,⁵² but has yet to be tabled in Parliament. The draft bill does not address the matter of a bail hostel. There has been no

⁴³ Tasmanian Government, [Budget Paper No 1](#), 2020-21 Tasmanian Budget, 2020.

⁴⁴ Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), United Nations, 1966.

⁴⁵ Magistrates Court of Tasmania, [Hobart Specialised Youth Justice Court Pilot](#), Evaluation Report, 2013.

⁴⁶ Commissioner for Children, [Alternatives for Secure Youth Detention in Tasmania](#), 2013.

⁴⁷ Willis, M, [Bail support: A review of the literature](#), 2017.

⁴⁸ Australian Law Reform Commission, [Bail](#), 2019.

⁴⁹ BBC News, [Ministers plan to send more prisoners into bail hostels](#), 2010.

⁵⁰ Woodruff, R, [Corrections – Bail Hostel](#), Tasmanian Greens MPs, 2020.

⁵¹ Department of Justice, [Consultation on bail reform](#), Tasmanian Government, 2018.

⁵² Department of Justice, [Bail Bill 2021 - Have your say](#), Tasmanian Government, 2021.

indication from the government that their reform process will be considering any reforms beyond legislative ones.

Recommendation 6: The government should conduct a fresh review of bail and remand, with particular reference to the *International Covenant on Civil and Political Rights*.

Recommendation 7: The government should commission an assessment of the costs and benefits of establishing, or funding, bail hostels in Tasmania.

Alcohol and Drug Related Offending

The Court Mandated Diversion (CMD) is a sentencing option for offenders where their drug use is linked with their offending.⁵³ It is one of the few options that can effectively break the cycle of addiction-related offending.⁵⁴ The program is so successful, that even amongst those who do not successfully complete the program recidivism declines.⁵⁵

In 2016 the Sentencing Advisory Council recommended that the CMD program be extended to cover alcohol-related offending.⁵⁶ This recommendation was supported by Community Legal Centres Tasmania,⁵⁷ and was echoed by the Alcohol, Tobacco and Other Drugs Council of Tasmania in 2019.⁵⁸

In 2017 the CMD program was expanded from 80 to 120 places due to the expansion of Drug Treatment Orders as a sentencing option in the Supreme Court.⁵⁹ In 2012, when the cap was at 80 participants, an analysis suggested that

⁵³ Magistrates Court of Tasmania, [Doing a drug treatment order](#), n.d.

⁵⁴ Tasmanian Government, [Submission to the Parliamentary Joint Committee on Law Enforcement Inquiry Into Crystal Methamphetamine \(Ice\)](#), 2015.

⁵⁵ Moore, L, [Tackling drug crime the TJ way: Report on therapeutic jurisprudence and the Tasmanian Court Mandated Diversion program](#), Department of Justice, 2012.

⁵⁶ Sentencing Advisory Council, [Phasing out of Suspended Sentencing](#), Final Report, 2016.

⁵⁷ Community Legal Centres Tasmania, [Re: Phasing out of Suspended Sentences Consultation Paper](#), 2015.

⁵⁸ Alcohol, Tobacco and Other Drugs Council of Tasmania, [Strengthening Tasmania's justice response to problematic alcohol and other drug use](#), 2019.

⁵⁹ Guy Barnett, [Increased cap for Court Mandated Diversion program](#), 2017.

demand for the program was about twice as high as the availability.⁶⁰ Under current conditions, it is difficult to imagine demand has done anything other than grow since this time.

It is also worth noting that while a defendant can indicate they would like to be assessed for eligibility, they do not have the right to be assessed. Whether or not the person is assessed is at the discretion of the Court.^{61,62}

This judicial discretion, as well as the participant limitations in the CMD program, have implications for the common law sentencing principle of parity – that sentencing decisions should treat like cases alike and different cases differently.⁶³

Two people with similar circumstances surrounding their offending, who are both eligible for court mandated diversion, could have significantly different sentencing outcomes based on whether or not the CMD program is at capacity, or based on the inclination of the judge to consider the CMD program as an option.

Whether or not a person can undergo a sentence that has been shown to reduce their risk to the community, and to better address the root cause of their offending, can effectively come down to luck.

In 2006 the Tasmanian Law Reform Institute undertook research into the desirability of establishing a pilot drug court in Tasmania. The assessment found that establishing a drug court could reduce recidivism, produce cost-savings, and have broader community benefits.⁶⁴

While not a silver bullet, a specialised drug court would also likely have the benefit of a greater level of parity in terms of individuals being referred for eligibility assessment.

Recommendation 8: The government should commission an updated report on the case for an alcohol and drug court in Tasmania.

⁶⁰ Moore, L, [Tackling drug crime the TJ way: Report on therapeutic jurisprudence and the Tasmanian Court Mandated Diversion program](#), Department of Justice, 2012.

⁶¹ Tasmanian Government, [Sentencing Act 1997](#), Part 3A - Drug treatment orders.

⁶² Department of Justice, [How to enter the program \(Court Mandated Diversion\)](#), Tasmanian Government, 2022.

⁶³ Australian Law Reform Commission, [Considerations to be taken into account when sentencing](#), Australian Government, 2018.

⁶⁴ Tasmanian Law Reform Institute, [The Establishment of a Drug Court Pilot in Tasmania](#), 2006, p. 79.

Recommendation 9: The government should extend the eligibility of court-mandated diversion program to include alcohol-related offending.

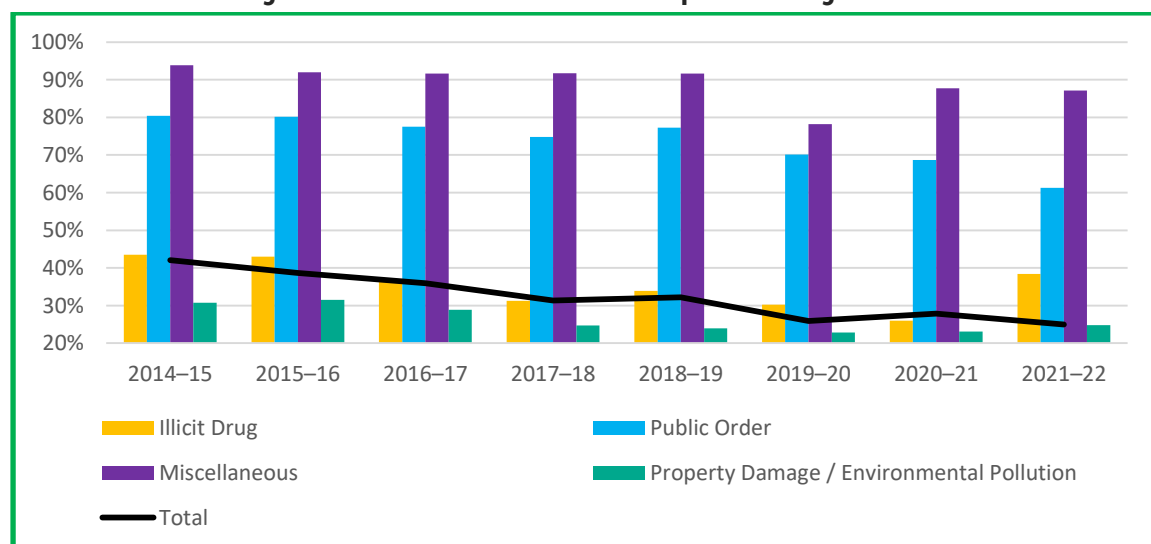
Recommendation 10: The government should establish a goal of ensuring all persons eligible for the court mandated diversion program are able to access the program, and determine the resources required to make that goal a reality.

Non-Court Action

Since 2014-15 the proportion of offenders proceeded against with non-court action has declined from 42% to 25% (figure 5). This decline has largely been in illicit drug, public order, property damage and pollution, and miscellaneous offences.

For youth offenders, between the 2014-15 and 2021-22 financial years the percentage who were subject to youth diversions instead of court proceedings declined from 54% to 43.3%. In the same period, youth diversions for Aboriginal and Torres Strait Islander people have experienced an even starker decline, from 41% to 22.5%.⁶⁵

Figure 5: Total and selected offenders proceeded against with non-court action⁶⁶



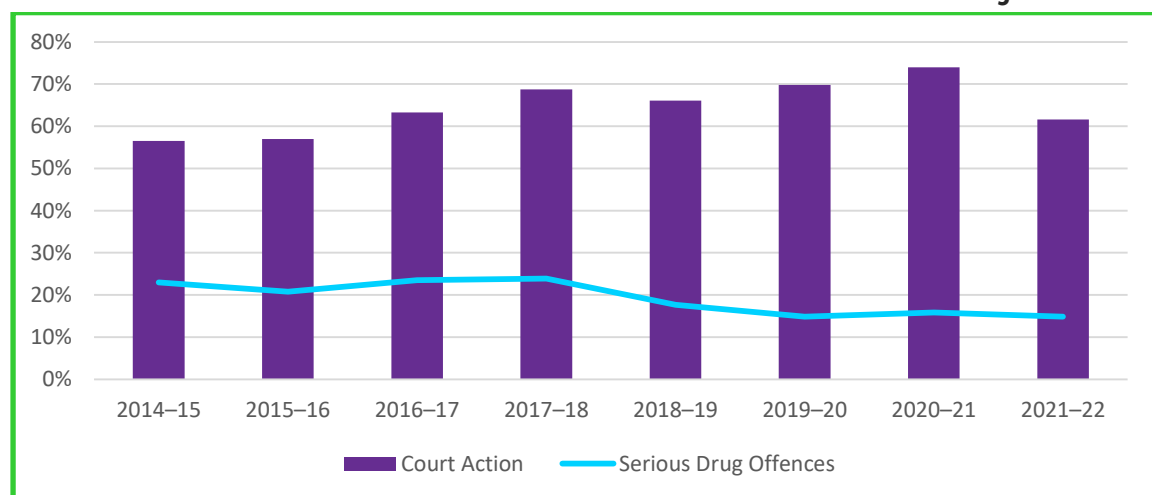
⁶⁵ Productivity Commission, [Police Services](#), Report on Government Services 2023, Part C, Section 6, 2023.

⁶⁶ Australian Bureau of Statistics, [Recorded Crime – Offenders](#), Table 31, 2023.

There are, clearly, circumstances where court action is the appropriate action to take. The nature and circumstances of offending can also change over time, influencing changes in justice pathway trends. However, in the context of broader trends we are seeing in the justice system, and given the significant shifts we are seeing, it is not unreasonable to speculate that a ‘tough on crime’ political agenda may be influencing – directly or indirectly – these outcomes.

In support of this, during the same period, the proportion of drug offenders proceeded against that Tasmania police have classified as ‘serious drug offences’ has decreased from 23% to 15% (figure 6). While it is acknowledged the nature of offending can be more complex than ‘serious’ and ‘not serious’, this provides some evidence that the significant shift towards court action over non-court action is not the result of more serious offending.

Figure 6: Proportion of drug offenders where court action was taken, and proportion of drug offences classified as ‘serious drug offences’^{67,68}



Police diversion programs, if used appropriately, can result in lower recidivism rates. There can be an even larger benefit for pre-charge diversion compared to post-charge diversion.⁶⁹

An increased reliance on court action also contributes to backlogs and delays. The proportion of unfinalised lodgements in the Magistrates Court over 6 months

⁶⁷ Australian Bureau of Statistics, [Recorded Crime – Offenders](#), Table 31, 2023.

⁶⁸ Tasmania Police, [Annual Reports](#), n.d.

⁶⁹ Wilson, D B, Brennan, I, Olaghere, A, [Police-initiated diversion for youth to prevent future delinquent behavior: a systematic review](#), Campbell Collaboration, 2018.

old has increased from 32% in 2014-15 to 47% in 2021-22, and over 12 months from 14% to 22%.⁷⁰

Recommendation 11: The government investigate the trend of decreasing no-court actions, and examine current police diversion options with a view to identifying any gaps that could be filled, or changes to existing programs that could be made, that could lead to lower recidivism rates.

Age of Criminal Responsibility

In 2021-22, 330 children aged between 10 and 14 were proceeded against by police. This age group has the highest mean number of times proceeded against by police, at 2.4. The next highest rate was 1.8. It is also the age group with the highest proportion of offenders proceeded against five times or more, at 12.4% – more than double the next highest rate of 6.1%.⁷¹

In 2019 Australia was called on by the U.N. Committee on the Rights of the Child to raise the age of criminal responsibility from 10 to 14.⁷² This call was emphasised in 2021 in Australia's Universal Periodic Review.⁷³

The majority (24) of the 38 OECD Member countries have an age of criminal responsibility over 14. Australia's is currently 10, although most States are looking at increasing this to 12, with the exception of the ACT, which is moving to 14.⁷⁴

The Tasmanian Government intends to increase the minimum age of detention to 14, although the intention is still to allow for detention to occur in some circumstances, so this is something of a misnomer.⁷⁵ Raising the age of criminal

⁷⁰ Productivity Commission, [Courts](#), Report on Government Services 2023, Part C, Section 7, 2023.

⁷¹ Australian Bureau of Statistics, [Recorded Crime – Offenders](#), Table 17, 2023.

⁷² Brennan, D, [The Fight to Raise Australia's Age of Criminal Responsibility](#), The Diplomat, 2023.

⁷³ Human Rights Law Centre, [Australia rejects UN call to raise the age of criminal responsibility](#), 2021.

⁷⁴ Brennan, D, [The Fight to Raise Australia's Age of Criminal Responsibility](#), The Diplomat, 2023.

⁷⁵ Jaensch, R, [Raising the minimum age of detention](#), Tasmanian Government, 2022.

responsibility to 12 is being considered as part of a national examination of the matter, but a decision has not yet been made.⁷⁶

In Australia (and Tasmania), like many other jurisdictions where the age of criminal responsibility is under 14, the '*doli incapax*' principle is applied. This is a rebuttable presumption that the child does not know their conduct is wrong (unless otherwise proven).⁷⁷

Tactics have, however, been used by prosecutions to lead or persuade a child into acknowledgement of wrongdoing in order to rebut the *doli incapax* presumption – tactics which, perversely, are more effective on children with disability, impairment, or behavioural issues.⁷⁸

Experts evidence is that Children under the age of 14 are unlikely to understand the impacts of their offending, to comprehend criminal proceedings, and are less able to control their behaviour.⁷⁹

It has also been argued that *mens rea* – the legal concept of the ability to form criminal intent – is not the only legitimate reason to increase the age of criminal responsibility. But rather whether or not the criminal justice system is an appropriate or useful tool in addressing offending in this age group.⁸⁰

As noted previously in this report more punitive approaches to justice can increase recidivism. Children who find themselves engaged with the criminal justice system often come from a background of disadvantage and trauma.⁸¹ They are likely to have had an interaction with the child safety system,⁸² and those

⁷⁶ Archer, E, House of Assembly Estimates Committee B - Monday 6 June 2022.

⁷⁷ Haysom, L, [Raising the minimum age of criminal responsibility to 14 years](#), Journal of Paediatrics and Child Health, 2023.

⁷⁸ Ibid.

⁷⁹ Council of Attorneys-General, [DRAFT Final Report 2020: Age of Criminal Responsibility Working Group](#), 2020, p. 50.

⁸⁰ Goldson, B, '[Difficult to Understand or Defend](#)': A Reasoned Case for Raising the Age of Criminal Responsibility, The Howard Journal Vol. 48, No. 5, 2009, p. 515.

⁸¹ Haysom, L, [Raising the minimum age of criminal responsibility to 14 years](#), Journal of Paediatrics and Child Health, 2023.

⁸² Australian Institute of Health and Welfare, [Young people under youth justice supervision and their interaction with the child protection system 2020–21](#), Australian Government, 2022.

sentenced to detention have a much higher recidivism rate than adults – with 80% returning to detention within a year.⁸³

Figure 7: Recidivism and Age of Criminal Responsibility

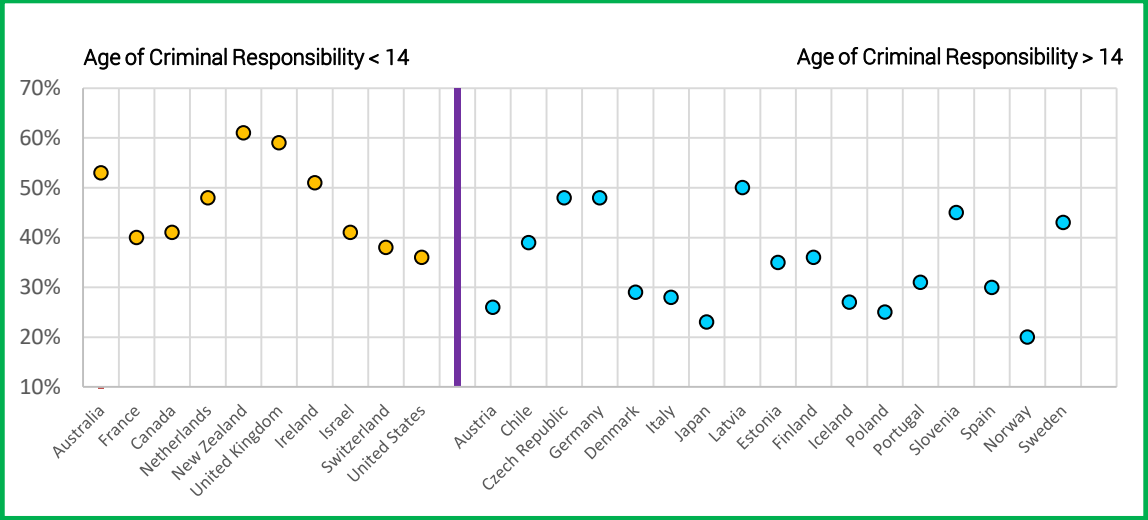


Figure 7 plots recidivism rates of countries, categorised by those with an age of criminal responsibility over 14, and under 14. These are OECD countries of which recidivism data is available.

The data shows that on average, countries with a lower minimum age of criminal responsibility have higher recidivism rates than their counterparts. Although, it should be noted that, due to differences in reporting frequency, data availability, and recidivism definitions inter-jurisdictional comparisons can be difficult.⁸⁴

Recommendation 12: The government should raise the age of criminal responsibility to 14.

Ashley Youth Detention Centre

The closure of Ashley Youth Detention Centre is a necessity, it's well overdue and has been a long time coming. We are broadly supportive of the proposed model, but have a number of outstanding matters we believe need to be addressed.

⁸³ Australian Institute of Health and Welfare, [Young people returning to sentenced youth justice supervision 2019–20](#), Australian Government, 2021.

⁸⁴ Fazel, S, and Wolf, A, [A Systematic Review of Criminal Recidivism Rates Worldwide: Current Difficulties and Recommendations for Best Practice](#), PLOS ONE, 2015.

The *Proposed Youth Justice Facilities Model* indicates that the detention facility will also be for remand.⁸⁵ This is contrary to article 10(2)(a) of the *International Covenant on Civil and Political Rights*, which require accused persons to “save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons”.⁸⁶

We believe the government needs to address how, and if, they intend to uphold this article if accused and convicted persons are in the same facility.

At the request of the Commission of Inquiry, the Tasmanian Government released the *Keeping Kids Safe* report. This report detailed 22 planned actions.⁸⁷ An update on the status of these planned actions has not subsequently been released.

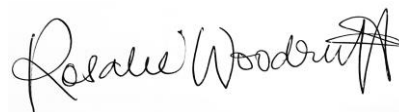
Recommendation 13: The government should ensure that article 10(2)(a) of the International Covenant on Civil and Political Rights is maintained, by ensuring that the new facilities model for youth justice keeps accused and convicted persons separated, and subject to separate treatment appropriate to their status as unconvicted.

Recommendation 14: The government should publish an update to the *keeping Kids Safe* report, detailing the current status of planned actions in that report.

Yours sincerely,



Cassy O'Connor MP
Greens Leader



Dr Rosalie Woodruff MP
Greens Justice spokesperson

⁸⁵ Department of Education, [Proposed Youth Justice - Facilities Model](#), Tasmanian Government, 2022.

⁸⁶ Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), United Nations, 1966.

⁸⁷ Department of Education, [Keeping Kids Safe: A plan for Ashley Youth Detention Centre until its intended closure](#), Tasmanian Government, 2022.