

Your Ref:
Our Ref:

3 July 2023

Anne Hollonds
National Children's Commissioner
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

By email: youthjusticereform@humanrights.gov.au

Dear Ms Hollonds

re: Call for submissions: Youth Justice and Child Wellbeing Reform across Australia

Thank you for the opportunity to provide a submission to your project on Youth Justice and Child Wellbeing Reform across Australia.

This submission provides a high-level overview of the role of the Tasmanian Commissioner for Children and Young People, particularly as it relates to children and young people in the youth justice system, and highlights publications, previous and upcoming work which I believe are pertinent to the National Commissioner's project. I have not answered the questions posed by the project specifically, however I believe that the publications referenced in this submission do provide a comprehensive summary of my views.

My comments are not intended to be exhaustive, and I would welcome any invitation to provide any further information as required.

Role of the Commissioner for Children and Young People (Tas.)

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.¹

Children and young people in the youth justice system in Tasmania

Fewer than 2 per cent of Tasmania's children and young people (aged 10 to 17) come into contact with the criminal justice system due to their behaviour. According to the most recent ABS Recorded Crime Statistics for 2021-2022, of the 53,860² children and young people aged 10 to 17 in Tasmania, 888 were proceeded against by police (1.65 per cent).³

The number of youth offenders aged 10 to 17 years has been steadily declining since 2008-09 in Tasmania. However, in 2021-22, there was a 5 per cent increase in the number of children and young people aged 10 to 17 proceeded against by police in contrast to a 7 per cent overall decrease in total offenders in Tasmania.⁴

In 2021-22, the number of children and young people in youth justice detention on an average day in Tasmania was 9.1.⁵ 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 10,000.⁶

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 socio-economic areas, to be disengaged from education, to have experienced family breakdown and homelessness, to be known to child safety services, to have mental health

¹ CCYP Act, s3.

² Australian Bureau of Statistics. (2022). National, state and territory population, Table 08. Estimated resident population, by age and sex – at 30 June 2022, cat. no. 3101.0. <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release#notes>

³ Australian Bureau of Statistics. (2022). Recorded Crime – Offenders. <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/2021-22#tasmania>

⁴ Ibid.

⁵ [Youth justice in Australia 2021-22, Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au). Table S137c.

⁶ [Youth justice in Australia 2021-22, Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au). Table S83a.



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 National Commissioner to the Tasmanian 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 in Tasmania.⁷

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 Youth Detention Centre (AYDC) 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.

In performing this role, I visit the AYDC 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 AYDC 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.

For further information regarding advocacy for children and young people in detention, I refer the National Commissioner to the [Commissioner for Children and Young People Annual Report 2021-22](#).⁸

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

⁷ [Sentencing Advisory Council Sentencing Advisory Council, *Sentencing Young Offenders*, Research Paper No. 6, October 2021.](#)

⁸ [Commissioner for Children and Young People \(Tas\) 2022, *Commissioner for Children and Young People Tasmania Annual Report 2021-22*, Tasmanian Government, Hobart](#)



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.

I believe that 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. 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.

I have provided my views on the reform of the youth justice system in Tasmania in various submissions and proposals to Government. Some of the recent and upcoming pieces of work relevant to your project are outlined below:

- My February 2020 report, [*Investing in the Wellbeing of Tasmania's Children and Young People*](#), which was instrumental in influencing the development of the Tasmanian Government's [*It Takes a Tasmanian Village: Child and Youth Wellbeing Strategy*](#).
- 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*](#) (commissionofinquiry.tas.gov.au).
- 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.
- My ongoing advocacy to raise the minimum age of criminal responsibility, to at least 14 years including:
 - my participation in an expert panel of Tasmanian practitioners and academics to explore what raising the minimum age of criminal responsibility might mean for Tasmania. Further information is available [here](#), and a recording of the forum is available [here](#);
 - 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](#));



- my April 2022 research report of the Tasmanian Law Reform Institute, *Raising the Minimum Age of Criminal Responsibility – Law Reform Considerations* (available [here](#));
 - my December 2022 feedback on the Final Draft Youth Justice System Blueprint 2022 (available [here](#)); and
 - my June 2023 Memorandum of Advice to the Tasmanian Government on the Age of Criminal Responsibility in Tasmania (to be released publicly in July 2023).
- In late 2022/early 2023, I sought the views of children and young people with lived experience of the youth justice system in Tasmania through the *Voices of Young People in the Youth Justice System Project*. While this project is ongoing, the findings from these consultations will provide invaluable insights into the views of children and young people in the youth justice system in Tasmania. Advocacy briefs and other audio-visual outputs from the consultations will be published from July 2023.

Thank you for the opportunity to contribute to your project on Youth Justice and Child Wellbeing Reform across Australia, and I look forward to receiving your final report on this issue in due course.

In the meantime, please do not hesitate to contact me if you would like to clarify or discuss in more detail any aspect of this submission.

Yours sincerely



Leanne McLean
Commissioner for Children and Young People