



Reforming Tasmania's Youth Justice System

Submission

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Acknowledgement

The submission was prepared on *lutruwita* (Tasmania) Aboriginal land. We acknowledge, with deep respect the traditional owners of this land, the palawa people.

The palawa people belong to the oldest continuing culture in the world. They cared and protected Country for thousands of years. They knew this land, they lived on the land and they died on these lands. We honour them.

We pay respects to elders past and present and to the many Aboriginal people that did not make elder status and to the Tasmanian Aboriginal community that continue to care for Country.

We recognise a history of truth which acknowledges the impacts of invasion and colonisation upon Aboriginal people resulting in the forcible removal from their lands.

Our Island is deeply unique, with spectacular landscapes with our cities and towns surrounded by bushland, wilderness, mountain ranges and beaches.

We stand for a future that profoundly respects and acknowledges Aboriginal perspectives, culture, language and history. And a continued effort to fight for Aboriginal justice and rights paving the way for a strong future.

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Introduction

The Peter Underwood Centre

Launched in 2015, the Peter Underwood Centre is a partnership between the University of Tasmania and the Tasmanian Government in association with the Office of the Governor of Tasmania.

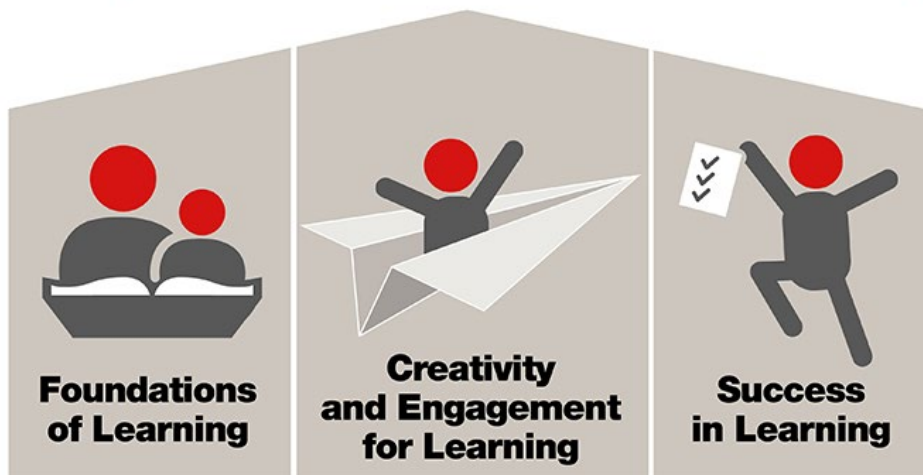
During his time as Tasmania's 27th Governor, the Honourable Peter Underwood AC, began conversations with the University of Tasmania around the importance of educational attainment to Tasmania. Following his passing in 2014, the Peter Underwood Centre for Educational Attainment was established in his name, serving to honour his belief in the transformative power of education.

Our focus is on research, partnerships and initiatives that contribute to positive and sustained change in educational outcomes for children and young people.

Our work spans three pillars of action, each contributing to our vision. The pillars have been drawn from interactions with international research, policy makers and practitioners.

Our Vision and Strategic Pillars

**All young Tasmanians flourish
through the transformative power of learning**



Our pillars underpin our aims to:

- Research and inform policy and practice in order to improve learning outcomes for children and young people;
- Facilitate and evaluate collaborative programs, initiatives and activities that support and address engagement and success in learning; and
- Foster and contribute to best practice research, policy and programs which make a difference to young people.

Our research focus is to produce knowledge on educational attainment that is of direct benefit to Tasmanians and that both learns from and informs national and international research. Our research connects with local, national, and international organisations, think tanks, policy groups, and allied professional groups to share information and knowledge.

Along with research, our Centre is focused on creating, delivering, and supporting programs and initiatives that contribute to positive and sustained change in educational outcomes for children and young people. Along with young people themselves, we are honoured to work with a range of partners including schools, teachers, parents, industry, and community members as well as those within the University who contribute to the vision of the Peter Underwood Centre.

Submission focus

We thank the Tasmanian Government for the opportunity to make a submission in response to the discussion paper “Reforming Tasmania’s Youth Justice System”. We give permission for our submission to be made publicly available.

This submission is focused only on the role of education in relation to youth justice. Education is widely recognised for its potential both as a protective factor (Prevention and Early Intervention) and as a circuit breaker (Diversion and Targeted Interventions; Therapeutic Service System for Repeat and High Risk Offenders).

Research on a program for young people who came before the Melbourne Children’s Court¹ noted that educational engagement was highly valued by legal professionals:

If a young person is out there offending, it’s often because there’s not a lot happening during the day for them. ... They get suspended from school and then there’s nothing keeping them supported, and so then things just spiral and get worse and worse. *(Legal Aid Lawyer)*

We know that having a program, a day program, is really critical to avoiding or reducing the risk of re-offending so let-alone the impact that education and training can have on long term life opportunities. Just being busy and engaged has many benefits around the young person’s self-esteem, their connection with positive peers, their just feelings of personal achievement and just being more integrated and contributing to society. *(Assistant Director, Youth Justice)*

Young people in the same research also commented on the positive role that schools can play:

It was good with the teachers. I was getting As and Bs. The teachers liked me and they explained things well. ... It was a good place to actually go during the day and actually do something constructive with my time. And stay out of trouble. And I had friends there. *(Young Person)*

We note the interconnected web of factors associated with young people’s involvement in the youth justice system.

Therefore improved support through education is not sufficient. However it is an essential component of reshaping the youth justice service continuum for the benefit of children and young people, as well as the community.

¹ Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children’s Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. <http://ecite.utas.edu.au/113852> (p.48)

Underpinning principles

This submission is underpinned by three principles of significance to young people involved in the youth justice system.

Right to education

Under the Tasmanian Education Act 2016, it is compulsory for children and young people aged between the ages of approximately 5 and 18 to attend school (or an approved alternative, such as home schooling or a Registered Training Organisation).

Importantly, school education is also a human right, established in the UN Universal Declaration of Human Rights² and also in the UN Convention on the Rights of the Child³.

UN Convention on the Rights of the Child

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

Table 1: UN Convention on the Rights of the Child

Ensuring the right to education is implemented is especially important for children and young people experiencing personal, social and educational disadvantage—including those in youth justice. When children and young people are in the care of the State, such as out-of-home-care and custodial youth justice, there is particular responsibility on the State to ensure they can and do participate in education.

² <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Children First Offenders Second

Children First Offenders Second (CFOS) is a perspective developed in the UK⁴. In contrast to risk-based approaches to youth justice, this perspective promotes child-appropriate intervention and treats offending behaviour as a developmental aspect of children's lives and thus treats children as children, not as offenders. It works in close harmony with the Convention on the Rights of the Child.

Key aspects of CFOS include:

- Ensuring the justice system is child-appropriate, and seeing offending as only one part of the child's identity.
- Prioritising diversion and child rearing practices in a family context, rather than formal secure services.
- An inclusionary approach to prevention in order to promote positive behaviours and outcomes;
- Ensuring children view systemic responses as legitimate and fair.
- Providing evidence-based partnership and interventions, and avoiding the lure of fashionable programs.
- Ensuring each step in the system (e.g. caution, arrest, bail, remand, sentence, divert, imprison) meets child-friendly goals, and avoids criminalising children.
- Strong partnership, including State and non-government agencies.
- Placing responsibility on adults for facilitating children's access to their rights and entitlements and for promoting positive outcomes.

Interagency collaboration

The complexity of the lives of young people in youth justice is highlighted by statistics from the Victorian Youth Parole Board⁵:

68%	had been suspended or expelled from school
38%	presented with cognitive difficulties that affect their daily functioning
67%	had been victims of abuse, trauma or neglect
36%	were and/or had been under a child protection order
38%	presented with mental health issues
79%	had offended while under the influence of alcohol and / or drugs
25%	spoke English as a second language

The interconnected web of factors associated with young people's involvement in the youth justice system requires collaboration between a large range of agencies, not just education and youth justice.

Different sectors and agencies bring different expertise and capabilities. Bringing these together is much more likely to lead to positive outcomes for children and young people than each operating largely separately from the others.

⁴ Haines, K., & Case, S. (2015). Positive youth justice: Children first, offenders second. Policy Press.

⁵ Victorian Youth Parole Board (2019). 2018-2019 Annual Report <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-parole-board-annual-report-2018-19>

Interagency collaboration⁶ could involve:

1. Developing a common vision of shared principles (such as the ones discussed here) across government and non-government agencies, informed by quantitative and qualitative data.
2. Protocols and governance that allow access to common data sets and information sharing (respecting both privacy legislation and the wishes of the young person).
3. Closer and more collaborative program planning and development; collection and use of assessment data; and case management.
4. A clear articulation of roles and responsibilities, and of methods of communication.
5. Coordinated requests for information, e.g. from the young person or the education system, to reduce burden.

The young person and their family also should be part of this collaboration, as they have their own vital knowledge and experiences to contribute.

Interagency collaboration is notoriously difficult. Building capacity to develop a common vocabulary and understanding of each area's roles and responsibilities is vital so that misunderstanding can be avoided and so that stakeholders can work together productively.

⁶ Gonsoulin, S., & Read, N.W. (2011). *Improving Educational Outcomes for Youth in the Juvenile Justice and Child Welfare Systems Through Interagency Communication and Collaboration*. Washington, DC: National Evaluation and Technical Assistance Center for Children and Youth Who Are Neglected, Delinquent, or At-Risk (NDTAC). <https://files.eric.ed.gov/fulltext/ED533050.pdf>

Strnadová, I., Cumming, T. M., & O'Neill, S. C. (2017). Young people transitioning from juvenile justice to the community: Transition planning and interagency collaboration. *Current Issues in Criminal Justice*, 29(1), 19-38. <https://doi.org/10.1080/10345329.2017.12036083>

Prevention and Early Intervention

The importance of being at school and in class

As a universal service, schools play a central role in prevention and early intervention, both through targeted initiatives and through the 'every day' work of teachers in schools. However, schools can only play this role if students are there.

Ensuring students are at school and in class is the single most powerful strategy that the education system can provide at the 'prevention and early intervention' stage.

Being absent from school is associated with increased social isolation, increased likelihood of leaving school early, and reduced academic achievement⁷. Any absence (even if authorised, and even if only small) has a negative impact; and the effects are cumulative⁸.

The importance of attendance is recognised by the Tasmanian Department of Education in its information for parents/carers⁹. However, like much of the policy and scholarly literature on attendance, this is focused largely on the first two types of absences below (authorised and unauthorised) through emphasis on the compulsory school age; what parents/carers need to do if a child is absent; and reasons for authorised absences.

Under the Education Act 2016, the responsibility for the child's school attendance is placed with the parent. Investigation of unauthorised absences by a child may lead to a conciliation conference, which is compulsory for the parent/carer and the school principal to attend¹⁰.

The Tasmanian Auditor General found that while processes for managing student attendance in general are appropriate, more is needed to support students facing disadvantage, with recommendations to:

Monitor trends and establish improvement targets for students at highest educational risk.

Identify and manage risks to student attendance in Years 7 to 10¹¹.

⁷ AITSL (2019). *Spotlight: Attendance matters*. <https://www.aitsl.edu.au/tools-resources/resource/spotlight-attendance-matters>

Hancock, K., Shepherd, C., Lawrence, D. & Zubrick, S. (2013). *Student Attendance and Educational Outcomes: Every Day Counts*. <https://www.telethonkids.org.au/globalassets/media/documents/research-topics/student-attendance-and-educational-outcomes-2015.pdf>

Zubrick, S. R. (2014). School attendance: equities and inequities in growth trajectories of academic performance. In: ACER (ed.) *Quality and Equality: What does research tell us?* Melbourne: ACER. https://research.acer.edu.au/cgi/viewcontent.cgi?article=1221&context=research_conference

⁸ Hancock et al (2013) *ibid*.

⁹ Tasmanian Department of Education (n.d.) *Attendance*. <https://www.education.tas.gov.au/parents-carers/parent-fact-sheets/attendance/>

Tasmanian Department of Education (n.d.) *Authorised Absences*. <https://www.education.tas.gov.au/parents-carers/parent-fact-sheets/authorised-absences/>

¹⁰ Education Act 2016 <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2016-051>

¹¹ Report of the Auditor-General No. 8 2018-19. Student attendance and engagement: Years 7 to 10. <https://www.audit.tas.gov.au/wp-content/uploads/Report-No8-Full-Report.pdf> (p.6)

It is important to recognise that student absence may fall in several categories, as outlined below.

1) Authorised absences

At first sight authorised absences may seem unproblematic, since these have a reason that is formally accepted by schools. However, as noted above, any absence from school can lead to difficulties for students.

The Tasmanian Department of Education states that: “By minimising absences to give your child the most opportunities to learn. This could include making medical and other appointments outside school hours”¹². While medical and legal appointments are approved reasons for absence, they can add up to significant disruption to school attendance for children and young people from disadvantaged backgrounds.

2) Unauthorised absences

When a student is absent from school without a reason provided to the school—or the school does not accept the reason—this is an unauthorised absence. Schools and education systems tend to locate the responsibility for these absences with the student or family. However, there are important indirect influences that can lie behind these absences, such as the impact of trauma and poverty.

3) Disciplinary absences

Disciplinary absences include the use of time-out spaces, as well as short or long suspensions. They are imposed by a school and governed by education system policies. They are not usually considered as part of attendance policies.

The Education Act 2016 notes as ‘exemption from attendance of school-aged child without application’ if the child has been suspended, temporarily excluded or expelled¹³. This means non-attendance due to these disciplinary measures is not captured in attendance data. However, these disciplinary measures are an additional key reason for students missing out on instructional time as well as the wellbeing benefits of being at school and in class.

4) Part time enrolment

Education systems enable students to enrol in school on a part time basis if there is a sound reason why this is in the best interest of the child. Reasons may include a child not being developmentally ready to commence full time primary school; an ongoing medical condition or medical treatment; or combining school and part time employment for older students¹⁴.

¹² Tasmanian Department of Education (n.d.) *Attendance*. <https://www.education.tas.gov.au/parents-carers/parent-fact-sheets/attendance/>

¹³ Education Act 2016 <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2016-051>

¹⁴ *Ministerial Instruction No 3 for Part-time Attendance at School*. <https://publicdocumentcentre.education.tas.gov.au/library/Document%20Centre/Part-Time-Attendance-at-School-Ministerial-Instruction-No-3.pdf>

Education Act 2016 <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2016-051>

However, research suggests that schools may initiate part-time enrolment more informally and for inappropriate reasons¹⁵. The Victorian Commissioner for Children and Young People heard many examples that Aboriginal children and young people in out of home care are placed on “reduced hours of schooling in response to their trauma-related behaviours and the inability of schools to work with them”¹⁶.

5) Missing from school entirely

Despite the fact that schooling is compulsory, research in Victoria¹⁷ and Tasmania¹⁸ indicates that some children and young people are not merely absent for hours or days—but miss school for weeks or months.

This is a significant concern (even if the number is relatively small) because these children and young people are likely to face deep and persistent disadvantage¹⁹, including involvement in the (youth) justice system.

One reason for students going ‘missing’ may be when they leave a school. Watterston and O’Connell argue: “school movement provides an opportunity for the ‘relay baton’ to be dropped if schools are unable to confirm that students have enrolled and are attending in their new location”²⁰.

Research in Victoria²¹ demonstrated that among a cohort of about 100 young people appearing before the Melbourne Children’s Court:

- 70% had attended 4 or more schools (including 20% who attended 6 or more schools);
- 84% had not attended school at all in the month before they met the education support team at the Court. Almost half of these were not enrolled in school.
- 9% of the young people who were actually enrolled in education (five out of 55) had attended school in the week prior to that meeting, and most of those only for a single day.

¹⁵ Graham, L., McCarthy, T., Killingly, C., Tancredi, H. & Poed, S. (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report*. Brisbane: The Centre for Inclusive Education, QUT.

¹⁶ Victorian Commissioner for Children and Young People (2016). *Always was, always will be Koori children’: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*. <https://ccyp.vic.gov.au/upholding-childrens-rights/systemic-inquiries/always-was-always-will-be-koori-children/> (Page 87)

¹⁷ Watterston, J. & O’Connell, M. (2019). *Those who disappear. The Australian education problem nobody wants to talk about*. <https://education.unimelb.edu.au/mgse-industry-reports/report-1-those-who-disappear>

¹⁸ Robinson, C. (2018). *Outside In: How the youth sector supports the school re-engagement of vulnerable children in Tasmania*. Anglicare Tasmania Social Action and Research Centre <https://www.anglicare-tas.org.au/research/outside-in-how-the-youth-sector-supports-the-school-re-engagement-of-vulnerable-children-in-tasmania/>

¹⁹ McLachlan, R., Gilfillan, G. and Gordon, J. (2013). *Deep and persistent disadvantage in Australia*. Australian Government. Canberra: Productivity Commission Staff Working Paper. <https://www.pc.gov.au/research/supporting/deep-persistent-disadvantage>

²⁰ Ibid, page 13

²¹ Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children’s Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. <http://ecite.utas.edu.au/113852>

Enabling school attendance

Enabling children and young people to be at school, and for schools therefore to be able to play a prevention and early intervention role, requires initiatives across policy areas and agencies.

School education sectors (government, Catholic, Independent) can support schools to:

- reduce the use of part-time enrolment and disciplinary absences in response challenging student behaviours through productive student engagement approaches (including trauma-informed practice) and collaboration with families and case workers;
- if part-time enrolment or suspension is needed, minimise disruption to the student's learning through appropriate learning support, and facilitate a smooth return to full time learning in class as soon as possible;
- provide positive, high-quality learning and wellbeing experiences (including targeted learning support where needed) for vulnerable students, so that they want to be at school;
- provide a welcoming environment and positive communication for parents/carers of vulnerable students, so they feel able to raise any concerns about children not being a school for any reason.

The Child and Student Wellbeing Strategy²² as well as the Student Engagement Procedures (see table 2 on next page) by the Tasmanian Department of Education are useful resources.

Other agencies and government departments (e.g. Courts, OOHC providers, disability support services, housing) can support attendance by:

- providing practical support to address factors behind absences, such as financial assistance, access to health care and counselling, food, transport, homework support, and mentoring;
- prioritise the provision of stable housing for homeless minors and families with school-age children to minimise the number of times a child moves to another school; and
- support schools to enable attendance by vulnerable students, for example through information-sharing by the agency with schools and a joint approach to therapeutic support for students.

²² Tasmanian Department of Education (2018). Child and Student Wellbeing Strategy 2018-2021
<https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Child%20and%20Student%20Wellbeing%20Strategy.pdf>

Tasmanian Department of Education: Student Engagement Procedures²³

Sensitive and appropriate implementation of these procedures will strongly support the prevention and early intervention role.

While the procedures are specific to the government system, the advice and strategies are also useful in the Catholic and Independent systems.

Of particular relevance to enabling students being present at school and in class are the following strategies:

- the support and wellbeing team in each school coordinates support, including with agencies beyond the school,
- have a continuum of engagement initiatives, enabling early provision of support (see details re Tier 1 and Tier 2 in the document)
- schools have systematic processes for identifying students who may need additional engagement support.

The 2019 Auditor-General's report in relation to Year 7-10 school attendance²⁴ recognised that Student Engagement Procedures (since then updated) offers "a structure of intervention to minimise the impacts of student disengagement" but made three recommendations for improvement that are relevant to this submission:

Develop a system to identify signs of disengagement and tools to be used by schools for structured analysis of information.

Consider undertaking further work to clarify and agree on the information to be recorded, reported and monitored regarding student engagement and establishing improvement targets.

Undertake a benefits analysis to determine the level of success of interventions and determine where best to invest funds using measurable performance targets.

Table 2: Tasmanian Department of Education: Student Engagement Procedures

²³ Tasmanian Department of Education (Nov 2021). Student Engagement Procedures
<https://publicdocumentcentre.education.tas.gov.au/library/Document%20Centre/Student-Engagement-Procedures.pdf>

²⁴ Report of the Auditor-General No. 8 2018-19. Student attendance and engagement: Years 7 to 10.
<https://www.audit.tas.gov.au/wp-content/uploads/Report-No8-Full-Report.pdf> (p.8)

Diversion and Targeted Interventions

Enrolment in school

As noted on p.3, enrolment in school (or an approved alternative, such as home schooling) is both a legal obligation for 5-18 year old young Tasmanians, as well as their human right.

Australian governments have committed to support children and young people experiencing disadvantage through the *Alice Springs (Mparntwe) Education Declaration*, which states:

Australian Governments commit to ensuring the education community works to provide equality of opportunity and educational outcomes for all students at risk of educational disadvantage²⁵.

Ensuring that students in the youth justice system are supported to be enrolled in school—and schools are enabled to provide appropriate learning and wellbeing support for these students—is the single most powerful strategy that the education system can provide at the ‘diversion and targeted intervention’ stage.

Despite high level policy commitments to schooling, specific practices on the ground mean that young people in the youth justice system may not be enrolled in school. For example, research in Victoria²⁶ demonstrated that among a cohort of about 100 young people appearing before the Melbourne Children’s Court 40% of those aged 13-16 (i.e. compulsory school age) were not enrolled in any school.

Courts can both enable and complicate enrolment in school through mandating a particular way or level of connecting with education as part of bail or parole. Such orders can provide an added impetus for schools and school systems to ensure enrolment. However, sometimes the conditions set by the Court may not be achievable for the student or the school. A school principal explained:

The minute that they come out, one of the court orders is that this young person has to be in a school setting and I can understand why, but at the same time that young person hasn’t got the skills around the mental health concern that they have to be ordered to go in to a traditional setting. So what’s going to happen? They’re going to come out, they’re going to disengage with school, they won’t go to school, they’re bored, and all of sudden the cycle starts again. (Principal)²⁷

²⁵ Education Council (2019). *Alice Springs (Mparntwe) Education Declaration*. <https://www.dese.gov.au/alice-springs-mparntwe-education-declaration> (p. 17)

²⁶ Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children’s Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. <http://ecite.utas.edu.au/113852>

²⁷ MacDonald, F., Te Riele, K., White, J., Corcoran, T., Moylan, P., Baker, A. and Manan, R. (2020). *Educational Transition from Custody. Final report*. <http://ecite.utas.edu.au/140598> (p.65)

Watterston and O’Connell suggest that ‘detached’ students “would have moved locations and not re-enrolled, with a great many more just silently departing from their current school and disappearing out of sight”²⁸.

Schools also may contribute more actively to children and young people in the youth justice system not being enrolled, as outlined below.

1) *Formal or informal expulsion*

Schools are expected to support positive student behaviour and under the Education Act 2016 are not allowed to suspend, exclude or expel a student when “unacceptable behaviour occurs outside of school or school activities”²⁹. Nevertheless, schools may formally exclude or expel a student based on their behaviour at school, as a last resort³⁰. In that case, schools have a responsibility for providing appropriate learning and arranging a re-entry process.

In government schools, formal exclusion is associated with explicit responsibilities for providing appropriate learning and arranging a re-entry process or transfer to another school³¹. As long as these responsibilities are acted on, children and young people in the youth justice system should be enabled to enrol in school.

Informal exclusion, however, does not involve such responsibilities. Young people can be informally excluded from school in a range of ways³².

²⁸ Watterston, J. & O’Connell, M. (2019). *Those who disappear. The Australian education problem nobody wants to talk about.* <https://education.unimelb.edu.au/mgse-industry-reports/report-1-those-who-disappear> (p. 10)

²⁹ Tasmanian Department of Education (2018). Student Behaviour. <https://www.education.tas.gov.au/parents-carers/parent-fact-sheets/student-behaviour/> (p. 2)

³⁰ *Secretary’s Instruction No 3 for unacceptable behaviour of students and volunteers at, and visitors to, State schools and school activities.*
<https://publicdocumentcentre.education.tas.gov.au/library/Document%20Centre/Unacceptable-Behaviour-at-a-State-School-Secretarys-Instruction-No-3.pdf>

³¹ *Secretary’s Instruction No 3 for unacceptable behaviour of students and volunteers at, and visitors to, State schools and school activities.*
<https://publicdocumentcentre.education.tas.gov.au/library/Document%20Centre/Unacceptable-Behaviour-at-a-State-School-Secretarys-Instruction-No-3.pdf>

Secretary’s Instruction No 4 for suspension, exclusion, expulsion or prohibition of state school students.
<https://publicdocumentcentre.education.tas.gov.au/library/Document%20Centre/Suspension-Exclusion-Expulsion-Prohibition-State-School-Secretarys-No-4.pdf>

Secretary’s Instruction No 10 for transfer of a state school student.
<https://publicdocumentcentre.education.tas.gov.au/library/Document%20Centre/Transfer-of-a-State-School-Student-Secretarys-Instruction-No-10.pdf>

³² Mitchell, J. (2016). *Out of sight, out of mind? Exclusion and inclusion of students in Victorian schools.* A research paper by the Youth Affairs Council of Victoria.
<https://www.yacvic.org.au/assets/Documents/SUB-Exclusion-and-inclusion-of-students-in-Victorian-schools-2016.pdf>

Victorian Ombudsman (2017). Investigation into Victorian government school expulsions. Victorian Ombudsman. <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-victorian-government-school-expulsions/>

Warnings and suspension sometimes having the effect of discouraging a child to attend. At other times, a student may be advised that it would be better for them to leave or students may believe they have been 'kicked out'. In these cases, young people may continue to be formally enrolled at that school but in fact not attend any school. This is illustrated by examples from research with young people who came before the Melbourne Children's court:

Lucas [...] says he was suspended: "heaps of times when I was in Year 7, 8 and Year 9". He reports that eventually he simply stopped going to school, during Year 10, when it "got too much". [...]

In his interview Oliver says that he was asked to leave during Year 9, and received a Year 9 pass (i.e. it was recorded that he officially passed the year), even though he had not completed the year. He says that the school told him they did not want him to have an expulsion on his record. Once he left that school, he ended up just staying at home for the rest of the year.³³

2) *Resisting enrolment*

Both in Australia and internationally, research demonstrates that the desire of young people in the youth justice system to engage with education can be met with resistance from the school they hope to attend or return to³⁴. This highlights the tension between a general commitment to the idea of children's right to education (as per the Convention on the Rights of the Child) and the right of a specific student who is in the youth justice system to attend a particular school, as exemplified by this quote from research in Victoria:

The "right" to education that is used to force principals into accepting students is misguided. Students do have a right to education, but may have demonstrated that their local school isn't an appropriate setting. [The Education Department] needs to ensure this right is catered for in different ways, and not assume that a mainstream school is the appropriate setting following custody. (School Leader)³⁵

³³ Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children's Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. <http://ecite.utas.edu.au/113852> (p. 14)

³⁴ Armytage, P. & Ogloff, J. (2017a). Youth justice review and strategy: Meeting needs and reducing offending: Executive summary – July 2017. Victorian Government. <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending>

Lanskey C. (2015). Up or down and out? A systemic analysis of young people's educational pathways in the youth justice system in England and Wales. *International Journal of Inclusive Education*. 19, pp. 568-82. <https://doi.org/10.1080/13603116.2014.961675>

Mitchell, J. (2016). *Out of sight, out of mind? Exclusion and inclusion of students in Victorian schools*. A research paper by the Youth Affairs Council of Victoria. <https://www.yacvic.org.au/assets/Documents/SUB-Exclusion-and-inclusion-of-students-in-Victorian-schools-2016.pdf>

Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children's Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. <http://ecite.utas.edu.au/113852>

³⁵ MacDonald, F., Te Riele, K., White, J., Corcoran, T., Moylan, P., Baker, A. and Manan, R. (2020). *Educational Transition from Custody. Final report*. <http://ecite.utas.edu.au/140598> (p.59)

Non-government schools have significant legal leeway to refuse enrolment. Government schools also at times resist enrolment. For example, schools may:

- indicate the course the student wishes to enrol in is 'full';
- state that the location the student lives in is outside the school's 'zone';
- argue that the young person can't re-enrol because they owe school fees.³⁶

Schools face multiple pressures, not only to offer an inclusive education, but also to achieve high academic outcomes (such as NAPLAN and ATAR results) and provide a safe environment for all students and staff. Balancing various demands can be difficult.

Enabling enrolment in school

As with enabling attendance, enabling enrolment in school for children and young people in the youth justice system requires initiatives across policy areas and agencies.

School education sectors (government, Catholic, Independent) can provide support by:

- Rewarding and recognising schools for outstanding inclusion practices, just like school gain recognition for outstanding academic results;
- Providing access to non-teaching staff to provide targeted support for students in the youth justice system, such as school psychologists, school nurses, and Teacher Assistants;
- Providing access to appropriate professional learning for teachers and other staff, for example in relation to trauma informed practice;
- Implementing an appropriate continuum of engagement support (see Table 2 on p.10);
- Discouraging expulsion and refusal to enrol, and clarifying the exceptional grounds required to allow such expulsion and refusal to enrol;
- Arranging transfer to another school only if that is in the best interest of the student.

The Court and justice system more generally can provide support by:

- Ensuring Court Orders that require a child or young person to be in education are constructive, enabling and feasible;
- Collaboration between the Court and education through the work of education liaison officers as part of the Youth Courts;
- Employing dedicated mentors to act on the child's or young person's behalf;
- Placing a child or young person remand only as a last resort, since the uncertainty of the duration of remand makes planning for transition to enrolment in a school outside custody very difficult.

³⁶ These examples are all from: Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children's Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. <http://ecite.utas.edu.au/113852>

Therapeutic Service System for Repeat and High Risk Offenders

Prioritising education

The custodial component of the youth justice system is relatively small but presents significant challenges. In part this is due to differing perceptions on the purpose of custody by various stakeholders. We commend the emphasis on a therapeutic service system in the Discussion Paper.

Ensuring education is prioritised as part of the rehabilitative function of youth justice detention is essential to the success of a ‘therapeutic service system’.

Traditionally, there has been a tension between the purposes of accountability and rehabilitation in custodial youth justice. Although both are aimed (at least partly) at diversion from the criminal justice system and reducing further criminal acts, their focus is very different. Accountability emphasises the needs of the wider community and focuses on punishment. Rehabilitation emphasises the rights of the child, and focuses enhancing the child’s future life chances. Education is widely recognised as a central component of this, as well as having benefits beyond rehabilitation³⁷.

Tension between security and education may be exacerbated by the different professional expertise and expectations as well as working conditions of security staff and teachers in a youth custody setting³⁸. Of interest is an initiative in the United Kingdom to establish a ‘Campus Model’ that is a sentencing option as a final option prior to a custodial sentence, with a focus on education³⁹.

The United Nations Committee on the Rights of the Child has made explicit that children and young people of compulsory school age in custody have the right to suitable education which should prepare them for their return to their community⁴⁰.

³⁷ Jesuit Social Services (2013). Thinking outside: Alternatives to remand for children. http://jss.org.au/wp-content/uploads/2015/10/Thinking_Outside_Research_Report_Final_amend_15052013.pdf

Griller Clark H, Mathur SR, Brock L, O’Cummings M, Milligan D. (2016) Transition toolkit 3.0: Meeting the educational needs of youth exposed to the juvenile justice system. Washington, DC: National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At Risk (NDTAC). <https://neglected-delinquent.ed.gov/sites/default/files/NDTAC-TransitionToolkit30FINAL.pdf>

O’Neill, S. C., Strnadová, I. & Cumming, T. M. (2016). How juvenile justice and education support the transition of school-aged youth from within a custodial environment to the community: Lessons to be learned and celebrations to share. <http://unsworks.unsw.edu.au/fapi/datastream/unsworks:42708/bin993daa90-d69f-43d3-8e4f-19a87caa2bf9?view=true>

Victorian Auditor-General’s Office (2018). Managing rehabilitation services in youth detention. <https://www.audit.vic.gov.au/sites/default/files/2018-08/20180808-Youth-Detention.pdf>

White, J., Te Riele, K., Corcoran, T., Baker, A., Moylan, P. & Manan, R. (2019). *Improving educational connection for young people in custody*. <http://ecite.utas.edu.au/134257>

³⁸ White, J., Te Riele, K., Corcoran, T., Baker, A., Moylan, P. & Manan, R. (2019). *Improving educational connection for young people in custody*. <http://ecite.utas.edu.au/134257>

³⁹ Jesuit Social Services (2017). #JusticeSolutions Tour. Expanding the conversation. <http://jss.org.au/wp-content/uploads/2017/08/SUB-170623-Solutions-Tour-Long-Report-v.15.pdf>

⁴⁰ Committee on the Rights of the Child, General Comment No 10: Children’s rights in juvenile justice. <https://digitallibrary.un.org/record/599395>

The Australian Children’s Commissioners and Guardians’ ‘Model charter of rights for children and young people detained in youth justice facilities’⁴¹ advises detained children of their right: “To continue your education, or to do training to learn useful skills for work”.

National Children’s Commissioner’s Children’s Rights Report 2016

Chapter 4: The voices and experiences of children and young people in detention.⁴²

Children and young people consistently raised the importance of access to education and purposeful activities with me.

They requested more choices in terms of available learning programs, and for learning programs to result in formal qualifications that they can use to gain employment or engage in further training when they are discharged.

Some advised that the learning programs provided to them are not sufficient for them to easily re-enter mainstream schools when they are discharged. The academic content is not commensurate with the content provided in mainstream schools and if, or when, they return to mainstream schools, they do not have the requisite knowledge.

They also wished to be appropriately assessed so that their placements in learning programs were proportionate to their existing skills and knowledge. They pointed out the value of one-on-one teaching at ‘their own pace’ where their literacy and numeracy skills were significantly behind chronological peers.

Table 3: National Children’s Commissioner’s Children’s Rights Report 2016

Two specific issues of relevance to the ‘therapeutic service system for repeat and high risk offenders’ are discussed below.

1) Remand

Nationally, a large proportion of children and young people in detention are on remand, rather than sentenced. This means “Australia is not effectively implementing article 37 of the CRC, which states that arresting, detaining and the imprisonment of children should only occur as a last resort and for the shortest time possible”⁴³. Therapeutic and educational support are especially difficult to provide for children and young people on remand, due to the uncertainty of how long they will be in custody. Staff in the Parkville Youth Detention Centre in Victoria said that the “high churn” makes it hard to “deliver real, substantive, quality, consistent education” and recognised that the uncertainty “plays into a child’s ability to focus, see purpose in, have time to actually worry about education”⁴⁴.

⁴¹ Australian Human Rights Commission (2018). A model charter of rights for children and young people detained in youth justice facilities. <https://www.humanrights.gov.au/our-work/childrensrights/projects/model-charter-rights-children-and-young-people-detained-youth>

⁴² Australian Human Rights Commission. (2016). Children’s rights report 2016. <https://humanrights.gov.au/our-work/childrens-rights/publications> (p.162)

⁴³ Australian Human Rights Commission. (2019). Children’s rights report 2019. <https://humanrights.gov.au/our-work/childrens-rights/publications> (p.243)

⁴⁴ White, J., Te Riele, K., Corcoran, T., Baker, A., Moylan, P. & Manan, R. (2019). *Improving educational connection for young people in custody*. <http://ecite.utas.edu.au/134257> (p.30)

2) Transition from custody

The time children and young people spend in custody is determined by the justice system, rather than by their educational needs or completion of qualifications. Planning for their pathway after leaving custody is an essential aspect of their access to education. Transition back into education is complex, because many children and young people in custody have previously had negative school experiences⁴⁵. Research in Victoria highlighted:

In the Australian context, young people who have been acclimatised to shorter school hours and smaller classes while in youth justice can find it difficult to adjust to increased school hours and large classes if they commence or return to a mainstream school. Another barrier to school attendance is that there are not always available supports in the community to assist families to help young people connect to educational goals.⁴⁶

As noted on p. 13-14, schools also may resist the enrolment of a student who is in the youth justice system. A legal framework around Transition Plans, such as in New Zealand⁴⁷ can be useful.

Transition planning is particularly well-established in the USA. A useful framework⁴⁸ outlines key activities to support transition at four stages: Entry into the juvenile justice system; Residency; Exit from secure care; and Aftercare. The first and final stage are especially crucial:

- The concept of “think exit at entry” stipulates that planning for a young person’s release from custody should commence from the moment they enter custody⁴⁹.
- Continuing support well beyond exit from custody. In Australia a good example is the throughcare approach, which is “defined as the coordinated provision of support to a person, beginning when they first go into prison and continuing until they are living a safe, fulfilling and trouble-free life back out in the community”⁵⁰.

⁴⁵ Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children’s Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. <http://ecite.utas.edu.au/113852>

Victorian Youth Parole Board (2019). 2018-2019 Annual Report <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-parole-board-annual-report-2018-19>

⁴⁶ MacDonald, F., Te Riele, K., White, J., Corcoran, T., Moylan, P., Baker, A. and Manan, R. (2020). *Educational Transition from Custody. Final report*. <http://ecite.utas.edu.au/140598> (p.15)

⁴⁷ Lambie, I. & Ioane, J. (2019). The transitioning of incarcerated youth in the New Zealand justice system. Pp 115-29 in S. O’Neill (Ed.) *Incarcerated youth transitioning back to the community: International perspectives*. Singapore: Springer. https://link.springer.com/chapter/10.1007%2F978-981-13-0752-2_8

⁴⁸ Griller Clark H, Mathur SR, Brock L, O’Cummings M, Milligan D. (2016) *Transition toolkit 3.0: Meeting the educational needs of youth exposed to the juvenile justice system*. Washington, DC: National Evaluation and Technical Assistance Center for the Education of Children and Youth Who Are Neglected, Delinquent, or At Risk (NDTAC). <https://neglected-delinquent.ed.gov/sites/default/files/NDTAC-TransitionToolkit30FINAL.pdf>

⁴⁹ Risler, E., & O’Rourke, T. (2009). Thinking exit at entry: Exploring outcomes of Georgia’s juvenile justice educational programs. *Journal of Correctional Education*, 225-239. <https://www.jstor.org/stable/pdf/23282745.pdf>

⁵⁰ North Australian Aboriginal Justice Agency (n.d.) Throughcare Program, <https://www.naaja.org.au/our-programs/throughcare/>

In Australia, Parkville College (the school in the youth justice precincts in Victoria) has developed a transition framework across similar stages, with a focus on supporting the student to make decisions about their preferred post-custody destination⁵¹.

Research in Victoria points to enablers of successful educational transition from custody in relation to staff roles and responsibilities; information and communication; and programs directly supporting young people.

Educational Transition from Custody⁵²

Overarching conclusions:

- The timeline of planning for and supporting successful transition for custody needs to commence early (on entry) and continue well beyond enrolment of the young person in an educational institution.
- Successful transition to education requires a statewide coordinated system of support and collaboration between units within the Department and with other agencies to help to overcome fragmentation, duplication and gaps.
- The young people are the fundamental stakeholder throughout the transition process. They must be given every opportunity to be actively involved in planning and implementing their own transition to education after custody.

Table 4: Educational transition from custody

Support for prioritising education while children and young people are in custody can include:

- Development of a pre-custody, education-focused model, such as the Campus Model in the UK (see above);
- Ensuring remand is a last resort. Enrolment in education and provision of safe and stable housing can support Magistrates to avoid remanding a child into custody;
- Emphasis on therapeutic support and education, to ensure children and young people leave custody with better prospects than when they arrived;
- Promote strong collaboration between security and education staff, including joint professional development;
- Employing dedicated mentors to act on the child's or young person's behalf from entry into custody through to aftercare;
- Ensuring planning for transition from custody commences immediately, and continues into aftercare.

⁵¹ Parkville College (2020). Education, Training and Employment Transitions Framework.

<https://www.parkvillecollege.vic.edu.au/resources>

⁵² MacDonald, F., Te Riele, K., White, J., Corcoran, T., Moylan, P., Baker, A. and Manan, R. (2020). *Educational Transition from Custody. Final report.* <http://ecite.utas.edu.au/140598> (p.8)

In conclusion

We would welcome the opportunity to discuss the contents of our submission in further detail and to support the Youth Justice Blueprint Community Consultative Group.

This submission is informed by research conducted by Professor te Riele and colleagues about education and youth justice in Victoria.

The most significant difference between the Victorian and Tasmanian youth justice context is the number of young people involved in the youth justice system. In particular, the smaller number in the Ashley Youth Detention Centre means it is more difficult for Ashley School than for Parkville College (the school in Victorian youth justice precincts) to offer a broad suite of curriculum and support programs for students, and an extensive range of professional learning opportunities for staff. Apart from this difference, research findings from these projects are also relevant to Tasmania.

The reports are (in chronological order):

Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children's Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. Available: <http://ecite.utas.edu.au/113852>

White, J., Te Riele, K., Corcoran, T., Baker, A., Moylan, P. & Manan, R. (2019). *Improving educational connection for young people in custody*. Melbourne: Victoria University. Available: <http://ecite.utas.edu.au/134257>

MacDonald, F., Te Riele, K., White, J., Corcoran, T., Moylan, P., Baker, A. & Manan, R. (2020). *Educational Transition from Custody. Final report*. Melbourne: Victoria University. Available: <http://ecite.utas.edu.au/140598>

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