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# YOUTH JUSTICE IN TASMANIA

## RESPONSE TO THE DISCUSSION PAPER REFORMING TASMANIA'S YOUTH JUSTICE SYSTEM – A PATHWAY FOR IMPROVING OUTCOMES ACROSS THE YOUTH JUSTICE SUPPORT CONTINUUM

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### ABOUT THE JUSTICE REFORM INITIATIVE

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The Justice Reform Initiative is an alliance of people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system, further supported by a movement of Australians of goodwill from across the country who believe jailing is failing and that there is an urgent need to reduce the number of people in Australian prisons.

The Justice Reform Initiative is committed to reducing Australia's harmful and costly reliance on incarceration. Our patrons include more than 100 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges including High Court judges, and many other community leaders who have added their voices to end the cycle of incarceration in Australia.

We seek to shift the public conversation and public policy away from building more prisons as the primary response of the criminal justice system and move instead to proven alternative evidence-based approaches that break the cycle of incarceration.

We are committed to elevating approaches that seek to address the causes of contact with the criminal justice system including responses to housing needs, mental health issues, cognitive impairment, employment needs, access to education, the misuse of drugs and alcohol, and problematic gambling. We are also committed to elevating approaches that see Aboriginal and Torres Strait Islander-led organisations being resourced and supported to provide appropriate support to Aboriginal and Torres Strait Islander people who are impacted by the justice system.

Tasmanian patrons of the Justice Reform Initiative include:

- **Greg Barns SC**, barrister, commentator and spokesperson on criminal justice for the Australian Lawyers Alliance
- **Rodney Dillon**, Advocate for change
- **The Honourable Lara Giddings**, former Premier and Attorney General of Tasmania
- **Adjunct Associate Professor Terese Henning**, Former Director of the Tasmania Law Reform Institute
- **Michael Hill**, former Chief Magistrate of Tasmania and Former Acting Justice of the Supreme Court of Tasmania. Currently Adjunct Professor within the Faculty of Law at the University of Tasmania and Chair of the Just Deserts Drug Court Support Group.
- **The Rt Revd Dr Chris Jones**, Vicar General and Assistant Bishop Anglican Diocese of Tasmania and CEO of Anglicare Tasmania
- **Christine Milne AO**, former Senator for Tasmania and leader the Australian Greens and current Global Greens Ambassador
- **The Rt Honourable Lord Mayor of Hobart**, Councillor Anna Reynolds
- **The Honourable Denise Swan**, Former Minister (Community Development, Status of Women, Aboriginal Affairs, Multicultural and Ethnic Affairs, and Local Government) and Member of the Tasmanian House of Assembly
- **Professor the Honourable Kate Warner AC, Head Patron**, former Governor of Tasmania,
- **Professor Rob White FASSA FANZSOC**, Distinguished Professor of Criminology, School of Social Sciences, University of Tasmania
- **The Honourable Jim Wilkinson**, former President Tasmanian Legislative Council, President of the Tasmanian Football Board and former partner of the law firm Wallace Wilkinson & Webster

## JUSTICE REFORM INITIATIVE APPROACH TO YOUTH JUSTICE

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### VISION

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A community in which disadvantage is no longer met with a default justice system response.

### OPPORTUNITY IN TASMANIA

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There is an opportunity in Tasmania to break the cycle of incarceration by ensuring effective, holistic, community-led and evidence-based support for children at risk of justice system involvement. This includes supports and interventions for children at risk prior to contact with the justice system, diversion (at the point of police and courts) and supports post-release (reintegration/re-entry). There is also the need for First Nations led supports for Aboriginal children and young people that are culturally safe and connected to family and community.

A significant resourcing shift is required so that those children 'caught' in the justice system instead receive effective support and assistance in the community. There is the need for both reform of the youth justice legislative framework as well as the supporting youth service system. This will require a significant increase in the resourcing and capacity of the youth service system.

There is a particular need for this support to be available at key touch-points in the system. These include:

- A comprehensive framework of supports that identify and respond to children and young people at risk of justice system involvement. These supports should include holistic, place-based services for children and families that focus on wellbeing, housing, education and health. Aboriginal children and young people require access to culturally safe, Aboriginal led community based support;
- Diversion at the point of contact with police that seeks to divert a child from the youth criminal justice system, with an emphasis on pre-charge diversion;
- Diversion at the point of court and a court-based focus on therapeutic intervention for children and young people – this requires a separate specialist Children's and Young Persons Magistrates Court (i.e. one that is separate and not merely a division of the Magistrates' Court in Tasmania) with multiple systemic diversionary options for children who come before the court;
- Access to high quality community led services and programs for children who are in youth justice detention. It is essential that these services address the individual health, well-being, developmental and educational needs of each child in detention. In addition, each child in detention must have access to transition, pre-release and post-release planning. This should be provided by organisations with strong support models that can continue to provide support post-release. Children in detention should have access to environments that are supportive, non-restrictive, non-punitive and have access to daily interactions with staff that

are genuinely respectful, that recognise their dignity, and also developmental stage.

- On release from detention, the continuous provision of support services that commence pre-release. The transition from pre-release to post release should be facilitated by pre-release planning, the commencement of support pre-release, and its seamless continuation post-release.

Consistent with this vision, is the need to raise the minimum age of criminal responsibility to 14 and to ensure that for *any* child charged with *any* criminal offence that there is always a presumption in favour of bail. In no circumstances should there ever be a presumption against bail for a child charged with a criminal offence.

There is strong evidence of the efficacy of community led approaches that address the social drivers of over-incarceration. We believe Tasmania has the opportunity to lead the nation in turning around the Youth Justice System as it currently operates as a default response to disadvantage. We can invest in accessible, evidence-based systems of supports in the community, where children at risk of incarceration are given genuine opportunities to build productive, hopeful and meaningful lives in the community.

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## KEY RECOMMENDATIONS

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1. That the Blueprint recognise that the answers to the problem of the over-use and failures of the youth justice system, exist primarily *outside* of this system.
2. That the Tasmanian Government commit to implementing a youth service system that focuses on supports, intervention and diversion away from the criminal justice system, via the following means:
  - a. Intervention programs, supports and community led approaches that focus on community based and led support for children who are at a high-risk of contact with the criminal justice system;
  - b. Support services must be holistic, and identify and respond to the needs and unique circumstances of children as individuals, including by focusing on their cultural, legal, health, education, employment and social needs;
  - c. Intervention, diversion and support programs must be developed in partnership with local communities to ensure that they are responsive to the individual and their circumstances, culture and learning styles; and
  - d. Children should remain with their families and in their communities, with custodial detention being considered only as a last resort.

### **Establishing The Breaking the Cycle Fund**

3. That the Blueprint recommend a financial commitment of \$30 million over three years to support evidenced-based, community-led programs that will break the cycle of youth justice system involvement for children who are currently at risk or involved with the youth justice system ('the Breaking the Cycle Fund').

4. That 30% of all funds in 'the Breaking the Cycle Fund' be dedicated to Aboriginal-led organisations in recognition of the challenges and overrepresentation of Aboriginal children in the justice system. This is in line with the aspirations of Closing the Gap.
5. That the Breaking the Cycle fund be administered in a portfolio *outside* of Youth Justice. Breaking the cycle of justice system involvement is a whole of government responsibility and delivers whole of government outcomes including in health, housing and economic engagement.
6. That the Breaking the Cycle fund should fund community led organisations that adopt the good-practice principles in service delivery (noted below in this submission). This includes the provision of long-term, flexible, holistic, intensive, relational outreach case-work support.
7. That the Breaking the Cycle fund allow flexibility and the capacity to ensure that programs and projects for people at risk of justice system involvement are genuinely responsive to the specific geographic and demographic needs of the populations for whom they are intended. This includes Aboriginal and Torres Strait Islander led programs that focus on outcomes for Aboriginal and Torres Strait Islander populations. It is anticipated that experienced organisations may expand their operations, but also provide support and guidance to other organisations who are less experienced in the delivery of specific 'breaking the cycle' services.

#### **The age of criminal responsibility**

8. That the Tasmanian Government make a public commitment to raising the age of criminal responsibility to 14.
9. That the Tasmanian Government make a concurrent commitment to oversee a comprehensive review process of the youth service and youth justice systems with the view of ensuring a gaps and needs analysis is carried out, prior to the development of a road-map for implementation and subsequent legislation.
10. That the *Youth Justice Act* explicitly state that any child under the age of 16 should not be subject to youth justice detention unless there are exceptional circumstances concerning community safety warranting such detention.

#### **Access to bail**

11. That the *Youth Justice Act* explicitly state that there should always be a presumption in favour of bail in respect of *any* child charged with *any* criminal offence. In no circumstances should there ever be a presumption against bail for a child charged with a criminal offence.
12. That the Blueprint should reject the proposal of introducing electronic monitoring of children on bail.

## **A new Children's and Young Persons Magistrates Court**

13. That in order to support the Blueprint vision of a therapeutic and integrated approach to youth justice in Tasmania, there is a need to establish a separate specialist Children and Young Persons Magistrates Court ('CYPM Court'). The CYPM Court would be a separate Magistrates' Court with its own President or Chief Magistrate and appropriate specialised judicial officers and court staff able to implement court-based therapeutic, diversionary and targeted intervention strategies to support children charged with criminal offences who come before the court.

## BACKGROUND – THE COST AND FAILURE OF YOUTH JUSTICE IN TASMANIA

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The rate of recorded youth crime in Tasmania has substantially reduced over the last decade from 4,747 per 100,000 children in 2009-10, to 1,661 per 100,000 children in 2019-20 – a reduction in the number of children offending of over 65 per cent.<sup>1</sup> However, over the same period, expenditure on youth justice services has substantially increased, with an increase of over 30 per cent in the last five years.<sup>2</sup>

According to the Australian Institute of Health and Welfare (AIHW) in Tasmania on an average day in 2019-20, 146 children aged 10-17 were under youth justice supervision. Of these, 89 per cent were supervised in the community and the remainder were in detention.<sup>3</sup>

The trends to 2019–20 would suggest a far more punitive approach to youth offending:

- Over the 5 years to 2019–20, on an average day in Tasmania: the number of young people under supervision rose by 3.3% (from 141 in 2015–16 to 146 in 2019–20), while the rate increased from 17 to 22 per 10,000 young people aged 10–17
- In community-based supervision, the number fluctuated between 123 and 144, while the rate increased from 15 to 20 per 10,000
- In detention, the number rose by 68%, and the rate increased from 1.4 to 2.8 per 10,000.<sup>4</sup>

In 2020-21, the average daily number of children aged 10-17 years who were in detention was 8, while the average daily number under community-based supervision was 72. (In 2019-20, the average daily number of children in detention was 14, and under community-based supervision was 101).<sup>5</sup>

According to Communities Tasmania a total of 47 children were placed in detention over 2020-21, while a further 360 children were supervised in the community.<sup>6</sup>

The most recent data from the AIHW shows that in 2018-19 the number of children aged 10-16 released from sentenced supervision in Tasmania was 75. Of these, 39 children (or 52%) returned to sentenced supervision within 12 months.<sup>7</sup>

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<sup>1</sup> ABS, *Recorded Crimes 2019-20*, tables 19, 20.

<sup>2</sup> Australian Government Productivity Commission, *Report on Government Services 2022*, Part F Community Services, Section 17 Youth Justice Services, 25 January 2022, Table 17A.10.

<sup>3</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia, 2019-20*.

<sup>4</sup> Ibid.

<sup>5</sup> See n 2 above.

<sup>6</sup> Department of Communities Tasmania, *Annual Report 2020-21*, 54.

<sup>7</sup> Australian Institute of Health and Welfare (AIHW). 2021. *Young people returning to sentenced youth justice supervision 2019-20*. AIHW. 2021. 26

The Productivity Commission estimated that in 2020-21, the cost per average day per child subject to detention-based supervision in Tasmania was \$4,442. The cost per average day per child subject to community-based supervision in Tasmania in 2020-21 was \$175.<sup>8</sup>

The Productivity Commission has also noted that in Tasmania in 2018-19, the proportion of children released from sentenced supervision who are aged 10–16 years at time of release who returned to sentenced supervision within 12 months of having completed was 52 per cent.<sup>9</sup>

The cost of incarcerating a child in Tasmania for a year including capital costs is approximately \$1.62 million. Estimates of the cost of providing intensive, specialist community-based services with proven ability to keep people out of prison range from \$8,000 to \$15,000 per year.<sup>10</sup> Residential treatment is more expensive, but still far cheaper and more effective in reducing recidivism than incarceration.

In Tasmania, in 2020-21 the total recurrent expenditure on youth justice was more than \$22.3 million – an increase of 30 percent on the total expenditure in 2015-16 (\$17.1 million). Of this, in 2020-21, total recurrent expenditure on youth detention services was more than \$15.25 million - an increase of 26 percent on the total expenditure in 2015-16 (\$12.13 million).<sup>11</sup>

The Tasmanian Government has also announced that it intends to construct two purpose-built detention facilities (12 beds capacity each) in Hobart and Launceston, which provides some surge capacity at a regional level while closing down and potentially repurposing Ashley Youth Detention Centre. The two options under consideration for this initiative are -

- Option 4A – two purpose-built detention facilities (12 beds capacity each) – projected cost over 20 years is \$158.66 million (approx. \$7.93 million per year on average);
- Option 4B – two purpose-built detention facilities (12 beds capacity each) with a shared services hub at each – projected cost over 20 years is \$171.81 million (approx. \$8.59 million per year on average).<sup>12</sup>

The Justice Reform Initiative is concerned that under either of these options, the number of children in youth justice detention will significantly increase. The planned

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<sup>8</sup> Australian Government Productivity Commission, Report on Government Services 2022, Part F Community Services, Section 17 Youth Justice Services, 25 January 2022.

<sup>9</sup> See n 2 above, Table 17A.26.

<sup>10</sup> See Dr Mindy Sotiri, Dr Ruth McCausland, Dr Rebecca Reeve, Lucy Phelan and Terry Byrnes. 2021. *'They're there to support you and help you, they're not there to judge you'* Breaking the cycle of incarceration, drug use and release: Evaluation of the Community Restorative Centres AOD and Reintegration Programs, Report for NSW Health. 2021.

<sup>11</sup> See n 2 above.

<sup>12</sup> Custodial Youth Justice Options Paper. 2016. Report for the Tasmanian Government Department of Health and Human Services Noetic Solutions Pty Ltd October 2016. 31, available at <[https://www.communities.tas.gov.au/\\_\\_data/assets/pdf\\_file/0025/36394/99010\\_Custodial\\_Youth\\_Justice\\_Options\\_Paper\\_October\\_2016\\_-\\_Report\\_for\\_the\\_Tasmanian\\_Government.pdf](https://www.communities.tas.gov.au/__data/assets/pdf_file/0025/36394/99010_Custodial_Youth_Justice_Options_Paper_October_2016_-_Report_for_the_Tasmanian_Government.pdf)>



public expenditure for the proposed two detention facilities should be redirected to community-based services including early intervention and diversionary programs for young people. This is consistent with the principle that youth justice detention should always be regarded as the option of last resort.

While Tasmania's financial commitment to incarceration continues to increase, we have only seen a piecemeal approach to resourcing services and programs in the community that we know are effective at reducing contact with the justice system. In 2020-21 Tasmanian Government spending on community-based youth justice services was only \$6.99 million. Expenditure on Group conferencing was only \$88,000.<sup>13</sup>

While there are some excellent and effective community led youth services in Tasmania supporting children at risk of justice service involvement in Tasmania, these are not adequately resourced, and their capacity to divert children from the justice system is limited. As noted in our recommendations there is the need for youth services to be mapped, the funding of these services to be unpacked and quantified, demand for services to be explored, and gaps in service delivery to be addressed. Building a comprehensive youth service system is critical to building a better justice system. As we note in our recommendations understanding, mapping and scoping in detail what is available for young people in the community will allow us insights into reducing the numbers of children we incarcerate.

Of particular note is the Tasmanian Government expenditure in 2020-21 per child aged 10-17:

- Detention-based services – expenditure per child aged 10-17: \$294.60;
- Community-based services – expenditure per child aged 10-17: \$134.79;
- Group conferencing – expenditure per child aged 10-17: \$1.70.<sup>14</sup>

Over-reliance on incarceration as a default response to both disadvantage and offending has resulted in a situation where too many people in the justice system are unnecessarily trapped in a cycle of harmful and costly incarceration. Instead of reducing the likelihood of reoffending prison entrenches existing disadvantage and increases the likelihood of ongoing criminal justice system involvement, often over generations. Many people leave prison homeless, jobless, and without the necessary supports to build healthy, productive, connected and meaningful lives in the community.

Too many children are trapped in a cycle of incarceration and being 'managed' in justice system settings which could be avoided if effective supports were available in the community. Investment by the Tasmanian Government in evidence-based programs and services run by the community sector that address the social drivers of incarceration would lead to a significant reduction in recidivism and a significant reduction in police interactions and care and protection orders. This shift in approach

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<sup>13</sup> See n 2 above.

<sup>14</sup> Ibid.

will also result in significant cost-savings, and substantial improvements in health and well-being.

There is substantial evidence that prison and detention (as it currently operates) is both expensive *and* ineffective. It is ineffective at reducing offending and re-offending; it is criminogenic (it increases the likelihood of future imprisonment), and its over-use causes enormous and inter-generational harm to the most vulnerable communities.

There is no causal relationship between imprisonment rates and crime. That is, crime reduction is not able to be explained by higher rates of incarceration but rather by a series of interrelated shifts in economic, cultural and social and justice policy.<sup>15</sup> A recent in-depth analysis of crime in Australia, shows that imprisonment has no significant impact on crime rates.<sup>16</sup>

## **GOOD PRACTICE PRINCIPLES IN SERVICE DELIVERY: HOW TO BUILD A YOUTH SERVICE SYSTEM THAT WORKS TO KEEP PEOPLE AWAY FROM THE JUSTICE SYSTEM**

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While the fact of disadvantage cannot be used to discount the consequences of crime,<sup>17</sup> it is crucial to understand the context in which most children are coming into contact with the justice system<sup>18</sup> to build and implement effective policy to reduce the numbers of people in custody and strengthen genuine alternatives to incarceration.

The principles underpinning successful services have been noted across multiple academic research reports into 'what works'.<sup>19</sup> All of them recognise the importance of acknowledging the social drivers of over-incarceration, working holistically with children leaving detention, ensuring a flexible and person-centred approach to service delivery, and working with people long-term to address the significant challenges in 'staying out'

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<sup>15</sup> Weatherburn, D & Rahman, S. 2021. *The Vanishing Criminal*. Melbourne University Press, Australia.

<sup>16</sup> Weatherburn, D. 2021. 'Imprisonment, reoffending and Australia's crime decline'. *Judicial Officers Bulletin*. September 2021. Vol. 33, No. 8.

<sup>17</sup> <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary>; For example see literature reviewed in <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#prisoner-characteristics-australia>; <https://www.aihw.gov.au/reports-data/population-groups/prisoners/overview>; <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/2-context/social-determinants-of-incarceration/>

<sup>18</sup> For example, see analysis in Chirs Cunneen, Eileen Baldry, David Brown, Melanie Schwartz and Alex Steel. 2013. *Penal Culture and Hyperincarceration: The Revival of the Prison*. Routledge.

<sup>19</sup> Melanie Schwartz, Sophie Russell, Eileen Baldry, David Brown, Chris Cunneen, Julie Stubbs. 2020. *Obstacles to Effective Support of People Released from Prison: Wisdom from the Field*. Rethinking Community Sanctions Project. UNSW. 2020. <https://apo.org.au/sites/default/files/resource-files/2020-02/apo-nid274951.pdf>; S.Kendall, S.Redshaw, S.Ward, S.Wayland and E.Sullivan. 2018. 'Systematic review of qualitative evaluations of re-entry programs addressing problematic drug and alcohol use and mental health disorders amongst people transitioning from prison to communities'. *Health and Justice*. Vol. 6, No. 4, 2018.

of prison. The research recognises the centrality of relational casework, the importance of housing, and the necessity of long-term support.

We consider the key principles for good practice to be:

1. **Reintegration, diversion and support framed *outside* of the lens of rehabilitation and 'addressing offending behaviour'**. There is a need to create and facilitate pathways for children that focus on addressing the systemic drivers of incarceration, and allow children the opportunity to develop connection and identity outside of the justice system. This means addressing barriers to reintegration including discrimination, poverty and homelessness. For Aboriginal and Torres Strait Islander populations, identity is often related to culture, family and community. Programs, services and supports for children impacted by the justice system should not just be framed in terms of addressing offending, but emphasise the importance of building a life *outside* of the prison environment.<sup>20</sup>
2. **Service delivery incorporating systemic advocacy**. Service delivery must include a significant advocacy component that addresses structural barriers for children (such as access to housing, education, health-care, and financial support), and advocates systemically for change when it is required. Systemic advocacy sees workers walking alongside children and challenging the multiple forms of perpetual punishment experienced by children who have been to prison.<sup>21</sup>
3. **Pre-release engagement for children who are incarcerated**. Meeting and working with children prior to release is highly beneficial when it comes to building the engagement necessary to sustain the casework relationship, building trust between the person in detention and the community organisation on the outside, and practically planning for re-entry into the community with complex needs populations.<sup>22</sup>

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<sup>20</sup> See Sotiri, McCausland, Reeve, Phelan and Byrnes, n 10 above; M.Schwartz, M.Terare. 2020. *Creating Futures: Weave's intensive support services for young people leaving custody or involved in the criminal justice system*, Evaluation report. Sydney. Available at <[https://www.cclj.unsw.edu.au/sites/cclj.unsw.edu.au/files/Creating%20Futures%20Evaluation%20Report%202020%20\\_%20with%20images.pdf](https://www.cclj.unsw.edu.au/sites/cclj.unsw.edu.au/files/Creating%20Futures%20Evaluation%20Report%202020%20_%20with%20images.pdf)>; Women's Justice Network. 2016. *Adult Mentoring Program*. Evaluation report. 2016; Community Restorative Centre. 2016. *Alcohol and Other Drugs Transition Program*. Evaluation report. 2016; M. Sotiri. 2015. *An Exploration of Best Practice in Community Based reintegration Programs for people leaving custody in the US and the UK*. The Winston Churchill Memorial Trust of Australia. 2015.

<sup>21</sup> M Sotiri and S Russell. 2018. 'Pathways home: How can we deliver better outcomes for people who have been in prison?'. *Housing Works*. Vol. 15, No. 3, 2018, 41; Sotiri 2015 see n 20 above.

<sup>22</sup> M Borzycki and E Baldry. 2003. 'Promoting integration: The provision of prisoner post-release services'. *Trends and Issues in Crime and Criminal Justice*. Australian Institute of Criminology: Canberra, No. 2, 2003; J Gilbert and B Elley. 2015. 'Reducing recidivism: An evaluation of the pathway total reintegration programme'. *New Zealand Sociology*. Vol. 30, No. 4, 2015, 15–37; B.Angell, E.Matthews, S.Barrenger, A.Watson and J.Drain. 2014. 'Engagement processes in model programs for community re-entry from prison for people with serious mental illness'. *International Journal of Law and Psychiatry*. Vol. 37, 2014, 490–500.

4. **Holistic, relational, intensive and long-term casework models.** Children should not be excluded from services on the basis of complexity or on the basis of criminal records or past offending behaviour. Services should be resourced to work with children with multiple and complex support needs. Children, especially those with histories of trauma, often require long-term support to build engagement and trust. Long-term support also allows people the opportunity to develop the skills required to navigate frequently hostile or unwieldy service systems. Services that can work with children around their various support needs, rather than simply referring on, are also critical in terms of building engagement, trust and providing meaningful support. Although there is the need for specialist services (for instance specialist mental health support), the role of the youth case worker or support worker, is to genuinely support this engagement (not just make a referral).<sup>23</sup>
5. **Community-based and community-led outreach.** Services that work with children at risk of involvement in the criminal justice system need to operate outside of the criminal justice system and within the communities in which people are living. Services should be outreach in focus - workers should travel to where clients are 'at' rather than relying on appointment-based systems (at least initially).<sup>24</sup>
6. **Programs should be developed in partnership with local communities.** For First Nations children, the most effective early intervention responses are those which are culturally appropriate, designed and delivered by local First Nations communities and organisations and which foster a genuine sense of community ownership and accountability.<sup>25</sup> Many First Nations People have intergenerational and/or personal experience of mainstream services working against them.<sup>26</sup> Engaging with First Nations communities ensures that programs are more effectively targeted to local priorities and needs, and are aligned with local systems and circumstances.<sup>27</sup> Community involvement should occur at

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<sup>23</sup> Gilbert and Elley 2015. See n 22 above; Angell et al 2014, see n 22 above, 490–500; B.Hunter, A.Lanza, M.Lawlor, W.Dyson and D.Gordon. 2016. 'A strengths-based approach to prisoner re-entry: The fresh start prisoner re-entry program'. *International Journal of Offender Therapy and Comparative Criminology*. Vol. 60, No. 11, 2016, 1298–314.

<sup>24</sup> D Padgett, L Gulcur and S Tsemberis. 2006. 'Housing first services for people who are homeless with co-occurring serious mental illness and substance abuse'. *Research on Social Work Practice*. Vol. 16, No. 1, 2006, 74–83; S Kendall et al, 2018. See n 19 above.

<sup>25</sup> Legislative Assembly of New South Wales Law and Safety Committee. 2018. '[Inquiry into the Adequacy of Youth Diversionary Programs in NSW](#)', Report 2/56. September 2018. 9; Kristen Davis and Daryl Higgins. 2014. '[Law and justice: prevention and early intervention programs for Indigenous youth](#)'. Australian Institute of Health and Welfare and Australian Institute of Family Studies. Resource Sheet No 34. July 2014. 10.

<sup>26</sup> Law Council of Australia. 2019. '[Minimum Age of Criminal Responsibility](#)'. Policy Statement, 17 December 2019. 5.

<sup>27</sup> Kristen Davis and Daryl Higgins 2014, see n 25 above.

each stage of the process, including at the feedback stage to ensure that the feedback methods used align with First Nations communication and knowledge.

7. **Housing first approaches.** Support must be practical and children need somewhere safe and secure to live. They require a solid base from which they can make the changes required to stay out of prison.<sup>28</sup>
8. **Genuine collaboration with people with lived experience of incarceration at all levels of program delivery.** The expertise of children who have themselves been involved in the justice system is critical in both the design and delivery of community-based diversion and reintegration services. People who have experience of these systems are best equipped to provide honest and critical insights into what is needed to change and improve them.<sup>29</sup>

Service delivery for children should be person-centred, strengths-based, flexible, trauma-informed, culturally safe, holistic, and relational in approach.<sup>30</sup> The quality of the relationship between workers and children is critical, in terms of building trust, engagement and hope. Long-term support, where relationships can be developed over time, should always be an option. First Nations children should also always have the option of receiving culturally-safe support.

Children with multiple and complex support needs are accustomed to their needs being 'too much' for service and support providers in the community and too often end up 'managed' in justice system settings rather than supported in the community. In order to build an alternative system, support services must be equipped to be able to work intensively and long-term with highly vulnerable children. Workers and services must have the capacity to 'hold' multiple and complex issues and, wherever possible there should be one point of contact and connection for the child who also serves as an advocate when it comes to navigating service systems (although specialist support is also essential). Children need to feel and know that there is someone in their corner,

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<sup>28</sup> D.Padgett, L.Gulcur and S.Tsemberis. 2006. 'Housing first services for people who are homeless with co-occurring serious mental illness and substance abuse'. *Research on Social Work Practice*. Vol. 16, No. 1. 2006. 74–83; Sotiri and S Russell. 2018. See n 21 above, 41; G.Johnson, S.Parkinson, and C.Parsell. 2012. *Policy shift or program drift? Implementing Housing First in Australia*. AHURI Final Report No. 184. Australian Housing and Urban Research Institute Limited. Melbourne,

<sup>29</sup> C.Doyle, K.Gardner, K.Wells. 2021. 'The Importance of Incorporating Lived Experience in Efforts to Reduce Australia's Incarceration Rates'. *International Journal for Crime, Justice and Social Democracy*. Vol. 10, No. 2; M.Sotiri. 2020. 'Building Pathways Out of the Justice System: Supporting Women and Reducing Recidivism'. *Precedent*. Issue 161. November/December 2020.

<sup>30</sup> M.Sotiri. 2008. 'Meeting the needs of marginalised young men: An analysis of service provision'. *Youth Studies Australia*. 27, 29-38; Megan Semczuk, Anthony Shakeshaft, Alice Knight, Myfanwy Maple, Kathryn McKay and Bernie Shakeshaft. 2012. *An Analysis of the Relationship Between a Community-based Program for Young People with Multiple and Complex Needs and the Prevalence of Crime*, NDARC Monograph No 65. Sydney: University of NSW; Chris Cunneen, Sophie Russell and Melanie Schwartz. 2021. 'Principles in diversion of Aboriginal and Torres Strait Islander young people from the criminal jurisdiction'. *Current Issues in Criminal Justice*. 33: 170-190.

who can help them through a difficult time. Consistency and the option of long-term support is critical.

## SERVICE MODELS THAT WORK

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While there is no single 'reform fix' to reduce the numbers of children in the justice system, there are multiple proven, cost-effective reforms that can work together to make progress. Many of these reforms are already catalogued in an abundance of government and non-government reports and reviews.<sup>31</sup> In addition, there are clear examples and case studies both Australian and internationally that point to approaches led by the community and health sectors which can make a profound difference in disrupting entrenched criminal justice system trajectories for children.

There are excellent examples of successful evidence-based practice in the community (early intervention), in policing (pre-charge diversion), diversionary programs at the point of court, and post-release. These programs have demonstrated ability to achieve significant reductions in recidivism as well as other improvements in health and wellbeing. There is a need to look at evidence-based, cost-effective alternatives to detention in terms of 'what works' to improve community safety and to reduce recidivism. Some recent Australian examples are noted below.

Weave (Creating Futures) NSW	This independent three-year evaluation of the WEAVE Creating Futures program (which provides intensive, culturally safe case work support to Aboriginal children on release from custody) found that only 4.11% of the 93 children engaged in the program over the period of the evaluation re-offended. This was compared to BOCSAR reoffending rates for young Aboriginal people which are 57.3% for a comparable cohort. <sup>32</sup>
Backtrack Youth Services, Armidale, NSW	Over the last ten years, the intensive, holistic and relational case work provided by Backtrack Youth Services has supported 1000 children at risk of criminal justice system involvement or entrenched in the justice system. An impressive 87% of the children who leave Backtrack transition into employment or education. A UNSW report of the impact of the program on the local community in Armidale found a 35% reduction in crime because of the engagement of children in the program. <sup>33</sup>
Yirimán Project, WA	The Yirimán project is regarded as an exemplar of national best practice for working with First Nations youths at risk of involvement in the criminal justice system. Youth aged 15 to 25 years are taken out on country to visit Elders where they are involved in deep learning and transmission of culture and

<sup>31</sup> For example, as detailed in <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/2-context/social-determinants-of-incarceration/>

<sup>32</sup> M.Schwartz, M.Terare, 2020, see n 20 above.

<sup>33</sup> Backtrack Annual Report 2020, Backtrack\_AnnualReport\_2020.pdf

	<p>language, workshops, making of artefacts and taking care of the land. This allows participants to experience a cultural connectedness with others and build self-respect, confidence and resilience.<sup>34</sup></p> <p>Reported Impact: A three-year review of the Yiriman project found that Yiriman had helped reduce children's involvement in the criminal justice system. International research supports the correlation between the practice of culture, language and 'on-country' activities and decreases in crime. A magistrate concluded that Yiriman was more capable of reducing recidivism than most other diversionary and sentencing options.<sup>35</sup></p>
<p>Maranguka Justice Reinvestment Project, Bourke NSW</p>	<p>This community-led justice reinvestment program commenced in 2013 to reduce First Nations children's disproportionate rates of offending, reoffending and incarceration in Bourke. The project was initiated through a grassroots coalition of concerned local First Nations residents.</p> <p>First Nations children aged 10 to 17 years in Bourke suffer from multiple overlapping vulnerabilities and disadvantage and experience the highest rate of juvenile convictions in NSW. The project aims to ensure that Bourke First Nations children grow up safe, smart and strong. The project targets children from when they are born, ensuring that every First Nations parent values the importance of learning for their child and feels supported and confident in their parenting. This is achieved through measures such as nurses undertaking home visits for the first two years of a child's life. For school-aged children, the project co-ordinates and integrates services around children showing early signs of school disengagement or anti-social behaviour, ensuring they engage in positive activities, complete Year 12 and address the impacts of trauma, grief and loss. Every service provided engages First Nations people in its design and delivery.<sup>36</sup></p> <p>Reported Impact: For children and young people aged 10-25, between 2014 and 2015, the project saw a:</p> <ul style="list-style-type: none"> <li>- 12% reduction in the number of youth charged with offences;</li> <li>- 14% reduction in the rate of reoffending within 12 months of release;</li> <li>- 38% reduction in youth proceeded against for driving offences; and</li> </ul>

<sup>34</sup> Melissa Marshall and Dr Kathryn Thorburn. 2017. 'The Yiriman Project in the West Kimberley: An example of Justice Reinvestment?'. Indigenous Justice Clearinghouse. Current Initiatives Paper 5. July 2017. 2-3, 5.

<sup>35</sup> Dr Dave Palmer. 2016. "'We know they healthy cos they are on country with old people": demonstrating the value of the Yiriman Project'. Community Development Programme. Murdoch University. May 2016. 9-10.

<sup>36</sup> KMPG. 2016. 'Unlocking the Future: Maranguka Justice Reinvestment Project in Bourke'. Preliminary Assessment. v, 39.

	<ul style="list-style-type: none"> <li>- 43% reduction in the number of youth proceeded against for breaches of AVOs or domestic violence related assault.<sup>37</sup></li> </ul> <p>In March 2019, an additional \$1.8 million in government funding was announced for this project. This costs less than keeping four children in detention for a year.<sup>38</sup></p>
<p>Danila Dilba, NT</p>	<p>Danila Dilba in the NT delivers a range of early intervention services targeted at children at risk of becoming involved in the criminal justice system, including:</p> <ul style="list-style-type: none"> <li>- The Assessment of Behaviour and Child Development Clinic, a collaborative assessment and planning clinic for First Nations children with learning, behaviour and development problems including FASD. The Clinic assists families to navigate complex referral pathways and systems and ensures children access all relevant assessments and supports to meet their needs; and</li> <li>- A Youth Social Emotional Wellbeing service to build the capability and skills of children and parents.</li> </ul> <p>Danila Dilba is also currently developing a culturally safe youth diversion service to target the holistic needs of children and provide an intervention wholly outside of the criminal justice system. This service will include:</p> <ul style="list-style-type: none"> <li>- a holistic and comprehensive assessment of the child and their family, including a screening for a potential neuro-cognitive disability;</li> <li>- restorative justice conferencing involving the victim and/or their family;</li> <li>- access to programs/activities aimed at connecting children with culture, family and country; and</li> <li>- a range of internal and external referral pathways to ensure a child is in a safe and supportive environment and their developmental needs such as physical and mental health, education, culture and family are being met.<sup>39</sup></li> </ul>
<p>Youth Crime Action Plan, New Zealand</p>	<p>The New Zealand 10-year Youth Crime Action Plan<sup>40</sup> provides an interesting and relevant approach to reducing youth offending rates, with a focus on the overrepresentation of Maori people in the justice system.</p>

<sup>37</sup> Just Reinvest NSW. 2018. 'New Evidence from Bourke'. October 2018.

<sup>38</sup> Law Council of Australia. 2019. 'Minimum Age of Criminal Responsibility'. Policy Statement. 17 December 2019. 5.

<sup>39</sup> Danila Dilba Health Service. 2020. Submission to the Council of Attorneys-General Age of Criminal Responsibility Working Group. *Review of the Age of Criminal Responsibility*. 28 February 2020. 4, 14-15.

<sup>40</sup> New Zealand Ministry of Justice. 2013. Youth Crime Action Plan 2013-2023  
 <<https://www.justice.govt.nz/assets/Documents/Publications/YCAP-full-report.pdf>>



	<p>In 2015 the New Zealand Justice and Courts Minister reported that the number of young people (aged 10-16 years) appearing in court had more than halved since 2007.<sup>41</sup></p> <p>The program has sought to have a ‘genuine partnership with communities’ by involving Maori communities, frontline practitioners and schools, to allow 20 communities across New Zealand to develop their own solutions to youth offending problems.<sup>42</sup></p> <p>With an innovation fund of \$400,000 the program aims to reduce escalation by implementing informal interventions, warnings, family group conferences and diversion programs.<sup>43</sup></p> <p>The Youth Courts in New Zealand have also implemented solution-focused court practices.<sup>44</sup></p>
<p>Alternative Action Plans, New Zealand Police</p>	<p>Alternative Action is an innovative Police response to youth offending that goes beyond the bare legal requirements and provides a reasonably complex response to youth offending. The two essential requirements for Alternative Action being used are that the young person admits the offence in question, and that a parent, guardian or adult nominated by the child or young person be present.</p> <p>The Alternative Action process involves the Youth Aid Officer meeting with the child or young person and their parents or caregivers and together they develop a plan. In preparation for this meeting the Youth Aid Officer will collect relevant background information and review any existing Police information. A home visit will sometimes be carried out prior to the Alternative Action meeting to provide the Officer with a greater understanding of the child or young person’s background and current circumstances.</p> <p>An Alternative Action plan will often include elements that have a variety of aims, including making the young person accountable for his/her actions, making amends to the victim, and addressing needs that the young person may have that increase the risk of future offending. Elements often found in Alternative Action plans include:</p> <ul style="list-style-type: none"> <li>• A letter of apology to the victim</li> <li>• Reparation or financial restitution to the victim</li> <li>• A donation to a nominated charity</li> </ul>

<sup>41</sup> New Zealand Justice and Courts Minister, ‘Lowest number of youth in court in 20 years’, Media Release, 24 March 2015 <[http://beehive.govt.nz/release/lowest-number-youth-court-20-years?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+beehive-govt-nz%2Fportfolio%2Fcourts+%28Courts+-+beehive.govt.nz%29](http://beehive.govt.nz/release/lowest-number-youth-court-20-years?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+beehive-govt-nz%2Fportfolio%2Fcourts+%28Courts+-+beehive.govt.nz%29)>.

<sup>42</sup> New Zealand Associate Justice Minister, ‘Action Plan the next step forward for youth justice’, Media Release, 31 October 2013 <<http://www.beehive.govt.nz/release/action-plan-next-step-forward-youth-justice>>.

<sup>43</sup> Ibid.

<sup>44</sup>New Zealand Bar, At the Bar,(December 2016, 10 [https://www.nzbar.org.nz/sites/default/files/uploaded-content/field\\_f\\_content\\_file/at\\_the\\_bar\\_december\\_2016.pdf](https://www.nzbar.org.nz/sites/default/files/uploaded-content/field_f_content_file/at_the_bar_december_2016.pdf); see also [18579-MIS-YouthLaw-Advocacy-Report-2017-WEB.pdf](#) accesses 2/2/2022.

	<ul style="list-style-type: none"> <li>• Community work</li> <li>• Attending a programme or counselling related to the perceived needs of the child or young person</li> <li>• Re-enrolling in school or a training course</li> <li>• Curfew or commitments not to associate with certain peers seen to be a negative influence or other restrictions.</li> </ul> <p>Alternative Action have made a difference with high risk young people by assessing and identifying their offending-related needs, and including ways of addressing these needs in Alternative Action plans in addition to addressing deeds, particularly through referral to high hours of effective programmes.<sup>45</sup></p>
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The Justice Reform Initiative is currently undertaking ongoing research on models of evidence-based practice in the community (programs that are effective in reducing contact with the justice system), in policing (pre-charge diversion), diversionary programs at the point of court, and post-release. We would be happy to update the Tasmanian Department of Communities of additional examples of effective service delivery in these areas as we become aware of them, if that would be considered useful.

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## SPECIFIC ISSUES RAISED IN THE DISCUSSION PAPER

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### RAISE THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY TO 14

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The Justice Reform Initiative recognises the need for multiple legislative and policy, social, health, and human service reforms to be enacted, so that historically over-incarcerated and disadvantaged populations have opportunities to thrive in the community. Raising the minimum age of criminal responsibility (MACR) to 14 is one of the key priority reform areas for the Justice Reform Initiative and we welcome the opportunity to include this key legislative strategy into our recommendations for the Tasmanian Youth Justice Discussion paper.

There is a significant quantity of contemporary research indicating that many children aged between 10 and 14 years of age are not at a cognitive stage of development where they are able to appropriately appreciate the nature and significance of criminal conduct and the lifelong consequences of undertaking such conduct. This creates significant doubt on the capacity for children of these ages to appropriately reflect before embarking on a course of action involving criminal behaviour.<sup>46</sup>

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<sup>45</sup> Kaye McLaren. 2011. *Alternative Actions that Work – A review of the research on Police Warnings and Alternative Action with children and young people*. Youth Services Group. Police National Headquarters. Wellington.2011.

<sup>46</sup> Kelly Richards. 2011. 'What makes juvenile offenders different from adult offenders?'. *Trends & issues in crime and criminal justice*. Paper No. 409. 18 February 2011. 4; Laurence Steinberg. 2007. 'Risk taking in adolescence: new perspectives from brain and behavioural science'. (2007) 16(2). *Current Directions in Psychological Science*. 55, 56; See also E. Farmer. 2011. 'The age of

According to the UN Committee on the Rights of the Child:

Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence.<sup>47</sup>

The consequences of imprisoning young children extend well beyond the futility of this in terms of what we know about children's developmental capacity. By criminalising the behaviour of children who may not be aware of the consequences and nature of their conduct, a dangerous cycle of disadvantage is initiated causing children to become entrenched in the criminal justice system. Several studies confirm that when children are drawn into the criminal justice system at a young age there is a significantly higher likelihood of subsequent reoffending and a lower likelihood of that child completing their education or securing employment. The experience of youth detention is one of the key predictors of longer term justice system involvement.<sup>48</sup>

The Justice Reform Initiative is of the view that there should **not** be any exceptions on the MACR, on the basis of the 'type' or severity of the offence or behaviours. The frame around which decision-making should be made with regard to the minimum age should be medical and developmental – not political. If a child is not able to be held criminally responsible for offences that might be considered 'less serious' (for instance, shoplifting) then there is no reason why they could be held criminally responsible for more serious offences. This is especially the case for offences that require specific intent, for example, the requirement for murder that the person intended to cause the person's death or cause serious harm to the person.

The Justice Reform Initiative notes that in January 2021 as part of Australia's Universal Periodic Review before the UN Human Rights Committee, 31 UN Member States called on Australia to raise the age of criminal responsibility to 14 years of age.<sup>49</sup>

In addition, the UN Committee on the Rights of the Child has recommended that the minimum age of detention be set to 16 years of age, with exceptions allowed where

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criminal responsibility: developmental science and human rights perspectives'. *Journal of Children's Services*. 6(2); Chris Cunneen. 2017. 'Arguments for Raising the Minimum Age of Criminal Responsibility'. Comparative Youth Penalty Project. Sydney. University of New South Wales. 2017. Available at <<http://cyp.p.unsw.edu.au/node/146>>; Australian Medical Association. 2019. AMA submission to the Council of Attorneys-General – Age of Criminal Responsibility Working Group Review'.

<sup>47</sup> United Nations Committee on the Rights of the Child. 2019. *General comment No. 24: Children's rights in the child justice system*, CRC/C/GC/24 (18 September 2019). Paragraph 22.

<sup>48</sup> Australian Institute of Health and Welfare. 2016. *Young people returning to sentenced youth justice supervision 2014–15*. Report, Juvenile justice series no. 20. 22 July 2016. Available at <<https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-youth-justice-supervision-2014-15/contents/table-of-contents>>; Australian Institute of Health and Welfare, *Young people aged 10–14 in the youth justice system 2011–12*, (Report 25 July 2013) <<https://www.aihw.gov.au/reports/youth-justice/young-people-aged-10-14-in-the-youth-justice-system/contents/publication>>.

<sup>49</sup> <https://www.abc.net.au/news/2021-01-21/un-australia-raise-the-age-of-criminal-responsibility/13078380>

there are genuine public safety or health concerns.<sup>50</sup> This recognises that ‘the use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers her/his reintegration into society.’<sup>51</sup> Detention should therefore always be considered as a measure of last resort.

*Focusing on the evidence: Why the Operational and Political Challenges of Raising the age to 14 should not get in the way of committing to the principle*

The Justice Reform Initiative is keen to promote a decision-making environment in Tasmania in which the framework for this important policy and legislative decision is driven by medical evidence, rather than any political challenges associated with legislative reform. To this end we encourage the Blueprint to use the clearly available evidentiary framework for decision making around the principle of raising the age to 14 so that this is the starting point for the development of the necessary service framework.

There is a need in Tasmania to develop an alternative service delivery and support framework for children who have historically been dealt with in the youth justice system. Although there are challenges with regard to making this change, and gaps in service delivery that require a response, we believe (and have observed in other jurisdictions internationally, and more recently in the ACT) that these issues are resolvable. The report in relation to implementation in the ACT can be found at:

[https://hdp-au-prod-app-act-yoursay-files.s3.ap-southeast-2.amazonaws.com/2716/3428/0940/Independent\\_Review\\_-\\_Final\\_Report.PDF](https://hdp-au-prod-app-act-yoursay-files.s3.ap-southeast-2.amazonaws.com/2716/3428/0940/Independent_Review_-_Final_Report.PDF)

We believe that once the principled decision to raise the age to 14 has been made the Tasmanian government will have the opportunity to draw on a wealth of experts (including First Nations led organisations, medical experts, community sector service delivery experts, researchers and advocates) to assist in the thoughtful development of an alternative multi-agency response to children aged between 10 and 13.

To this end, we recommend that the Tasmanian Government

1. Make a public commitment to raising the age of criminal responsibility to 14 (based on the available medical evidence).
2. That the *Youth Justice Act* explicitly state that any child under the age of 16 should not be subject to youth justice detention unless there are exceptional circumstances concerning community safety warranting such detention.
3. Make a concurrent commitment to oversee a comprehensive review process of the youth service and youth justice systems with the view of ensuring a gaps and needs analysis is carried out, prior to the development of a road-map for implementation and subsequent legislation.

This approach replicates the model used by the ACT government. A lack of confidence in the existing service system to cope with the changes required if the minimum age of

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<sup>50</sup> United Nations Committee on the Rights of the Child. 2019. [General Comment No 24 \(2019\) on children's rights in the child justice system](#), UN Doc CRC/C/GC/24 (18 September 2019). 30.

<sup>51</sup> *Certain Children v Minister for Families and Children [No 2]* (2017) 52 VR 441, 522 [262](c), quoting UN Committee on the Rights of the Child, General Comment No 10: Children’s rights in juvenile justice, 44th sess, UN Doc No CRC/C/GC/10 (25 April 2007) 5 [11].

criminal responsibility is raised to 14 is a legitimate concern. However, the implementation and operational challenges should – and can - be addressed separately from the overarching principle of the need to raise the age of criminal responsibility to 14, based on well documented medical evidence.

## ACCESS TO BAIL

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The Justice Reform Initiative is also of the view that the *Youth Justice Act* should clearly state that there should always be a presumption in favour of bail in respect of a child charged with any criminal offence. Denial of bail increases the likelihood of incarceration and is a major contributing factor in causing children to become further entrenched in the criminal justice system. In no circumstances should there ever be a presumption against bail for a child charged with a criminal offence.

In order to facilitate this access to bail for young offenders there is a need to increase resources for a bail support program which provides supported accommodation for children with opportunities for education, health and other necessary support services.

The Justice Reform Initiative does not support the introduction of electronic monitoring of children on bail. The Queensland Human Rights Commissioner recently commented in relation to a similar proposal in Queensland that electronic monitoring devices are not appropriate for children charged with offences and released on bail.<sup>52</sup> Moreover, requiring a child on bail to wear an electronic monitoring device creates a significant level of stigma for that child making it difficult for her/him to attend school, find employment, or secure safe accommodation. Such a child will need significant family support for the desired effect of electronic monitoring to be achieved. For many children in this cohort such family support will not be available. This is particularly the case for Aboriginal and Torres Strait Islander children who make up a disproportionate number of children under child protection orders, for whom the parent is the state.

The Justice Reform Initiative is further concerned that the requirement for some children on bail to wear electronic monitoring devices will inflame the already present concerns of the growing vigilante responses to youth crime.<sup>53</sup> The devices may make it easier for this group to identify the children on bail making them more vulnerable when in public.

A recent UK systematic review of the effectiveness of electronic monitoring in several countries found that electronic monitoring works best with people convicted of sex offences; but when extended to broader populations, there was no significant positive effect compared to non-monitoring.<sup>54</sup>

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<sup>52</sup> <https://www.abc.net.au/news/2021-02-05/youth-crime-justice-couple-killed-brisbane-gps-human-rights/13117336>

<sup>53</sup> <https://www.abc.net.au/news/2021-03-02/townsville-youth-crime-vigilantes-worry-indigenous-community/13192838>. <https://www.abc.net.au/news/2016-12-13/townsville-police-vigilante-warning-youth-crime-rates-soar/8115002>

<sup>54</sup> Jyoti Belur, Amy Thornton, Lisa Thomson, Matthew Manning, Aiden Sidebottom, Katie Bowers. 2017. *What Works Crime Reduction Systematic review Series – No 13 A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders*. UCL Department of Security and Crime Series, University of London. 2017, available online at

There is very little benefit in incurring the substantial cost of introducing electronic monitoring of children on bail, given the evidence that there is no significant positive effect in terms of crime reduction. We are also concerned of the substantial risk that children required to wear such a device will be set up to fail resulting in increased incarceration for this vulnerable cohort.

### WHAT MIGHT A CONTEMPORARY AND THERAPEUTIC YOUTH JUSTICE COURT LOOK LIKE?

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Under the *Youth Justice Act 1997* (Tas) there is a separate Youth Justice Division of the Magistrates Court in Tasmania. The Justice Reform Initiative submits that this structure does not reflect a contemporary and therapeutic Youth Justice Court.

In order to support the Blueprint vision of a therapeutic and integrated approach to youth justice in Tasmania, there is a need to establish a separate specialist Children and Young Persons Magistrates Court ('CYPM Court'). The CYPM Court would be a separate Magistrates' Court and not just a division of the existing Magistrates' Court. As such, it would have its own President or Chief Magistrate with power to assign any person who is appointed a magistrate to be a magistrate of the CYPM Court.

The President, in assigning a magistrate to the Court, would be required to consider the magistrates experience in matters relating to child welfare and youth justice. In order to enhance their experience in this specialist area, judicial officers assigned to the Court would be required to attend training and education seminars relating to child welfare and wellbeing, therapeutic and integrated service delivery, and models of therapeutic intervention for children.

A specialised CYPM Court should be staffed with appropriate specialised judicial officers and court staff able to implement court-based therapeutic, diversionary and targeted intervention strategies to support children charged with criminal offences who come before the court. The establishment of the CYPM Court and the way in which it should operate should be clearly outlined in legislation. In addition, the physical location of the CYPM Court should ideally be in an integrated services hub which enables easy referral to support services that are identified as relevant and appropriate for children who come before the court.