



Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:

Feedback on the Dangerous Criminals and High Risk Offenders Amendment Bill 2025

April 2025

TALS is an Aboriginal and Torres Strait Islander Legal Service (ATSILS) that specialises in criminal, civil and family law matters for Tasmanian Aboriginal peoples. As an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations (ICN 9283), TALS is committed to improving the life outcomes of Aboriginal peoples.

In this submission, any reference to Aboriginal peoples is understood to encompass Torres Strait Islander peoples.

As an advocate for law reform, justice and equity for all Aboriginal people in Tasmania the Tasmanian Aboriginal Legal Service (“TALS”) welcomes the opportunity to provide feedback on the draft Dangerous Criminals and High Risk Offenders Amendment Bill 2025 (“the Bill”).

TALS strongly support any initiatives that promote community safety, whilst maintaining fairness, respect and delivering just outcomes for all people in contact with the justice system.

TALS recognise that Aboriginal peoples are grossly overrepresented in the justice system. This is attributed to Aboriginal peoples lived experiences of disproportionate structural disadvantage, stereotyping and inter-generational trauma. It is fact that on all standard indicators, Aboriginal peoples emerge as the most structurally, socially and economically deprived, making them the most disadvantaged and marginalized group in Australia.¹

This document responds directly to the proposed amendments to the Dangerous Criminal and High Risk Offenders Act 2021, namely clauses 5, 6, 7 and 8, and the impact this may have Aboriginal people in Tasmania and communities across the state.

¹ Tasmanian Government - Department of Justice, *Prisoners, detainees and community-based offenders output data* (23 October 2024).

INTRODUCTION

Aboriginal peoples continue to be disproportionately represented in custodial settings, with thirty-six (36) percent of all prisoners in Australia identifying as Aboriginal during the 2023/24 financial year.² As of September 2024, twenty four (24) percent of prisoners in the Tasmanian prison system identified as Aboriginal.³ During this same period Aboriginal peoples also experienced significantly higher recidivism rates in comparison to the non-indigenous population both in Tasmania and across Australia.⁴

The disproportionate incarceration rate, and higher recidivism rate experienced by Aboriginal peoples, can be attributed to the systemic discrimination that has long existed in public policies, practices and social structures.⁵ Systemic discrimination also contributes to Aboriginal peoples developing an increased mistrust of the justice system and community support mechanisms which subsequently results in a range of unaddressed issues perpetuating overrepresentation in the justice system.⁶

Additionally, there are still access issues for Aboriginal people seeking legal assistance and culturally appropriate services. This was evident in the independent *Review of the National Legal Assistance Partnership ('NLAP') 2020-2025* where it was said that NLAP had failed to meet *Closing the Gap Priority Reforms*, namely commitments to early intervention and prevention services, advocacy and law reform and community legal education.⁷ The review also concluded that future agreements must significantly increase funding to Aboriginal legal and support services to adequately address the identified gaps.⁸

THE BILL

The *Dangerous Criminals and High Risk Offenders Act 2021* ('the Act') was introduced when it was passed by the Parliament of Tasmania in May 2021. The Act repealed the dangerous criminal declaration provisions in the *Sentencing Act 1997* and provided Tasmania with a separate legislative framework for the indefinite detention of dangerous criminals, and post-sentence supervision of a 'second tier' referred to as high risk offenders.

The amendments to the Act proposed by the Bill are mostly relevant to high risk offenders. This 'second tier' enables the Director of Public Prosecutions ('DPP') to apply for a High Risk Offender ('HRO') order to be imposed on a person who may not meet the threshold to be declared a 'dangerous criminal' but is still deemed a risk to the community if released without supervision upon completion of their term of imprisonment.

Where the Court makes a HRO order, a range of mandatory conditions must be imposed on the offender, such as residential and reporting conditions, permissions for police to enter and search their premises, limitations on

² The Guardian, *Unsentenced prisoners make up a third of Australia's prison population as bail refusals boom* (1 February 2023)

³ Department of Justice, *Prisoners, detainees and community based offenders output data* (23 October 2024).

⁴ Australian Institute of Health and Welfare, *Contact with the criminal justice system* (accessed 8 April 2025).

⁵ Victorian Aboriginal Justice Agreement, *Underlying causes of Aboriginal over-representation* (15 August 2024).

⁶ Judicial Commission of New South Wales, *Handbook for Judicial Officers – Cultural Diversity: reflections on the role of the judge in ensuring a fair trial* (accessed 8 April 2025).

⁷ Community Legal Centres Australia, *Independent review of the National Legal Assistance Partnership 2020-2025*, (accessed 24 April 2025).

⁸ *Ibid.*

their movement and travel, and directions to engage with programs or supports. The Court may also impose additional conditions such as electronic monitoring or urinalysis testing.

Broadly, the amendments to the Act proposed by the Bill are:

Clause 5 – Amends section 3 of the Act to specify that a conviction for attempting to commit a ‘serious offence’ is considered to be a conviction for a ‘serious offence’ for the purposes of the Act.

Clause 6 – Amends section 35 to provide that the Supreme Court may order that an offender is detained for period of not more than 7 days beyond their sentence end date, if the Court is satisfied that such a period of time is required to make arrangements to give effect to the conditions of the HRO order. This is amendment mirrors the existing provisions regarding interim HRO orders (section 37) and is designed to facilitate a successful release from custody and increased compliance with the HRO order.

Clause 7 – Amends section 39 to clarify the that operational period of a HRO order is not extended in the event that the order is suspended for a period.

Clause 8 – Expands the list of serious offences within Schedule 1 to include further offences relating to children.

TALS RESPONSE

Clause 5

TALS supports and recognises the need to protect community safety, particularly in relation to children and vulnerable people. However, the amendment proposing that attempting to commit a ‘serious offence’ is considered to be a conviction for a ‘serious offence’ for the purposes of the Act risks inconsistency, interpretive confusion, and unintended overreach.

Using offence-based categorisations over individualised assessments may detach the legal process from the social, historical, and personal factors that influence offending behaviour. For Aboriginal peoples, who are more likely to experience intergenerational trauma, systemic discrimination, and early criminalisation, this method may exacerbate existing disparities.⁹

TALS recommend the inclusion of clear statutory principles to guide application, which would ensure the law is applied consistently across jurisdictions. These principles should also account for the unique historical and social experiences that have shaped patterns of criminal behaviour in Aboriginal communities.

Clause 6

The proposal to allow up to 7 days of detention post-sentence to finalise HRO order conditions may appear administratively convenient however, from both rights-based and cultural perspectives, it represents an

⁹ Victorian Aboriginal Justice Agreement, *Underlying causes of Aboriginal over-representation* (15 August 2024).

expansion of custodial authority that may be viewed as a superfluous use of custodial settings and impingement on an individual's rights.¹⁰

Whilst it is accepted that the Court must attempt to facilitate a successful release from custody, and encourage increased compliance with the HRO order, post-sentence detention should be an exceptional measure and not be utilised in situations where delays with assessments or court processes out of the individual's control.

In practice, this amendment may disproportionately affect those with limited housing, no legal representation, or minimal access to appropriate post-release supports. Historically, these are issues that are experienced by Aboriginal peoples at higher rates and as such this measure risks perpetuating existing disadvantage.¹¹

There are also instances where the 7 days of post-sentence detention may not deliver on its intended purpose. For example, if there is a delay or issue with assessing an offender for electronic monitoring the 7 days may not be adequate, given that recent reports that Tasmanian Police have extended their assessment time for electronic monitoring to 28 days.¹² In situations where this assessment is still unable to be completed, despite the extra 7 days in custody, the offender would still need to be released regardless.

Given the above, TALS are of the position that an offender should not be disadvantaged by being made subject to post-sentence detention. TALS recommend that the onus be placed on the DPP to ensure an application is made within a pre-release time frame that enables the application to be heard well before the end of an offender's sentence. The updated time frame expectations for lodging a HRO order application can be supported with an addition to the Act.

The addition of a subsection to the Act that outlines firm pre-release timeframes for a) serving the offender with an application, and b) the lodgement of documentation with the Court by the DPP, will mitigate the delays that the proposed *Clause 6* amendment seeks to address and remove the need for post-sentence detention. A timely application will also provide the offender with an adequate opportunity to make any post-release arrangements and seek legal advice.

Clause 7

TALS understand the intent of clarifying that suspension periods do not extend the overall length of an HRO order and are of the position this is a fair and just amendment.

Generally, however, TALS encourages consideration of the contributing factors to suspension periods, such as systemic failures like housing or service gaps, rather than focusing simply on individual non-compliance.

¹⁰ Armstrong, S., *Securing prison through human rights: unanticipated implications of rights-based penal governance*, Howard Journal of Criminal Justice (8 June 2018).

¹¹ University of New South Wales, *The social determinants of justice: 8 factors that increase your risk of imprisonment* (18 April 2023).

¹² Clark, N., *Blowout in time taken for electronic monitoring riles Launceston Magistrate*, The Examiner (11 April 2025).

Clause 8

TALS acknowledge the seriousness of the additional offences proposed for Schedule 1. TALS affirm that children must be protected from abuse and exploitation, and offences included in the expanded Schedule 1 should be considered among the most serious.

However, criticisms of static offence-based inclusion in post-sentence risk assessments state that there are potential biases in the tools used and concerns with their reliability in predicting recidivism, especially with regards to Aboriginal peoples.¹³

Considering this, TALS recommends that HRO order assessments focus on an individual's responsiveness to intervention, in addition to their offending behaviour. Assessments, treatment and reintegration plans should be developed in collaboration with Aboriginal communities and leaders, ensuring cultural competence and just outcomes.

Cultural Considerations and Disproportionate Impact on Aboriginal People

The implications of the Bill can be significant for Aboriginal peoples. Given the disproportionate overrepresentation in prison, combined with systemic discrimination and inadequate post-release support, Aboriginal peoples are far more likely to be negatively impacted by post-sentence orders.¹⁴

As a Tasmanian community-controlled Aboriginal and Torres Strait Islander Legal Service, TALS urge a proactive approach to cultural equity in the Act. TALS recommend:

- **Mandatory use of culturally informed risk assessments before any HRO order application:** Assessments should be developed by Aboriginal organisations and be tailored to consider community obligations, trauma histories, and systemic disadvantage.
- **Independent reporting on the cultural demographics of individuals subject to HRO orders:** Public reporting must include cultural identity data and outcomes to ensure monitoring and accountability. This will also ensure transparency and enable the identification of potential systemic bias or inequities.
- **Consultation with Aboriginal communities and Aboriginal legal services:** Co-design implementation strategies that reflect cultural obligations, kinship responsibilities, and trauma-informed practices. Aboriginal perspectives and lived experiences must inform how policies are implemented to avoid further harm and support self-determination.

¹³ Howard, M., Mahajan, Y., Corben, S., *Development and validation of the Triage Risk Assessment Scale: Sexual Offending (TRAS:SO)*, NSW Government (September 2023).

¹⁴ *Ibid* (n 6).

TALS support efforts to protect the community from serious, high risk offending and have welcomed the opportunity to provide feedback on the Bill.

However, such measures must remain proportionate, evidence-based, and culturally responsive. Without sufficient oversight, cultural safeguards, and investment in prevention and healing, these amendments risk perpetuating the cycle of disadvantage experienced by Aboriginal Tasmanians.

TALS recommends the Tasmanian Government continue to engage Aboriginal community leaders, TALS and legal experts to ensure the perspectives of Aboriginal people have been taken into account and that amendments contribute to fair and impartial outcomes for all Aboriginal peoples

If you have any questions regarding TALS' recommendations in this document, please reach out to me directly.

Warmest regards,

A handwritten signature in black ink, appearing to read 'Lucas Tolputt', written in a cursive style.

Lucas Tolputt (He/Him)

Policy and Project Lead

P: 1800 595 162 | M: 0491 018 002 | E: ltolputt@tals.net.au

Level 1, Office 1A, 67-69 Brisbane Street, Launceston