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Youth Justice Reform
Department of Communities Tasmania
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Introduction:

The Tasmanian Aboriginal Legal Service (TALS) welcomes the opportunity to make a submission in respect of the Tasmanian Government discussion paper, *'Reforming Tasmania's Youth Justice System: A pathway for improving outcomes across the youth justice support continuum'* ("the Discussion Paper").¹

TALS is a community legal centre that specialises in criminal, civil and family law matters for Aboriginal people in Tasmania. We are a member-based, independent, not-for-profit, and incorporated organisation that advocates for law reform. Our goal is to halve Aboriginal Tasmanians' rate of negative contact with the justice system in a decade.

Limitations:

The Discussion Paper is extremely broad and disappointingly, we are not able to comment on extensive reforms across various aspects of the Youth Justice System and community sector in one submission, especially in the timeframe provided. There are many separate considerations, and the consultation with stakeholders must not be tokenistic. There must be a structured and targeted consultation process with culturally appropriate engagement. It is also not clear to TALS what the reform service system could look like, with the paper lacking targets, particularly so in respect of Closing the Gap targets, which the Tasmanian Government has committed to.

Our submission does not speak on behalf of Aboriginal communities in Tasmania. There must be direct stakeholder participation, including but not limited to in person individual meetings with Aboriginal Organisations and Aboriginal and Torres Strait Islander people living in Tasmania for the reforms to be properly informed.

¹ I would like to acknowledge staff and stakeholders of TALS who have given their time to provide comment and assist with this submission, particularly TALS staff Jessica Stewart and Rosie Battaglione who contributed to the submission.

Closing the Gap:

The National Agreement on Closing the Gap has 17 national socio-economic targets across areas that have an impact on life outcomes for Aboriginal and Torres Strait Islander people. There are 4 priority reforms.²

The Discussion Paper consists of 16,777 words, and the words indigenous and Aboriginal are mentioned 36 times, representing 0.21% of the entire document. In Tasmania, Aboriginal and Torres Strait Islander children are 6 times more likely to be in detention than non-Aboriginal and Torres Strait Islander young people. In 2019-2020 alone, 499 children aged between 10 and 13 were imprisoned nationally, 65% of whom are Aboriginal and Torres Strait Islander children.³ Given the significant overrepresentation of Aboriginal children in the Youth Justice System, the discussion does not adequately address and consider Aboriginal children, other than at a surface level.

The Tasmanian Government made a commitment to the Tasmanian Closing the Gap Implementation Plan 2021-2023 and has said it will be accountable to progress the actions within the plan. Despite this, the Discussion Paper refers to only one of seventeen Closing the Gap targets (target 12) and does not mention how it will be held accountable to the plan. Without accountability measures, the Closing the Gap targets will not be met.

To effect real change, the government must work collaboratively and in genuine, formal partnerships with Aboriginal communities in Tasmania, as they will be the change agents for their people. Formal policy partnerships are needed to drive community-led outcomes.

It is our observation that adequate funding will be required to support Aboriginal and Torres Strait Islander parties to be partners with government in formal partnerships in respect of any reforms. Communities will need funding to potentially obtain independent policy advice, meet government to determine their position and to engage with people from all relevant groups within their community.⁴

The following key targets have been ignored in the Discussion Paper:

1. Target 3, *Increase the proportion of children assessed as developmentally on track in all five domains of the Australian Early Development Census up to 55 per cent by 2031*: The health of a young person, including their physical health, how well they get along with others, how they handle their feelings, how they think and understand and speak and how they communicate are important factors in determining whether a child will likely come into contact with the Youth Justice System. There are many occasions in the Youth Justice System where children with “behavioral issues” or who are seen as “truant” have underlying health issues that have not been properly diagnosed or supported. This can lead to the intergenerational revolving door of recidivist offending.
2. Target 4, *Reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent by 2031*: Children who are in out-of-home care are more likely to come into contact with the Youth Justice System. The Child Safety System in Tasmania needs to be

² For an overview of the targets and the priority reform areas, Australian Government, Productivity Commission, dashboard, see [Dashboard | Closing the Gap Information Repository - Productivity Commission \(pc.gov.au\)](#).

³ Australian Government, Australian Institute of Health and Welfare, Youth Justice in Australia, 2019-2020, released 28 May 2021.

⁴ Coalition of Peaks (2020). *National Agreement on Closing the Gap: Closing the Gap Agreement*, part 6, Priority Reform One – Formal Partnerships and Shared Decision-Making.

reviewed and reformed.⁵ There is inadequate funding to be able to support children as needed, leaving many children facing disadvantage, disconnect with community and culture and a hopeless future.

3. Target 9, *Increase the proportion of youth (aged 15-24) who are in employment, education, or training to 67 per cent by 2031*: whilst the outcomes for this Closing the Gap target arguably will sit outside of the reforms, the creation of appropriate employment, education and training pathways for young people involved in Youth Justice System must be considered. The intervention framework can be used to redirect young people into education and training.
4. Target 11, *Reduce the rate of adults held in incarceration by at least 15 per cent by 2031*: Many children who are involved in the Youth Justice System are then involved in the adult justice system. Ashley has been referred to by lawyers as the Kindergarten for Risdon Prison. The impact you have on a young person early can change their entire life trajectory, including whether they end up in adult prison.
5. Target 13, *Reduce the rates of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by at least 50 per cent by 2031, as progress towards zero*: Many children who are involved in the Youth Justice System have either witnessed or been the victim of family violence. The impact family violence has on a young person cannot be underestimated, particularly so in a child's early stages of development. Reducing the rates of family violence and supporting children and families who are experiencing family violence will reduce the number of children in the Youth Justice System.

Closing the Gap targets must be at the forefront of the reforms in respect of Aboriginal and Torres Strait Islander children. It is not one reason alone that has led to the over-representation of Aboriginal children in the Youth Justice System, and many, if not all the targets intersect. If you improve educational standards, you increase employment rates and levels of health. If a family have somewhere safe to live, a child is more likely to attend school and their parents engage in employment. If an outcome for one person in one or two areas is improved, for example housing and family violence support, it has the potential to impact life outcomes.

Raising the Age of Criminal Responsibility:

The Tasmanian Government has recently committed to developing a proposal to raise the age of criminal responsibility from 10 to 12, but this does not go far enough. TALS supports Raising the Age of criminal responsibility to 14 and this must occur as a priority and as an introductory part of the reforms. If this does not occur, it will lead to lifelong damage as children get stuck in the quicksand of the legal system. TALS is also supportive of a minimal age of detention being 16.

The focus prior to 14 must be on addressing the risks and underlying issues of why young people are getting in trouble, not punishment. Young people do not belong in prisons, they belong in schools and with family and community.

Commentary on the Discussion Paper:

As outlined above, TALS has two major concerns in respect of the Discussion Paper. The first is the lack of appropriate focus on issues facing Aboriginal and Torres Strait Islander people other than at a surface level.

⁵ There are many references in this submission to intervention from Child Safety Services, we do not advocate for the removal of Aboriginal children for their families but the intervention we are seeking is by way of support to assist families and communities in protecting their young people.

The second is the process in which the consultation is being conducted. There must be a more structured approach to getting genuine comment and guidance. Despite this, we have provided comment below in respect to some key aspects of the Discussion Paper.

Social factors:

Addressing key social issues and disadvantage will prevent many children having to turn to crime to survive and support themselves. In addition to putting significant funding into supporting those facing homelessness, mental health issues, drug and alcohol dependency and poverty as some examples, the government also needs to address the levels of children not engaged in education and the levels of children currently suspended on a day-to-day basis. In addition to addressing why children are not at or engaging in school, there must be targeted programs in schools to address key criminogenic risk factors like drug use.

1. Housing:

All children deserve somewhere safe to live, it is unfortunate in Tasmania that is not always a reality. Not having a safe place will almost definitely lead a young person to engage in risk taking behaviors that will bring them into contact with the Youth Justice System.

Ideally, options that support children to live with their family and communities are best. The goal is for all families to have somewhere to live that is affordable and safe but given the current housing crisis it is difficult to see this eventuate in the coming years. Consideration must be had to spreading housing commission properties over different areas, rather than creating hubs of disadvantage. The importance of this was highlighted, when a TALS client, aged 14, asked his lawyer to have his bail revoked, as he was worried that he was going to get in trouble where he was living. People kept coming to his house who were criminally inclined due to the neighborhood he was living in. He saw that he could not safely remove himself from the lifestyle. There can be consequences for many young people who live a disadvantaged community where crime is prevalent.

Many children who have some involvement already in the Youth Justice System have indicated that they would prefer to live on the streets or couch surf than access group/communal placements. There appears to be a stigma attached to shelters that steer more troubled children away from them. There can also be the reverse concern, where children want to be bailed to shelters or live in shelters rather than their home so they can interact with negative associates they cannot associate with whilst at home and in these situations, offending often escalates.

Young people need options for independent living that is also supported. Somewhere they have their own space to learn and grow, but there must also be the support if required on site, including a counsellor and social worker.

There needs to be shelters and accommodation that are culturally sensitive and appropriate, this could include shelters specifically led and run by Aboriginal organisations to support young people.

There needs to be support packages easily available for family members who take children on short and long term when Child Safety Services do not intervene or when they do but the child does not want to go to an alternate placement, particularly if there are identifiable risks at their ordinary home. A TALS client was

homeless after the death of his father at 15, and his Aunty took him in. She had no financial support. In Court, after the child's problematic behavior escalated to the point he was in custody, the Magistrate refused bail on the basis he did not have a stable address and that the aunt's house was not appropriate as she clearly did not have any control over him. Instead of supporting the Aunty to care for the child, she was made to feel that she was not fit to care for him when she was his only family support. The young person was remanded in detention for two weeks until his matters could be finalised.

Children are often not able to live on an ongoing basis with family due to ongoing conflicts between the child and the parent(s). This often results in the child going between relatives (if they have them close) to seek respite. Often these relatives are not provided any financial support and the child is at an age where Child Safety Services wipe their hands as they see it as the child "voting with their feet" when they are seeking safety. A TALS client who was deemed by Child Safety Services to "self-select" and return to live with his mother at age 15, although under a Care and Protection Order until age 18, was offered no support after his mother kicked him out of the house. He then spent time sleeping rough in a carpark until Child Safety sent him to Launceston where he had no family support as this was the only housing option Child Safety deemed available to him. This accommodation had no affiliations with Aboriginal Organisations and the client was isolated from his other support services in Southern Tasmania.

Many complex cases involving children who exhibit escalating behavior involve children leaving the family home and the parents have no ability to control the child. Child Safety do not seek orders or intervene in respect of the child due to their age (often over 13). This leads to the young person seeking refuge with older people who have access to housing or so that they have some protection on the streets, which increases offending behavior.

Some children do not have parents to care for them, and Child Safety do not intervene. For example, TALS had a 14-year-old youth client, whose mother lived on the mainland and whose dad died leaving the child an orphan. There were no Child Safety orders, and the young person sold drugs for a much older female to support himself. This young person had a lack of trust of authority due to the pro-criminal attitudes of his immediate family. Given his current circumstances, it is difficult to see how he is almost definitely going to end up spending further time in detention and ultimately Risdon Prison.

2. Trauma/generational disadvantage:

Many Aboriginal children who come to the attention of police come from a family where there is significant generational disadvantage and intergenerational trauma. This is a huge topic that we do not seek to address in this paper, but some starting points to address this issue:

1. Ensure families are not living below the poverty line and are able to support themselves. A person's entire being can be completely stripped if they are placed in a position where they feel they cannot support their children and families.
2. Families need to be supported with culturally appropriate psychological and counselling services to address trauma that is culturally appropriate, free and accessible in all areas of Tasmania (including rural and remote areas). As an example of this being an issue:
 - a. A parent and client on the Northwest coast waited 5 months to get an appointment with a psychologist and this was driven by his mother due to his poor mental health. It is also at a cost of around \$300 per session as he has used all sessions on his mental health plan. If he

did not have his mother's financial and emotional support, it is difficult to see how he would have had the stamina to see it through. He requested trauma therapy and was recently advised that the total cost for this therapy is \$22,000.

3. Victims and families impacted by family violence, need culturally safe and supported, Aboriginal controlled and led services in their local areas. A place that victims can attend to learn about family violence, the impact and to get referrals, support, and legal advice to feel appropriately armed to be able to change their future. TALS has been funded recently to deliver a Family Violence Prevention Legal Service, which will address this need, but the funding is only for two years and will only be able to be delivered in Hobart and potentially Launceston in year two.
4. There must be support for parents to address their own issues, including drug and alcohol abuse, gambling, or violence as some examples.
 - a. A TALS client who has five children, many of whom have behavioral issues is violent when she abuses alcohol. She has used violence in front of the children and is before the Launceston Magistrates Court. She has significant childhood trauma from sexual abuse and abuses alcohol as a coping mechanism to block it out. She is not engaged in therapy at this time as she has moved locations to get away from a past violent relationship. She is assessed as not being eligible for the Family Violence Offender Intervention Program as she is a female, and the program is for "men". It is concerning that a sentencing option and behavioral change program is not available to her due to her sex. She is not able to attend a residential rehabilitation program in respect of her drinking as she has no one to care for the children. The children are the victims in this situation, and whilst the mother is open to behavioral change programs, she does not have the capacity or opportunity to attend.

3. *Support Services:*

The support for particularly disadvantaged families, needs to be accessible and free in all areas of Tasmania. Often the reports from parents are that they do not know where to start, are unable to get the support they need (citing barriers with cost, transport, or available options) or if there is support, they cannot get the child to engage.

There is a lack of support for children and families who face complex needs, including mental health, relationship conflicts and drug dependency. Often children who are referred to family support services, are not able to be supported. On one occasion, the family of a TALS youth client was referred to the Intensive Family Support Services, but the support was not able to be given due to risks associated with conflict in the family home (violence) leaving the family without support. Notifications to Child Safety went unanswered. Whilst it is understood that staff must be protected, it leaves the family without any support.

4. *Alcohol and Drug use:*

It is concerning the age at which young people are starting to use illicit drugs, which on occasion falls below ten years of age. There are many reasons why this is the case, most often it is because people in their immediate family are doing it and the behavior is normalized.

Cannabis is often a starting point as it is seen as a "soft option" for illicit drug use for young people, with many children involved in the Youth Justice System being a user. Many young people do not know the risks of smoking cannabis on their development, and their parents are unaware and often see it as the lesser of

two evils. The use of cannabis amongst friends, leads to young people being and engaging in more risk-taking environments where the drug use spreads to “party drugs” like speed and ultimately the most damaging drug, methamphetamine.

It is not effective to use the same model for adult drug counselling for young people. They need unique and innovative ways to change learnt or risk-taking behavior. The information needs to be delivered by someone they have a rapport with/ someone they may look up to or who they trust. It could accompany a different activity, that a child is engaged with, for example a physical and outdoor activity that challenges a child.

Young people often react well to messages being delivered by sports people or music artists (people they admire and respect). Programs could be considered with organisations like the Australian Football League (men and women) and Cricket Australia and local music artists. There are many children who see their parents struggling on a day-to-day basis and think they will too be stuck in the quicksand of disadvantage. They do not see a reason to make good decisions, which is why the benefit of positive role models with lived experience being leaders in this space will change the lives of young people. TALS has seen many Aboriginal children who have been excellent football players come into the contact with the Youth Justice System, a mentor in that space that can be called on to speak to these young people could have a huge impact. Often the young people are not able to focus on their talent due to many competing social issues and it becomes “the least of their worries” how they will get to training.

There also needs to be designated youth drug and alcohol dependency facilities. These do not currently exist, and Ashley Youth Detention Centre is often used as a detox facility which is entirely inappropriate. Sentencing options need to consider the harmful impact of drugs and support children to access help.

The Court Mandated Drug Diversion Program is only available for adults, an adaption of this should be available to young people. The Court Mandated Drug Diversion Program is available at the end of the line only, when an adult is serving straight jail sentences and after they have spent years in and out of detention and prison. There must be programs run through the Court to support young people at a much earlier stage. After someone has completed multiple prison sentences, the damage is already done. One of the key difficulties identified by those people who have beat drug addiction is to step away from pro-criminal associates. In a place like Tasmania, where towns are small and the state is small, the longer you leave someone living the lifestyle, the more entrenched it becomes and the less likely it is for people to leave it behind.

Consideration should be had to family-based education in respect of drug use as often young people are unable to cease drug use whilst it surrounds them in their household.

5. Mental Health:

Undiagnosed and untreated mental health is a significant problem in children who come before the Youth Justice System. Often young people are unable to access the help they need, and this is compounded if they live in a rural or remote area. This can lead to young people “self-medicating” with cannabis and a parent not wanting to address this as an issue because the cannabis allows their child to engage sometimes in the family unit and they are able to sleep.

Tasmania needs an overhaul of the current mental health system, which we will not go into in detail about but some points that we seek to raise are:

- There needs to be a shift away from young people being treated by “tele-health” appointments due to a lack of appropriate and suitably qualified staff in their area.
- There seems to be a lack of support for Child Safety services engaging counsellors, psychologists, and psychiatrists to assist young people on their Orders. We do not know if this is from a lack of training or funding but leads to extremely detrimental outcomes for young people. There are countless examples of TALS clients who reach the end of an 18-year Child Safety Order, with no diagnosis or support.
- The National Disability Insurance Scheme is difficult to access, the forms and process is onerous and the delay in actual benefit is significant. There also appears to be issues in coordinated support, particularly when a young person is in detention or another facility. This needs to be rectified.
- The Court system ends up being a vehicle where Youth Justice and lawyers support clients with their non legal issues, including their mental health, which again is an indictment on the current mental health system. There are many examples where TALS has had to pay for reports for psychologists and psychiatrists for children who have been on Child Safety Orders for several years, and the reasons provided for the reports not being prepared is that the child would not engage. We have assisted the young person to attend their appointments and the reports being prepared, which on many occasions are then utilised to assist a child in accessing the National Disability Insurance Scheme. This should be a situation where a child’s guardian supports the child in accessing that scheme.
- There must be a youth mental health facility so that young people can be treated in a safe space. Young people with complex mental health needs are often put in the “too hard basket”, many of whom are in the Child Safety system. It seems it is a waiting game, until the child turns 18 and then they are on their own.

6. *Lack of access to necessities:*

There are a staggering number of children who face the court who advise the Magistrate that they stole something to eat, or they trespassed, so they had somewhere to sleep. These matters get to Court and are not diverted away due to often an escalating number of offences. There are clear social needs which are not being met, but still they are met with a justice response.

One TALS client at age 15 was once prosecuted for stealing a pregnancy test. Another was charged with stealing lubricant and condoms, and it is now known due to a Supreme Court matter, that this young female was being sexually abused at the time by a much older male. Child Safety were aware at the time that she was spending time with this male, but there was a complete lack of communication leading to the young person being charged with the stealing offence.

There are children who do not have access to Centrelink but who are living away from home. There are children who do not have the ability to obtain a birth certificate as they have no connection with their family which makes, making an application for Centrelink difficult and too complicated for children without supports. Young people should not be in this position.

Young people are charged with breaching bail when they do not come to court, often they have no telephone, no stable accommodation, and no transport. There are also additional pressures but on Aboriginal young people on bail when cultural responsibilities, like sorry business and ceremony are not protected by legislation.

There must be flexible and “out of the box” responses to address these issues. The above are only some of many examples.

Prevention and Early Intervention:

1. Accountability:

Whilst TALS is supportive of an early intervention model that sees children diverted away from the Court process, there must be support for children who do not have family support and accountability measures to ensure that children do not fall through the cracks. Often the court system is used to highlight how children are at risk without supports in place. There must still be accountability measures to ensure risks are addressed. TALS would be supportive of a specialist panel being created to address risks and hold services accountable at the intervention stage. The panel could consist of representatives from police, the Aboriginal community, NDIS, Housing, the mental health sector, Child Safety, the health sector, and the education department.

2. Role of admissions and parental participation:

The current diversion process being driven by attitude and parental participation is problematic particularly for young people who come from disadvantaged upbringings with histories of negative experiences with authority, particularly police. It is a dangerous model as many children can have a response bias to people in authority. Many young people also may not have a parent or guardian to support them during the process.

Attitudes towards police, government and authority is often passed down through generations. Aboriginal families and communities continue to feel the impact of the Stolen Generation, when as late as the 1970's, Aboriginal and Torres Strait Islander children were forcibly removed from their families under government policy and direction.

In some instances, a young person may not have committed an offence, or it did not occur as outlined by Police, but they agree to “get it over with” or to avoid court. These cautions still appear on a young person's record of prior convictions and are then used by Police as prior matters relevant for future sentences.

TALS would support there being advocates involved with young people at an early opportunity, including identified positions for Aboriginal people to support young people and advocate for their views and needs at that early stage. These Aboriginal support workers should also be present at Court to support young people involved in the court stage of the process.

An example of the effectiveness of an advocate's involvement, can be seen when a young person attends Court who was not able to be diverted due to the fact they have not agreed with the allegations. Often lawyers will negotiate with Police to drop charges or amend the facts, so that a matter can be diverted back away from the Court system. There must be a system where these matters still do not need to go to Court.

Early intervention and diversion must be used to identify the key risk areas and address them. It is not good enough to complete a caution for stealing, and not ask why and arrange support and referrals to reduce the risk of offending occurring in the future. The process must be culturally appropriate and safe for Aboriginal children.

Diversions and Targeted Interventions:

In respect of Aboriginal children living in Tasmania, Aboriginal organisations need to be funded and empowered to deliver services for their community that meets their need. Any input and reforms need to be considerate of the unique landscape that exists in Tasmania in respect of Aboriginal identity. All Aboriginal organisations must have a seat at the table.

We often see that people who work in this space become fatigued quickly and knowledge is lost as they feel they cannot make a real difference, or they meet “brick walls” with the “system”. Any service model needs to be appropriately funded to ensure this does not occur, as it is the people involved in the service delivery that will make a real difference to the lives of young people.

Sufficiently funded Aboriginal organisations can provide wrap around support services for families and their young people, including transport options, physical and mental health care, and program delivery. If young people are going somewhere that is trusted by their family, like their local Aboriginal organisation, they are more likely to engage.

The importance of activities can be seen in the strength of the Save the Children program. A TALS client was provided a worker from Save the Children on the Northwest Coast when on bail. That worker took the young person fishing on days when he had time, which allowed them to create a bond and gave the young person something to look forward to.

Young people who are sent to the Ashley Youth Detention Centre often report that they do not want to leave because they are “finishing a project in art” or “metalwork”. This is an appalling reflection on the Education and Youth Justice System. These projects should be open and accessible to all young people in the community. Opportunities for young people to create things, for example building a pushbike, or making a coffee table leads to feelings of achievement and gives the young person something to focus on.

There must be further funding for bail support programs, like Save the Children, to be able to support young people. Implementing changes in young people’s lives allows the court to monitor progress whilst still in the court system. Bail conditions should not overwhelm a young person or set them up to fail however they can provide structure to a young person’s life.

Some flexibility must be permitted to young people on bail. Changing a young person’s residential address or school requirements can be disruptive. They should not be punished for minor breaches and bought back before the court but supported to continue to comply with conditions.

There are several barriers in children accessing support services, even on bail, including the inability to keep a mobile phone, have credit or keep a phone charged. In many instances, our lawyers are aware referrals have been made to support services for a young person but then they are non-contactable, leading to the referral being closed. This can mean little progress is made during adjournment periods in court to support

and rehabilitate young people, increase risk of recidivism and ultimately increase the chance of young people ending up in detention.

Therapeutic service system for repeat and high-risk offenders:

Under the current Youth Justice System, Magistrates have options to defer sentence or to release a young person on certain conditions. These are good options to be able to curb problematic behavior, particularly if a young person has a positive attitude and wants to change with support.

There are currently extremely limited options available to Magistrates, Youth Justice Workers, and stakeholders to refer young people to by way of programs of educational opportunities. There must be specialist options for there to be real change. Some examples to consider are below:

1. A program where young people learn about the risks of driving without a license or under the influence.
2. A program that funnels young people's energy away from the dangerous or reckless use of motor vehicles (burnouts, driving at high speed) into a positive interest area, for example learning mechanics whilst learning about risks. Often young people see losing their license as a deterrent for offending, and if they have a goal to work towards it can change problematic behavior.
3. Programs to address dealing with emotions and anger.
4. The ability for young people to complete courses and certificates with social workers who create rapport and a positive relationship.
5. The ability to refer young people to a career counsellor or trainer who can identify with a young person their strengths and show them tangible options for education, training, and employment.
6. Inclusion of comprehensive programs that provide a holistic approach to reduce offending by targeting several risk behaviors. These should not be strict (boot camp style) but there must be boundaries. They should also not be for a long period, where they are away from family and community but should serve as a circuit breaker to provide education, a sense of belonging and connection and a fresh outlook on who they are and what they are capable of. These should be created and run by Aboriginal communities for their young people.
7. Recreational programs that provide activities for young people that they are interested in to keep them occupied.

In summary, programs need to be targeted at the individual's needs and there must be several options, as one program will not be suitable for all. Programs should address more than one risk factor and should not be used in isolation. Programs need to be designed to alter the way a young person thinks as offending behavior is often linked to deficiencies in thought process, poor problem solving and decision-making skills. Skills that build social competence are therefore going to benefit many young people. There is also a need for programs to contain skill-based learning which can assist a young person in obtaining education and improve employment prospects. One person having meaningful employment in a family can impact the entire next generation.

Identified issues with the current *Youth Justice Act*:

1. The *Youth Justice Act* currently provides that a young person is not required to serve an entire period of detention in the Ashley Youth Detention Centre that is over three months.⁶ Any period more than three months is essentially halved, and the remainder is served in the community, supervised by Youth Justice. There is currently a tension in the way that Detention Orders work with Suspended Detention Orders in some instances. If a young person receives a sentence of 6 months detention, with three months suspended, and they breach their suspended detention order, they end up spending six months in detention. If they received six months detention to start with, they would have only had to serve three months leading to an unjust result.
2. Young people can find themselves in the Supreme Court of Tasmania if they are jointly charged with an adult and it is an indictable offence. For example, if a 14-year-old was charged with aggravated robbery with a 21 year old, and they plead not guilty they will be tried in the Supreme Court alongside the adult. If they were charged with another young person, they would remain in the Youth Justice System. This needs to be rectified, as a young person should not be dealt with in the Supreme Court only for extremely serious charges (murder, manslaughter).
3. In the South of the State, young people are held in detention for bail support plans to be completed. Often this occurs with young people who ultimately will not receive a period of detention in their sentence, but their offending is at a problematic level in terms of community protection. Detention is not to be used as a holding cell for support services to get their act together.

Key Priorities – Custodial Centers:

If detention must be an element of the Youth Justice System, the facilities must be fit for purpose and meet the needs of those that will be sent there. Detention must be a last resort when there are no community options available. It should not be used for children where there are identifiable and significant failures of other government systems as a holding house until the child reaches 18. Detention, if it must be used, must only be for those young people whose offending is serious enough and who cannot, with support, be safely managed and supported in the community.

Detention must have a therapeutic, and through-care model, where there are trained professionals on sight to assist all young people daily. It is not enough to have a psychologist link in via ZOOM once a month to speak to the young people. Families must be supported in attending the centers to see young people, often TALS clients are unable to have visits with family as the choice is between eating that week or paying for petrol to travel.

Once a young person is settled, and any immediate health issues are addressed (often drug detox), the focus needs to be on education, training, and healing. This should not be in a prison like environment, the facilities should be warm and welcoming.

There must be substantial input by Aboriginal communities into how the centre should look, the programs it runs and the outcomes it is seeking to achieve. This may be achieved through the creation of an advisory group made entirely of Aboriginal people to guide the model.

⁶ The minimum period of detention prior to supervised release is established in the 'interpretation' section of the *Youth Justice Act 1997 (Tas)* s3.

Conclusions:

TALS is supportive of reforms, but they must be considered, properly consultative with appropriate evaluation measures. There must be clearer steps in the reform process, with consultation at each level in respect of discreet areas rather than expecting stakeholders to provide the answers to an entire reform strategy in one paper.

The over-representation of Aboriginal children in the Youth Justice System and the adult prison system is indicative that significant change is needed, and it is disappointing the lack of inclusion of Closing the Gap targets in the Discussion Paper.

The answers for change for Aboriginal and Torres Strait Islander young people are with their families and communities, and funding must be provided for these communities to consider and provide substantial input into the reform strategy. Communities must also be the leaders in any programs delivered for Aboriginal and Torres Strait Islander youth. It is not enough for communities to have “input”, they must have the opportunity to create and drive the change for their people.

We also identify that as a starting point, social issues must be addressed to give young people the best chance to succeed. They must have somewhere safe to live, access to necessities and access to education and currently there are young people sleeping on the street and this is not good enough.

To conclude, we have included at annexure “A”, case studies which are real-life examples of where young people have faced the Youth Justice System and often it and many other systems have failed them. We ask when considering the reforms, you consider what any new system would do differently to give these young people a more positive outcome and future.

Yours faithfully,



Hannah Phillips
Acting State Manager
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ANNEXURE A

Alice

Alice is 8 years of age when a Child Safety officer she has never met comes to her house and takes her out of her mother's arms in a cold rural town in Tasmania. Alice's mum is unwell, she has been her whole life. She has a diagnosis of schizophrenia and the only place she can live is with her abusive partner. She is on the list for public housing, she has already waited 2 years and hasn't got anywhere. She puts up with being hit and abused, so that Alice and her siblings have a roof over their head. Alice has a 17-year-old brother with an intellectual disability, Alice's mum has made some enquiries with women's shelters, but they have said strictly no boys allowed.

Alice is put in a foster placement 2 hours away for a few weeks but is given back to her mother; with a promise she will do better. Alice at 11 is suspended from school for selling cannabis in the schoolyard. She doesn't like class anyway because she doesn't understand and always gets in trouble, they are trying to reduce the hours she is at school, Alice starts to feel they don't want her there. She can't concentrate and just waits in the hall until class finishes.

Alice starts to abuse alcohol and is often found by Police in the street and dropped home intoxicated. They do not go inside her house to see the empty cupboards, mess and neglect that is occurring behind closed doors. Alice's mum has been sleeping for about three days when Police arrive.

Alice stops going to school and smokes cannabis and drinks alcohol she steals out of people's sheds. Police try and engage with Alice and her mum, but they never come to pre-booked appointments at the Police Station and when they go to the house, Alice's mum says she won't speak to them so they can't do any diversion with Alice.

Alice starts sniffing lighter fluid, which makes her feel good for a bit, but her mind is starting to change. Alice has a few Court appearances, where the Magistrate is told about the troubles at home, Alice gets released on condition she be good. Child Safety are not present at Court, despite the fact they have had many notifications in respect of Alice from the school and the local Aboriginal organisation. They have been trying to engage with Alice's family, but the situation is complex. Alice's mother won't move away from her community, but she doesn't have anywhere to live other than the abusive home she is in.

The local Aboriginal organisation has a youth worker, but he is spread very thin and has had children like Alice he has supported in the past that have led to him burning out as there are no services or funding to support her.

Alice gets in real trouble when she is caught breaking into someone's car in the dark and is held down by the owner on the driveway. Alice has been held like this before, by her stepfather. Intoxicated, Alice grabs a knife out of her pocket and slices the leg of the owner of the vehicle so she can get out of his tight grip.

Alice's mental health is deteriorating, she is intoxicated every evening. Child Safety remove her from her mother's and move her to a group home where there are people employed on shifts to look after her. She isn't engaged in any therapy. They can't get her to any appointments. She is volatile when challenged and those employed to look after her cannot physically restrain her.

The Magistrate indicates that she is very concerned about the escalating behaviour and asks what is being done to address Alice's mental health. Child Safety say they can't get Alice to engage.

Alice has a good relationship with her lawyer and says she will go to the appointments. The Aboriginal Legal Service funds a psychological report to be completed so that a NDIS assessment can be completed. Youth Justice and an elder from Alice's community take her to all her appointments. Some questionnaires are completed with Alice at the request of the psychologist by her lawyer. Alice says she didn't want to go with Child Safety as she doesn't get along with her worker and they haven't helped her before.

Alice continues to get remanded in Ashley Youth Detention Centre for the next year, in and out on bail when the Court cannot be assured her safety is protected in the community. Nothing that has been tried has succeeded. Alice doesn't have a regular General Practitioner, has never seen a counsellor or any mental health professional. She has never had any assessments. The General Practitioner's in her local area are always changing so she has never had a good rapport with anyone.

By age 17, Alice is unable to speak coherently and is seen sitting in Ashley Detention Centre talking to the television when it isn't on, she has said to staff she thinks she is a bear and starts behaving like one in her cell when alone.

Alice is moved to an adult mental health facility as soon as she is 18 as Ashley Detention Centre do not have the nursing staff to administer her medication. Her lawyer is not advised of her move. She spends her days with many adults who are insane and unfit to stand trial. Alice goes through Court and an Order is made under the *Criminal Justice (Mental Impairment) Act*, as Alice has been diagnosed with a severe intellectual disability, Foetal Alcohol Syndrome and her treating professionals suspect a schizophrenia diagnosis shortly. Alice remains in the adult facility for two years; she is now 19. She is not serving a period of imprisonment and the Court has said she can get out, but the supports in the community and the team who care for her do not yet have a plan for her release.

The system failed Alice, there were so many opportunities for her to have a chance, but a lack of resources led to her not having any chance at all. It is difficult to say what could have been different for Alice, but if the system had addressed the risk at the start, supported her mother with her own mental health and safe accommodation so that she could parent Alice, the future for Alice could have been much brighter.

Jamie

Jamie has been without stable accommodation or adult supervision since the age of 10. Since he was 14 years of age, Jamie has had no regular contact with his parents, who live in a different state, and no one knows where Jamie has been living. At 15 years of age, Jamie presents to a school by himself asking to enrol. Reports were made to Strong Families Safe Kids Advice and Referral Line (SFSK) but the file was closed as Jamie and his family did not engage with SFSK.

Jamie has no money. He wears the same clothes and does not have access to basic hygiene or food resources. He needs his birth certificate to apply for Centrelink, but his parents will not post it to him because they think he will lose it.

At 15 years of age, Jamie is found driving, evading police, and using another person's credit card to buy food. Jamie is often found by police intoxicated and under the influence of illicit substances. Police and Youth Justice are concerned that Jamie is in a sexual relationship with a much older woman who gives him drugs.

Because Jamie is 15 years old and does not have a phone or stable accommodation, SFSK and Child Safety Service have said there are limitations in their ability to make Jamie meaningfully engage with support services.

Youth Justice help Jamie apply for a birth certificate so he can apply for Centrelink and housing. They have a plan for Jamie to "drop in" to the office every few days, rather than setting appointment times because Jamie has trouble remembering what day it is.

It is the unfortunate reality in this situation that Jamie would have continued down the wrong path, but for the assistance of Youth Justice, who are not his guardian.

Tom

Tom has watched his dad hit, abuse and control his Mum his whole life. Child Safety Services have received notifications since Tom was a baby. There were concerns of parental drug use, that Tom's dad was physically violent towards him, and his siblings and that Tom was being exposed to family violence.

Tom's parents separated when Tom was 10. His Mum was 14 when they started dating and it was hard for her to leave the relationship.

Tom lives with his mum, but he prefers to be at his dad's house. Child Safety Services are worried that Tom's dad gives him drugs. Tom sleeps on a fold out couch at his mum's because he and his brother fight and cannot share a room. His Mum is on a waitlist for a bigger house so Tom can have his own room. Tom had to stop staying at his dad's because he went to gaol.

Tom has ADHD but he does not like taking his medication. Tom's mum gets scared when he gets angry and starts smashing furniture and putting holes in the wall. She is unable to control Tom and is worried he is going to seriously hurt someone. She has asked for help, but nothing changed until Tom went to Court.

Tom is 12 when he starts hanging out with people who are older than him. He starts getting into trouble for having drugs, abusing police and breaking into buildings and stealing things. He stops going to school.

The Magistrate ordered Child Safety Services to provide a report so that Child Safety Service, Youth Justice, the Education Department and other support services can all work together to help Tom and his family.

Unfortunately, despite CSS concerns, when Tom's dad was released from gaol, Tom went back to live with him. Tom is 12 and even though CSS are concerned, and their report to the Magistrate said they do not want Tom living with his dad, they have not removed him from his dad's care. Tom's mum does not know what to do anymore, Tom's dad will not talk to her or support her decisions and plan for Tom. Tom's offending has continued to escalate, and he is taking more risks by driving, setting property and houses on fire and committing burglaries. He is now in breach of his Youth Justice Order and has to go back to Court for his new offending. Tom's future remains unclear.

Sam

Sam's parents separated when he was young. He regularly saw his dad physically assault his partners. Sam says his dad is a drug dealer. He watches him sell and use drugs. Sam idolised his dad and aspired to be like him.

At 11 years of age, Sam became obsessed with weapons and began self-harming. Sam made new friends and he began using cannabis and withdrawing from his family and was suspended from school for possessing cannabis. Sam's moved in with his grandma because his Mum did not think it was safe for him to be around his younger siblings.

Sam had his first interaction with police at 13 years old. Sam's offending began to escalate when he was 15 years old. Sam lived at shelters and in his car for a bit. He kept driving whilst disqualified. He also had trouble controlling his anger and would damage property and assault people. He wanted to go to Ashley Youth Detention Centre.

Sam is very smart. He did very well on all his tests, even when he missed lots of days of school.

Sam had a lot of people supporting him, even when he did not want it. Sam was always able to live with his grandma and his mum would always drive him places and help him get to appointments and school. He could call her whenever he needed. Sam also worked with Save the Children and Youth Justice.

With this support, Sam returned to his grandma's house to live and stopped using drugs. He obtained a casual job and went back to school. He worked really hard. He did a VET course at school and went on to TAFE before obtaining full time employment in his chosen industry.

It is only one or two factors, such as housing and a support person who believes in you that can change the life of a young person.

Julia

Julia was the middle child of 7 siblings. She is low IQ scoring in the poor-low average percentiles. Her siblings and herself were exposed to significant drug use and suffered from neglect and abuse at the hands of her parents.

The family slept on one mattress in the living room and constantly had to fight for food. Her parents made the children physically fight one another, with the winner being awarded food and the loser being shamed by the rest of the family.

Julia and her siblings were removed from their parents care in 2012 when Julia was 6 years old. Julia is blamed for being the reason why the children were removed, as when the police and Child Safety Services came to the home, she was the one who opened the front door.

Julia and her siblings were split up and placed in different, non-aboriginal placements. Julia was frequently removed from foster families and residential care due to her behavioural issues.

Little supports are put in place to assist Julia and her behaviour escalates. She gets expelled from school for chasing a classmate with a machete and her placement breaks down again.

Her parents separated in 2018 and her father moved to Victoria and commenced a relationship with his cousin. They now have 2 children.

Julia "self-selects" in 2019 when she is 14 years old and returns to live with her mother. Some of her other siblings are living at the address including her youngest, infant sibling. Her mother is still a heavy drug user and smoked methamphetamine inside the house.

In 2019 Child Safety have Julia assessed by a psychologist to ascertain the risk she poses if she returned to school. That assessment outlines comprehensive recommendations to support Julia returning to school and further therapeutic recommendations. Concerns are raised in the assessment that if significant measures are not taken, her behaviour will escalate due to her maladaptive coping mechanisms.

Some of the recommendations were initially implemented however nothing substantial changed and Julia distances herself from Child Safety.

Her mother kicks her out of the house on a regular basis and she spends multiple months of 2020 sleeping rough before moving in with her boyfriend who was 4 years older than her. She commences drinking alcohol and experiments with cannabis however largely remains abstinent from illicit substances.

Julia starts committing criminal offences in late 2020 comprising of minor burglary and stealing matters. She instructs she is influenced by her boyfriend.

Her behaviour escalates further, during a time of personal crisis and low self-worth when she sets fire to a building and causes \$300,000.00 worth of damage.

Whilst on bail for these matters her relationship breaks down and her mother refuses to have her home. Child Safety are unable to find her accommodation in Hobart, so she is required to move to Launceston.

A report is prepared by a psychologist who completes a screening of Julia's neuropsychological status. The results are reflective of someone who suffers from neurological impacts of trauma and environmental deprivation.

The report writer raises concerns that if sentenced to a term of detention, Julia would self-harm and there are real risks she will commit suicide. The report writer notes that Julia wants to live a pro-social lifestyle and does not present with an anti-social personality.

There are several recommendations made in the report to implement adaptive coping mechanisms and trauma-based therapy. The Magistrates sentences Julia to complete community service and work with Youth Justice to support her in the future.

Sandy

Sandy is now 15 years of age but started getting into trouble when she was 13. Her brother also did, he is now in jail after receiving a sentence for his eighth robbery. Sandy lives with her mother and siblings in a housing commission area, they have lived in the same house for ten years and everyone in the area knows where they live.

Sandy does not get a long with her mother, her mother screams and yells at her and it turns violent. Both Sandy and her mother have put the other one in hospital a few times with injuries.

Sandy smokes cannabis and cigarettes and has done since she was 12. Her mum says she has to give it up but refuses to give up herself and it is smoked inside the front door and can be seen when you enter and exit the house in a jar above the washing machine.

When Police come, and they try and move Sandy out of the way, she reacts and says, "don't fucking touch me". Police take Sandy to the ground and put their knee into her back why they try and handcuff her for 5 minutes. She is wriggling. She weighs 35 kilograms.

Sandy has a good relationship with her Youth Justice Worker and has a worker from Save the Children. They have expressed increasing concern about Sandy's use of violence as a coping mechanism and that Sandy has said she "blacks out" and loses control of her emotions.

Youth Justice have made 5 notifications to Child Safety in respect of Sandy but there has been no action.

Sandy stays with her aunty on occasion, but this is ad hoc and places significant pressure on her aunty who is already caring for a few family members.

Sandy is taken to her paediatric appointments by her Youth Justice Worker, as she has no one else to take her. Her mum has the care of younger siblings and says it isn't worth the drama to take them all.

Sandy is not engaged in school, she dropped out after there were not enough places in the photography class she wanted to do. She also had problems getting to school and she also had a bail condition that she does not associate with someone that was in another class on campus, which made things difficult. She raised this with her lawyer, who filed an application to vary her bail (where there is a filing fee payable), Sandy did not turn up to Court and the application was dismissed as she slept in.

Sandy has poor attitudes about police, authority, and the court. This has been passed down to her through her father and brother. Both her and her brothers' names are etched in one of the Police paddy wagons. She is becoming increasingly violent and without warning leading to support services reducing the contact they have with her away from office spaces. She is not currently engaging in any therapy or education to address her problematic behaviour.

Sandy is sentenced to a Suspended Detention Order, but it is difficult to see how she will not breach it when the serious risk factors are not able to be addressed with community supports creating a situation where her fate is almost already sealed.