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### **Re: Draft Tasmanian Drug Strategy**

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The Tasmanian Aboriginal Legal Service (“TALS”) welcomes the opportunity to provide feedback on the Draft Tasmanian Drug Strategy 2022-2027 (“the Draft Strategy”).

TALS is a community legal centre that specialises in criminal, civil and family law matters for Aboriginal people in Tasmania. TALS goal is to halve Aboriginal Tasmanians’ rate of negative contact with the justice system in a decade.

TALS is committed to closing the gap and improving life outcomes of Aboriginal people. TALS is an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations.

Our feedback in relation to the Draft Strategy will focus on the following key areas:

- Our strong recommendation that substance misuse and dependency is decriminalised, given the overwhelming impact of criminal justice responses towards Aboriginal people, families, and communities.
- The need for a strong public health approach to substance use and misuse, focused on harm minimisation and promotion of good health and wellbeing.
- The need for culturally appropriate AOD support for Tasmanian Aboriginal communities, particularly in relation to priority cohorts (such as Aboriginal people in custody).

### **Background**

The Draft Strategy acknowledges Tasmanian Aboriginal people as a priority cohort, recognising that, ‘[c]ultural dislocation, personal trauma and ongoing stresses of disadvantage, racism, alienation, and exclusion can all contribute to heightened risk of ATOD use’.<sup>1</sup> As well as being a population at risk, the Draft Strategy also acknowledges the increased harms which Tasmanian Aboriginal communities may experience as a result of substance misuse.<sup>2</sup>

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<sup>1</sup> Tasmanian Government, Department of Health, Draft Tasmanian Drug Strategy 2022-2027 (2022), 13.

<sup>2</sup> Ibid.

The most recent data from the National Aboriginal and Torres Strait Islander Health Survey (NATSHS)<sup>3</sup> shows high rates of substance use,<sup>4</sup> alcohol use,<sup>5</sup> and smoking.<sup>6</sup> This is particularly concerning given the links between substance use, physical health and mental health. The recently released census data shows high rates of long term mental health conditions in Tasmania compared to the rest of Australia – a recent news article reported that while ‘8.8 per cent of Australians — around 2.3 million people — reported to the 2021 census that they had a long-term mental health condition...[i]n Tasmania, that figure is 11.5 per cent, just under 64,000 people.’<sup>7</sup> However, the rates of long-term mental health conditions are even higher for Aboriginal people – according to the Australian Bureau of Statistics, 13.3% of Aboriginal people nation wide have a mental health condition.<sup>8</sup>

TALS therefore strongly supports a Draft Strategy which includes targets and initiatives directed towards supporting Aboriginal people living in Tasmania. The below is a non-exhaustive list of ways in which the Draft Strategy could provide greater support and accountability towards these individuals, families, and communities.

### **Suggested priority reforms**

#### ***Decriminalisation***

The Draft Strategy acknowledges that Aboriginal Tasmanians are ‘statistically more likely to be involved with the criminal justice system’.<sup>9</sup> TALS believes this is extremely concerning in the context of AOD use and misuse, and strongly encourages the Government adopt alternative strategies which reframe substance use as a public health issue.

Police and criminal justice responses to substance use are expensive and have a significant toll on families and communities. The Victorian Aboriginal Legal Service has recently highlighted the far-reaching impacts of a person’s involvement in the criminal justice system, which include the following:

- Continued overrepresentation of vulnerable communities, such as Aboriginal and/or Torres Strait Islander people in the justice system, leading to ongoing interactions with the justice system that can lead to increased distrust between communities and the criminal justice system.
- Increased risk of future engagement with the criminal justice system, and risk of receiving a custodial sentence and more Aboriginal deaths in custody.
- Trauma caused or exacerbated by the experience of engaging with the police, courts, and the justice system, including incarceration.

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<sup>3</sup> Australian Bureau of Statistics, National Aboriginal and Torres Strait Islander Health Survey (11 December 2019), accessed at <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/national-aboriginal-and-torres-strait-islander-health-survey/latest-release#substance-use>.

<sup>4</sup> Ibid - according to the NATSIHS, in the year 2018-2019 ‘[m]ore than one-quarter (28%) of people aged 15 years and over had used substances for non-medical purposes... up from 22% in 2012-13’.

<sup>5</sup> Ibid - the NATSIHS data shows that, ‘[m]ore than half (54%) of people aged 18 years and over had exceeded the single occasion risk guideline (more than four standard drinks on one occasion in the last 12 months)’.

<sup>6</sup> Ibid – ‘Around four in 10 (41%) people aged 15 years and over were current smokers — 37% smoked every day and 3% smoked but not every day’.

<sup>7</sup> Will Murray, ‘Higher proportion of Tasmanians living with mental health conditions, census data shows’, ABC News (30 June 2022), accessed at <https://www.abc.net.au/news/2022-06-30/mental-health-a-bigger-issue-in-tasmania-census-data-shows/101194880#:~:text=8.8%20per%20cent%20of%20Australians%20%E2%80%94%20around%202.3,is%2011.5%20per%20cent%20just%20under%2064%20000%20people..>

<sup>8</sup> Australian Bureau of Statistics, Australia: Aboriginal and Torres Strait Islander population summary (1 July 2022), accessed at <https://www.abs.gov.au/articles/australia-aboriginal-and-torres-strait-islander-population-summary>.

<sup>9</sup> Tasmanian Government, Department of Health, Draft Tasmanian Drug Strategy 2022-2027 (2022), 13.

- Impaired ability to engage in employment, travel, and volunteer work due to having a criminal conviction, discrimination, and inability to meet VISA or Working with Children Check requirements.
- Disruption to community supports that are more likely to lead to meaningful recovery and rehabilitation than a criminal justice response.
- Impaired ability to seek appropriate support due to community and public stigmatisation of drug use.<sup>10</sup>

VALS have also highlighted the impact of criminalisation and incarceration not only on Aboriginal individuals, but on their entire community. Parental incarceration is linked to a number of health and wellbeing concerns for children, as well as increasing their risk of being involved with the child protection system.<sup>11</sup> This in turn creates a vicious cycle, as children who are in out-of-home-care have an increased likelihood of becoming involved in the youth justice system.<sup>12</sup> According to a recent study by the Australian Institute of Health and Welfare, ‘more than half of young people who had been in youth justice supervision had also received child protection services in the previous five years.’<sup>13</sup> This is particularly concerning for Aboriginal communities, as Aboriginal children are more likely to be in out-of-home care.<sup>14</sup>

There are diversionary options available for police in relation to drug offences in Tasmania. For example, the Tasmania Police Illicit Drug Diversion Initiative (IDDI) provides the opportunity for officers to issue either a Drug Caution or a Diversion Notice for low-level or first-time users of illicit drugs. According to the National Drug Law Enforcement Research Fund (NDLERF), ‘first time cannabis offenders can receive a formal caution; second time offenders receive a diversion notice requiring them to attend a brief intervention with an approved health service; and third time offenders are referred to a more formal assessment and treatment process with an approved health service. In the case of offences involving illicit drugs other than cannabis, offenders are issued with a third level diversion notice and must attend an approved health service where an assessment and appropriate follow-up interventions must be undertaken. Offenders are only eligible for a caution/diversion provided they have not been involved in more than two other drug events in the previous 10 years.’<sup>15</sup> As well as providing an opportunity for these offences to be ‘diverted’ from the mainstream criminal justice system, drug diversion is also an opportunity for offenders to be connected to services and, if necessary, receive treatment.<sup>16</sup>

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<sup>10</sup> Victorian Aboriginal Legal Service, Submission to the Inquiry into the use of Cannabis in Victoria (September 2020), 4-5.

<sup>11</sup> Victorian Aboriginal Legal Service, Submission to the Inquiry into Children of Imprisoned Parents (May 2022), 19-20.

<sup>12</sup> See, for example, Tasmanian Aboriginal Legal Service, ‘Children First: Children in the Child Safety and Youth Justice System’ (2021), 12.

<sup>13</sup> Australian Government, Australian Institute of Health and Welfare, Young people under youth justice supervision and in child protection 2018–19 (October 2020), 1.

<sup>14</sup> Ibid – according to AIHW, ‘[y]oung Indigenous Australians in youth justice were more likely than non-Indigenous young people to have received child protection services. Just over 3 in 5 (61%) Indigenous young people under youth justice supervision during 2018–19 had also received child protection services in the 5 years from 1 July 2014 to 30 June 2019. This compares to just under half (48%) of non-Indigenous young people’.

<sup>15</sup> Kellow, A, Hall, R, Richman, M, Alessandrini, M, Bower, M, Julian, R, White, R, National Drug Law Enforcement Research Fund, Enhancing the implementation and management of drug diversion strategies in Australian law enforcement agencies: The cases of South Australia Police, Tasmania Police and Victoria Police during the period 2000 – 2005 (2008), 7.

<sup>16</sup> For example, see information from Holyoake Tasmania, one of the community organisations providing support through the IDDI – information can be accessed on their website: <https://www.holyoake.com.au/our-programs/initial-drug-diversion-initiative>.

However, information provided by Tasmania Police and the Department of Health indicate a low uptake of these alternatives. Information about the IDDI in the Tasmanian Drug Strategy 2013-2018: Report on Activities indicates the number of cautions and second level diversions, as well as the total number of diversionary outcomes, has continued to decline between 2013-2014 and 2018-2019.<sup>17</sup> Research has also highlighted that increased police discretion in relation to diversionary options does not necessarily result in higher rates of these alternatives being offered to offenders, with the NDLERF noting that ‘analysis of the overall level of discretion and the overall rate of diversion reveals that there is an inverse relationship between the reported level of discretion an officer says he or she has and the likelihood of diverting an offender – those who rated their level of discretion as high were 30 percent less likely to divert an offender than those who rated their level of discretion as low.’<sup>18</sup>

In light of the above, TALS strongly recommends the urgent consideration of legislative responses to decriminalise substance use and possession. Rather than relying on existing diversionary options, the Draft Strategy should include steps towards decriminalising substance use. This could include the removal of offences relating to possession and/or use of a drug, or an implement intended for drug use, from the Misuse of Drugs Act 2001,<sup>19</sup> as well as offences such as cultivating a controlled plant,<sup>20</sup> but not any offences relating to sale or preparation for sale.<sup>21</sup>

We also recommend a review of the existing diversionary framework for drug offences in Tasmania. We strongly recommend the Draft Strategy include specific targets for increasing the number of cautions and diversions being offered by Tasmania Police, as well as consideration of other mechanisms to increase availability of these options – this could include provisions which would allow judicial officers and/or decision makers to refer an offender to the IDDI on their own motion, rather than relying on police discretion. We also recommend allocated funding for the provision of culturally appropriate AOD supports as part of the IDDI.

### ***Harm minimisation and health promotion***

While the Draft Strategy does explicitly include harm minimisation as an overarching principle,<sup>22</sup> TALS believes there is a lack of concrete targets or actions which reflect this goal.

As outlined above, TALS strongly recommends the Government shift away from criminal and/or carceral responses to substance use and begin to implement strategies which support a public health response. We also encourage responses which seek to address substance misuse issues in the broader social context of the ongoing disadvantage faced by Aboriginal people living in Tasmania. As highlighted in a recent Closing the Gap report, 34% of the health gap between non-Aboriginal and Aboriginal people in Australia is attributable to social determinants of health,<sup>23</sup> and behavioural risk factors (including smoking or substance use) account for only 19%.<sup>24</sup> Researchers have highlighted that a key underlying factor driving poor health and mortality for Aboriginal communities is therefore linked

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<sup>17</sup> Tasmanian Government, Department of Health, Tasmanian Drug Strategy 2013-2018: Report on Activities (2019), 21.

<sup>18</sup> Kellow, A, Hall, R, Richman, M, Alessandrini, M, Bower, M, Julian, R, White, R, National Drug Law Enforcement Research Fund, Enhancing the implementation and management of drug diversion strategies in Australian law enforcement agencies: The cases of South Australia Police, Tasmania Police and Victoria Police during the period 2000 – 2005 (2008), 117.

<sup>19</sup> Misuse of Drugs Act 2001 (Tas), ss23, 24 and 25.

<sup>20</sup> Misuse of Drugs Act 2001 (Tas), s22.

<sup>21</sup> For example, Misuse of Drugs Act 2001 (Tas), s22A.

<sup>22</sup> Tasmanian Government, Department of Health, Draft Tasmanian Drug Strategy 2022-2027 (2022), 6.

<sup>23</sup> Australian Government, Closing the Gap Report (2020), 78, accessed at <https://www.closingthegap.gov.au/resources/reports>.

<sup>24</sup> Ibid.

to systemic issues such as institutional racism and intergenerational trauma, rather than personal decisions.<sup>25</sup>

We therefore recommend the following:

- Greater focus on, and funding of, programs which are designed to promote good health and positive social connection
  - Programs should be co-designed with community and delivered by Aboriginal community-controlled organisations
- Greater investment in programs which address some of the underlying causes which are contributing to substance misuse and dependency, including financial stress, family and child wellbeing and safety, and homelessness support services
- In recognition of the link between mental health and substance misuse, as well as the need for an increased range of services to support people with co-occurring issues, the Draft Strategy should include specific targets in relation to the needs of this cohort
- A focus on the further development and implementation of culturally safe healthcare within mainstream settings, which should be ‘determined by Aboriginal and Torres Strait Islander individuals, families and communities’,<sup>26</sup> and include ‘ongoing critical reflection of health practitioner knowledge, skills, attitude, practising behaviours and power differentials in delivering safe, accessible and responsive healthcare free of racism’.<sup>27</sup>

### ***Culturally appropriate supports***

TALS firmly believes the Draft Strategy will not adequately address the needs of Tasmanian Aboriginal communities without specific measures to provide additional funding for existing support services, as well as addressing existing gaps in service provision which are placing Tasmanian Aboriginal communities and families at risk.

A holistic health response is supported within the priority reform areas found in the *Closing the Gap Tasmanian Implementation Plan 2021-2023*.<sup>28</sup> The actions in Target 14 outline that “The Department of Health will work in partnership with Aboriginal people to develop and deliver alcohol and drug services that meet their needs and priorities.”

Aboriginal people have a unique set of experiences that requires flexibility in any design and creation of programs and supports to address underlying systemic issues. Further the *Cultural Respect Framework 2016-2026* clearly acknowledges that cultural respect is vital to improving Aboriginal health and wellbeing, which has a consequential effect on ATOD use and harms.<sup>29</sup>

Additional funding should be allocated to increase the capacity of Aboriginal community-controlled organisations to develop and deliver programs offering AOD support. Funding should also allow for

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<sup>25</sup> Nathan S, Maru K, Williams M, Palmer K, Rawstorne P. Koori voices: self-harm, suicide attempts, arrests and substance use among Aboriginal and Torres Strait Islander adolescents following residential treatment. *Health Justice*. 2020 Feb 7;8(1):4, accessed at <https://pubmed.ncbi.nlm.nih.gov/32034568/>.

<sup>26</sup> Australian Health Practitioner Regulation Authority, National Scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy, 9 – accessed at <https://www.ahpra.gov.au/About-Ahpra/Aboriginal-and-Torres-Strait-Islander-Health%20Strategy/health-and-cultural-safety-strategy.aspx>.

<sup>27</sup> Ibid.

<sup>28</sup> Tasmanian Government, *Closing the Gap, Tasmanian Implementation Plan 2021-2023*, 18.

<sup>29</sup> Australian Health Ministers' Advisory Council's National Aboriginal and Torres Strait Islander Health Standing Committee, *Cultural Respect Framework 2016-2026 for Aboriginal and Torres Strait Islander Health*,

additional programs in areas addressing underlying factors which contribute to substance misuse, including housing, mental health and family violence.

The Draft Strategy acknowledges prisoners, as well as those exiting prison, as a priority population, noting that prisoners are four times more likely than people in the general population to report illicit drug use (including use of illegal drugs and non-medical prescription medication and volatile substances).<sup>30</sup> However, there is a lack of cultural supports of any kind within prisons in Tasmania. TALS therefore recommends the Draft Strategy include targets addressing this existing service gap, and that the development of a prison-based cultural support service be prioritised as part of this reform.

There is also a need for greater rehabilitation options in prison, as well as programs to provide adequate and culturally safe throughcare for those exiting prison or on parole. We recommend increased funding and capacity for prison-based rehabilitation programs, including the development of targeted programs for those who identify as Aboriginal Tasmanians. We also recommend the Draft Strategy include targets for increasing the capacity of Aboriginal community-controlled organisations to develop and deliver throughcare programs, and to provide intensive supports to those exiting prison who may be at particular risk.

### *Summary*

TALS is firmly of the view that a decriminalisation model must be adopted otherwise Tasmania's most vulnerable will continue to fall victim to a system where there are limited supports and answers for those that fall victim to the harmful effects of alcohol and other drugs. Whilst it is positive to see harm minimisation as an overarching principle, there are a lack of targets and goals to ensure this is achieved. The need for culturally services led by Aboriginal communities cannot be understated in addressing the significant health and wellbeing disparities in a meaningful way.

Yours faithfully,



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Tasmanian Aboriginal Legal Service

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<sup>30</sup> Tasmanian Government, Department of Health, Draft Tasmanian Drug Strategy 2022-2027 (2022), 14.