



## **PUBLIC DISCUSSION PAPER**

### **COMMISSIONER FOR CHILDREN'S RESPONSE TO:**

#### **The Legislative Council Select Committee Report on Ashley, Youth Justice and Detention**

**MR PAUL MASON,  
COMMISSIONER**

**OCTOBER 2007**

*The Commissioner for Children is an independent, statutory office responsible to the Parliament of Tasmania. The Commissioner's functions include promoting the rights and well-being of children and young people, examining and advising the Government on policies, practices and services provided for children and laws affecting their health, welfare, care, protection and development.*

## **PUBLIC DISCUSSION PAPER**

COMMISSIONER FOR CHILDREN'S RESPONSE TO:  
LEGISLATIVE COUNCIL SELECT COMMITTEE REPORT ON  
ASHLEY, YOUTH JUSTICE AND DETENTION  
Parliament of Tasmania 2007.

The Commissioner for Children ("the Commissioner") believes this is the right time to push forward reforms in Youth Justice and the design and functions of the Ashley Youth Detention Centre ("Ashley"), following the report of the Legislative Council Select Committee ("the Committee"), tabled on 11<sup>th</sup> July 2007.

### **BACKGROUND**

The Select Committee Review follows the April 2006 "Review of Juvenile Remandees in Tasmania" conducted by the Commissioner for Children for the Minister DHHS with the input of the Australian Institute of Criminology. Both those reports follow the September 2005 "Review of Resident Safety AYDC" conducted for the Secretary DHHS by a Review team comprising the then Commissioner Mr David Fanning, Ms Vicki Rundle then Executive Director Children and families and Mr Paul Targett, Executive Director Corporate Services.

The Youth Justice Act 1997 ("the YJA") uses the word "youth" to include children over 10, so I will use that term instead of "child". However it must be remembered that "child" is in other legislation used to describe anyone under 18 years of age, and that developmentally, no matter how much they may protest it, people between 10 and 18 have not yet finished maturing physically, emotionally, socially or neurologically. The importance of this point is that if a resident at Ashley has long since abandoned formal schooling, the opportunity for further pre-adult development remains.

On the day of writing there are 25 children and young people on site at Ashley. They range in age from 12 years 6 months to 19 years 2 months (not in the same unit). 11 of them (44%) are under 16 years old. 9 of the 25 at Ashley have been found guilty of crimes (36%).

The other 16 (64%) have been charged but have not been found guilty of the allegations against them and are awaiting court hearings. Only 2 of those on remand (12%) are remanded to Hobart Courts so probably have immediate family in the South. 5 of the 16 (31%) have been on remand 2 months or more. 4 have been remanded to the Supreme Court for more serious indictable offences, for which a Magistrate has decided there is sufficient evidence, if proved, for a jury to find them guilty to the standard required that is "beyond a reasonable doubt".

### **REMAND AND POST-RELEASE**

In the eyes of the law all 18 are innocent until proven guilty.

The Committee reports that each remandee is costing Tasmanian taxpayers \$250,000 per annum to accommodate. Young impressionable people are exposed to the influence of youths who think it clever and mature to break laws and stay on a track of repeat detentions and ultimately “graduation” to Risdon. Overwhelming evidence shows that children diverted from the Court and detention system are far less likely to re-offend. Similarly, the current practice of discharging youths at the end of a detention period or straight from Court after they have been in Ashley on remand does not protect them from returning to the same patterns of risk-taking and criminal behaviour that put them there in the first place.

The Children’s Commissioner visited Ashley recently and observed a high degree of professionalism and commitment by the youth workers and management. However they did not create the system in which their best efforts seem to have little or no impact, and some are not equipped by their own training to achieve it.

## **DIVERSION BEFORE COURT**

PART 2 of the YJA provides for an escalating ladder of pre-court diversionary measures, from informal caution to formal caution (including a written admission by the youth and the possibility of confronting the victim) though to community conference under Division 3. The preconditions to a conference include signing an admission and the youth “enters into an undertaking to attend a community conference”.

The pathway to a community conference before Court is via s.9, where a police officer is of the opinion that a matter “warrants more formal action than an informal caution”. In other words if an informal caution is not an adequate response to the circumstances in the opinion of Police but Police do not immediately think a complaint should be filed at Court, the youth is offered the option of a formal caution or a community conference. If the youth opts for a formal caution, and signs an undertaking to attend it, the conference proceeds under s.14.

In 2005-2006 a Police-held community conference was the outcome instead of Court prosecution in 13% of 3,199 cases of contact with Police. In 2006-2007 community conferences still accounted for 13% of outcomes despite an increase in the number of Police contacts. The greater number of Police contacts may be the result of better staffing or better policing, which would include better community involvement.

Between 2005/06 and 2006/07 informal cautions by Police rose by 8% from 28% to 36% of contacts. Formal cautions remained at 22% of all contacts with Police. The proportion of complaints prosecuted in Court fell to 29% of all youth contacts with Police from 37% in 2005-2006 a fall of 8%. The raw number of prosecutions did not change significantly. This suggests that the pre-Court diversionary programme envisaged by the YJA Amendments is actually working.

s.9(2)(6) prohibits Police filing a complaint in Court unless the youth requires the matter to go to Court, or refuses the offer of a formal caution or the offer of a community conference, or if Police thinks the matter is too serious.

The diversionary processes could be strengthened if Police were required to give written reasons for deciding that caution and conference were not adequate "in view of the seriousness or the nature of the offence". In this way the reasons of Police would be spelled out not only for the youth and his or her family but also for Youth Justice Workers and the Magistrate, who could then be guided in the next steps to take, including court-ordered community conference under s.37.

## **REMAND ON BAIL AND POST-RELEASE SUPPORT**

The strictures on police arresting a youth in s.24 YJA could apply to Justices and Magistrates each time they are making a bail determination. S. 25 YJA or alternatively s. 35 Justices Act could be amended to include the option of supervised accommodation by an approved provider.

### ***BAIL OPTIONS***

Recommendation 5 made by then Commissioner for Children David Fanning in the report "Review of Juvenile remandees in Tasmania, April 2006" was :

5) The development of bail options as alternatives to remanding youth in custody.

There can be no more pressing need and no more effective way to reduce the injustices and the wasted opportunities and loss of respect for the legal system caused by remanding a youth in custody for longer than their likely sentence if found guilty.

For example it is extremely concerning that Magistrates sometimes feel compelled to refuse bail and remand to Ashley because they become aware that the youth has no home and nowhere else to go, sometimes called "welfare remand". This is not the province of the bail officer under the criminal justice system, but the province of Human Services and Housing.

### ***BAIL CONSIDERATIONS***

In Tasmania there is no list of statutory bail considerations though there is a presumption of bail before Magistrates (s.34 Justices Act, 1959). There is no special provision for bail considerations applicable to youth offenders, save indirectly through consideration of the "General Principles of Youth Justice" in s.5 Youth Justice Act.

The "last resort" principle in s.5(1)(g) should be restated in all bail provisions and is best expressed by a presumption of bail with explicit considerations (eg s.4 Bail Act, 1977 (Vic); ss.8, 9 and 32 Bail Act 1978 (NSW); s.10 Bail Act 1985 (SA); s.16 Bail Act 1980 (QLD); Schedule 1 Parts C Clauses 1 and 2 Bail Act 1983 (WA), s.23 Bail Act (ACT).

For instance:

- In the ACT bail officers and courts are required to apply the paramountcy principle that the primary consideration is the best interest of the child; courts must consider any welfare report ordered under the Children and Young People Act 1999 and the principles in s.68 of the Children and Young People Act are restated in this part of the Bail Act.
- In WA under the Bail Act 1992 there is a presumption of bail subject to a list of disqualifying considerations, however the Court is directed to consider any bail condition that would reduce the likelihood of those disqualifying considerations or there is no responsible person willing to undertake compliance with conditions.
- In Victoria under the Children, Youth and Families Act 2005 s.346(9) bail must not be refused solely on the ground that the youth does not have any or adequate accommodation.

### ***SUPPORTED BAIL***

Many youth before Police, the Justices or a Court for a bail decision have no home to go to or no home where they feel safe. Others refuse bail because they are not satisfied that supervision and supports are available to prevent re-offending. Bail conditions that can be imposed are not restricted in any way, and can include place of residence, hours of attendance at drug treatment, behavioural management or formal education and rigid reporting conditions. Magistrates cannot make full use of this facility without adequate information from Youth Justice workers.

Government should consider all aspects of “bail support” and fund them appropriately. Bail officers and Courts need to be able to distinguish between youths who are likely to breach bail and should be remanded in custody from those who are less likely to breach bail if adequately supported and accommodated.

These supports include

- providing Courts and bail officers with timely reports about bail-relevant factors in the youth’s individual history and situation;
- youth workers to supervise bail compliance, and
- residential support, either in the care of community members willing to assume this task (who would not themselves be responsible for ensuring compliance) or State-funded hostel or group home accommodation.

An NGO Anglicare is currently operating an initially unfunded non-secure "Bail Options Project" in the North of Tasmania. The first pilot of the project has been successfully reviewed so that it has extended into the North West. Its model is the allocation of hours per youth after the initial placement, the hours being used to re-engage in education, family reunification, paid work, drug and alcohol and impulse control therapy. Placement proceeds on locating willing family, then extended family and then community volunteers known to the NGO through community networks and pre-approved according to accepted standards for this caring role. The referral system is ad hoc and its funding is drawn from other homeless services, which are not specifically targeted to youth in need of bail support. It is currently undergoing independent review for its effectiveness. Anglicare reports that it has access to a cohort of community providers unlikely to be available to Youth Justice, though the obverse may also be the case.

If that program costs the same or less than the cost of housing one Ashley remandee for one year, but enables one round-the-clock roster at Ashley to be reduced by 2 FTEs in the following year, it will have been revenue-neutral. If it costs less or saves more than one full time roster Tasmania will be ahead, not only in dollars but also in the opportunity to divert a number of young people from pursuing the false glory of the criminal life into pursuing the rewards of engagement in productive society.

Another alternative to remand in custody that should be considered is electronic ankle bracelets to ensure compliance with geographical bail conditions. The technology is well-established and the major cost would be establishing it, not maintaining it. The cost of such a system will be compared with the alternative of remand at Ashley. Such a system would enable the youth to remain in the community and in contact with family and the education system in keeping with the objectives of the Act and would be accompanied by youth worker supervision and support.

### ***BAIL REFORM***

A major component of supervised bail should be continuing education, but not simply routine traditional class-based school education.

It would be preferable to locate all bail provisions applying to youth in the YJA rather than have them located in 3 different Acts, or alternatively as in some other jurisdictions locate youth bail laws in the Bail Act.

Indeed there seems no reason why the whole of the Youth Justice Act could not be incorporated in the Children Young Persons and Their Families Act as is the case with the ACT Children and Young Persons Act. This is a direct parliamentary recognition of the commonality between families and children in need of support and protection and those engaged in youth offending.

### ***POST RELEASE***

Similar supported programs could ensure that youths leaving Ashley, either after serving detention or after discharge from Court should have supported

half-way house accommodation. There are no security issues or breaching protocols as for the remand on bail program.

The recidivism rate is very high for youths discharged from Ashley and who do not have access to support and accommodation services. As many of them face the same pressures after leaving Ashley that were influential in the development of the offending behaviour (housing difficulties etc). This suggests that there is little point in implementing educational and rehab programs within Ashley if the child has no support in implementing this knowledge upon leaving.

Community reintegration programs such as the Pathways program run by Whitelion have been effective and are believed to have been successful in either reducing or eliminating offending in up to 60% of cases. Adult prisoners who have attended rehabilitation programs while in prison have progressed into community based programs upon the completion of their prison term. These adult community programs have received positive feedback from participants and have been shown to be effective in reducing recidivism rates.

Another problem reported by the Courts and the Youth Justice system is the release from remand of youths either acquitted (the Crown has failed to prove the case against the individual to the required standard “beyond a reasonable doubt”) or discharged (the Crown has withdrawn the complaint and discontinued the prosecution because of witness availability or in the exercise of discretion) or sentenced to the rising of the Court (the Court determines that any period served on remand has exceeded the period of any detention sentence that would have been appropriate to the offence once proved or admitted).

Because of the specialist youth offending model, and the connections between child protection status and youth justice involvement, magistrates should be empowered when discharging a youth in those circumstances to declare the youth a person “in need of care and protection” or in need of youth worker assistance and order a period of supervision to prevent them being dumped back into the identical environment from which they had emerged.

Civil liberties considerations arise but are addressed in two ways:

- the acknowledgement that the criminal justice system applied to youths is to be applied in their best interests by reason of their vulnerability; and
- the power should be exercised only where on the evidence adduced (which may be only Police and witness statements) the Court is satisfied, after hearing for the youth, that it “very highly probable” that the youth has committed the acts complained of and that the acts were attended by criminal state of mind. This standard of proof is lower than the criminal standard but higher than the standard required under the CYPATF Act.

## **PUNISHMENT V. EDUCATION**

Programs and education at Ashley follow a containment model of detention, rather than effectively developing young people in directions they wish to take. As noted at the outset the youths at Ashley do not see themselves as children, but they are.

s.4 of the Youth Justice Act “Objectives” in particular s.4(h) acknowledges inherently that youth offenders differ from adult offenders in the origins of criminal conduct, in the opportunities for rehabilitation into “responsible citizens” and in the relevance to behaviour modification of youth “to accept personal responsibility for their behaviour”.

Teaching staff at Ashley School and the Programmes Staff who operate around the limited school hours seemed to the Commissioner to be dedicated to delivering a complex and fluid system to a difficult clientele. There was an atmosphere of professional respect between the two systems, the one operating 365 days a year, the other operating during proclaimed school term time.

However there did appear to be some degree of disjunction between the two systems, and not a lot of confluence. There were problems with requiring youths over 17 to engage in the Department of Education programme as it only applies to compulsory-age students. If the focus of a young person in Ashley is seen as a learning: new behaviours, ways of interacting, respect, there need be no disjunction between the two.

Exciting new work has recently been tried in a Hobart Public High School to design educational programs around the needs of children and youth who resist traditional class room settings. Again this is an educational model that needs to be fully funded in the community – especially for youth on supervised bail – as a cost-effective means of keeping them out of Ashley.

### ***PSYCHOMETRIC ASSESSMENT***

There is growing evidence that children exhibiting the behaviours that bring them into Ashley are often exhibiting symptoms of behaviours learned from abusive backgrounds, or of behaviours endemic in brain dysfunction or difference, including ADHD, Foetal Alcohol Effects, Acquired Brain Injury, personality disorder and mental illness. Many Ashley students had poor school attendance before admission.

There is strong evidence that the involvement of a youth’s family of origin with Child Protection services is a risk factor in the youth’s criminal conduct and ultimately in their admission to youth detention, whether on remand or on detention.

There is little or no point in drilling a child with a Department of Education numeracy and literacy program if the child’s brain is simply incapable of using the lesson structure or receiving and using the information in the form it is

presented. Behavioural programs have to differ for individuals for whom standardised reward/deprivation models will not work.

The Committee recommendation 9 (assessment of youth at risk of offending), should apply to every youth admitted to Ashley on remand or detention for any period greater than 2 weeks. This period is selected as the likely minimum time it would take to perform the multi-disciplinary psychometric assessment required to identify or diagnose the historical, personality and psychiatric origins of the offending behaviour.

The vast majority of youths admitted on detention will have presented on remand previously, so this procedure for first time detainees will be rare. For this reason all youths presenting to Ashley for the first time should be fully segregated from the rest of the resident population. The rate and depth of acculturation is swift and not only interferes with the validity of the assessment but also counteracts the last possibility of identifying special needs for youths which may require continuing segregation or even a return to the bail court.

Recommendation 9 may seem expensive to resource, but the relatively small number of youth actually admitted to Ashley and the persistent severity of those individuals' behaviour should be much more manageable and that much more productive if the causes of their behaviour are identified and addressed.

At the moment there is no centre in Tasmania qualified to conduct the multidisciplinary diagnosis of Foetal Alcohol Spectrum Disorders (FASD), and few people qualified to perform psychometric assessment to diagnose other disorders. Australia's first clinic fully capable of the differential diagnosis of FASD at the Alcohol Related Brain injury Association (ARBIA) in Melbourne opened only in July 2007. If it is expensive to bring in qualified experts or teams of experts, this will be money well spent if it reduces staffing and accommodation needs in the future at Ashley or Risdon, and if it goes some way to protecting the community from future criminal behaviour. Accurate diagnosis and targeted programs offer also a better individual outcome for the youth with a future more positive than graduating to in Risdon.

### ***RESIDENT SEGREGATION***

In the ACT Human Rights Commissioner in June 2005 published her "Human Rights Audit of Quamby Youth Detention Centre" (The Quamby Audit). The recommendations from that Report are attached to this paper.

The Quamby Audit gave high priority to recommendations about segregation of different classes of detainees by age and most importantly by remand and detention status. In particular it recommended:

1. Classification and Placement
  - 1.1 There should be a separate accommodation unit for new inductees.
  - 1.3 There should be appropriate separation of detainees on the basis of age group and status (remand or under sentence).

In the ACT during the period of assessment the “first time” youth is segregated from the rest of the centre population on the principle that there are still significant prospects of diverting the youth from becoming embedded in the culture of offending and re-offending common to “old hands” at the Centre.

Youth admitted to detention undergo not merely a risk and history assessment but a full psychometric assessment that can take one or two weeks. It frequently involves more than one professional working in a team to arrive at a workable diagnosis of personality or psychiatric disorder upon which to tailor an individual behaviour-changing program. The new centre named Bimberi has incorporated in its design a separate accommodation wing for new inductees.

### ***FEMALE RESIDENTS***

There was in camera evidence given to the Committee and they drew the conclusion (recommendation 28) that female Ashley residents should have only female staff without reference to any evidence of specific instances of risk to the young women. It is heartening that some male youth workers from Ashley had the insight to feel uncomfortable about mixing female residents with male staff, mainly from a sense of self-preservation. Despite the helpful suggestion, it is not certain that CCTV surveillance would provide both staff and student with the level of protection needed.

From confidential information received directly to this office concerning interaction of male staff and female residents both on-site and upon discharge, the Commissioner supports an immediate change of policy in this direction.

### **THE NAME, EDUCATION AND THE CULTURE**

The Commissioner for Children agrees the name should be changed to more accurately reflect the role, but more fundamentally than that recommended by the Legislative Council Committee.

The Commissioner for Children recommends a switch from a punitive/correctional model to a developmental/educative model. “Ashley College” or “Ashley Youth Development Centre” or even just “Ashley”, as it is locally known in the community.

The Government should bring together the Department of Education and the Division of Youth Justice and with expert educators design individual and group programmes. Youths in Ashley could be called “students” for in truth that is what they are.

### ***THE CULTURE***

The Commissioner observed that there is a marked degree of masculine posturing and aggression amongst the young males at Ashley which may well derive from their cultures of origin, but which may have contributed to the risk-taking behaviours which brought them there. None of this is addressed at

Ashley and they will carry these behaviours and the core beliefs behind them back into the community upon release. These behaviours are likely to perpetuate cycles of domestic and family violence, intergenerational violence, lack of insight and empathy and more advanced risk-taking.

Despite the behavioural programmes implemented, there is still the ethos that “It’s cool to be a fool”. Whilst many may dismiss this behaviour as typical of adolescent males generally, or even admirable, what is learnt behaviour can be unlearnt. If aspects of “blokey” behaviour are inherently associated with anti-social or even criminal conduct, they need to be addressed if Ashley is to move beyond anything more than a temporary containment model for young criminals.

This aspect does not appear in the Committee’s Report, Conclusions or Recommendations, but was the subject of private communication with the Commissioner, from individuals who said it was raised with the Committee.

### ***THE FENCE***

Security includes security for the community, but also security for students at Ashley.

Connected with this is the appearance and function of the fence. A significant effect identified by witnesses to the Inquiry is not to deter anyone, but to intimidate and devalue offenders who frequently come from abusive or neglectful backgrounds. If you didn’t think you were devalued before you went in, you certainly do as you pass under the fence and the front gate clangs behind you for the first time. Evidence before the Committee was clear that fencing sends the message “I am going to keep you here. I am going to take responsibility” and does nothing to promote self-management, trust, growth and responsibility (Mr Ben Marris).

S.5(1)(a) of the YJA requires the exercise of powers under that Act with proper regard to the principle that “the youth is to be dealt with,... in a way that encourages the youth to accept responsibility for his or her behaviour”. S.5(1)(h) provides “punishment of a youth is to be designed so as to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways”

It has become a rite of passage to work out and develop the strength and skills to swing up over it, and many escapees simply hand themselves in to return as “heroes”, but make no serious effort to evade recapture eg by leaving the State.

Youths guilty of crimes and on detention are able if classified low-security risk, to work in the farm; whereas remandees who are innocent at law are required to wear handcuffs if they pass work in the farm. This is an Alice In Wonderland effect occasioned by the legislation which should be amended to avoid it.

The Commissioner for Children can see no need for a high security fence to remain around the perimeter once a secure unit has been securely established within it. Certainly many of the youth remanded at Ashley will have been assessed by the relevant bail officer or Court as at risk of re-offending in the community, or at risk of failing to appear, but not even these will be at high risk of non-compliance. Others are remanded at Ashley for their own safety and welfare.

Bail officers and Courts should be able on refusing bail to declare a youth a low security risk based on the youth justice reports before them. That status can always be reviewed under Standing Operating Procedures if conduct at Ashley gives the Site Manager security concerns.

In the ACT the detention centre fence features a swinging top section that prevents residents using it as a fulcrum to swing over. Another model under development is subject to safeguards to “energise” the fence with a low current of electricity so that it does not shock casual contact, but effectively deters prolonged contact

## **OVERSIGHT AND DEVELOPMENT**

The Commissioner for Children notes that the Interagency Whole-of-Government Working Group was established in 2006, but does not appear to have made any submissions as a group to the Committee. Its existence and its work seem from a reading of the Report itself to be rather opaque, so it does not seem to have been straightforward for even the Parliament to have a clear grasp of its role, its objectives and its progress.

This is a clear role for an Advisory Group as recommended in Recommendation 20 of the 2005 “Review of Resident Safety”.

Whilst the current management of residents Ashley would satisfy most of the Human rights concerns addressed by the ACT Human Rights Commissioner in the Quamby Audit, it would fail others, both in management, in the premises, in some of the Standard Operating Procedures.

Of particular concern to the Commissioner for Children is the availability of advocacy within Ashley for internal disciplinary matters, for voicing concerns about conditions at Ashley and for preparation for hearing and obtaining timely legal advice.

The latter has been identified as a significant contributing factor in some of the delays on remand. There is a clear role for an Ashley Residents Advocate recommended in the Review of Resident Safety: Recommendation 19.

## **DISCUSSION**

The Commissioner for Children does not oppose any of the recommendations in the Committee report, but explores in this paper enlargements upon some of them.

The Commissioner calls for the Government to proceed with urgency to implement the following:

1. Child Safety  
The Secretary should issue immediately a Standard Operating Procedure requiring that only female staff work in accommodation occupied by female residents, under any circumstances.
2. Oversight and Development
  - 2.1 The Government should implement Recommendation 20 of the “Resident Safety Review” to establish an AYDC Advisory Group as soon as practicable and as a functioning alternative to the proposed Interagency Working Group.  
In the meantime the Interagency Working Group should commence regular meetings that include NGO stakeholders, Parliamentarians and the Commissioner for Children in order firstly to avail itself of rapid access to fruitful ideas and quicker delivery of new projects than might be possible within a Government framework; and secondly to be more transparent in the interests of public reassurance and accountability
  - 2.2 Government should implement Recommendation 19 of the Review to establish as soon as possible an AYDC Residents Advocate.
3. Youth Detention Model
  - 3.1 Government should make a conscious decision to switch the entire model of Ashley from containment and punishment to correction and development in keeping with sections 4 and 5 of the YJA, the purpose of the CYPATF Act and current developmental theory.
  - 3.2 The name should be changed to redefine the mission of youth detention for the community and for youth at risk of entering or advancing within the youth justice system. The Commissioner for Children recommends “Ashley College” or “Ashley Youth Development Centre” or “Ashley”.
  - 3.3 All youth admitted the first time to Ashley either on detention or on remand for a period longer than 14 days should undergo psychometric assessment to identify or exclude Acquired Brain Injury, Foetal Alcohol Effects, Intellectual Disability and Personality or Psychiatric Disorder. The assessment tools should be developed in collaboration with ARBIAS or other brokered professional service.
  - 3.4 A framework should be established based on assessment to enable each student to have their own Individual Education Plan (IEP) developed by a teacher or team of teachers. If a youth returns to school or TAFE education after Ashley, this assessment and IEP could follow them for consistent implementation.

- 3.5 Youth admitted during this assessment phase should be segregated from the rest of the detention centre population, subject to selective co-location with appropriate companions for youths at particular risk of self-harm.
- 3.6 The YJA should be amended to legislate that youth on remand should be segregated where administratively possible from youth on detention.
- 3.7. The Commissioner supports any policy development that will dilute the strongly masculine ethos of the male section of Ashley and the Government should engage a consultant to advise on aspects of diet, décor, music and activities that could achieve this.
  
4. Security levels
  - 4.1 A secure unit should be established at Ashley, within the perimeter using sections of the existing fence, to segregate residents presenting risk to other residents or at high risk of absconding.
  - 4.2 The balance of the fence should be downgraded to a lower security level to improve the amenity of the premises for lower security residents.
  - 4.3 The YJA should be amended to enable bail officers and Courts to declare the security level of remandees in the first instance, subject to administrative re-assignment if identified and recorded conduct or external risk on arrival warrants a higher level of security.
  
- 5 Options for secure and non-secure bail options outside Ashley.
  - 5.1 The Government should examine Bail Options including:
    - 5.1.1 Provision of an all hours bail advocacy service staffed by youth justice workers able to put before bail offices and bail courts re-offending and absconding risk assessments and bail options.
    - 5.1.2 Adequate supervision by dedicated youth workers of compliance with bail conditions;
    - 5.1.3 The Anglicare Bail Options Project (BOP) model of community-based bail accommodation should be evaluated, formalised, and properly funded and rolled out across the State to an NGO, with worker hours and carer support funding proportionate to the demands from each Youth Justice service area..
    - 5.1.4 The State itself should provide supervised bail accommodation in group or other residential settings for youth on adjournment not suitable for the NGO community-based program.
  - 5.2 Supervised programs should be available for an evidence-based period (e.g. 3 months) post-release, either voluntarily or following amendment to the YJA on a mandatory basis, ordered by a Magistrate on discharging a youth he or she believes requires that level of assistance.
  
6. Other Legislative Amendments.
  - 6.1 The Bail Act or the YJA should be amended to ensure Bail is a priority and to express that lack of accommodation is not itself a grounds for refusing bail.

- 6.2 The Government should refer to the Tasmanian Law Reform Institute the question as to what considerations for bail should be codified in the Bail Act.
- 6.3 The Youth Justice Act should be amended to make express the option of a youth to submit to a community conference as an alternative to the laying of a complaint for an offence, and to spell out the escalating ladder of seriousness from informal to formal caution, thence to community conferencing thence to restorative processes like apology, restitution and community service and thence to prosecution.
- 6.4 The Commissioner adopts the recommendation of the Committee that Service Orders whether arising from community conferencing or from s.47 sentence in order to have any effect must be
- a. prompt and
  - b. where possible “fit the crime”; and
  - c. must be “breached” swiftly on the application of Police or Youth Workers
- To this end they must be properly funded.
- 6.5 The YJA should be amended to require Magistrates to state why they are remanding a youth into custody rather than to bail or a less restrictive supervised bail option.
- 6.6 The YJA should be amended to express a Magistrates power to direct a child or youth into programs (eg drug treatment, victim impact or living skills education programs) or into supported accommodation as a condition of bail, or of release and adjournment under s.47(1)(d) or of probation under s.437(f) or of a suspended detention order under s.47(2)(a).
- 6.7 Subject to amendment of s.48(1) the Government should consider extending these powers to the period after the child’s or youth’s discharge from the YJ system, either after serving a sentence of detention or even if not found guilty of a crime “beyond a reasonable doubt”, provided the Magistrate is satisfied that the elements of the offence charged were proved as “very highly probable”.
- 6.8 S.25 YJA or alternatively s.35 Justices Act could be amended to include the option of supervised accommodation by an approved provider.

Paul Mason  
Commissioner

October 2007