

Your Ref:
Our Ref: 904

23 December 2022

Tim Bullard
Secretary
Department for Education, Children and Young People
By email: officeofthesecretary@decyp.tas.gov.au

Dear Secretary,

Re: Feedback on the Final Draft Youth Justice System Blueprint 2022

Thank you for this opportunity to provide feedback on Tasmania's Final Draft Youth Justice Blueprint (November 2022) (Blueprint). I also wish to thank you for responding positively to feedback and comments I have submitted previously on an earlier draft of the document.

The Blueprint now appears more strategic, the terminology is more consistent with a child-centred approach, and it displays a stronger intent to deliver services more effectively and through a strengthened evidence-based approach. For example, the "principles that underpin the Blueprint" (p.9) are now much clearer and provide an excellent guide to the further development and implementation of action plans, programs and initiatives that are to sit within the Blueprint. In particular, principle 2, "Children and young people have their rights upheld", is central to the continued development and success of the Blueprint:

We take the rights and best interests of the child or young person, and their family, into account in all matters relating to them. We actively engage with, and seek the views of children, young people and their communities and provide ongoing opportunities for children and young people with lived experience to be heard.

Despite these marked improvements, the Blueprint does not yet reflect the nation-leading approach to youth justice that the Government promised. As this is now my third tranche of feedback on the draft Blueprint, my comments below focus on the outstanding limitations of this draft and what I believe is needed to:

transform the way we address youth offending, providing improved outcomes for children and young people and increasing community safety. Our small size, while presenting geographical challenges, also gives us a chance to do something innovative and nation leading.¹

¹ Final Draft Youth Justice Blueprint 2022, p. 2. No further page references to quotations from the Blueprint will be footnoted.



My comments also accord with the following principles:

- that the wellbeing and best interests of children and young people are paramount;
- relevant provisions of the United Nations Convention on the Rights of the Child are observed; and
- special regard be given to the needs of children and young people who are disadvantaged or vulnerable.

As I remarked in my correspondence to an earlier draft (dated 23 September 2022):

the Blueprint does not yet clearly articulate a bold 10-year vision, nor does it demonstrate a clear path to achieving that vision in a conceptually clear way.

I believe further work is still needed to set this bold over-arching vision.

My feedback should not be considered exhaustive and should be regarded as complementing previous feedback I have provided on the Blueprint. I do not necessarily repeat issues, concerns, queries, or ideas I raised in previous submissions.

If the Government is genuinely seeking to transform the way we address harmful behaviour by children and young people, improve outcomes for children and young people, and increase community safety, a funded Blueprint, populated with clear and specific objectives, implementation plans, and measures and/or targets relating to the strategic priorities is required.

In my [submission on Reforming Tasmania's Youth Justice System Discussion Paper](#) from March 2022, I identified three over-arching principles that I believe must guide the reform of youth justice in Tasmania, across the continuum of prevention and early intervention, targeted and tertiary intervention:

1. Youth justice reforms should be child-centred;
2. The reforms should acknowledge the right of Aboriginal people to determine and lead the appropriate response for their children;
3. The reforms should acknowledge the ecological model of child development, which recognises the influence of families, communities and broader society on the wellbeing of children.

These principles are detailed in my original submission, but I would like to highlight that genuine partnerships with Tasmanian Aboriginal people must be developed to ensure that services to children and their families are culturally safe and enshrine self-determination.²

² Chris Cunneen, *Self-Determination and the Aboriginal Youth Justice Strategy* (Research Report, 2018). Available at [Self-Determination and the Aboriginal Youth Justice Strategy by Chris Cunneen: SSRN](#), p. 6.



The representation of Aboriginal people in discussions on the National Agreement on Closing the Gap targets and other initiatives provides self-determination for Aboriginal Communities in ways that meet their social, cultural, and economic needs. It is not clear from the Blueprint how the Tasmanian Government intends to actively engage and seek the views of Aboriginal children and young people in reforming youth justice, and how it will address the over-representation of Aboriginal children and young people in the youth justice system. Again, I would urge the government, as a matter of urgency, to provide Aboriginal children and young people with a real opportunity to be heard as part of the reform process.

In line with the over-arching principles reiterated above, I would expect the following to be incorporated into the Blueprint (and implemented through the Action Plans):

- A clearly stated commitment and plan to actively involve children and young people, including Aboriginal children and young people, in co-design and implementation to ensure that their wellbeing and safety are front and centre of the reforms. There is currently no mention of co-design in any part of the Blueprint.
- A key objective of the Blueprint should be to actively keep children and young people away from the criminal justice system.
- Tasmania leading the way on raising the minimum age of criminal responsibility.
- A wide-ranging law reform project that reviews, researches and modernises youth justice laws and youth justice courts.
- Education, and by extension, the education system, recognised as a “pillar” of youth justice and a powerful lever to keep children and young people away from the criminogenic effects of the criminal justice system.
- A commitment to fund the Blueprint, Strategic Objectives, Action Plans and the respective initiatives. The lack of a commitment to funding in the Blueprint seriously damages its credibility.

Ultimately, in my respectful opinion, I do not think that the Blueprint has done enough to articulate a clear plan to “transform the way we address youth offending”.

In the below section I describe and discuss in further detail what, in my view, are the outstanding limitations of this iteration of the Blueprint.

I would also welcome further opportunities to be involved in the Blueprint’s development.

Further comments

1. Reduce the involvement of children and young people in the youth justice system

A main strategic driver of the Blueprint is to prevent children and young people “from becoming involved with the youth justice system.” The Blueprint acknowledges that the burden on the statutory (tertiary) end of the youth justice system needs to be reduced, and universal (primary) and targeted and diversionary supports (secondary) need to be enhanced, in line with a public health approach. Yet, over its 10-year lifespan the “key objectives” of the Blueprint are consistently more heavily weighted towards the tertiary end



of the youth justice system. For example, the objectives to “keep children and young people in youth justice facilities safe”, “reduce offending behaviour by children and young people”, “reduce the over-representation of Aboriginal children and young people” and “support children and young people to re-enter the community through pro-social pathways”, are all very much tertiary-focused. To achieve these objectives, the Blueprint must also include a strategic objective to actively reduce the involvement of children and young people in the youth justice system in the first place, focused on prevention, early intervention and diversion.

I note, by way of example, that one of the key strategic directions for youth justice set out in the *Blueprint for Youth Justice in the ACT 2012-22*, arguably the headline indicator of success for that Blueprint, was the reduction in the number of children and young people apprehended by police. As a result of this approach, there was a 37% reduction in the number of children and young people apprehended. Given the established link between early involvement in the youth justice system and further offending, a reduction in apprehension in Tasmania (in similar terms to the ACT) is likely to benefit the entire youth justice system.

The need to keep children out of the youth justice system, and by corollary the criminal justice system, is starkly illustrated by the fact that the Tasmanian Prison Service (TPS) is often the gateway for children entering the youth justice system. As I noted in my earlier submission on the Blueprint, while it is rare for a child to be held in an adult correctional facility for any significant length of time, currently children and young people who are detained following arrest by Tasmania Police are routinely held in reception prisons managed by the TPS when, for example, they are awaiting court or transport to Ashley Youth Detention Centre. Clearly, an adult reception prison is neither a child-centred nor therapeutic environment in which to hold a child, even for a short period of time. Further, TPS staff do not have appropriate trauma or child development training to support and respond to the complex behaviour that children and young people as young as 10 may exhibit in this environment.

Fundamentally, the front door to the adult and the youth justice systems should not be the same; it is my view that it is not appropriate for children and young people to be held in reception prisons, or indeed any adult correctional facility for any length of time. I would strongly encourage the Blueprint and any associated Action Plan to resolve this serious concern and articulate an alternative therapeutic and more developmentally appropriate approach.

It is disappointing that a key action that was included in previous iterations of the Blueprint draft has been omitted, namely the review of formal diversionary options to identify service gaps and ensure consistent application for young people who come into contact with the criminal justice system. I recognise that under Strategy 2, the Blueprint seeks to emphasise the importance of diversion as captured in the following objectives:

1. To support the effective diversion of children and young people from contact with both the police and justice system while encouraging them to take responsibility for their behaviour.



2. To provide a range of developmentally appropriate responses for children and young people under the minimum age of criminal responsibility who are exhibiting behaviours that would otherwise be considered an offence.
3. To deliver a range of diversionary options and programs for children and young people who come into contact with the justice system.
4. To ensure that Aboriginal children and young people have access to Aboriginal-led diversionary services.

Notwithstanding the merit of these objectives, arguably, this can only be achieved following a review of what has and has not worked before, and the stress points in the diversionary system. Therefore, the review should be re-instated in the Blueprint and carried over into an Action Plan.

2. Raise the minimum age of criminal responsibility in Tasmania

Closely connected with reducing the involvement of children and young people in the criminal justice system is the pressing need to raise the minimum age of criminal responsibility. Children and young people under the age of 14 should not encounter the criminal justice system. Statements in the Blueprint committing “to support the development of a proposal to raise the age of criminal responsibility from 10 to 12 years old” and to raise the minimum age of detention from 10 to 14 do not go far enough and represent a missed opportunity.

I note the draft final report from the former Council of Attorneys-General (CAG) Age of Criminal Responsibility Working Group recommended that the Commonwealth, State and Territory governments should raise the minimum age of criminal responsibility to 14 years of age, without exception.

In my respectful opinion, the Tasmanian Government should immediately commit to raising the minimum age of criminal responsibility to at least 14 years. The Blueprint reforms should directly seek to ensure that all children aged less than 14 years old who are engaged in harmful and/or risky behaviour, are responded to in a therapeutic way that addresses the underlying causes of their behaviour.

Raising the age of criminal responsibility to at least 14, with no exceptions, together with broader service system reform, will serve to immediately and significantly reduce the involvement of children and young people in the criminal justice system.

I strongly encourage the Government to commit, in the Blueprint, to raising Tasmania’s minimum age of criminal responsibility to at least 14 years, and to investigating the service elements and legislative reforms that will be necessary to enable this to be achieved within a definitive timeframe. As you are aware, I am preparing formal advice to the Tasmanian Government on raising the minimum age of criminal responsibility, which I now expect to deliver in early 2023.



3. Consideration of a Children's Court

The Blueprint says that “a number of submissions to the consultation highlighted the need for a specialist youth court.” This comment follows a brief description of the distinction between a “traditional courtroom structure and operation” and a “contemporary approach” to hearing youth matters:

As part of a therapeutic approach to youth justice, court processes and legal services are required that enable the young person and their family to actively participate in the legal and court system in a timely manner. The traditional courtroom structure and operation is often highly intimidating for children and young people and their families and the use of technical and unfamiliar legal terminology, and other language that exceeds the clients' literacy, has been shown to result in a young person's disengagement with proceedings. Equally, evidence suggests the timeliness of the court response is critical in ensuring that children and young people can connect their offending with the consequences being imposed by the court. Research indicates that a contemporary approach to hearing youth matters requires a specialist approach that is: child focussed; promotes the participation of children and families in the court process; incorporates problem solving, collaborative and multidisciplinary practices; is supported by a specialised and trained workforce; and provides culturally responsible approaches.

Unfortunately, the approach in Tasmania is more closely aligned to a traditional courtroom structure and operation, rather than a contemporary, child focused approach. Tasmania and the Northern Territory are the only jurisdictions without a separate, dedicated and specialist Children's Court, which hears both youth justice matters and child protection matters. Even a jurisdiction as small as the ACT has a specialist Children's Court with jurisdiction to hear criminal cases against children and young people and child protection applications and related proceedings. It is a separate and dedicated court, with a separate entrance and exit for people appearing in Children's Court proceedings.

The Blueprint should include a strategic action to establish Tasmania's first Children's Court. At present, there are limited court structures and procedures that respond to the needs of children and young people involved in the youth justice system. The Magistrates Court (Youth Justice Division) is distinct from the Magistrates Court (Children's Division) (hearing child protection matters), with both divisions sitting in Hobart, Launceston and northwest Tasmania. This means that several magistrates across the state deal with youth justice and child protection matters as an add-on to their main task of hearing adult criminal matters. Moreover, non-magistrate bench justices hear criminal proceedings against young people in after-hours courts throughout the state. The current system is confusing and opaque to children and adults alike, and urgent reform is needed to establish a separate Children's Court.

It is curious that the Blueprint acknowledges the strong association between early childhood experiences of trauma and youth offending and indicates an inclination to address the thorny problem of children and young people circulating through the child safety and youth justice systems but avoids any consideration of reforms that would directly address the issues faced by those children colloquially referred to as 'crossover children'. It says:



Children and young people who have experienced chronic trauma such as abuse and neglect, or exposure to family violence, and are involved with the Child Safety System, are overrepresented in the youth justice system. Although most children and young people who are involved with Child Safety Services do not engage in offending behaviours, for some, their trauma background presents as challenging and impulsive behaviour. This behaviour can increase the likelihood of them becoming involved with the youth justice system. Effort is required to reduce the number of 'crossover children', who are involved with both the child safety and youth justice systems. Aboriginal children and young people are overrepresented in both the child safety and youth justice systems.

If a young person is involved in both child protection and youth justice proceedings, they may see multiple different magistrates, in multiple different courts, not understanding the difference between the two and not having the confidence that the courts have a shared or consistent view on how best to address the offending behaviour of the young person. A specialist Children's Court, hearing both youth justice and child protection matters, can help to reduce the administrative and legal burdens placed on children and young people.

A specialist Children's Court is also capable of being an important element of the service hub model mentioned in the Blueprint:

To encourage participation and make accessibility as easy as possible, services should include elements of assertive outreach or delivery through community service hubs. A service system that can 'wrap' services around children and young people and their families, where they live and in a coordinated and wholistic way is required. Approaches that identify risk factors; respond to wellbeing issues and make timely decisions based on the individual needs of the young person and their families to prevent them from entering the formal youth justice system are essential.

A Children's Court connected to the "service system" can also play a critical role in prevention and diversion, wrapping services around children and young people, as occurs in other jurisdictions. Children's Courts are ineffective if they sit alone and disconnected from the service system.

It is disappointing that the Blueprint gestures timidly towards the need for a contemporary court that is child focussed, promotes the participation of children and families in the court process, incorporates problem solving, collaborative and multidisciplinary practices, and is supported by a specialised and trained workforce, but does not declare that law reform is necessary to achieve this.

At present, the Magistrates Court (Youth Justice Division) and Magistrates Court (Children's Division) are structurally incapable of responding to or contributing effectively to the aims of the Blueprint over the course of the next ten years. A specialist Children's Court would transform youth justice and I strongly recommend that it be included as part of the Blueprint.



4. Leveraging the universal education system

Between the release of the previous draft of the Blueprint and the current Blueprint, the Government consolidated the major agencies that support children and families, including education, child safety and youth justice services, into a single department, the Department for Education, Children and Young People.

This is a significant machinery of government change and is intended to minimise the operational, practice and information silos affecting children and young people and lead to better alignment of activities in child-centred portfolio areas. It is therefore disappointing that the Blueprint does not take a more ambitious and imaginative approach to addressing and enhancing the universal (primary) supports and services in the education service system, in line with the public health model advocated for in the Blueprint.

While the Blueprint acknowledges the importance of education as a protective factor for children and young people, this has not been translated into positive initiatives. There are currently only two objectives that reference education supports and programs, and these appear under the diversion strategy (Strategy 2) and the therapeutic criminal justice response strategy (Strategy 3) respectively and are focused on re-engagement with education. In line with the public health approach advocated by the Blueprint, the Government should adopt a more focused and practical strategy to integrate the youth justice system with the education system:

To support an integrated youth justice system, we need to ensure collaboration between key service partners including youth justice, courts, police, education, and the Child Safety Service so practice approaches and learnings can be shared and there is a common understanding of good therapeutic practice with consistent and agreed language. The creation of opportunities for shared, multidisciplinary, and creative learning will support integration of the service system.

Partnership with the education system is one of the ten “pillars” of effective youth justice. Poor school attendance, low academic performance and school exclusion are recognised as significant risk factors for youth offending. Conversely, strong school ties, educational achievement and recognition are strong protective factors. Also, as stated in the *10 Pillars of Youth Justice*, “school-based programs can identify children who might not be reached by other early intervention services. They can also provide targeted, place-based responses. Formal school retention programs, whole of school anti-violence and restorative programs and family engagement initiatives are effective in reducing the precursors of offending.”³ Additionally, educational achievement in language and literacy can steer children and young people away from the youth justice system.⁴

³ Lisa Ward, *10 Pillars of Youth Justice*, ANZSOG Research Insights, Australian & New Zealand School of Government, December 2020, available at [Microsoft Word - ANZSOG Research Insights - 10 Pillars of Youth Justice v3.docx \(ayja.org.au\)](#)

⁴ Pamela C. Snow, “Speech-Language Pathology and the Youth Offender: Epidemiological Overview and Roadmap for Future Speech-Language Pathology Research and Scope of Practice”, *Language Speech and Hearing Services in Schools*, 50 (2), April 2019, pp. 324-339.



The education system is arguably the service system which children and young people have most universal and primary access to, but there is a dearth of initiatives in the Blueprint that leverage productively off the consolidation of services to the Department *for* Education, Children and Young People. In my view, further work is needed to examine whether and, if so, how government and independent primary schools, high schools, and colleges could become key sites of universal (primary) and targeted (secondary) supports and services.

Given the acknowledged criminogenic nature of the criminal justice system generally, I believe a greater focus of attention and resources should be channelled to earlier engagement with children and families in schools, to support them to thrive, and thereby reduce the likelihood of contact with the criminal justice system. Schools are critical sites of pro-social activity and modelling. They should be substantively included in any early intervention and prevention approaches articulated in the Blueprint.

5. Law reform

The specific objectives related to law reform of the *Youth Justice Act 1997* and the *Bail Act 1994* appear to have been omitted from the Blueprint and replaced with the following specific objectives, respectively:

To develop a contemporary and therapeutic legislative framework for youth justice that emphasises prevention, early intervention, diversion and rehabilitation through system-wide collaboration and cooperation.

To deliver effective support that meets the individual needs and circumstances of children and young people on bail through a range of assisted bail options.

I am concerned that the specificity contained in the earlier draft of the Blueprint has been diluted in the current Blueprint. The lack of a specific reference to reviewing the *Youth Justice Act 1997* is problematic because the Magistrates Court (Youth Justice Division) operates on powers and procedures invested in legislation and not on “system-wide collaboration and cooperation” alone. Is it the intention that legislative review and reform is part of an upcoming and associated Action Plan? I appreciate the acknowledgment of the need for a “contemporary and therapeutic legislative framework for youth justice” but greater detail on what that may look like is warranted. Similarly, the objective to “deliver effective support that meets the individual needs and circumstances of children and young people on bail through a range of assisted bail options” would only seem to be effective through consequential reform to the bail law. Bail decision-makers (courts, police officers, and bench justices) need appropriate child-centred powers, procedures and assisted bail options for granting bail to children and young people vested in legislation. Mechanisms for seeking variations to bail conditions are another area requiring urgent reform.

The Government should commit to a wide-ranging law reform project that encapsulates youth justice legislation, bail law and any other criminal justice legislation that affects children and young people in conflict with the law. Such a project, which would complement the commitments I have called for above on raising the minimum age of criminal responsibility and the establishment of a specialist Children’s Court, would ideally be included in an Action Plan under a bold and transformative 10-year Blueprint.



6. Children and young people from migrant and refugee backgrounds

I welcome the efforts made in the Blueprint to include an increased focus on self-determination of Aboriginal communities. I recognise that Aboriginal communities are best placed to determine and deliver services that meet the needs of Aboriginal children and young people. Concrete commitments developed in partnership with Tasmanian Aboriginal communities will be critical to achieve the objectives sought through the National Agreement on Closing the Gap.

I would also encourage specific recognition in the Blueprint of the support needed for other groups, including children and young people from migrant, refugee and asylum seeker backgrounds who may be disengaged, or at risk of disengagement, from the community, education, and employment and/or displaying harmful behaviours. While there is a lack of Tasmanian specific data concerning children and young people from migrant and refugee backgrounds and their interactions with the youth justice system, it is well established that ethnicity is a social risk factor along with factors such as Indigenous status, low socio-economic status, homelessness or inadequate housing, and/or a history of involvement in the child protection system.⁵ There is also a strong overlap between children and young people from migrant and refugee backgrounds and low socio-economic status⁶

Primary, secondary, and tertiary prevention programs that recognise and seek to address the at-risk needs of migrant and refugee children and young people ought to be included in the Blueprint and associated Action Plans.

I am aware, for example, of the success of the Migrant Resource Centre's MY Pathways program which provides an early intervention initiative that works with children and young people at-risk. The program is designed to support young people from migrant backgrounds to thrive in the local community and to facilitate community safety goals around social cohesion.⁷

Once again, I thank you for this opportunity to provide feedback on the Blueprint. As noted at the beginning of this document, I have provided this feedback in the spirit of achieving the intent of creating an innovative and nation-leading response that benefits children, young people and their families and keeps our community safe.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc *The Hon Elise Archer, Attorney-General*
The Hon Roger Jaensch, Minister for Education, Children and Youth

⁵ Sentencing Advisory Council, *Sentencing children and young people in Victoria*, April 2012, p 11,

⁶ Australian Institute of Health and Welfare, "Youth justice in Australia 2020–21", March 2022, p. 15.

⁷ See [MY Programs - Multicultural Youth Tasmania \(myt.org.au\)](https://myt.org.au).