

Your Ref:
Our Ref: 934

7 July 2023

Mr Richard Connock
Tasmanian National Preventive Mechanism

By email: enquiries@npm.tas.gov.au

Dear Mr Connock,

Subject: Submission – Tasmanian National Preventive Mechanism Implementation Project, Consultation Paper 2

I am grateful for the opportunity to advocate on behalf of all children and young people in Tasmania by commenting on the 'Tasmanian National Preventive Mechanism (NPM) Implementation Project, Consultation Paper 2'. Thank you also for the extension of time in which to respond.

The Tasmanian NPM forms part of Australia's ratification of the *Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). OPCAT is an international human rights agreement that complements and enhances compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). I recognise that the Tasmanian NPM, in accordance with OPCAT and under the *OPCAT Implementation Act 2021* (Tas) ("the Act"), intends to establish a system of regular visits to places in Tasmania where persons are or may be deprived of their liberty.

The Tasmanian NPM seeks stakeholder input on the application of its mandate to prevent torture and ill-treatment. Specifically, feedback is requested in response to four questions, and accordingly I will address each of the questions in turn.

Please note that my responses are not intended to be exhaustive, and I would welcome to the opportunity to provide further feedback as the NPM project progresses. Further, the imminent report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (Commission of Inquiry) will undoubtedly assist in the further development of your understanding of the core issues affecting children deprived of their liberty, including in youth detention, and the identification of barriers to the prevention of torture and ill-treatment, as well as the likely challenges to children engaging with you.



1. What does your organisation see as the core issues affecting populations that you represent in places of detention, that the Tasmanian NPM should consider as a matter of priority?

As a matter of priority, I would urge the Tasmanian NPM to consider the use of isolation practices including the use of lockdowns and restrictive practices for operational reasons at Ashley Youth Detention Centre (AYDC). During my time as Commissioner, and especially since June 2022, I have often witnessed children being subjected to restrictive practices and rolling lockdowns at AYDC.

Children's rights are repeatedly trumped due to chronic staff shortages and/or workplace health and safety considerations. I continue to be extremely concerned by the inhumane and degrading conditions for children and young people at AYDC and the impact these conditions are having on their immediate safety and wellbeing.

2. What does your organisation see as the main barrier(s) to preventing torture and ill-treatment in places of detention, and to people in these places engaging with the Tasmanian NPM?

There are several barriers to preventing torture and ill-treatment of children in places of detention, and to children engaging with the NPM.

There is an apparent lack of child rights-based and child-centred culture, policies, and practices within detention environments where children may be deprived of their liberty. See, for example, my submission to inform the Tasmanian Government's Youth Justice Blueprint which explores therapeutic approaches to youth detention and related matters.¹ While there have been some improvements, see for example the recent amendments regarding personal searches now incorporated into the *Youth Justice Act 1997*, there is still a very long way to go.

In the context of the Commission of Inquiry, children and young people have raised several matters with relevance to the implementation of the Tasmanian NPM. These include:

- a lack of faith in adults and organisations preventing and adequately responding to their safety needs;
- not always being allowed or encouraged to make contact with independent advocates, or having experienced repercussions for doing so;
- poor experiences of and/or lack of confidence to engage in organisational complaints mechanisms;
- fears that if their peers and others knew they had been ill-treated that they would be treated differently, judged or made to feel responsible;
- reliance on a child or young person making a complaint, as opposed to organisations proactively checking in on them.²

¹ [2022-03-21-FINAL-Reforming-Youth-Justice-submission.pdf \(childcomm.tas.gov.au\)](#)

² Moore, T., & McArthur, M., (2022). Take notice, believe us and act! Exploring the safety of children and young people in government run organisations. Hobart: Tasmanian Commission of Inquiry into the



In late 2022 and early 2023, I sought the views of children and young people with lived experience of the youth justice system in Tasmania through the Voices of Young People in the Youth Justice System Project. While this project is ongoing, the findings from these consultations will provide invaluable insights into the views of children and young people in the youth justice system in Tasmania, including about their experiences of police custody, reception prisons, and youth detention. Advocacy briefs and other audio-visual outputs from the consultations will be published from July 2023. I look forward to sharing these outputs with you in due course.

Further, I am currently conducting an own motion investigation into the introduction of a new Out-of-Home Care case management approach that has changed the allocation of Child Safety Officers for children and young people in care in Tasmania.³ As part of this investigation, I am considering the effect of the new approach on the rights and wellbeing of children and young people in out-of-home care. To inform my understanding, I have engaged with children and young people with direct and indirect experiences of the new case management approach. It is likely the findings of my investigation will also have relevance to this question. I intend to report publicly on the findings of my investigation in the second half of the year.

3. Are there any international obligations or other materials missing from this consultation paper that your organisation considers the Tasmanian NPM should have regard to when exercising its functions?

The Consultation Paper provides a comprehensive summary of relevant international materials. Supplementary sources not currently included but which should be considered in the exercise of the NPM's functions relevant to children deprived of their liberty include:

- UN Committee on the Rights of the Child (CRC), General Comment No. 24 (2019) on children's rights in the child justice system
- UN CRC, General Comment No. 12 (2009) on the right of the child to be heard
- UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).
- UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- UN Guidelines on the Administration of Juvenile Justice (Vienna Guidelines).

Consideration should also be given the UN Sustainable Development Goals which include the objective of ending "abuse, exploitation, trafficking and all forms of violence against and torture of children" by 2030 (target 16.2).

Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings. Available at Moore, T., & McArthur, M., (2022). Take notice, believe us and act! Exploring the safety of children and young people in government run organisations. Hobart: Tasmanian Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

³ For further information, see: [2022-12-15-Terms-of-Reference-OOHC-Inquiry.pdf \(childcomm.tas.gov.au\)](#)



4. Are there any examples of best practice in preventing torture and ill-treatment that you consider the Tasmanian NPM should have regard to during the development of its operating policies and procedures?

I recommend to you the [*Global Guide for Prevention and Protection of Children Against Torture*](#) recently published by the World Organisation Against Torture (OMCT). This resource highlights the unique vulnerabilities of children to torture and ill-treatment, identifies contemporary and replicable best practices in the prevention of torture and ill-treatment of children, and outlines key principles in the monitoring of places of detention where children may be deprived on their liberty. It also discusses the inextricable link between detention of children and their ill-treatment and argues for prevention to encompass efforts to radically reduce the number of children deprived of their liberty in the first place. This includes setting a minimum age of criminal responsibility in line with international standards, promotion of non-custodial measures, and non-criminalising responses to children's behaviour.

I would be pleased to discuss my feedback in more detail should that be of assistance.

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
Ginna Webster Secretary, Department of Justice
Tim Bullard, Secretary, Department for Education, Children and Young People