



Kids that have fallen through the cracks”

Young people’s views on supporting children, young people and their families

A Voices of Young People in the Youth Justice System Project Report



CONTENT WARNING:

This project is about the experiences of young people in Tasmania’s youth justice system. Some of their experiences include references to family violence, drug use and abuse. Some young people used strong language to describe these experiences. Readers might find the content of this report distressing. The services listed below can be contacted for support:

- **1800 RESPECT:** 1800 737 732
- **Family Violence Counselling Support Service:** 1800 608 122
- **Blue Knot (childhood and complex trauma support):** 1300 657 380
- **13YARN for Aboriginal and Torres Strait Islander people:** 13 92 76
- **A Tasmanian Lifeline:** 1800 984 434
- **Lifeline:** 13 11 14
- **Kids Helpline:** 1800 55 1800
- **Tell Someone website:** tellsomeone.tas.gov.au

Acknowledgement of Country

The Interim Commissioner acknowledges and pays respect to the Palawa people of Lutruwita/Tasmania as the original and ongoing custodians of this land and for the more than 40,000 years they have cared for their Country and their children. The Interim Commissioner recognises that Aboriginal people are best placed to determine and deliver services to meet the needs of their children.

Other Acknowledgements

The Interim Commissioner thanks the young Tasmanians with experience of the youth justice system who have bravely shared their stories for this report. Their unique insights and views inform the advocacy of the Office of the Commissioner on behalf of all children and young people in the state. The Interim Commissioner would also like to thank the staff of the Department *for* Education, Children and Young People (and the former Department of Communities) and non-government organisations for supporting young people to participate. Many thanks to the external reviewer who provided helpful feedback during the planning for this work.

Adverse Comment Process

Section 21 of the *Commissioner for Children and Young People Act 2016* (Tas) provides that the Interim Commissioner is not to include any comment in a report that is adverse to a person unless that person has had at least 15 working days to make representations to the Interim Commissioner before the report is finalised.

The Interim Commissioner provided this report to the Department *for* Education, Children and Young People on 31 October 2024. The Secretary responded on 2 December 2024 advising that no representations would be made.

Commissioner for Children and Young People (Tas) 2024. *"Kids that have fallen through the cracks"*

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Any questions regarding this report or the work of Tasmania's Commissioner for Children and Young People more generally may be directed to the Commissioner by emailing childcomm@childcomm.tas.gov.au or by telephoning +61 3 6166 1366.

For more information, visit: www.childcomm.tas.gov.au



“Kids that have fallen through the cracks”: Young people’s views on supporting children, young people and families is part of the *Voices of Young People in the Youth Justice System (Voices Project)* report series.

Introduction

The *Voices Project* promotes and empowers young people with recent lived experience of the Tasmanian youth justice system to share their views on this system.¹ By working with young people to share their views about what contact with this system can be like for children and young people, this project provides critical insights into the system’s impact on children and young people in Tasmania. The *Voices Project* informs the Interim Commissioner’s ongoing systemic advocacy about the reforms needed to promote, protect, and uphold the rights and wellbeing of children and young people in Tasmania.²

The *Tasmanian Child and Youth Wellbeing Strategy* (the *Wellbeing Strategy*) outlines the Tasmanian Government’s long-term and whole-of-government vision for a Tasmania in which all children and young people have what they need to ‘grow and thrive’.³ Accompanied by a four-year *Action Plan* covering 2021-2025,⁴ the *Wellbeing Strategy* is structured around the six domains of wellbeing outlined in the *Tasmanian Child and Youth Wellbeing Framework*.⁵

Aligned to the *Wellbeing Strategy*, the *Youth Justice Blueprint 2024-2034* (the *Blueprint*) outlines the Government’s 10-year plan to create a youth justice system that improves the wellbeing of children, young people and their families, and reduces the involvement of children and young people in this system.⁶ This approach is based on the Government’s adoption of a broader definition of youth justice, expanding focus to include prevention, early intervention, and diversion, in addition to traditional statutory responses.⁷

This report shares the views of young people with experience of the Tasmanian youth justice system about the supports that they believe children and young people need to reduce the likelihood that they will have contact with the youth justice system in Tasmania.

1. *Commissioner for Children and Young People Act 2016* (Tas) s 8(1)(e).

2. See, eg, Commissioner for Children and Young People, Submission to Secretary, Department of Communities Tasmania, Tasmanian Government, *Reforming Tasmania’s Youth Justice System Discussion Paper* (21 March 2022); Commissioner for Children and Young People, Tasmania, *The Age of Criminal Responsibility in Tasmania* (Memorandum of Advice, July 2023).

3. Tasmanian Government, *It Takes a Tasmanian Village* (Child and Youth Wellbeing Strategy, August 2021)

4. *Ibid.* (Appendix One) 5; Tasmanian Government, *Child and Youth Wellbeing Strategy Annual Report 2023* (Child and Youth Wellbeing Strategy, 2023).

5. Tasmanian Government, *Tasmanian Child and Youth Wellbeing Framework* (June, 2018).

6. Tasmanian Government, *Youth Justice Blueprint 2024-2034* (Report, December 2023).

7. *Ibid.* 3.



How we did the Voices Project

More information about why and how we did the *Voices Project* is available here:

<https://www.childcomm.tas.gov.au/VoicesMethodology>

Note, to protect their privacy, the real names of young people who shared their views with us as part of the Voices Project are not used.

The role of the Commissioner for Children and Young People

The Commissioner for Children and Young People advocates for all Tasmanian children and young people, and has a special function to advocate for individual young people detained under the *Youth Justice Act 1997*.⁸

The Commissioner promotes good practice, policy, and legislation by influencing decision-making, undertaking research, monitoring, publishing reports, providing advice to ministers and government agencies, undertaking investigations, and making submissions to inquiries and reviews. In exercising these functions and powers, the Commissioner considers the rights of the child under the *United Nations Convention on the Rights of the Child* (the *Convention*) to ensure the wellbeing and best interests of children and young people are paramount.⁹

Extensive advocacy has been dedicated to ensuring that children, young people and their families have what they need to grow and thrive, and through co-ordinated and holistic system reforms across the public health continuum – from the first 1,000 days of a child’s life.¹⁰ This includes substantial advocacy for the rights and safety of all children and young people, including those who come into contact with the child safety¹¹ and youth justice systems.¹² For example, advocacy has highlighted the need to uphold the participatory rights of children and young people as the Tasmanian Government responds to the final report of the *Commission of Inquiry into the Government’s Responses to Child Sexual Abuse in Institutional Settings* (the *Commission of Inquiry*).¹³ By ensuring that appropriate supports exist for children, young people and their families, governments can uphold the rights of children and young people.

8. *Commissioner for Children and Young People Act 2016* (Tas) s 8(1)(b).

9. *Commissioner for Children and Young People Act 2016* (Tas) s 3(1)(b).

10. The Tasmanian Child and Youth Wellbeing Strategy ‘It Takes a Tasmanian Village’ was developed in response to recommendations by the Commissioner in Investing in the Wellbeing of Tasmania’s Children and Young People: Commissioner for Children and Young People, *Investing in the Wellbeing of Tasmania’s Children and Young People* (Report, February 2020).

11. See, eg, Commissioner for Children and Young People Tasmania, *Somebody in Your Corner: The views of children, young people, carers and care providers on children and young people being stable and safe in out-of-home care* (Report, 2023); Commissioner for Children and Young People Tasmania, *A Place at the Table: An investigation into a change to the case management of children and young people in care in Tasmania* (Investigation, December 2023); Commissioner for Children and Young People Tasmania, *A Place at the Table* (Report, 2023); Commissioner for Children and Young People Tasmania, *Out-of-Home Care Monitoring Report No. 2* (Report, Second Edition, 2020-2022).

12. See, eg, Commissioner for Children and Young People, *Submission to the Tasmanian National Preventative Mechanism, Draft Tasmanian National Preventative Mechanism Expectations on the Treatment of Children and Young People Deprived of their Liberty* (6 May 2024); Commissioner for Children and Young People Tasmania, *Listen: This is my voice – Young People’s experiences of the youth justice system* (Report, 2023); Commissioner for Children and Young People Tasmania, *Memorandum of Advice – the age of criminal responsibility in Tasmania* (Submission, 2023); Commissioner for Children and Young People Tasmania, *Reforming Tasmania’s Youth Justice System Discussion Paper* (Submission, 21 March 2022).

13. Commissioner for Children and Young People Tasmania, *Change for Children and Collaborating for Change Consultation Draft* (Submission, September 2024); Commissioner for Children and Young People Tasmania, *Speaking Out for a Safer Tomorrow: Our Messages for Change. A Report from the Voices for Tasmanian Youth Consultative Council* (Voices for Tasmanian Youth Report, 2024); Commissioner for Children and Young People Tasmania, *Messages for Change: Our Perspectives on Change for Children* (Voices for Tasmanian Youth Report, 2024).

Rights Insights

All children are entitled to the rights set out in the *United Nations Convention on the Rights of the Child*.¹⁴ These rights are about ensuring their protection, provision and participation. Articles relevant to a child's right to support include:

Article 2 of the Convention states that every child is entitled to all the rights in the Convention, regardless of who they are, what they believe, or their family's situation. No child should face discrimination for any reason.

Article 3 says that when adults make decisions, they must consider how it affects children. The well-being of children should be a primary consideration, and governments must ensure they are properly cared for.

Article 4 notes that governments must take all necessary steps to ensure that every child can fully enjoy their rights under the Convention.

Article 6 says that every child has the right to life. It is the responsibility of governments to make sure that children develop and grow up healthily, protected from harm.

Article 9 states that children should only be separated from their parents if they are not being properly cared for. If parents don't live together, children have the right to stay in contact with both, unless it's harmful.

Article 12 says that children have the right to express their views on matters that affect them, and adults must take their views seriously.

Article 19 says that governments must protect children from all forms of violence, abuse, and neglect by those responsible for their care.

Article 20 says that any child who cannot be cared for by their family has the right to be cared for by others who respect their religion, culture, language, and other important parts of their identity.

Article 24 states that children have the right to good health, healthcare, clean water, nutritious food, and a safe environment. Everyone should have access to information on how to stay healthy.

Article 26 says that governments should provide support to children from low-income families to ensure their well-being.

Article 27 says that every child has the right to adequate food, clothing, and a safe home. Governments should help families provide a decent standard of living.

Article 28 of the Convention states that all children have the right to education, and if they need extra help, the government should provide it.

Article 39 says that if a child experiences harm, neglect, or abuse, the government must help them recover physically and emotionally, and to reintegrate into society, in a safe, caring environment.

Article 40 says that children accused of breaking the law have the right to legal help and fair treatment, with options to reintegrate into society. Detention should be a last resort.

14. United Nations Conventions on the Rights of the Child, opened for signature 20 November 1989, (entered into force 2 September 1990) art 40(4). Note, several other international human rights treaties and declarations are relevant here including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Background: Supports for children and young people in Tasmania

Governments are ‘the primary duty bearers’ for realising children’s rights.¹⁵ It is a vital role of government to design, implement and resource policies, programs, services, and activities across the public health continuum to meet the inherent needs of children, parents and carers, and the communities that support them. The provision and resourcing of health services, education, disability services, child safety, justice services and others, reflect a complex intersection of federal and state responsibilities, where both levels of government have different, but sometimes overlapping, responsibilities.¹⁶

Children and young people in contact with the youth justice system have often experienced, or are experiencing, a range of challenges. These can include dysfunctional family environments, family violence, unstable accommodation or homelessness, and socio-economic disadvantage.¹⁷ Alongside these, it is not uncommon for children and young people who come into contact with the youth justice system to have experience of mental health challenges, learning and developmental difficulties, adverse childhood experiences and trauma, gaps in schooling and problem substance use.¹⁸ Living with one or more of these challenges can mean that a child or young person has complex support needs.¹⁹

The Tasmanian Government provides a range of support services for children, young people and their families. Under the *Wellbeing Strategy*, and the first 4-year Action Plan, the Government committed to 65 actions aimed at better supporting children, young people and their families in Tasmania, with a focus on 8 priority areas.²⁰ While the *Wellbeing Strategy*, complemented by the work occurring in other policy areas,²¹ including under the *Blueprint*,²² is promising, there is, as the Tasmanian Government recognises, still much to be done to ensure that all children and young people, including those who come into contact with the youth justice system, receive the support they need to grow and thrive.²³

15. Australian Human Rights Commission, ‘Help way earlier’ How Australia can transform child justice to improve safety and wellbeing (Report, 2024).

16. This report is about the views of young people with a youth justice experience in Tasmania, and while some of the references that young people make are clearly to support services or the need for support services that fall within the responsibility of the Tasmanian Government, it is not always the case.

17. Australian Institute of Criminology, *Youth Justice in Australia: Themes from recent inquiries* (Paper, October 2020).

18. Australian Institute of Criminology, *Youth Justice in Australia: Themes from recent inquiries* (Paper, October 2020).

19. State of Tasmania, *Youth Justice Blueprint 2024-2034* (Report, December 2023).

20. The 8 priority areas include: Priority 1: Improving our focus on the first 1000 days, Priority 2: Developing a child and youth wellbeing information strategy; Priority 3: Improving cross-agency and cross-sectoral collaboration and integration; Priority 4: Supporting the transition stages of life for young people; Priority 5: Supporting children and young people at risk; Priority 7: Continuing to improve the domain descriptors; and, Priority 8: Evaluating our progress.

21. See, eg, *Tasmanian Drug Strategy 2024-2029*. Although the former Commissioner has noted the need for discrete residential and community-based drug and alcohol services for children, there is no specific mention of children’s services under the Strategy’s Key Activities: Tasmanian Government, *Tasmanian Drug Strategy 2024-2029* (Strategy, 2024).

22. See also *Change for Children: Consultation Draft ‘Youth Justice Priority Area’* which outlines that through this policy, ‘all youth justice reform related recommendations of the Commission of Inquiry will be completed’: Tasmanian Government, *Change for Children* (Consultation Draft) 35-36.

23. Tasmanian Government, *Child and Youth Wellbeing Strategy Annual Report 2023* (Child and Youth Wellbeing Strategy, 2023). 4; Ibid 33-83; see further Tasmanian Government, *It Takes a Tasmanian Village Data Snapshot* (2022), <<https://wellbeing.tas.gov.au/data-snapshot>>. See also, Australian Human Rights Commission, *Help way earlier! How Australia can transform child justice to improve safety and wellbeing* (Report, 2024).

Young people who took part in this project shared their views about how the presence or absence of supports in the community can affect a young person's likelihood of having contact with the youth justice system.

What we heard

- Young people want to be treated with respect, have their basic needs met and be informed of decisions that affect them
- Young people want to be and feel safe and cared about
- Young people want services that are tailored to meet their individual needs.

What needs to change

- There needs to be a stronger focus on prevention that starts before a child or young person has contact with the child protection or youth justice systems
- Children and young people who may be at risk of coming into contact with the youth justice system need earlier and individualised needs-based support.



Listen, learn and act: The views of young people

“Kids that have fallen through the cracks” is about young people’s views on what can lead to some young people having contact with the law and the kinds of services and experiences that can support young people to stay out of trouble.

“It’s all broken”: Adverse childhood experiences

Young people spoke about how experiences in childhood can affect young people’s likelihood of coming into contact with the youth justice system.

James explained how experiencing poverty made him feel like he had to engage in harmful behaviour to help his family cope with their difficult situation.

Like it’s a broken home...That’s what I felt like sometimes when I had to help my mum out. I went and stole and made money and gave my Mum money because she was broke and she was hard up.

(James, 15)

Making a similar point, Stevie described how many young people face hardships well before coming into contact with the youth justice system.

Because that’s what most kids go through before they get locked up. They’re either homeless or going through poverty.

(Stevie, 15)

Joe reflected on how young people’s exposure to family violence or physical abuse can cause trauma that may negatively affect their behaviour.

Maybe [Harley]²⁴ is watching his Dad hitting his Mum, or something like that. Or he’s getting hit by his Dad, or something like that. He would have that inner rage and just wants to take it out on the world.

(Joe, 18)

24. Harley is a ‘made up’ character the young people could talk about, instead of referring to their own experiences, see: <https://www.childcomm.tas.gov.au/VoicesMethodology>.

Joe spoke about how challenges at home might explain why a child or young person engages in harmful behaviour.

If a 10-year-old's committing a crime, obviously there's something wrong at home. They're going to rebel against their parents, and then they're eventually going to rebel against the police. That's the way it works...At the end of the day, there's always something.

(Joe, 18)

In addition to adverse childhood experiences including poverty, homelessness, and family violence, some young people reflected that being removed from family and placed in out-of-home care,²⁵ could lead some young people to engage in harmful behaviour. Describing this, Lucas stated,

We were good kids, we were all in school. I never got introduced to crime until I went to welfare, and that's honest. I just wanted to go back home. They'd never let me see me mum or nothing...obviously I've got to get a way to get away to get out of it. That's how I started doing crime.

(Lucas, 18)

25. If the Child Safety Service determines that it is not safe for a child or young person to remain living with their parents, they will apply to the Magistrates Court for a court order called a 'Care and Protection Order' that grants guardianship of the child to the Secretary. Once this has been granted, the Secretary or their delegate can make placement decisions for the child to live in 'out of home care' (OOHC). OOHC is the system that provides care for children and young people when the court decides it is not safe for them to live with their parents or other caregivers. This includes kinship care, foster care, and residential care.





“Go do activities with us”: Things that can help

When describing the kinds of supports that can make a difference for children and young people who may be at risk of contact with the youth justice system, young people identified a need for improved social supports, including community outreach programs, and support services for young people who live with mental health and substance use challenges.

Stevie spoke about the need for a service system that meets the needs of children and young people.

...better welfare systems...like Child Safety and that. Most kids that get locked up or in trouble they're usually kids that have fallen through the cracks before...they've done crime and shit for a reason.

(Stevie, 15)

Lucas explained that community programs and engaging in prosocial activities can make a difference for young people.

...there used to be a fella that used to come pick up me and the mates that are trying to stay out of trouble and go do activities with us...or have a barbecue, just go out for the day. Stuff like that, you know? Keeps your mind off crime for sure.

(Lucas, 18)

Reflecting on the lack of programs available for young people who experience substance use challenges, Lucas identified the need for specialist supports for children and young people.

Well, honestly...there should be a thing with... there should be a little drug program for the underage youth. You know what I mean? ...Little drug courts and shit like - whatever they are, like little drug programs or stuff for drugs for young kids and that.

(Lucas, 18)

Building on this, Joe pointed to the need for services that can help a young person who might be getting into trouble with the youth justice system and struggling with their mental health.

But at the end of the day, we need to think - we need more mental health help, in my opinion. We do need it, because half of these crimes wouldn't be committed if - maybe if they just, instead of sending them away, they're like right, you're going to rehab for a bit. Or...they go to the ward bit. You know what I mean?

(Joe, 18)

Reflecting further on how mental health challenges can affect young people, Harry described how a child or young person might be feeling by the time they find themselves in trouble with the law.

Well, you're already going through stuff... you know what I mean? You're already going through stuff, so that doesn't really worry me mind really about the cops and that...You're just lost, you don't know what to do...You want to, I don't know...you want to feel something, but you can't feel it.

(Harry, 18)



Conclusion

This report, *“Kids that have fallen through the cracks”*, shares the views and ideas of young people about the challenges that children and young people can face, and how these challenges can affect the likelihood of them coming into contact with the youth justice system. It also shares young people’s ideas about what can support children and young people to reduce the likelihood that they will have contact with the youth justice system.

We heard from young people that a range of challenges may increase young people’s vulnerability to engaging in harmful behaviours. We also heard that young people have clear ideas about the kinds of supports they believe can make a difference to the lives of children and young people and reduce the likelihood that they will have contact with the youth justice system. This includes improved social supports, such as community outreach programs, and support services for children and young people who experience mental health and substance use related challenges.

Ensuring that the rights of all children and young people are upheld is the responsibility of governments, at both the state and federal level. Effective collaboration between federal and state governments is essential to create and sustain policies, programs, and services that address the diverse needs of children, families, and communities. By committing adequate resources and maintaining a clear focus on upholding the rights of children, governments can fulfill their duty to children and young people, enabling them to grow and thrive.

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