

9 October 2025

Department of Justice
Office of the Secretary
By email to: haveyoursay@justice.tas.gov.au

Dear Secretary,

Re: Terrorism Legislation (Extension) Bill 2025 – Submission

Thank you for the opportunity to provide feedback on the Terrorism Legislation (Extension) Bill 2025 (the 2025 Bill) which, if passed, will extend the operation of the *Police Powers (Public Safety) Act 2005* (Police Powers Act) and the *Terrorism (Preventative Detention) Act 2005* (Preventative Detention Act), referred to collectively in this submission as the 'Principal Acts', for another ten years until 31 December 2035.

Noting the statutory functions of the Commissioner under the *Commissioner for Children and Young People Act 2016*, it is important that this Office is afforded a genuine opportunity to provide independent, child-centred feedback and child-rights based advice on law reform relevant to Tasmanian children and young people. While I am cognisant of disruptions to the parliamentary calendar this year, I note that the 2025 Bill was tabled on 24 September 2025, during the public consultation period, making it doubtful whether the matters raised through this submission can be properly considered and incorporated before the relevant sunset provisions in the Principal Acts come into effect on 31 December 2025.

I also note that, unlike in other jurisdictions,¹ there appears to have been no formal review of the Principal Acts since they came into effect in Tasmania. Legislative reviews in other states and territories have raised important issues relevant to how children and young people may be affected by the 'extraordinary' powers provided by these laws.

Noting that proper consideration of any issues raised during consultation on the 2025 Bill may not be achievable during parliamentary debate before 31 December 2025, I recommend that a thorough review of the Principal Acts – with specific consideration of how they affect the rights and wellbeing of children and young people – is conducted without delay following resolution of the 2025 Bill. This thorough review should be informed by the findings of reviews undertaken by other jurisdictions.

¹ See, for example, [NSW Attorney General's Department \(2007\), Review of the Terrorism \(Police Powers\) Act 2002](#); [Engage Victoria \(2021\), Review of the Terrorism \(Community Protection\) Act 2003](#); [Western Australia Police Force \(2022\), Statutory Review - Terrorism \(Extraordinary Powers\) Act 2005](#); [ACT Attorney General \(2021\), Review of the Terrorism \(Extraordinary Temporary Powers\) Act 2006](#); [Crime and Corruption Commission Queensland \(2018\), Review of the Terrorism \(Preventative Detention\) Act 2005](#).



While the Principal Acts have the potential to affect various rights of children, this submission focuses on just a few key issues to support the above recommendation for a comprehensive review. These issues relate to:

- preventative detention of 16- and 17-year-olds;
- personal searches of 16- and 17-year-olds in preventative detention; and
- personal searches of children and young people under the Police Powers Act.

Preventative detention of 16- and 17-year-olds

I note that in Tasmania, and most other Australian jurisdictions, children and young people under the age of 16 cannot be subject to a preventative detention order.² However, in the Australian Capital Territory (ACT), the age limit for preventative detention is 18.³ This age limit was specifically included in the ACT's legislation to comply with article 37 of the United Nations Convention on the Rights of the Child (UNCRC),⁴ which provides that '[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily' and that '[t]he arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'. Importantly, the Explanatory Statement for the relevant ACT Bill indicates that the legislature considered preventative detention of children to be a 'disproportionate limitation' on their rights.⁵

In addition to prohibiting the preventative detention of anyone under 18, section 11(2) of the ACT's *Terrorism (Extraordinary Temporary Powers) Act 2006* also requires a police officer who is detaining a person to immediately make reasonable inquiries about the person's age where they suspect, or have any grounds to suspect, that the person may be a child. After making such inquiries, the police officer must release the person as soon as practicable if they believe, on reasonable grounds, that the person is a child (unless there is some other ground for detaining the child).

While the higher age threshold in the ACT differs from the approach in other jurisdictions, child rights advocates and legal experts elsewhere have questioned whether 16- and 17-year-olds should be subject to preventative detention,⁶ including the National Children's and Youth Law Centre.⁷ Further, an Expert Panel on Terrorism and Violent Extremism

² See, for example, [Terrorism \(Police Powers\) Act 2002 \(NSW\) s 26E](#); [Terrorism \(Preventative Detention\) Act 2005 \(Qld\) s 9](#); [Terrorism \(Preventative Detention\) Act 2006 \(WA\) s 16](#); [Terrorism \(Preventative Detention\) Act 2005 \(SA\) s 7](#); [Terrorism \(Preventative Detention\) Act 2005 \(Tas\) s 12](#). Note, the minimum age for preventative detention in Victoria is 14, pursuant to section 13J of the [Terrorism \(Community Protection\) Act 2003 \(Vic\)](#). However, the age was lowered from 16 to 14 in Victoria through a 2018 amendment and Victoria's Commission for Children and Young People recommended, in its [Submission to the Department of Justice and Community Safety on the Review of the Terrorism \(Community Protection\) Act 2003 \(Vic\)](#), that this change be repealed.

³ [Terrorism \(Extraordinary Temporary Powers\) Act 2006 \(ACT\) s 11](#).

⁴ [Legislative Assembly for the Australian Capital Territory, Terrorism \(Extraordinary Temporary Powers\) Bill 2006 – Explanatory Statement](#).

⁵ [Legislative Assembly for the Australian Capital Territory, Terrorism \(Extraordinary Temporary Powers\) Bill 2006 – Explanatory Statement](#).

⁶ [Commonwealth of Australia – The Senate Legal and Constitutional Affairs Committee \(2005\), Provisions of the Anti-Terrorism Bill \(No. 2\) 2005](#).

⁷ [NSW Attorney General's Department \(2007\), Review of the Terrorism \(Police Powers\) Act 2002](#).



Prevention and Response Powers in Victoria (Expert Panel) suggested that the Court's power to make a preventative detention order in respect of a minor should be subject to the Court being satisfied that there are 'no other less restrictive means available' to prevent an imminent terrorist act or to preserve evidence related to a recent terrorist act.⁸ The Expert Panel also recommended that the Court be given sufficient powers to make alternative orders, such as restricting the child's movements, who they may associate with and/or their access to the internet.⁹

In undertaking the comprehensive review that I have recommended, proper consideration should be given to the State's duty to safeguard children's rights. This should include consideration of less restrictive alternatives to the use of preventative detention of 16- and 17-year-olds.

Personal searches of 16- and 17-year-olds in preventative detention

Despite the fact that powers under the Preventative Detention Act have not been utilised to date in Tasmania, I have concerns about the current protections available to 16- and 17-year-olds who may be preventatively detained, particularly the lack of safeguards around personal searches. I note that under section 25B(2) of the *Youth Justice Act 1997*, the protections afforded to children and young people subject to personal searches in custody do not apply to those detained under the Preventative Detention Act. The review that I have recommended should consider whether this extraordinary exemption is necessary, reasonable and proportionate to achieve the relevant purpose.

In 2019, Tasmania's former Commissioner for Children and Young People, Leanne McLean, provided a comprehensive Memorandum of Advice on searches of children and young people in custody.¹⁰ This advice led to law reform in 2022 through the *Youth Justice Amendment (Searches in Custody) Act 2022* which, as the then Minister for Justice noted, sought to address significant concerns that had been raised by the former Commissioner.¹¹

The provisions incorporated through the 2022 Amendment Act include, among others, requirements related to the gender of the person conducting the search, protecting the privacy of the person being searched and conducting the least intrusive type of search in the least intrusive manner. While some protections are outlined in sections 22(5) and 30 of the Preventative Detention Act, such as requiring the search to be conducted by an officer of the 'same sex' or another person of the 'same sex' under the police officer's direction, 16- and 17-year-olds searched in preventative detention will not have the comprehensive protections available to children under Tasmania's *Youth Justice Act 1997*.

In contrast, in NSW a personal search of any person who is preventatively detained must be conducted in accordance with requirements set out in the *Law Enforcement (Powers and*

⁸ [Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers \(2017\), Report 2, Recommendation 22.](#)

⁹ [Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers \(2017\), Report 2, Recommendation 23 and discussion on pp 103-104.](#)

¹⁰ [Commissioner for Children and Young People – Tasmania \(2019\), Memorandum of Advice: Searches of Children and Young People in Custody in Custodial Facilities in Tasmania.](#)

¹¹ [Tasmania, *Parliamentary Debates*, House of Assembly, 4 May 2022, 32 \(Elise Archer, Minister for Justice\).](#)



Responsibilities) Act 2002 (NSW).¹² Similarly, the ACT requires that a search of any person under a preventative detention order be conducted in accordance with comprehensive requirements outlined in Schedule 1 of their Act.¹³

While personal searches under section 22 of Tasmania's Preventative Detention Act are carried out by police officers, most of the guidance, principles and procedures in the Tasmania Police Manual that relate to personal searches, including searches of 'youths', are not statutory requirements. Pursuant to section 42(3) of the *Police Service Act 2003*, police officers only have a statutory obligation to comply with the 'orders' in the Tasmania Police Manual, and there are only two such orders related to personal searches.¹⁴ One order requires that where a 'youth' is in custody, a personal search must be conducted in accordance with the *Youth Justice Act 1997*. However, as noted above, the *Youth Justice Act* itself excludes the application of provisions in Part 3, Division 3 of that Act from searches on children and young people in preventative detention.

I recommend that in reviewing the application of the Preventative Detention Act, the appropriateness of the exemption in section 25B(2) of the *Youth Justice Act 1997* is reconsidered.

Personal searches of children and young people under the Police Powers Act

In addition to issues related to personal searches of 16- and 17-year-olds detained under the Preventative Detention Act, I have concerns about the personal search provisions in the Police Powers Act insofar as they apply to children and young people.

While an age threshold applies in the Preventative Detention Act, no such age threshold is specified in the Police Powers Act. Under the Tasmania Police Manual all principles related to searching of persons in Part 2.35 apply to 'youths' as defined in the *Youth Justice Act 1997*, meaning a person aged 10 or more but less than 18 years of age.¹⁵

Under the Police Powers Act, police officers have authority to conduct an 'ordinary search' or a 'strip search' without a warrant in accordance with sections 18 and 22 respectively. A police officer may conduct an 'ordinary search' without a warrant, including where a person is simply within a 'designated area' as described in an 'authorisation' under the Act. While an 'ordinary search' is minimally intrusive, a 'strip search' is much more invasive. Under section 22(2) of the Police Powers Act, a police officer may conduct a strip search without a warrant, including on a person aged under 18, if:

- the person is suspected of being a 'designated person' as described in an 'authorisation' under the Act; and
- the police officer believes on reasonable grounds that it is necessary to conduct a strip search, and that the seriousness and urgency of the circumstances require a strip search to be conducted.

¹² [*Terrorism \(Police Powers\) Act 2002* \(NSW\) s 26V\(5\).](#)

¹³ [*Terrorism \(Extraordinary Temporary Powers\) Act 2006* \(ACT\) s 41\(5\).](#)

¹⁴ [Tasmania Police \(8 April 2024\), Tasmania Police Manual, Part 2.35.](#)

¹⁵ [*Youth Justice Act 1997* \(Tas\) s 3 \(definition of 'youth'\).](#)



While provisions in Part 3, Division 3 of the *Youth Justice Act 1997* apply to personal searches of people aged under 18, pursuant to section 25B(1) of that Act these provisions only apply to ‘a clothed search, or an unclothed search, of a youth who is in custody, that is conducted in a custodial facility’, where a ‘custodial facility’ is defined in section 25A. Searches under the Police Powers Act are unlikely to occur in a ‘custodial facility’ and are more likely to be conducted at a location within the ‘designated area’ described in the ‘authorisation’ issued under the Police Powers Act.¹⁶ Further, as noted earlier, the Tasmania Police Manual only has limited ‘orders’ regarding personal searches which carry a statutory obligation under the *Police Service Act 2003*. While these orders require searches of children to be conducted in accordance with the *Youth Justice Act 1997*, as previously noted, this Act only applies where a search is conducted in a ‘custodial facility’.

With this in mind, it is extraordinary that children as young as 10 may be subject to a personal search under the Police Powers Act, including a strip search, where no warrant has been issued and where only limited statutory protections are afforded to them, such as those in section 22(4). As noted in my submission on the Police Powers and Responsibilities Act – Proposal Paper,¹⁷ it is problematic to apply a double standard to children and young people, affording them procedural protections only in certain specified contexts and not others.

The procedural protections under the Police Powers Act contrast with protections available in other jurisdictions, such as NSW, where section 17(2) of the *Terrorism (Police Powers) Act 2002* (NSW) requires police conducting a personal search to comply with comprehensive statutory requirements in Part 4, Division 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW). Similarly, comprehensive statutory requirements for personal searches by police using ‘special powers’ under Part 3A of the *Terrorism (Community Protection) Act 2003* (Vic) are outlined in Schedule 1 of that Act.

Despite more comprehensive statutory protections in place in NSW and Victoria regarding personal searches conducted pursuant to the exercise of police ‘special powers’, advocates have nonetheless raised concerns that searches of children may still be conducted without a warrant. Notably, the National Children’s and Youth Law Centre has recommended that a strip search of a child aged 10 to 18 ‘should only be conducted when authorised by a court’, the child should be legally represented when the warrant application is made, and an independent adult should be present during the search.¹⁸ This recommendation better reflects article 16 of the UNCRC, which states that ‘[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy ... and the child has the right to the protection of the law against such interference or attacks’.

In reviewing the Police Powers Act, I would urge that consideration is given to better regulating personal searches of people under the age of 18 through procedural safeguards (e.g. by requiring a warrant as well as compliance with the statutory requirements in Part 3, Division 3 of the *Youth Justice Act 1997*).

¹⁶ [Noting section 21\(2\) of the Police Powers Act.](#)

¹⁷ [Commissioner for Children and Young People – Tasmania \(2025\), Submission on the Police Powers and Responsibilities Act – Proposal Paper.](#)

¹⁸ [NSW Attorney General’s Department \(2007\), Review of the Terrorism \(Police Powers\) Act 2002.](#)



I appreciate the opportunity to provide feedback on the 2025 Bill. For the avoidance of doubt, the matters I have raised are not meant to be exhaustive but are intended to provide a strong basis for my overarching recommendation that the Principal Acts should undergo a comprehensive review. Should any further explanation or clarification be required, I would be happy to engage in discussion.

Yours sincerely,

Isabelle Crompton

Interim Commissioner for Children and Young People

cc The Hon Jo Palmer MP, Minister for Children and Youth

cc The Hon Guy Barnett MP, Attorney-General

cc Dr Grant Davies, National Preventive Mechanism