WITNESS STATEMENT OF VINCENZO CALTABIANO

I, Vincenzo Caltabiano of 158 Liverpool Street, Hobart, in the State of Tasmania, Director, Tasmania Legal Aid (**TLA**), do solemnly and sincerely declare that:

1. I am authorised by TLA to make this statement on its behalf.

2. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

3. I consent to this statement being made public.

BACKGROUND AND QUALIFICATIONS

4. I have the following qualifications:

   (a) Bachelor of Economics from Monash University, awarded in 1989;

   (b) Bachelor of Laws from Monash University, awarded in 1991;

   (c) Master of Public Policy and Management from the University of Melbourne, awarded in 2017; and

   (d) Post-Graduate Certificate in Public Policy and Management from the University of Melbourne, awarded in 2015.

5. Prior to joining TLA I held a number of roles at Victoria Legal Aid that included:

   (a) Associate Director, Child Protection Transformation, from 2017 to 2019;

   (b) Project Manager, Child Protection Review, from 2015 to 2017;

   (c) Program Manager Summary Crime, from 2011 to 2015; and

   (d) Managing Lawyer Advocacy Team, from 2008 to 2015.

6. Prior to joining TLA, I worked in private practice in my own firm for seven years, focusing on family and criminal law. I worked at Opie and Co (formerly McMullin Coate and Co, and Opie Sirca and Co) for 10 years before that.

Attached to this statement and marked **VC-01** is a copy of my curriculum vitae.

Current role

7. I am currently the Director of TLA. I commenced in this position in May 2019.

TASMANIA LEGAL AID

8. TLA is an independent statutory body established by the *Legal Aid Commission Act 1990* (Tas). It commenced operation on 1 January 1991. It is accountable to the Minister for Justice and is the largest government-funded legal assistance service in Tasmania. It is funded by both the Commonwealth and the State of Tasmania.

9. TLA provides a range of legal services across Tasmania. It has offices in Burnie, Devonport, Hobart, and Launceston and 92.41 FTE staff. The organisation is arranged into five primary areas – Civil law, Criminal law, Family law, Legal Services and Business Services.

10. TLA services include criminal law, youth justice, child safety, family law, family violence and a range of civil law areas. It provides telephone advice, face-to-face consultations, duty lawyer services, minor assistance, and mediation services.

11. Grants of legal aid are made available for representation in courts and tribunals by TLA staff and private lawyers, primarily in criminal law and family law matters. In 2021-22 almost $6,700,000, or around one third of the TLA budget, was paid to private lawyers to deliver representation services.

12. TLA has a focus on economically and socially disadvantaged Tasmanians and is the primary provider of legal services to children in Tasmania. TLA has interacted with clients and people from across all practice areas who have disclosed a history of abuse in various settings, including institutional settings.

13. In September 2020, TLA published its strategic plan for the period 2020 to 2023, which identifies children as a focus for the organisation, with a commitment to putting children at the centre of service delivery.

14. In July 2021, TLA published a paper entitled *Children First: Children in the Child Safety and Youth Justice System* (**TLA's Children First Report**). Attached to this statement and marked **VC-02** is a copy of TLA's Children First Report.

15. In January 2021, the Department of Communities (**Department**) issued a Discussion Paper entitled 'Reforming Tasmania's Youth Justice System: A pathway for improving outcomes across the youth justice support continuum'. In response, TLA issued its response entitled 'Reforming Tasmania's Youth Justice System: Discussion Paper Response' (**TLA's Youth Justice Reform Response**). Attached to this statement and marked **VC-03** is a copy of TLA's Youth Justice Reform Response.

OVERVIEW OF THE YOUTH JUSTICE SYSTEM IN TASMANIA

Ability of children to obtain legal representation through TLA

16. There are several different mechanisms to ensure that children can have legal representation through TLA. TLA's Guidelines for Grants exempt children from the financial testing applied to applicants. Guideline 2 (b) (iii) states that 'Children, that is, people who are under 18 years of age, are not subject to the means test'.

17. TLA provides a duty lawyer service so that there is a youth justice lawyer at each sitting of the Youth Justice Court around Tasmania. Youth justice lawyers see any unrepresented children and can help them on a duty basis, without a grant of aid. If the case requires on going assistance the youth justice lawyer will apply for a grant of legal aid.

18. If a child is arrested and taken before the court for a bail application, TLA is notified and can provide legal advice and representation.

19. The only situations in which children may come before the Court and be remanded into custody without having seen a lawyer would be if the child refused an offer of assistance, which would be extremely rare, or if they were brought before an after-hours Court on an evening or weekend when there was no after-hours duty lawyer service operating.

20. There is currently only one after-hours duty lawyer service funded by TLA, which operates at the Hobart Magistrate's Court on Friday, Saturday and Sunday and is provided by the Hobart Community Legal Centre. The after-hours service assists both adults and children who are remanded and brought before the Court during those times. However, there is no service operating in Hobart on other evenings of the week, and no similar service that operates in the rest of Tasmania. A funding commitment was made by the Tasmanian Government in last year's budget to fund the establishment of an after-hours service in the North and the North-West. TLA is currently in the process of resolving some logistical challenges to establishing a seven day a week service that will see children receive assistance with after-hours court appearances, regardless of their location.

21. Currently, if a child appears before the after-hours Court and is remanded, they are generally remanded overnight and will be brought back before the Court the next day, when our regular duty lawyer services can assist them.

22. The vast majority of children facing criminal charges are bailed from a police station by the police. An even larger percentage of children are diverted away from the system altogether by the police or the Court.

23. Typically, where a Magistrate is considering refusing bail to a child, it would be because the charges were very serious, and/or the child has a history of other offending and/or of not complying with previous orders for bail. It can be a combination of all three reasons.

24. We observe that children refused bail by a Justice of the Peace at an after-hours hearing are commonly granted bail when they appear before a Magistrate the following day. This may be due to the Magistrates' broader understanding of the legislative framework and greater experience dealing with young people.

Over-represented children/young people in the youth justice system

25. In TLA's Children First Report, we identified some common themes which emerge when looking at the small cohort of children who are over-represented in the youth justice system. Significantly, the earlier children are involved in the system, the more entrenched they become. We also identified that children who also have involvement with the Child Safety Service (referred to as "crossover children") are over-represented in this group, particularly girls and Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander children are also generally over-represented in the youth justice system.

26. We made recommendations for measures to reduce the over-representation of these groups including:

    (a) raising the minimum age of criminal responsibility from ten to 14 years;

    (b) increasing diversion options;

    (c) involving the police only as a last option for children in out of home care;

    (d) adopting a trauma informed approach to reduce involvement in the criminal justice system;

    (e) increased recognition by bail laws of children's circumstances and greater bail support; and

    (f) establishing school lawyer programs as an early intervention to support children.

27. In TLA's Youth Justice Reform Response, TLA recommended several key actions, including:

    (a) raising the minimum age of criminal responsibility from ten to 14 and the minimum age of detention to 16;

(b) establishing a specialist Children's Court in Tasmania to promote a consistent State-wide therapeutic approach;

(c) greater resourcing of preventative, early intervention, and diversionary services to address the complex needs of young people and the underlying causes of offending;

(d) amending bail laws to prevent high rates of un-sentenced children being remanded in custody waiting for their matters to be resolved; and introducing child-specific bail laws and practices;

(e) establishing holistic bail support programs available across Tasmania; and

(f) amending the *Youth Justice Act 1997* (Tas) (**YJA**) to reflect our contemporary understanding of child brain development and adopt a trauma-informed, child focused approach.

Issues with bail laws and particular issues faced by crossover children

28. There are no specific bail laws for children. Accordingly, Magistrates must apply the same law as applies to adults when considering an application for bail by a child. Magistrates often want to include a residential condition, requiring the child to live at a specific address. Where accommodation is not available to the child, it becomes harder to obtain bail. This leads to a greater number of the most vulnerable children being remanded in custody and exposes them to the adverse impacts of detention.

29. There needs to be a clear articulation of the considerations that apply to children applying for bail. The relevant factors should include the preservation of the family unit where possible, the need for a therapeutic trauma-informed approach, the likely sentence should the child be convicted, and that all other options are explored so that detention should always be a last resort. Critically, bail should not be refused because the child does not have a home. An example of this approach is set out in s3B Bail Act (Vic) 1997.

30. It is noteworthy that most children in detention are on remand and that when sentenced they are not required to serve any additional time in custody. One consequence of this is that their period of detention is too short to provide them meaningful access to any of the therapeutic or other supports available such as access to education, and health and mental health services, while exposing them to the negative consequences of incarceration. As mentioned, TLA recommends that the laws regarding bail should be amended to provide specific considerations that apply to children. The lack of accommodation should not be a reason to refuse bail but should prompt support from the Child Safety Service. The reason for this is clear when contrasting the situation of a

child without accommodation who is applying for bail with a child in the child safety stream of the court. In the second situation the onus would be on the Child Safety Service to provide support to the child and ensure that they are safe and cared for.

31. TLA also recommends that there should be a funded bail support program for children, including bail support officers who have access to brokerage funds for accommodation and can coordinate appropriate support services.

32. TLA supports the greater use of pre and post court diversion. Data from the Sentencing Advisory Council's (SAC) 2021 *Sentencing Young Offenders* Report shows that Tasmania Police use diversion in fewer than half of youth files (47.4%), with more than half of youth cases (52.6%) sent to prosecution.[1]

33. There are a number of different mechanisms available to police to divert children and young people from the court system. The most common is an informal caution or a formal caution about behaviour. While Tasmania Police are more likely to use these forms of diversion for a range of alleged offences such as minor shoplifting, destruction of property and minor assault, depending on the age of child, there has been a decrease in the use of diversion, in particular informal cautions, and community conferences, over the past decade. The Report on Government Services data shows that the use of diversion for young people in Tasmania overall has decreased between 2011 – 2021. Further, the data indicates that non-Indigenous children are more likely to receive a diversionary response than Aboriginal and Torres Strait islander children.[2]

34. There is also a more formal diversionary process under the YJA where children can be diverted after being charged, but access to this diversionary process is dependent on an admission of guilt. In that situation, a community conference can be convened, either on referral by the police or by order of the Youth Justice Division of the Magistrate's Court. At the community conference, the child and other parties meet to discuss the offence and its impact. If an agreement is reached on appropriate sanctions, the Court can be advised that the conference has been successful, and the charges are not pursued.

35. However, one of the challenges with the community conference process is the requirement for a child to admit to the commission of an offence in order to participate in community conferences. It means a child must make a choice between either admitting a charge to access a more lenient diversionary process or exercising their right to challenge the charge. The young person may have a viable defence to the charge, or it may be that a less serious charge is more appropriate.

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[1] Sentencing Advisory Council *Sentencing Young Offenders Research Paper No:6* December 2021
[2] Report on Government Services 2022 Chapter 6 Police Services

36. Requiring a child to admit to the offence so they can participate in a community conference can give rise to a risk that a child will have a history of admitting wrongdoing, which the police may later rely on to rebut the *doli incapax* presumption and argue that the child understood the criminal nature of their conduct. There is also a risk that this could result in their previous plea being used against the child in subsequent charges (on the basis of tendency and coincidence) or to oppose bail.

37. In New Zealand a child may access these types of diversionary processes if they do not deny the charge, rather than requiring that the child admit to the charge. This approach not only avoids the potentially negative consequences outlined above, but it also allows more cases to be diverted because children who do not want to admit guilt would still be able to access diversionary processes.

38. Tasmania does not have structured pre-Court diversionary programs tailored for children that apply uniformly across the State (such as the 'Ropes program' for young offenders that exists in Victoria). Currently the only available response available for children and young people in Tasmania, even as part of sentencing orders, is supervision by a youth justice social worker.

39. Children, the justice system, and the community would benefit from greater use of diversion generally, and for those practices to be consistent and bolstered by well-funded services that exist across the State.

40. The number of children who are on supervisory orders in Tasmania is proportionally higher than in other jurisdictions and higher than the national average. It is a small step to go from a formal supervisory order to detention. Having more options available at an early point to divert children away from the justice system reduces the prospect that they will become entrenched in the justice system.

41. TLA recommends greater resourcing of preventative, early intervention, and diversionary services to address the complex needs of young people and the underlying causes of offending, as outlined in TLA's Youth Justice Reform Response and TLA's Children First Report.

Therapeutic/other supports for children and young people charged with sexual offences.

42. In Tasmania, there are no court-ordered child focused rehabilitation courses available for children who are charged with harmful sexual behaviours. We understand there these is one recent case in which a child was referred to the PAST program through the community conferencing process.

43. The PAST Program is a state-wide service focused on children and young people, aged 17 years and under, who are displaying Harmful Sexual Behaviour. It began in April 2021 and is run by the Sexual Assault Support Service (SASS) and Mission Australia.

44. There are various diversionary options in Victorian courts, including programs for young people up to the age of 16 who are charged with sexual offending. These options are not available to Tasmanian children. There are some children who do show problem sexual behaviours in Care and Protection proceedings. While some may be in contact with the PAST program, referred to above, this new service has a three-month waiting list.

49. In Victoria, children who have exhibited harmful sexual behaviours might be placed on a Therapeutic Treatment Order, by the Family Division of the Magistrates' Court, and have treatment mandated for them in circumstances where they are not otherwise going to access treatment voluntarily[3]. Children can also come into those treatment programs in Victoria through the youth justice system as well as the child safety system.

50. We would see a benefit in Tasmania for greater availability of therapeutic work of this nature, including potentially through the mechanism of the Youth Justice Court, or the Family Division of the Magistrate's Court.

51. Our Youth Justice Reform Response notes the need for a wraparound legal and support service to address the complex needs and underlying factors that contribute to children ending up in the youth justice system. The report quotes Emeritus Professor Morag McArthur and others writing about how the ACT (the ACT report) can support their commitment to raise the age to 14:

> 'Raising the age of criminal responsibility provides a real opportunity to build the capacity of the formal and informal systems (of family and community) to focus on 'promoting secure, safe, and stable human relations, education, and housing, as well as offering appropriate and timely individual, family, and systemic support across an integrated policy and service framework. Intervening early can not only change the trajectories away from the criminal justice system but can improve the key domains of a child's life, leading to individual and community benefits. The ultimate outcome of raising the age of criminal responsibility is to identify and respond to the

[3] https://www.vic.gov.au/victorian-government-annual-report-2019-royal-commission-institutional-responses-child-sexual-abuse/children-with-harmful-sexual-behaviours

individual context of children with complex needs, to reduce and avoid harmful behaviour and to support them on positive pathways'.[4]

ASHLEY YOUTH DETENTION CENTRE

Demographics of children in Ashley Youth Detention Centre

52. TLA's Youth Justice Reform Response looked at some of the literature about those children less likely to be able to take the benefit of diversion mechanisms and to end up at Ashley Youth Detention Centre.

53. We found that boys are about ten times more likely to be at Ashley Youth Detention Centre than girls. Indigenous children are vastly over-represented. Children who live with intellectual impairments, mental ill-health or who have experienced family violence are also over-represented. Other common categories are children who have experienced an unstable home environment; children of people who have been in the justice system; children of parents who have drug problems and mental health problems; and children who have been involved in substance misuse. It would be rare for a child who did not fit into any of the above categories to end up in detention.

54. Those factors are also common experiences of children who are likely to have become known to the Child Safety Service, and perhaps have been so unsafe that they have been removed from their family of origin and placed in the out of home care system in some way or another.

55. It is not unusual to have multiple generations of families in care. Earlier generations have often experienced the same issues of homelessness, family violence, substance abuse – those factors turn up again and again.

The impact of detention at Ashley Youth Detention Centre

56. As TLA's Children First Report identified, the earlier that children enter the system, the more contact they have with the system. This increases the prospect of staying in the system and ultimately ending up at Ashley Youth Detention Centre.

57. Obviously, there is a whole spectrum of outcomes for children who have been in detention in Ashley Youth Detention Centre. There will be some children who are there once and never return, some for whom the experience is at best neutral, and for some it clearly has a criminogenic impact.

[4] McArthur, Morag. "Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory" (2021)

58. An incredibly high number of children who are detained at Ashley Youth Detention Centre find themselves back at Ashley Youth Detention Centre within a relatively short period of time. Over half of children aged 10-16 years return to supervised detention within 12 months of release. The general experience is that, if a child goes to Ashley Youth Detention Centre and spends any length of time there, their odds of staying in the system increase dramatically.

59. While it is difficult to identify a causal relationship between detention and that trajectory of recidivism, several factors are commonly present, as set out above. While there needs to be more done to reduce the number of children in detention at the Ashley Youth Detention Centre, it is also clear that children need more assistance to re-establish their lives once they are released.

60. The literature that formed part of TLA's Youth Justice Reform Response, including the ACT Report, reveals that the significant mental health problems experienced by children are not identified until their detention in custody. Around two thirds of the cohort that the ACT study looked at had moderate to significant mental health concerns after detention and only half of that group had attracted a diagnosis before detention.

61. But, like detention and imprisonment for adults, detention for children tends to contribute to a cycle of recidivism and then institutionalisation.

Child sexual abuse at Ashley Youth Detention Centre

62. We are aware that sexual abuse and harmful sexual behaviours from children in detention occurs at Ashley Youth Detention Centre because we hear of it frequently from clients who have been detained there.

63. However, we typically only hear of historical sexual abuse at Ashley Youth Detention Centre from clients later in their life. Commonly this is when clients are in their late twenties or their thirties, where disclosures are made about what occurred to them. These are often made in the context of taking instructions where they are charged with offending as adults.

64. If a client makes such a disclosure, we take instructions about their willingness to use the information in submissions to court if it is relevant to their current charges. We advise them of their options, including reporting to police, if they had not done so already, referral to support services, and seeking further advice about the possibility of compensation, depending on the situation.

65. Unlike other custodial settings, our experience is that lawyers have had good access to children in detention. However, this has deteriorated in recent times with children being 'locked down' for extended periods. When access occurs, it is available in appropriate

ways, including through the use of confidential spaces where the child cannot be overheard, nor their conversation with their lawyer monitored.

66. Despite access to their lawyers being easily available most of the time, it is obvious that there is still a lack of complaints being made by children to their lawyers about sexual abuse or harmful sexual behaviours when it is occurring.

67. There are key challenges in terms of how to create a system that would encourage early disclosure. Firstly, there are the recognised psychological, social and cultural barriers to children making disclosures of sexual abuse, even when they are not in a custodial setting. Sadly, many people will not make a disclosure at an early stage.

68. Then there needs to be very tangible processes to ensure that children can trust that they can make those disclosures safely and are protected from any adverse reactions and ramifications, not only when they make the disclosure but also at any later point in time.

69. One of the issues is that the children at Ashley Youth Detention Centre are dislocated and may lack strong relationships with other people in whom they can confide and with whom they can raise issues. It is important that children can build safe relationships with adults, so that they have someone with whom they can raise issues as they happen, or when the risk factors are building up towards something adverse happening.

OTHER AREAS FOR REFORM TO THE YOUTH JUSTICE SYSTEM

Specialisation for police and Magistrates who deal with sexual offences involving children

70. Anything we can do to improve the skill and awareness of those, including police, Magistrates, and practitioners, who are responding to and addressing the issues of child sexual abuse and harmful sexual behaviours is to be welcomed. TLA recently released Practice Standards and Guidelines for Independent Children's Lawyers. We are currently working on a similar document for those acting as Separate Representatives in child safety cases. The central aim is to ensure that a child-focused, trauma informed approached is adopted so that the voice of children can be heard. This approach is also relevant to those dealing with children in the youth justice system.

71. While it is generally the case that specific magistrates hear youth justice cases there is no specialist Children's Court in Tasmania.

72. TLA supports the creation of a specialist Children's Court. There is a great deal that can be gained by having a separate specialist Court that is designed for, and responds to, the needs of the children and families who appear before it, whether it be in the

youth justice or the child safety jurisdictions. This allows expertise to be developed and for specialist training to be delivered.

73. The proposed development of a new court complex in Burnie presents a unique opportunity to create an environment that breaks away from the traditional Court environment that we have in Tasmania which was not designed for children or families. The court space could be designed with children in mind so that it is less intimidating, has child friendly spaces, and ready access to support services. The court would have a separate entrance from that used for the adult court and the two courts would be separated. There are several examples of this child-centric design in other states, including the Children's Court at Broadmeadows in Victoria.

Witness intermediary scheme

74. A witness intermediary scheme is being piloted in Tasmania. That scheme aims to overcome communication difficulties for children who are giving evidence. The aim is to support a witness to give their best evidence, as opposed to evidence that is confused because of communication difficulties that are not addressed.

75. However, one of the limitations of the witness intermediary scheme is that it is only available to child complainants or child witnesses and not to accused children. An expansion of the scheme to include accused children would demonstrate respect for the rights of children to participate in proceedings.

76. There are other things that could be done in terms of reasonable accommodation for the circumstances of children who are accused of offending. For example, the Supreme Court of Victoria *Protocol: Principles for Managing Children in the Custody of the Supreme Court* aims to increase the capacity of children to participate in the proceedings. The Protocol supports reasonable adjustments being made, such as the use of language, where the child sits and ensuring that there are breaks during the day. Attached to this statement and marked **VC-04** is a copy of that protocol.

Minimising the risk of child sexual abuse in the youth justice system

77. The most significant reforms that would minimise the risk of child sexual abuse in the Tasmanian youth justice system is to keep children and young people out of detention and court proceedings. Our recommendations for this are outlined in the Children First Report and our Youth Justice Reform Response, as detailed in paragraphs 27 and 28.

78. The Tasmanian Government's recent decision to raise the age of incarceration to 14 is welcome. However, it means that young children will be in custodial settings where they are more vulnerable to abuse. Given the negative impact of detention, the use of detention should be delayed. The ACT Report identifies the alternate approach needed to ensure that children have access to supports that address behaviour, while avoiding the negative consequences of engagement with the criminal justice system.

The new youth justice facilities need to focus on the needs of children and supporting their return to the community. This requires a child welfare approach that aims to address underlying issues that contribute to the child's involvement with the criminal justice system.

RESTORATIVE JUSTICE IN THE CONTEXT OF CHILDREN EXHIBITING HARMFUL SEXUAL BEHAVIOURS

Community conferencing

79. As referred to above, there is a community conferencing system that operates in Tasmania, although the numbers of community conferences are relatively small and there are barriers in terms of the availability and utilisation of those conferences.

80. Restorative justice models, such as community conferencing, should be used wherever it is possible and feasible. In the case of children exhibiting harmful sexual behaviours, the wishes of the victim should be the primary consideration.

81. The use of these approaches is important when we are talking about young people, where often there is a whole range of factors that might be leading to the young person engaging in those behaviours, including their emotional and intellectual development.

82. Therapeutic approaches may not only provide some way of dealing with the particular instance of offending, but also reduce the likelihood of further offending in the future. This is because they assist in addressing the needs of victims in specific cases, while also addressing the underlying factors that contributed to the behaviour.

83. There is a growing body of evidence to support the use of restorative justice responses to sexual offending, for example the Victorian Law Reform Commission 2021 report Improving the Justice System Response to Sexual Offences.[5] The use of restorative

[5] VLRC Chapter 9 Restorative Justice for Sexual Offences in Improving the Justice System Response to Sexual Offences: Report.

justice in youth sexual offending has been utilised in various jurisdictions for some time and there is a great deal of information about what is effective.[6]

84. Similar considerations apply to the adoption of restorative approaches where children are engaging in family violence. Steps need to be taken to ensure that the wishes of the complainant are considered and that power imbalances are addressed. The PIPA Project, undertaken by the Centre for Innovative Justice at RMIT university, provides details about this and the considerations for policy makers. The report on the PIPA project 'Positive Interventions for Perpetrators of Adolescent violence in the home' contributes to understanding of adolescent violence in the home[7] (AVITH) and explores the development of a considered systemic response.

Importance of therapeutic approach

85. A response to harmful sexual behaviours must provide a safe network around the accused child. Responses that isolate and ostracise the accused child are more likely to increase the risks of offending and it does not provide safety. It can also result in the loss of the protective benefit of incidental supervision that occurs if the child is part of a community. The response should not be reliant on a formal criminal justice response for that to occur.

CHILD SEXUAL ABUSE PROCEEDINGS

Legal aid funding for eligible defendants

86. Adults charged with child sexual abuse offences need to meet the means test and the merits test when they apply for a grant of assistance, including in relation to appeals. Section 410 of the *Criminal Code Act 1924* (Tas) allows the Court to order TLA to provide funding for an appeal where the Court deems it in the interests of justice.

Statutory incentives for guilty pleas in child sexual abuse matters

87. Tasmania does not have the equivalent to section 6AAA of the *Sentencing Act 1991* (Vic) which would allow the accused to know the benefit of their plea of guilty. A 2018 Tasmanian Sentencing Advisory Council report considered whether Tasmania should adopt a structured sentencing discount scheme but recommended the adoption of a section 6AAA type option. While this has not been formally introduced, some judges have adopted the practice of indicating what the sentence would have been but for the

[6] For example, Daly, K et al, (2013) Youth sex offending recidivism and restorative justice: comparing court and conference cases; Koss, Bachar & Quince Hopkins Chapter 15 Disposition and Treatment of Juvenile Sex Offenders from the Perspective of Restorative Justice in The Juvenile Sex Offender edited by Barbaree, HE & Marshall WL(2006)

[7] Centre for Innovative Justice (2020) The PIPA project: Positive Interventions for Perpetrators of Adolescent violence in the home

plea of guilty. A uniform approach would provide greater clarity and assist in the advice that practitioners provide.

Implications of the Magistrates Court (Criminal and General Division) Act 2019 (Tas)

88. We are awaiting the implementation of the Magistrates Court (Criminal and General Division) Act 2019 (Tas) (**Criminal and General Division Act**), which will lead to changes to the way in which disclosure is made. The Act introduced clear requirements for disclosure of evidence and the timeframe for disclosure. It is hoped that the early provision of evidence will assist in the timely resolution of cases.

Other procedural changes

89. There is potential to implement other improvements of the justice system to promote timely and appropriate resolution of cases. One area which could be improved is the approach to serious indictable offences before they are referred to the Supreme Court. In Tasmania, the Director of Public Prosecutions only assumes carriage of the case once an application is made for a preliminary proceeding or after the accused has been committed to the Supreme Court. This, together with the lack of early disclosure, contributes to the 30% discontinuance rate of cases in the Supreme Court, with many of those then ultimately resolving in the Magistrates Court.

90. In contrast, in Victoria indictable cases are first sent to a filing hearing and then the case is separated into a specialist list. In particular, the Victorian Magistrates Court has a specialist Sexual Offences List. The Director of Public Prosecutions is involved from the outset. This often results in cases being resolved to a plea of guilty before they are set to a high court for sentence. A 2020 Victorian Law Reform Commission report indicated that in 2017-18 only around 7% of cases in the County Court were discontinued, stayed, or remitted to the Magistrates Court. The report noted the benefits of having a specialist indictable stream to manage cases. Tasmania would benefit from procedural changes of this kind, to streamline processes and encourage the early identification of the charges and the evidence and bring the parties together to try and reach resolution.

91. It can be difficult for people charged with a child sex offence to plead guilty, and there is a whole range of factors that goes into that. It is important that structural barriers to timely, appropriate pleas of guilty are removed.

Training for lawyers

92. We are not aware of any systematic training provided to Tasmanian criminal lawyer practitioners to trauma, memory, child sexual abuse or other related matters. There

would be great benefit to increasing training for all legal professionals, including judges and prosecutors, and anyone who deals with clients and witnesses.

93. There are no sexual offender programs available in Tasmania other than the New Directions Program that operates at Risdon Prison. It would be beneficial for these programs be available and to be an option for courts.

94. The New Directions Program is only available to inmates serving a sentence of an adequate length to accommodate the assessment and treatment components. To be eligible, they must have been convicted of a sex offence and assessed as suitable for treatment. The duration and intensity of treatment is determined during the assessment, so some participants will be required to do more intensive treatment than others.

95. Once a person is released from prison, there is no maintenance program, or community based sex offender treatment program in this state. Access to any community based treatment in Tasmania is limited. There are a small number of Forensic Psychologists in the Hobart area who are willing and able to provide individual treatment for sex offenders in the community. However, I understand that these services are not bulk billed and would require people in the north to travel to Hobart for sessions.

96. This compares to other jurisdictions which have community based treatment programs. For example, NSW has the New Horizons Sex Offender Treatment Program in prison and upon release to Parole or Extended Supervision Orders there is a requirement for sex offenders to attend a Corrections run maintenance program in the community which continues to address sexual offending and provide group-based treatment while the person reintegrates back into the community.

I make this solemn declaration under the *Oaths Act 2001* (Tas).

Declared at Hobart
on 13 July 2022

Before me