

15 July 2026

Ms Kristy Bourne
Secretary
Department of Justice

By email: Secretary@justice.tas.gov.au
Legislation.Development@justice.tas.gov.au

Dear Ms Bourne



Sentencing Amendment (Publication of Criminal Activity) Bill 2026

Thank you for the opportunity to provide feedback on the Sentencing Amendment (Publication of Criminal Activity) Bill 2026 (the **Bill**).

As Tasmanian NPM, a function of my office under section 9(1)(j) of the *OPCAT Implementation Act 2021* (Tas) (the **OPCAT Act**) is to submit proposals and observations concerning existing or draft legislation relating to detainees or places of detention, with the view of strengthening the protection of people deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. This reflects the advisory function of NPMs set out at Article 19 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).

This submission fulfils this preventive function mindful that changes to sentencing frameworks can impact the conditions and treatment of people deprived of their liberty across their custody experience. Significant changes may also influence peoples' wider perceptions of the justice system and confidence in the separation of powers underpinning our system of government. It is important that peoples' human rights are appropriately considered during the policy development process to identify the options best placed to strengthen those rights.

My feedback on this Bill centres on its application to children and young people. As it stands, I am not persuaded that extending sentences for children and young people will curb youth performance crime. The background information provided with this Bill omits any discussion of the prevailing criminological drivers of performance crime among young people and how the Bill intends to deter such offending. Based on my understanding of this kind of offending, it appears likely that the Bill's promulgation could counterproductively serve to increase the rates of such offending by requiring

that courts amplify the notoriety of 'posting and boasting' as a sentencing factor. I offer my reflections below and make four recommendations.

This Bill requires an impact assessment

The stated purpose of this Bill is "to address victim vulnerability, recognise the increased harm caused to victims when offending conduct is shared online, denounce the offender's conduct further and elevate the culpability of the offender in view of the harm and negative impacts occasioned to the victim and the wider Tasmanian community".¹ However, this reform is being introduced despite acknowledging that courts can already consider an offender 'posting and boasting' as an aggravating factor.

I acknowledge concerns raised by victims of crime and the wider community about publication of criminal acts on digital platforms and I support the intent underlying this reform to stop its occurrence. However, my recent submission on the Sentencing Amendment (Good Character) Bill 2026 (the **Good Character Bill**) highlighted the need for an impact analysis. There is a similar need for this Bill which would afford the process with a critical opportunity to demonstrate how it will achieve its intended purpose, especially among youth offenders.²

Without detailed analysis or regulatory impact information, I am restricted in my ability to provide comprehensive feedback. The need for impact information is especially pertinent in this instance: the Bill has been introduced following similar 'post and boast' law reform interstate without any effectiveness study and while Tasmania's youth justice system continues to experience significant challenges.³ Tasmania's Sentencing Advisory Council would be well placed to consider and report on the Bill's efficacy and potential impact in a Tasmanian context. I accordingly consider my recommendations in the Good Character Bill relevant here too:

RECOMMENDATION 1: that the Bill be referred to the Sentencing Advisory Council for advice prior to its tabling in Parliament.

RECOMMENDATION 2: that the Government develop a regulatory impact assessment framework to accompany all new policy proposals.

¹ Department of Justice, 23 June 2026, *Consultation: Sentencing Amendment (Publication of Criminal Activity) Bill 2026*, DOC/26/62680.

² Tasmanian NPM, 2 July 2026, *Tasmanian NPM submission on the Sentencing Amendment (Good Character) Bill 2026*.

³ Recent 'post and boast' law reforms across Australia include the *Crimes Act 1900* (NSW) s 154K; *Summary Offences Act 1995* (QLD) s 26B; *Criminal Code Act 1983* (NT) s 276H; *Crimes Act 1958* (Vic) Part I Division 2E; *Summary Offences (Prohibition of Publication of Certain Material) Amendment Act 2025* (SA)).

Addressing performance crime among children and young people requires whole-of-government coordination

This Bill seeks to address the recent and increasing trend of performance crime (also referred to as 'posting and boasting'), involving criminal activity where people actively post about or stream criminal offending via social media platforms (such as Facebook, TikTok or Snapchat), either at the time of the crime or after the fact.⁴ As its name infers, perpetrators generally 'perform' these acts to gain social acceptance among peers or within a social network, for online notoriety, to intimidate or humiliate victims, or to entertain an audience.⁵

The rise in this type of offending has largely been shaped by a social and cultural context that normalises electronic publication and sharing practices across all aspects of daily life.⁶ Social media platforms have also created a digital landscape that rewards notoriety through celebrity culture, the attention economy and the promotion and amplification of increasingly provocative content and trends.⁷ Digital societies and social media platforms play a key role in incentivising and transforming criminal behaviours into participatory, mediated spectacles.⁸

Performance crime is a growing global issue and the factors influencing people to commit this type of offending transcends sovereign borders. People, particularly young people, are forming communities, engaging in provocation and adopting and sharing antisocial activities with social groups in other countries.⁹ Addressing the root causes and behavioural drivers underlying performance crime is therefore critical when developing evidence-based policy and lawmaking. However, without comprehensive analysis, I am unable to evaluate whether a legislative response (on its own) is a viable and effective option to address and reduce performance crime.

To date, one way that jurisdictions across Australia have responded to performance crime is by increasing criminal penalties and introducing new offences. The rationale for these reforms appears to have been their deterrent effect: that people will be less likely to commit performance crime because the penalties for doing so will outweigh perceived gains. I am unaware of any study demonstrating that law reform of this kind has resulted in a reduction of performance or similar offending among young people or reduced corresponding harm to victims.

Law reform as a driver of behavioural change by deterrence relies on the assumption that people act rationally. However, many people who commit crime do not make rational choices, making deterrence approaches less effective or ineffective entirely.¹⁰ This appears to be the case for

⁴ Surette, R. Performance crime and justice. *Curr Issues Crim Just.* 2015; 27(2):195–216.

⁵ *ibid.*

⁶ Ellis, Justin; Bunn, Emma (2025). *Performance crime and processes of criminalisation*. Open Research Newcastle. <<https://hdl.handle.net/1959.13/31405515.v1>>

⁷ *ibid.*

⁸ Social media algorithms may amplify harmful content and explicit material. A recent article from the eSafety Commissioner discusses the impact of these algorithms on children and young people. See eSafety Commissioner, *An unfair fight – how algorithms are shaping our adolescents* (2025) <<https://www.esafety.gov.au/newsroom/blogs/an-unfair-fight-how-algorithms-are-shaping-our-adolescents>> (accessed 13 July 2026).

⁹ *ibid.*

¹⁰ Research demonstrates that an increase in the severity of punishment (particularly imprisonment) has no increased deterrent effect upon offending. See for example Sentencing Council Victoria, *Does Imprisonment Deter? A Review of the Evidence* (2011) <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Does_Imprisonment_Deter_A_Review_of_the_Evidence.pdf> (accessed 9 July 2026).

performance crimes, where its drivers may be amplified by an act's perceived notoriety, corresponding in greater perceived approval within a social group. Research demonstrates increasingly punitive legislative responses to performance offending may have an unintended outcome of encouraging rather than deterring future wrongdoing,¹¹ particularly where an underlying motivation is thrill-seeking such as motor vehicle theft.¹²

Without access to crime statistics for Tasmania, I am unable to understand the age demographics responsible for performance offending and its severity or other related trends. Based on academic materials and media reporting, children and young people appear to be more frequently identified as perpetrators of performance crime than adults. Academic literature further indicates that this younger cohort may be more inclined to commit these crimes because of the impact of social media on adolescent development: growing up immersed in digital societies, using social media platforms as a primary mode of communication, for social reward and their increased likelihood of engaging in impulsive behaviours due to ongoing brain development.¹³

Although the Bill does not make amendments to the *Youth Justice Act 1997* (Tas), it will apply to young people who commit prescribed offences listed in that Act. Noting my observations on rates of offending and age demographics, it follows that a potential outcome of this Bill is more young people receive extended sentences than adults. This may have flow on effects across the youth justice system. The ongoing pressures in Ashley Youth Detention Centre are well-known, and I have commented on this in my capacity as Custodial Inspector.¹⁴

Longer sentences for young people also increases the likelihood that, while serving their sentence, they are transferred from youth detention to prison. Young people transitioning to adulthood in custody increases the risk of recidivism, the rate of which in Tasmania remains above the national average.¹⁵ This not only adds to existing pressures facing our prison system but is unlikely to improve community safety by promoting rehabilitation. The utility of pursuing a legislative reform option increasing sentences for children and young people while having minimal material impact on reducing the underlying offending is unclear.

Interventions outside the sphere of criminal law reform may be better placed to achieve impact in reducing youth performance crime by adopting a whole-of-government approach that targets its underlying criminological drivers. The Commonwealth Government's social media age restrictions for under 16-year-olds is one such initiative that may serve to prevent children and young people from engaging in performance crime by limiting their access to and socialisation through social media. I would welcome further information from the Department about whether any community-led and similar diversionary intervention options have been considered as part of the policy development process.

¹¹ Ellis, Justin; Bunn, Emma (2025). *Performance crime and processes of criminalisation*. Open Research Newcastle. <<https://hdl.handle.net/1959.13/31405515.v1>>.

¹² *ibid*.

¹³ Hall RCW, Day T. (2024), *Formulating Performance Crimes*. J Am Acad Psychiatry Law.;52(3):280-285.

¹⁴ See, for example, my *Annual Report 2024 – 25*, pages 24 – 31.

<https://npm.tas.gov.au/data/assets/pdf_file/0006/836340/Tasmanain-NPM-Annual-Report-2025.pdf>

¹⁵ Australian Government, Productivity Commission, *Report on Government Services 2026*

<<https://www.pc.gov.au/ongoing/report-on-government-services/justice/>> (Accessed 13 July 2026).

Further, I believe it is necessary to highlight that pursuing measures that increase sentencing lengths for children and young people misaligns with commitments made under the *Youth Justice Blueprint 2024 – 2034*: to keep children and young people out of the youth justice system by prioritising prevention, diversion and early intervention.¹⁶

Tasmania's Plan for Closing the Gap for children and young people must also be considered. In New South Wales, similar performance crime reforms were highlighted as being more likely to disproportionately affect young Aboriginal people.¹⁷ It is unclear whether a similar outcome is likely in our state but given the disproportionate rate of representation of Aboriginal people in the criminal justice system, the risk is commensurate. Such an outcome would misalign with the 2031 targets of reducing the rate of Aboriginal adults held in incarceration by at least 15 per cent and Aboriginal young people in detention by at least 30 per cent. Relevantly, Outcome 10 of Tasmania's Plan for Closing the Gap 2025 – 2028 commits the Department to develop an impact assessment pre-Cabinet decision-making tool by the end of this financial year.¹⁸ Aligned with my second recommendation I ask that the Government consider accelerating the development of this tool.

RECOMMENDATION 3: Exclude children and young people from the scope of this Bill and establish a whole-of-government response to address performance crime.

National collaboration and review are essential

Finally, acknowledging that performance crime is a nationally significant issue, is the Tasmanian Government working alongside its state and territory counterparts and the Commonwealth to coordinate a response, including what strategies or processes have been devised to measure effectiveness? I note the eSafety Commissioner has raised the importance of establishing innovative ways to boost the detection and removal of youth crime material online to prevent performance crime behaviour going viral.¹⁹ The Commissioner also called for more collaborative responses to performance crime, including between law enforcement agencies, researchers, communities and the tech industry.²⁰

Performance crime is a complex issue that warrants further review, research and collaboration across jurisdictions and in consultation with the digital platform providers enabling its dissemination. Without adopting a range of measures to address the drivers of performance crime, this Bill is unlikely to meet its stated objectives. Should the Bill proceed, a compulsory review ought to be included so that its repeal may be considered should it be found to have had no material impact. To provide a fulsome analysis, this review should include consideration of any other state or national measures introduced in addition to the Bill designed to address performance crime. This is to avoid any impact (e.g. reduction in rates of offending) being falsely attributed to this Bill or another measure.

¹⁶ Department for Education, Children and Young People. 2023. *Youth Justice Blueprint 2024 – 2034*. <<https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Youth-Justice-Blueprint.pdf>>

¹⁷ Law Society Journal. 2026. *Neither necessary nor effective': post and boast laws under fire*. <<https://lsj.com.au/articles/neither-necessary-nor-effective-post-and-boast-laws-under-fire/>>

¹⁸ See; Department of Justice, *Tasmania's Plan for Closing the Gap 2025 – 2028*, Outcome 10. <<https://www.justice.tas.gov.au/about-us/news/articles/tasmanias-plan-for-closing-the-gap-2025-2028>>.

¹⁹ eSafety Commissioner. 28 June 2024. *Addressing youth crime on social media platforms*. <<https://www.esafety.gov.au/newsroom/media-releases/addressing-youth-crime-on-social-media-platforms>>

²⁰ *ibid*.

RECOMMENDATION 4: the Government commit to tabling in Parliament an independent review of the Bill's performance within four years from its date of commencement.

Should you have any queries in relation to this submission, please contact me or Mr Mark Huber, Director, at mark.huber@npm.tas.gov.au. I give my consent for this feedback to be published.

Thank you once again for the opportunity to comment on this important legislation.

Yours sincerely

A handwritten signature in blue ink, consisting of a large, stylized 'D' followed by a horizontal line.

Dr Grant Davies
Tasmanian National Preventive Mechanism