

2 July 2026

Ms Kristy Bourne
Secretary
Department of Justice

By email: Secretary@justice.tas.gov.au
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Dear Ms Bourne



Sentencing Amendment (Good Character) Bill 2026

Thank you for the opportunity to provide feedback on the Sentencing Amendment (Good Character) 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 and parole 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 therefore important that peoples' human rights are appropriately considered during the policy development process to identify the options best placed to strengthen those rights.

I acknowledge the contribution of people with lived experience, particularly victim-survivors, in identifying issues across the criminal justice system and promoting law reform. Victims of crime have the right to be treated with compassion, respect, dignity and to receive trauma informed access to justice. Judicial and administrative processes should respond to the needs and wellbeing of victims of crime, consistent with the United Nations Declaration of Basic Principles of Justice for

Victims of Crime and Abuse of Power and the Department of Justice's Charter of Rights for Victims of Crime.¹

Engaging with the justice system can be distressing and retraumatising for victim-survivors and communities. Many procedural aspects of our justice system historically were developed without consideration of victim-survivor and witness impacts or trauma informed practice. I support ongoing efforts by the government and the courts to reform our justice system to strengthen the conditions and treatment experienced by victim-survivors.

The matter advanced in this Bill—restricting the use of good character evidence at sentencing—is limited in scope but nevertheless raises some complex considerations. Reform to good character evidence at sentencing necessitates a consideration of the rights, safety and wellbeing of victim-survivors alongside the rights of all people to a fair trial.² The Bill may also impact people in custody and access to services, particularly if the number and duration of people in custody increases as a consequence of its implementation.

I support the intent underlying this proposed reform, although I maintain some uncertainty about whether the Bill, in its current state, is the best avenue to achieve the stated policy goal of reducing trauma to victim-survivors participating in the criminal justice process. My position arises because of the limited analysis provided in support of the Bill, particularly when compared with similar reforms introduced interstate this year and in light of ongoing service challenges facing Tasmania's justice system.

I am concerned about the absence of any regulatory impact information accompanying proposed legislation. For this Bill, I have only received a brief statement outlining the Bill's object and purpose and a factor supporting its development. I have not received any impact information indicating that the Bill will operate to achieve this aim, what other options may have been considered, and that potential unintended consequences have been appropriately allayed.

The absence of impact information has informed my two recommendations in this submission: that this Bill be referred to the Sentencing Advisory Council for advice prior to tabling and that the Government make regulatory impact analysis compulsory for proposed legislation that includes new policy.³

Regulatory impact analysis is a cornerstone of good policy development because its results test the theoretical assumptions underpinning a policy's development. They help to identify unforeseen and unintended consequences, the most appropriate policy option and can lead to the discovery of new ways to resolve the issue at hand. Importantly, their results assist government and service providers to anticipate and prepare for implementation.

¹ United Nations Office of the Human Rights Commissioner, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>; Department of Justice, *Charter of Rights for Victims of Crime*, <https://www.justice.tas.gov.au/your-rights/victims/charter-of-rights-for-victims-of-crime>.

² Article 14(1) of the International Covenant on Civil and Political Rights, to which Australia is party, states: *...In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

³ I do not consider regulatory impact statements necessary for miscellaneous legislation that does not change existing or give effect to new policy.

In relation to this Bill, there are two matters warranting further analysis before proceeding to Parliament which are:

1. What likely impact will the Bill have on court processes and sentencing outcomes?
2. What impact could this have on wider justice system resources?

1. Sentencing impact

This Bill follows similar legislation introduced this year interstate aimed at addressing the traumatising impact of offenders introducing good character references at sentencing to mitigate the length of their sentence. The background material for the Bill makes note of the government's intention to respond to this issue by proscribing circumstances under which a court can hear good character evidence at sentencing. However, it does not address potential sentencing impacts or the extent to which they may be a policy driver. Removing a mitigating factor at sentencing is likely to have some impact on how the courts develop sentences.

Interstate, similar legislation was accompanied by statements clearly motivated by a desire to prevent courts from reducing sentences after receiving statements in support of a defendant's previous good character. One of the first jurisdictions to implement similar legislation, New South Wales, did so following an extensive review by its Sentencing Council which began in 2024.⁴ When advocating the New South Wales policy, public commentary citing the Sentencing Council report stated that good character references were distorting its justice system and suggested that some people were receiving reduced or no jail time as a result of character references being considered by a court.⁵

I do not intend to dispute the New South Wales Sentencing Council majority's findings or recommendations. They make a cogent argument to abolish good character as a mitigating factor in sentencing in New South Wales. Its analysis is, however, based on the New South Wales justice system, sentencing legislation and jurisprudence, which is different to Tasmania's. The *Criminal Code Act 1924* (Tas) is unique in providing a maximum penalty for all crimes, other than for murder and treason, of imprisonment for 21 years, or a fine or both. It is a framework that places significant deference on the court, following the *Sentencing Act 1997* (Tas), to determine and impose a sentence that appropriately reflects an individual offender's offending and circumstances. It is important that this policy is assessed against the nuances of Tasmania's justice system.

Character evidence is a long established sentencing practice.⁶ It is only one factor among many considered and weighed when making a sentencing decision.⁷ We should take the time to understand how the Bill may change sentencing outcomes. I would expect that sufficient sentencing data and jurisprudence exists in Tasmania to conduct this analysis. Tasmania's Sentencing Advisory Council, like its New South Wales counterpart, is well placed to consider and report on the Bill's efficacy and potential impact.

⁴ The Sentencing Council report is available at: <<https://sentencingcouncil.nsw.gov.au/our-work/completed-projects/good-character-at-sentencing.html#Report0>>

⁵ See: Facebook, video statement by Premier, the Hon. Chris Minns, 19 May 2026 <<https://www.facebook.com/watch/?v=956948467111694>>

⁶ *Ryan v R* [2001] HCA 21, 206 CLR 267.

⁷ Courts and Tribunals Tasmania, *General Sentencing Principles*, https://www.courts.tas.gov.au/tasmanian_court_scenarios/general_sentencing_principles

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

2. Assessing regulatory impact

The systematic and government-wide use of regulatory impact assessments in policy making supports good governance, greater quality interventions and maintains trust and integrity in the rule of law.⁸

If the Bill is likely to result in increased imprisonment terms for serious offending, then we should consider any flow on effect to wider justice system. As a key stakeholder whose work includes examining the conditions and treatment of people in custody, this would be beneficial so I can identify potential unintended consequences or unidentified issues and provide feedback.

For instance, within the custodial system, longer imprisonment sentences and reduced parole eligibility can increase pressure on custodial centres, correctional staff, people in custody and their access to rehabilitation services. As Custodial Inspector, my predecessor and I have raised concerns about these matters and I would be well placed to provide relevant feedback. The reform may also discourage some defendants from pleading guilty prior to trial, adding to the trial backlog facing the courts and increasing pressure on the Southern Remand Centre—a facility that is routinely at or close to full capacity. An increase in trials and delay could also contribute to rather than mitigate victim-survivor trauma.

Regulatory impact assessments should include, at a minimum:

- A clear description of the issue and policy intent, including its scope and detailed rationale for the proposed changes or government intervention.
- A list of feasible options for addressing the issue, including any non-regulatory options.
- The identified risks, costs and benefits of each option, including equity impacts, relevant international standards engaged and, if necessary, reasons for diverging from these standards).
- Stakeholder feedback considered as part of the assessment process, including people who may be impacted by the proposed changes; particularly marginalised groups.
- How the proposed reform will be implemented (including funding and system capability), monitored, and its effectiveness evaluated.

The assessment process should take a collaborative, whole-of-system approach, clearly identify limitations, assumptions, or dependencies and avoid considering regulation as the first resort for problem solving. They should also be published on the responsible agency's website at the earliest opportunity.

I am not suggesting the underlying policy intent in this Bill may lacks merit or that it should not proceed if an increase in the length of certain sentences is likely to arise following its introduction. Rather, I am raising that my ability to contribute to the policy development process, consistent with my functions, is significantly restricted if no impact analysis is provided with the Bill because I do not have the capability to conduct one myself. Regulatory impact statements represent a

⁸ OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://doi.org/10.1787/7a9638cb-en>.

commitment to robust evidence-based policy development and reflects established processes, promoted by the Australian Government through the Office of Impact Analysis.⁹

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

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.

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

Yours sincerely



Dr Grant Davies
Tasmanian National Preventive Mechanism

⁹ See: Australian Government, Department of Prime Minister and Cabinet, Office of Impact Analysis, <<https://oia.pmc.gov.au/>>.