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Dr Jane Thomson
Committee Secretary
Legal and Constitutional Affairs References Committee
Department of the Senate
Parliament House

By email: Legcon.sen@aph.gov.au

Dear Dr Thomson

Inquiry into the Crimes Amendment (Prohibiting the Strip Searching of Children) Bill 2026

Thank you for the opportunity to submit feedback on the Crimes Amendment (Prohibiting the Strip Searching of Children) Bill 2026 (the **Bill**). I note the Bill intends to amend the *Crimes Act 1914* (Cth) to prohibit the strip searching of persons under the age of 18. I write to support this policy objective.

The issue of strip searching is relevant to several functions I exercise as Tasmania's Custodial Inspector and its National Preventive Mechanism (**NPM**)—part of Australia's implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**). Under both roles I am responsible for providing independent oversight with the aim of reducing the risk of mistreatment of people deprived of their liberty.

Strip searching, or personal searches as they are sometimes called, is an inherently cruel and inhumane practice. For children and young people, it has a compounding traumatic effect with negligible policy benefit. In Tasmania, strip searching has been the subject of reform in recent years, significantly limiting its use and imposing heightened procedural guardrails.

In this feedback my intention is to provide the Committee with analysis on the Bill's policy merits informed by Tasmanian context. I begin with an overview of Tasmania's Custodial Inspector and NPM jurisdictions, followed by overview and discussion of strip searching, Tasmania's recent reforms and their impetus. Finally, I highlight our expectations, which are published in accordance with my statutory obligations and to reemphasise the important leadership role the Commonwealth plays in upholding our reputation as a model state committed to international law.

Custodial Inspector and NPM statutory duties

As Custodial Inspector, under the *Custodial Inspector Act 2016* (Tas) my primary responsibility is to independently oversee Tasmania's custodial centres, including youth detention. The role relevantly includes regular inspections of Ashley Youth Detention Centre, the only youth detention centre in the state, as well as in reception and adult custodial settings where children and young people may be detained. My office assesses the conditions and treatment of people detained in these centres against published expectations.¹ Our inspection activities are typically thematic, meaning we focus on specific issues. When we have finalised an inspection, we provide advice and recommendations relating to the safety, custody, care, wellbeing and rehabilitation of children and young people in custodial settings.²

The Tasmanian NPM was established in response to Australia's 2017 ratification of OPCAT. The main objective of the Tasmanian NPM is to strengthen the conditions and treatment of people deprived of their liberty, to prevent torture and other cruel, inhuman or degrading treatment or punishment (or 'ill-treatment') from occurring. OPCAT is an important part of the wider field of human rights instruments to which Australia is a party and Australia's NPMs are required to consider these obligations in the context of their activities. A joint statement has been provided under separate cover, through the Commonwealth Ombudsman (in his capacity as Commonwealth NPM), which explains these matters in further detail.

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. This reflects the advisory function of NPMs set out at Article 19 of the OPCAT.

Both the Tasmanian Custodial Inspector and NPM are independent oversight bodies focussed on preventing future occurrences of torture and ill-treatment as well as making recommendations for the improvement of conditions and treatment within places where

¹ Available at <https://npm.tas.gov.au/our-expectations>.

² Sections 6 (e) and (h) of the *Custodial Inspector Act 2016* (Tas).

children and young people are deprived of their liberty. They focus on addressing systemic issues through cooperation with relevant authorities and stakeholders.³

Strip searching of children and young people

Strip searching of people in custody is a practice we review regularly. It is often justified as a practice to manage risk by reducing the likelihood of contraband entering a custodial facility. However, the claimed risk is significantly outweighed by the detrimental, lasting impact it can have on the person being searched, as well as on staff conducting the search.

Strip searching is inherently harmful, especially when applied to people in positions of acute vulnerability. The practice can be dehumanising and degrading and consequently is incompatible with both trauma-informed and human rights-based approaches to risk management. For children and young people, strip searching has a compounding trauma effect, particularly for those who have experienced violence and sexual abuse.⁴ Many children and young people who engage with the criminal justice system have a trauma background.

In addition to this compounding trauma impact, the process of being strip searched introduces a heightened risk for new harm to the person searched. Strip searching that involves touching of bodily parts can give rise to physical and psychological trauma and may be characterisable as sexual abuse. Disturbingly, the national Royal Commission into Institutional Responses to Child Sexual Abuse documented multiple accounts of child sexual abuse occurring *during* such searches.⁵

These practices have been criticised by successive international expert observers. The United Nations (UN) Committee against Torture stated its concerns on the practice in its 2022 Concluding Observations regarding Australia's routine use of strip searches in places of detention.⁶ And the UN Subcommittee on Prevention of Torture (with which I am affiliated as an instrument of OPCAT), observed on its visit to Australia that strip searches in places of detention, when taking into account frequency and level of invasiveness, may amount to degrading treatment.⁷

³ See: <https://npm.tas.gov.au/about-the-office>.

⁴ Australian Children's Commissioners and Guardians, 2017, *Statement on Conditions and Treatment in Youth Justice Detention*, page 20. See: https://humanrights.gov.au/sites/default/files/document/publication/ACCG_YouthJusticePositionStatement_24Nov2017.pdf.

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, Final Report, Vol 15, page 93. See: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_15_contemporary_detention_environments.pdf

⁶ CAT/C/AUS/CO/6, para 31.

⁷ CAT/OP/AUS/ROSP/1, paras 58-59.

Fundamentally, strip searching is inconsistent with the international human rights laws Australia has agreed to uphold and as a model state should promote, including children and young people's rights under the UN Convention on the Rights of the Child and the Convention against Torture.⁸

Tasmanian reforms on strip searching children and young people

In Tasmania, the *Youth Justice Act 1997* (Tas) (the **Youth Justice Act**) regulates searches of children and young people in custody, including at Ashley Youth Detention Centre.⁹ Broad authority once existed under this legislation to conduct routine strip searches. This included both 'unclothed' or 'partially clothed searches'. However, in 2022 the Tasmanian Government progressed significant reform to broadly proscribe the practice for children and young people with limited exception.¹⁰ In this section I outline the substance and impetus for these reforms.

Previously, section 131(2) of the Youth Justice Act broadly prescribed a range of circumstances permitting routine searches of children and young people with a low threshold to initiate that search. This included on admission or return from a temporary leave of absence from the custody facility. It also outlined it may occur at any other time with 'reasonable grounds' that the young person may have contraband in their possession or, if in the detention centre manager's view, it was necessary in the 'interests of security'.¹¹

The use of strip searches under these provisions was regular and had uncertain impact in reducing risk as typically no contraband was detected.¹² It was accordingly widely criticised, with significant concerns raised by multiple bodies and stakeholders across Tasmania, including the Commissioner for Children and Young People, who additionally highlighted its high use on Aboriginal children.¹³

In 2021, the Tasmanian Government initiated a 'Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings' (the

⁸ Articles 3, 19, 34, 37 of the Convention on the Rights of the Child and Article 16 of the Convention against Torture.

⁹ *Youth Justice Act 1997* s 25B(1).

¹⁰ Under the *Youth Justice Amendment (Searches in Custody) Act 2022* (Tas). Amendments included the introduction of sections 25A to 25L. Exceptions are contained in the *Youth Justice Act 1997* (Tas), Part 3, Division 3.

¹¹ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, 2023, Final Report, Vol 5, Chapter 10. See:

<https://www.commissionofinquiry.tas.gov.au/report/listing/volume-5/chapter-10/> *nocache*

¹² For example, between 1 June and 30 November 2018, 203 children were subject to an unclothed search at Ashley Youth Detention Centre (Tasmania), with no contraband found. Commissioner for Children and Young People Tasmania, 2019, *Memorandum of Advice: Searches of Children and Young People in Custodial Facilities in Tasmania*. Page 3 See: <https://childcomm.tas.gov.au/uploads/2023/07/2019-05-06-amended-FINAL-Advice-to-Ministers-Searches-of-children-and-young-people-in-custody-in-custodial-facilities.pdf>

¹³ Commissioner for Children and Young People Tasmania, 30 June 2020, Media Release. See: <https://childcomm.tas.gov.au/searches-of-children-and-young-people-in-custody-in-tasmania/>

Commission). Its final report, published in 2023, found repeated themes of inappropriate strip searches of children and young people in youth detention.¹⁴ The Commission further found instances where staff were using strip searching as a tool of control and an opportunity to sexually abuse children and young people.¹⁵

Preceding the Commission's final report (but against a backdrop of revelations arising in public hearings and litigation), in 2022 the Tasmanian Government pursued broad amendments to the Youth Justice Act to curtail strip searching. Under these amendments, searches of children and young people can now only occur where there are reasonable grounds that the search is necessary for the relevant search purpose and the type and manner of search are proportionate to the circumstances.¹⁶

The 2022 reforms to the Youth Justice Act, as part of a wider package of reforms, were an important step in the Tasmanian Government's commitment to implementing a trauma-informed model of care in youth justice.¹⁷ Routine strip searching of children and young people in youth detention has since ceased, following consequential changes in practice and policy. To replace strip searches, Tasmania's prison and youth justice facilities have installed body scanning technology and use wand searches as a less invasive alternative. Any 'unclothed' or 'partially clothed' searches are extremely rare and conducted under strict conditions.¹⁸

In Tasmania's prison watchhouses, data similarly show the use of strip searching has reduced following these reforms. However, in his 2025 report *'Children in Tasmania's Prisons'*, my predecessor Mr Richard Connock raised concerns regarding searches not being carried out by adults of the same gender, especially for girls.¹⁹ The report made recommendations aimed at reducing and eventually eliminating the practice of holding children and young people in adult prisons.

I will continue to monitor searching practices used on children and young people in custodial facilities, to promote their rights, safety and wellbeing. Tasmanian advocates argue the current approach does not go far enough in protecting children's rights and that strip searching must be prohibited rather than limited.²⁰ Prohibiting strip searches on

¹⁴ Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, 2023, Final Report, Vol 5, Chapter 11, Page 59. See: https://www.commissionofinquiry.tas.gov.au/data/assets/file/0011/724439/COI_Full-Report.pdf

¹⁵ Ibid, page 93.

¹⁶ *Youth Justice Act 1997* s 25E(1).

¹⁷ Office of the Custodial Inspector Tasmania, 2025, *Children in Tasmania's prisons*. Final Report. Page 49. See: https://www.custodialinspector.tas.gov.au/data/assets/pdf_file/0005/814073/Children-in-Tasmanias-prisons-review-report-2025.pdf.

¹⁸ Data received from Ashley Youth Detention Centre showed that in 2022 there were 27 instances of 'partially clothed' searches; 9 in 2023; 2 in 2024; 2 in 2025; and 0 between January and June in 2026. Partially clothed searches are distinct from unclothed searches in that a young person is required to remove some, but not all, clothing, ensuring they are not fully undressed at any point of the search.

¹⁹ Ibid.

²⁰ ABC. 30 June 2020. *Push to ban strip searches in custody for children, replace with body scanning*. See: <https://www.abc.net.au/news/2020-06-30/push-to-ban-strip-searches-in-custody-for-children/12407694> (accessed 9 September 2026).

children via legislation at a national level makes it demonstrably clear these practices are no longer acceptable. It also sends an important message that justice system reform needs to integrate trauma-informed best practice if it is going to contribute to reducing recidivism.

Expectations for searches of children and young people in custodial settings

In May 2024, my predecessor published *Expectations on the treatment of children and young people deprived of their liberty (Expectations)*, which I continue to apply.²¹ These Expectations were created with the assistance of former National Children's Commissioner, Megan Mitchell AM, to guide me and my office when examining the conditions and treatment of children and young people deprived of their liberty.

The Expectations apply Australia's human rights obligations, associated standards and contemporary best practice in youth justice settings. They aim to be child-centred and trauma informed. In the context of these obligations, I consider any searches conducted on children and young people in custodial settings must be lawful, necessary and proportionate. Searches should also be conducted in a manner that is trauma-informed and sensitive to gender, religion and culture.²²

The United Nations Standard Minimum Rules for the Treatment of Prisoners (or 'Nelson Mandela Rules'), which outline minimum standards for the treatment of children and adults in prison, state that searches should be conducted in a manner that is:

respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.²³

Rule 51 of the Nelson Mandela Rules states that:

administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.²⁴

My expectation is that custodial settings, including youth detention centres, implement the Nelson Mandela Rules and ensure these minimum standards are met.

There are less invasive (and potentially more effective) alternatives available to replace strip searching, for example body scanning technology. These machines enable custodial

²¹ Tasmanian National Preventive Mechanism and Office of the Custodial Inspector, 2025, *Expectations on the treatment of children and young people deprived of their liberty*, Version 1.2. See: https://npm.tas.gov.au/data/assets/pdf_file/0005/832271/Tasmanian-NPM-Expectations-Children-and-Young-People-September-2025.pdf

²² Ibid, Indicator 11.5.

²³ United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 50, See: https://www.unodc.org/documents/justice-and-prison-reform/PPR/UNODC_TheNelsonMandelaRules.pdf

²⁴ Ibid Rule 51.

staff to take detailed images of (clothed) people to identify concealed contraband. Other, low-tech options such as wandings have proven effective in Tasmania at detecting harmful items while respecting privacy, personal dignity and bodily and psychological autonomy. In youth detention, relational security approaches can be used to encourage children and young people to relinquish any suspected contraband rather than proceeding directly to any form of search.

OPCAT implementation across Australia

I note that OPCAT implementation across Australian states and territories remains incomplete.²⁵ Australia's three largest states are yet to establish NPM bodies. Robust oversight of the criminal justice system is essential to ensure Australia meets its international obligations. Perhaps more importantly, oversight promotes the adoption of practices by custody administrators that are less likely to retraumatise and contribute to recidivism.

NPMs play an important role in monitoring practices such as searches and collaborating with stakeholders to strengthen protections for children and young people deprived of their liberty. As part of this inquiry, I encourage the Committee to consider what recommendations could be made to fulfil OPCAT implementation across Australia.

Closing comments

I support the Bill's proposal to amend the *Crimes Act 1914* (Cth) to prohibit the strip searching of persons under the age of 18, which would assist the Commonwealth Government in meeting Australia's human rights obligations.

Tasmania's recent legislative reforms demonstrate the feasibility of states and territories taking action to eliminate an ineffective, harmful and degrading practice applied to children and young people deprived of their liberty. Prohibiting the practice, rather than minimising it, would ensure there is no ambiguity and improved consistency across Australian jurisdictions. The Bill's proposed approach would also bring Australia in line with New Zealand, which recently removed the ability to strip search children in secure residences in 2024 under the *Responding to Abuse in Care Legislation Amendment Act 2025* (NZ).²⁶ Effective OPCAT implementation and establishing NPMs across Australia would further support the likelihood that searches are conducted in a safe, legal and appropriate manner that upholds the rights and dignity of children and young people.

Finally, if the Committee makes the decision to conduct public hearings, I am available to appear before the Committee in my capacity as Tasmania's Custodial Inspector and NPM.

²⁵ Australian NPM. 2025. *Australian NPM submission Draft National Report: Australia's 4th Universal Periodic Review*. See: https://www.ombudsman.gov.au/data/assets/pdf_file/0025/321199/Australian-NPM-Submission-Australias-Fourth-Universal-Periodic-Review.pdf

²⁶ Section 384E of the Oranga Tamariki Act 1989 (NZ) was repealed on 25 October 2025 by section 21 of the Responding to Abuse in Care Legislation Amendment Act 2025 (NZ).

Should you have any queries in relation to this submission you are welcome to contact me or Mr Mark Huber, Director, at [REDACTED]

Thank you once again for the opportunity to comment on this Bill. I trust the Committee will find these comments helpful.

Yours sincerely

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