

COMMUNITY
LEGAL CENTRES
TASMANIA

25 September 2018

The Honourable Jim Wilkinson
President of the Legislative Council
Parliament House
Hobart TAS 7000

via email: jim.wilkinson@parliament.tas.gov.au

Dear Jim,

Re: Police Offences Amendment (Consorting) Bill 2018

Community Legal Centres Tasmania (CLC Tas) was not provided with an opportunity to comment on the *Police Offences Amendment (Consorting) Bill 2018* ('the Bill') prior to it being tabled and passed by the House of Assembly last week.

Having now had an opportunity to review the Bill we are opposed to it being passed, on the basis that it disproportionately infringes on the freedom of association as enshrined in international human rights law.¹ However, if the Bill is likely to be passed it is important that safeguards against abuse are assured. In our opinion, Tasmania's consorting laws should have the benefit of those jurisdictions where consorting laws have been in place for a number of years and been the subject of review.

- Consorting laws infringe on international human rights

The right to freely associate with others is an essential component of a democratic society as it allows individual's to peacefully assemble, socialise and meet for common purposes.² In other words, the right to freedom of association is a foundation block for the exercise of many other civil, cultural, economic, political and social rights and is enshrined in the *International Covenant on Civil and Political Rights* to which Australia is a signatory.³

We oppose the introduction of consorting laws on the basis that the laws are anathema to the right of association by disproportionately discriminating against particular persons and their right to associate. As well as restricting individuals right to freely associate consorting laws also violate the presumption of

¹ CLC Tas would like to acknowledge Suddathcharige Manoj Fernando who assisted in the preparation of this response.

² ICCPR, HRC Dec 15/21, 15th sess, UN Doc A/HRC/RES/15/21 (6 October 2010).

³ International Convention on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) article 22.

innocence.⁴ Some actions will automatically amount to guilt by association despite there being no evidence of wrongdoing.

Persons convicted of crimes should not be punished both through a term of imprisonment and upon release by not being able to freely associate with others. As one commentator observed, the proscription of consorting is:⁵

Inconsistent with the principle of justice and fair punishment that a person who has served and completed for a crime imposed by a court should then be subject to further punishment. In this case the person with a conviction is not committing the offence of consorting, but the effect is to punish that person by forbidding others from being in their company.

The disproportionate infringement on the right to freedom of association and the violation of the presumption of innocence means that we are strongly opposed to this Bill. However, in the event that the Bill is likely to be passed, we propose a number of safeguards that will better protect against abuse.

- ***convicted offender***

We believe that the definition of 'convicted offender' in the Bill is too broad, allowing persons who have been convicted of shoplifting or minor drug offences to be subject to the proposed laws. In NSW, where consorting laws have been the subject of review by the NSW Ombudsman, it was recommended that a convicted offender should be defined as someone had committed 'serious criminal offending' and defined as "offences punishable by 10 years or more imprisonment". It was the view of the NSW Ombudsman that the adoption of this definition would result in serious violence offences, robberies and major drug supply offences being subject to the consorting laws but at the same time guaranteeing that minor common assault, theft and drug possession were excluded.⁶

We therefore recommend the adoption of a statutory definition of 'convicted offender' that captures offending in which significant terms of imprisonment are imposed, such as the trafficking and manufacturing of illicit drugs and violent offences such as grievous bodily harm and sexual assaults.

- ***Aboriginal kinship***

A broader definition of 'family member' should be included in the Bill. In its review of the NSW consorting laws, the NSW Ombudsman acknowledged that for aboriginal Australians "kinship ties are far broader than lineal or blood relations"⁷ and that the failure to provide a definition of family members that recognised aboriginal Australians kinship had contributed to their overrepresentation in official consorting warnings in NSW. The NSW Ombudsman for example found that 40 per cent of all persons subject to the consorting provisions were Aboriginal,

⁴ ICCPR, article 14(2).

⁵ Alex Steel, 'Consorting in New South Wales: Substantive Offence or Police Power?' (2003) 26(3) *University of New South Wales Law Journal* 567 at 579.

⁶ New South Wales Ombudsman, *Consorting Issues Paper: Review of the use of consorting provisions by the NSW Police Force: Division 7, Part 3A of the Crimes Act 1900* (2013) at 117.

⁷ New South Wales Ombudsman, *Consorting Issues Paper: Review of the use of consorting provisions by the NSW Police Force: Division 7, Part 3A of the Crimes Act 1900* (2013) at 28.

despite aboriginal Australians comprising only 2.5 per cent of the NSW population.⁸ We therefore recommend that the Bill's definition of 'family member' expressly include aboriginal Australians concept of kinship.

- ***Transitional, crisis or emergency accommodation***

Finally, the Bill currently fails to recognise circumstances in which persons may be housed in temporary or emergency accommodation. Shelters for the homeless and emergency accommodation for victims of family violence should be exempt from the Bill to ensure that disadvantaged and vulnerable persons are not further marginalised. As well, many offenders are released from prison into transitional or short-term accommodation such as a motel or boarding house where common areas such as a lounge room, bathroom or kitchen are shared.

We recommend that an additional defence be added to the Bill to ensure that persons living in transitional, crisis or emergency accommodation are exempt from the consorting laws.

If you have any queries, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

⁸ New South Wales Ombudsman, *Consorting Issues Paper: Review of the use of consorting provisions by the NSW Police Force: Division 7, Part 3A of the Crimes Act 1900* (2013) at 9.