COMMUNITY
LEGAL CENTRES
TASMANIA

30 September 2016

Department of Justice
Office of Strategic Legislation and Policy
GPO Box 825
Hobart TAS 7001
Attn: Bradley Wagg

via email: bradley.wagg@justice.tas.gov.au

To the Office of Strategic Legislation and Policy,
Re: *Fines Without Recording Convictions Bill 2016*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Fines Without Recording Convictions Bill 2016*.

CLC Tas is the peak body representing the interests of eight community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We support the intention to amend section 7 of the *Sentencing Act 1997* (Tas) to enable a fine to be imposed without recording a conviction. This reform has been a long time coming with a Legislative Council Select Committee recommending the reform in 1991[1] and the Tasmanian Law Reform Institute recommending the same reform in 2008.[2] It should also be noted that the proposed amendment would bring our sentencing laws into conformity with a number of other Australian jurisdictions including Victoria,[3] South Australia,[4] Queensland,[5] and the Northern Territory.[6]

In our opinion providing the courts with the discretion to impose a fine without recording a conviction will ameliorate some of the adverse impacts of imposing both as well as ensure a greater degree of proportionality in sentencing.

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[1] Parliament of Tasmania, *Correctional Services and Sentencing in Tasmania* (1999) 119.
[2] Tasmania Law Reform Institute, *Sentencing*, Final Report No 11 (2008) at para. 3.9.6.
[3] Sections 7(1)(f), 49 of the *Sentencing Act 1991* (Vic).
[4] Section 16 of the *Criminal Law (Sentencing) Act 1988* (SA).
[5] Section 44 of the *Penalties and Sentences Act 1992* (Qld).
[6] Sections 7, 16 of the *Sentencing Act* (NT).

Adverse impacts encountered by offenders sentenced to both a fine and conviction, include an increase in the likelihood of the conviction being disproportionate to the offending. This is because the sentence will almost always be imposed in circumstances where the offending is at the lower end of seriousness and where the risk of reoffending is low. Another adverse impact is the potential loss of employment as well as future employability although it must be acknowledged that the practical effect of the Government's reform is somewhat limited given that police records will continue to note the offender's pleading of guilty and/or finding of guilt.

Given the limited effect of imposing a fine without a conviction but where a finding of guilt will continue to appear on police records we urge the Government to consider introducing an additional amendment which will, in our opinion, have a significant impact on the likelihood of an offender retaining their employment or being employed in the future. In Victoria, section 59 of the *Criminal Procedure Act 2009* (Vic) allows judicial officers to adjourn proceedings prior to a plea being entered, on the condition that the offender participate in a diversion program:

> **59. Adjournment to undertake diversion program**
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> ...
>
> (2) If, at any time before taking a formal plea from an accused in a criminal proceeding for a summary offence or an indictable offence that may be heard and determined summarily—
>
> (a) the accused acknowledges to the Magistrates' Court responsibility for the offence; and
>
> (b) it appears appropriate to the Magistrates' Court, which may inform itself in any way it considers appropriate, that the accused should participate in a diversion program; and
>
> (c) both the prosecution and the accused consent to the Magistrates' Court adjourning the proceeding for this purpose—
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> the Magistrates' Court may adjourn the proceeding for a period not exceeding 12 months to enable the accused to participate in and complete the diversion program.
>
> (3) An accused's acknowledgment to the Magistrates' Court of responsibility for an offence is inadmissible as evidence in a proceeding for that offence and does not constitute a plea.
>
> (4) If an accused completes a diversion program to the satisfaction of the Magistrates' Court—
>
> (a) no plea to the charge is to be taken; and
>
> (b) the Magistrates' Court must discharge the accused without any finding of guilt;

...

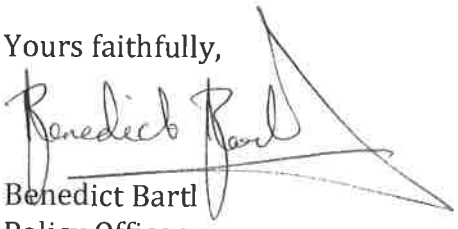
> (5) If an accused does not complete a diversion program to the satisfaction of the Magistrates' Court and the accused is subsequently found guilty of the charge, the Magistrates' Court must take into account the extent to which the accused complied with the diversion program when sentencing the accused.
>
> ...

The effect of this provision is that that there is no record that the accused person was charged or appeared in court. This in turn ensures that there is no impact on the offender's employment or prospects of future employment. In Victoria, the requirement that an offender participate in a diversion program has been interpreted to include a requirement that the offender write a letter of apology to the victim, make a donation to a charity or engage in a rehabilitation program. Importantly, many of these diversionary programs will have a salutary effect on the offender but not at the expense of a finding of guilt on their criminal record.

In summary, whilst we support the ability of judicial officers to fine offenders without also having to convict them we strongly recommend that the Government go further by introducing a similar amendment to that provided in section 59 of the *Criminal Procedure Act 2009* (Vic). In our opinion, this amendment will better ensure that the disproportionality of a conviction and/or a finding of guilty is greatly ameliorated whilst also ensuring that the offender participates in a diversion program.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer
Community Legal Centres Tasmania