

# COMMUNITY LEGAL CENTRES TASMANIA

17 October 2016

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

Dear Brad,

**Re: Sentencing Amendment (Assaults on Frontline Workers) Bill 2016**

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Sentencing Amendment (Assaults on Frontline Workers) Bill 2016*.<sup>1</sup>

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 strongly oppose the proposed amendments. It is our firm view that mandatory sentences are not effective in preventing crime and often results in the imposition of unjust sentences. We fully support the need to ensure that frontline workers are properly protected, however the threat of a harsh mandatory sentence through the passing of this Bill will not achieve the desired results.

In our view, the proposed Bill is unnecessary with existing legislation already providing sufficient flexibility to appropriately punish offenders convicted of assaulting frontline workers. Nevertheless, if the Government does intend to proceed with the Bill we urge them to merely amend the definition of 'emergency service worker' in section 34B of the *Police Offences Act 1935* (Tas) to include frontline workers not already covered by the definition. In our opinion, the broadening of the definition of 'emergency service worker' will address the Government's concerns of being seen to protect frontline workers without the harsh sentences that would be imposed through the imposition of mandatory sentencing.

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<sup>1</sup> CLC Tas would like to acknowledge Alexander Davidson who drafted the response and Jessica Musch who provided the research that underpins our response.

## **Current Legislative Framework**

The current legislative framework provides for both a summary and indictable offence of assaulting a police officer.<sup>2</sup> Presently, section 16A of the *Sentencing Act 1997* (Tas) provides for a mandatory term of imprisonment of six months where the assault caused ‘serious bodily harm’ to a police officer. ‘Serious bodily harm’ has no set legal meaning as it has not been defined by legislation or case law. Placed in the context of current legislative provisions, the term ‘serious bodily harm’ exists somewhere within the spectrum of wounding and grievous bodily harm, both of which are contained in the *Criminal Code Act 1924* (Tas).<sup>3</sup>

## **Current Tasmanian Crime Statistics**

As of September 2016, no individual has been sentenced under section 16A of the *Sentencing Act 1997* (Tas). However, over the timeframe 2006-2013 there has been a downward trajectory in offences committed against police officers on duty.<sup>4</sup>

There has been a 50 percent reduction in assaults against police officers between 2006-2007 and 2011-2012.<sup>5</sup> In 2011-2013, 301 offenders were charged under both the summary and indictable offences of assaulting a police officer.<sup>6</sup> In 2012-2013 this figure dropped to 233 assaults.<sup>7</sup> Expressed in another way, from 2006-2013 there was a 33 percent decrease in assaults against police officers.<sup>8</sup> Over the same timeframe that assaults against police officers were decreasing, statistics indicate that the rate of common assaults not involving police officers remained steady.<sup>9</sup>

The current crime supplement demonstrates that since the introduction of mandatory sentencing legislation, the rate of assaults against police officers on duty has increased. In a recent report detailing Tasmania crime statistics, there were 19 reportable incidents of assaults against police officers this financial year.<sup>10</sup> This is the same number reported for the same period last year.<sup>11</sup> In the last 12-month period assaults against police officers increased by 12 percent when

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<sup>2</sup> Section 34B of the *Police Offences Act 1935* (Tas) s34B; section 114 of the *Criminal Code Act 1924* (Tas).

<sup>3</sup> Section 172 of the *Criminal Code Act 1924* (Tas).

<sup>4</sup> Sentencing Advisory Council, *Assaults of Emergency Service Workers* (Final Report: No. 2) at v.

<sup>5</sup> Sentencing Advisory Council, *Assaults of Emergency Service Workers* (Final Report: No. 2) at 25.

<sup>6</sup> Section 34B(1)(a) of the *Police Offences Act 1935* (Tas); section 114 of the *Criminal Code Act 1924* (Tas).

<sup>7</sup> Tasmanian Police Service, *Annual 2012-2013 Corporate Performance Report* (Department of Police and Emergency Management, July 2013).

<sup>8</sup> Tasmanian Police Service, *Annual 2012-2013 Corporate Performance Report* (Department of Police and Emergency Management, July 2013).

<sup>9</sup> Tasmanian Police Service, *2012-2013 Crime Statistics Supplement* (Department of Police and Emergency Management, July 2013).

<sup>10</sup> Tasmanian Police Service, *Annual (June) 2016 Corporate Performance Report* (Department of Police, Fire and Emergency Management, August 2016).

<sup>11</sup> Tasmanian Police Service, *Annual (June) 2016 Corporate Performance Report* (Department of Police, Fire and Emergency Management, August 2016).

compared to last financial year.<sup>12</sup> This included an almost doubling of offenders charged under the more serious indictable offence contained in the *Criminal Code Act*<sup>13</sup> to 15 incidents during the last 12-month period.<sup>14</sup>

We agree that any increase in the assault rate against police officers is unacceptable. However, the evidence from the Police Service's own crime statistics is that the legislation has failed in its purpose to protect police officers. Despite the crime rate falling in the 2015-2016 period and the rate of common assaults only increasing by five percent in the last 12-month period,<sup>15</sup> rates of assaults against police officers have increased. This evidence along with interstate examples outlined below suggests that the proposed amendments will not have the desired result.

### **Interstate examples of similar laws**

At present, several other Australian jurisdictions have mandatory sentencing for assaults against police officers and other frontline workers.

Sections 318 and 297 of the Western Australian *Criminal Code Act* provides for a 3-month mandatory sentence for offenders found guilty of assaulting police officers or causing grievous bodily harm to volunteer firefighters or any other class of complainant identified in the act.<sup>16</sup>

Western Australian crime statistics demonstrate a 28 percent decrease of serious assault or assaults causing grievous bodily harm to police officers.<sup>17</sup> Nevertheless, it is simplistic to attribute this fall solely to the introduction of the mandatory sentencing provision, as at the same time the Western Australian Police force commenced a new policing policy that prohibited single officer patrols.<sup>18</sup> Crime statistics for that year also showed a significant drop in the level of common assaults, and was not limited to complainants identified under the Western Australian provision.<sup>19</sup>

Similarly, the Northern Territory operates a mandatory sentencing scheme for persons convicted of assaulting police officers. Division 6A of the *Sentencing Act 1995* (NT) provides for a mandatory term of imprisonment of between 3-12 months for defendants found guilty of assaulting a police officer. This law proved highly ineffective with the Northern Territory review into the mandatory

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<sup>12</sup> Tasmanian Police Service, *Annual (June) 2016 Corporate Performance Report* (Department of Police, Fire and Emergency Management, August 2016).

<sup>13</sup> Section 114 of the *Criminal Code Act 1924* (Tas).

<sup>14</sup> Tasmanian Police Service, *Annual (June) 2016 Corporate Performance Report* (Department of Police, Fire and Emergency Management, August 2016).

<sup>15</sup> Tasmanian Police Service, *2015-2016 Crime Statistics Supplement* (Department of Police, Fire and Emergency Management).

<sup>16</sup> Sections 297 and 318 of the *Criminal Code Act Compilation Act 1913* (WA).

<sup>17</sup> Sentencing Advisory Council, *Assaults of Emergency Service Workers* (Final Report: No. 2) at 25.

<sup>18</sup> Sentencing Advisory Council, *Assaults of Emergency Service Workers* (Final Report: No. 2) at 29.

<sup>19</sup> Sentencing Advisory Council, *Assaults of Emergency Service Workers* (Final Report: No. 2) at 30.

sentencing laws concluding that mandatory sentencing had no effect in reducing the crime rate.<sup>20</sup>

### **Effectiveness of Mandatory Sentences**

We have consistently expressed our opposition to the introduction of any and all mandatory sentence provisions. Mandatory sentencing does not reduce crime. The introduction of mandatory sentencing provisions in the Northern Territory proved to be unsuccessful with reported crime increasing significantly over the period the mandatory sentencing laws were in operation.<sup>21</sup> The Northern Territory reported crime data shows a drop in offending when the mandatory sentencing laws were repealed and other preventative strategies became more prevalent.<sup>22</sup> This is consistent with statistical evidence and academic literature concerning the failure of mandatory sentencing as a crime prevention measure.<sup>23</sup>

We also oppose mandatory sentencing because it often results in unfair or unjust sentences for offenders. The Tasmanian Sentencing framework is highly responsive to sentencing factors including aggravating circumstances of the case and personal circumstances of the defendant. We are concerned that the mandatory sentencing provision currently in operation in relation to assaults against police officers removes much of the flexibility of the court in addressing case-by-case sentencing factors. We believe that the current mandatory sentencing provision as well as any proposed mandatory sentencing reform has the potential to lead to disproportionate sentences for defendants as individual mitigating circumstances are not taken into account by the court.

It should also be noted that mandatory sentencing disproportionately affects the socially disadvantaged particularly individuals with a mental illness.<sup>24</sup> The theory that harsh or mandatory sentencing operates as a deterrent cannot be applied to those with mental health issues as offending is often not based in rational decision making.<sup>25</sup> This also applies to individuals who are drug affected.<sup>26</sup> Because individuals with mental health issues and other vulnerable people are more likely to come into contact with frontline workers, the introduction of the proposed amendments is likely to have a significant effect on this group. Individuals with mental health issues are already vastly over-represented in the prison system and

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<sup>20</sup> Carolyn Whyte, Joe Yick, Dee-ann Vahlberg and Leonique Swart, Review of the Northern Territory *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (Department of the Attorney-General and Justice: December 2015) at 2-3.

<sup>21</sup> Office of Crime Prevention, *Mandatory Sentencing for Adult Property Offenders – The Northern Territory Experience* (2003) at 10.

<sup>22</sup> Office of Crime Prevention, *Mandatory Sentencing for Adult Property Offenders – The Northern Territory Experience* (2003) at 10.

<sup>23</sup> Don Weatherburn, Sumitra Vignaendra & Andrew McGrath, The specific deterrent effect of custodial penalties on juvenile reoffending, *Australian Institute of Criminology (AIC Technical and Background Paper 33: 2009)* at 10.

<sup>24</sup> Law Institute of Victoria, *Mandatory Minimum Sentencing*, Submission to Victorian Attorney-General, 30 June 2011 at 5.

<sup>25</sup> Law Institute of Victoria, *Mandatory Minimum Sentencing*, Submission to Victorian Attorney-General, 30 June 2011 at 7.

<sup>26</sup> Law Institute of Victoria, *Mandatory Minimum Sentencing*, Submission to Victorian Attorney-General, 30 June 2011 at 7.

the passing of this Bill may contribute further to this.<sup>27</sup> We strongly believe that sentencing flexibility is paramount in circumstances in which an individual has a mental illness. A large body of case law supports this position. For example, in *Thompson v The Queen* it was found that ‘moral culpability would... be lessened where there is a causal connection between the psychiatric illness and the commission of the offence’.<sup>28</sup>

While in the case of *State of Tasmania v Hadley*, Blow J found that where mental health issues is causative or in some other way contributes to the offending there was a need for leniency in sentencing.<sup>29</sup>

### **How to properly protect Frontline Workers and Alternatives to the Bill**

We believe that the proposed amendments will not provide the protection that frontline workers require. As of October 2016, no individual has been prosecuted under the mandatory sentence provision for assaults against police officers. This provision was drafted to capture only the most serious offences which have resulted in the serious bodily harm to a police officer. The vast majority of incidents directed at police officers and other frontline workers do not involve violence.<sup>30</sup> The most common incident involves verbal abuse directed at frontline workers.

There are very few incidences of assaults on frontline workers and only one incident over a five-year period where an emergency service worker has suffered serious bodily harm.<sup>31</sup> Where frontline workers encounter hostility the majority of cases are of a non-serious assault such as spitting or shoving, cases of assault that will not amount to ‘serious bodily harm’ and therefore will not attract the mandatory sentence.

An alternative to the current Bill would be to broaden the definition used in section 34B of the *Police Offences Act 1935* (Tas) to include those frontline workers not already covered, namely child protection workers and medical or social service workers. Presently the provision only provides protection to police officers, ambulance officers (both employed in a paid and volunteer basis) and emergency service workers as defined in the *Emergency Management Act 2006* (Tas).<sup>32</sup> In our opinion, the broadening of the definition of ‘emergency service worker’ will address the Government’s concerns of being seen to protect frontline workers without the harsh sentences that would be imposed through the imposition of mandatory sentencing.

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<sup>27</sup> Law Council of Australia *Policy Discussion Paper on Mandatory Sentencing* at 33.

<sup>28</sup> *Thompson v The Queen* (2005) 157 A Crim R 385 at 396. Also see *R v Verdins* [2007] VSCA 102.

<sup>29</sup> *State of Tasmania v Nicholas Graham John Hadley* 10 January 2011, comments on passing sentence per Blow J. Justice Blow ultimately imposed a sentence of probation with special conditions to assist with Hadley’s mental health issues. Also see *Director of Public Prosecutions (Acting) v CBF* [2016] TASCRA 1.

<sup>30</sup> Sentencing Advisory Council, *Assaults of Emergency Service Workers* (Final Report: No. 2) at vi.

<sup>31</sup> Sentencing Advisory Council, *Assaults of Emergency Service Workers* (Final Report: No. 2) at 32.

<sup>32</sup> Section 3 of the *Emergency Management Act 2006* (Tas).

### **Summary**

In our opinion, the Bill will not provide adequate protection to frontline workers. The evidence demonstrates that the mandatory sentence provision already in place has not seen any decrease in assaults against police officers and there is no evidence that introducing mandatory sentence provisions for emergency workers will have any deterrent effect.

However, if the Government does intend to proceed with the Bill we urge them to merely amend the definition of 'emergency service worker' in section 34B of the *Police Offences Act 1935* (Tas) to include frontline workers not already covered by the definition.

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

Yours faithfully,



Benedict Bartl

Policy Officer

**Community Legal Centres Tasmania**

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