

COMMUNITY
LEGAL CENTRES
TASMANIA

1 September 2017

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

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

Dear Bradley,

Re: Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017* (the draft Bill).

CLC Tas is the peak body representing the interests of nine 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.

Whilst we do not believe that suspended sentences should be removed as a sentencing option, we welcome the Government's intention to broaden the range of sentences that can be imposed. In our opinion, the reforms to broaden court mandated diversion and the introduction of deferred sentences, home detention and community correction orders will better facilitate offender rehabilitation resulting in less crime and a safer community.

- *broad application of home detention*

We strongly support the extension of home detention to include, in appropriate circumstances, alternative accommodation. Tasmania's dispersed population means that monitoring of home detention, particularly in regional, rural and remote communities is more challenging. As a result, geographical difficulties may see otherwise eligible offenders excluded from the option of being sentenced to home detention. It is also recognized that some socially and financially disadvantaged offenders may not have stable accommodation and are therefore excluded from the option of home detention. The recognition in the draft Bill that suitable offenders may be sentenced to home detention in boarding premises, an institution providing residential alcohol or other drug treatment or a caravan park is welcomed.

We also strongly support the Bill's recognition that multiple home detention orders can be made including the flexibility that part of a home detention order can be served in an institution providing care or rehabilitation for persons addicted to alcohol and other drugs.

It is arguable that the draft Bill's definition of premises providing care would include properties that provide residential rehabilitation. But, there is also an argument that care –in this context– refers to a supported care facility or some other institution that assists persons with physical disabilities. In other words, it is arguable that premises providing care refers to something other than premises providing rehabilitation, particularly given that alcohol and other drug addiction is specifically noted in another subsection. Given the uncertainty, particularly for offenders with a recognized mental illness and who would otherwise benefit from residential rehabilitation we suggest the following amendment:

group premises means premises that:

(a) are boarding premises; or

(b) are provided for the purposes of providing care to persons; or

(c) are provided for the purpose of residential rehabilitation including alcohol or other drug addiction and/or mental health treatment; or assisting in the rehabilitation of persons who are addicted to alcohol or drugs; or

(d) are situated in a caravan park; or

(e) are of a type of premises that is prescribed

- exclusion of particular offences

We strongly believe that the courts should not be excluded from sentencing an offender to home detention simply because a particular category of offence has been committed. In our opinion, the category of offence is not always an accurate indicator of the risk posed by the offender to the community. A pre-sentence report that assesses the actual risk of the offender, as well as the offender's risk of reoffending and criminal history is a more accurate process for assessing suitability for home detention.

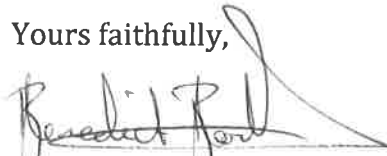
Nevertheless, we do support the exclusion of home detention as a sentencing option for persons convicted of violent (including family violence) and sexual offences where the victim of those offences is also residing.

In our opinion, the drafters of the Bill have struck the right balance between protecting victims of serious offences and the suitability of offenders to have home detention available to them as a sentencing option.

In summary, we support the draft Bill but are hopeful that clarification will result in an express recognition of the needs of persons with a recognised mental illness to access residential rehabilitation.

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

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Benedict Bartl', with a long horizontal flourish extending to the right.

Benedict Bartl
Policy Officer

Community Legal Centres Tasmania
