

COMMUNITY
LEGAL CENTRES
TASMANIA

22 November 2017

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: Amendment to clause 42AC(3)(c) of the *Sentencing Amendment (Phasing Out of Suspended Sentences) Bill 2017*

Community Legal Centres Tasmania is writing to you about proposed amendments to the *Sentencing Amendment (Phasing Out of Suspended Sentences Bill) 2017* (the Bill) and in particular a proposed amendment to clause 42AC(3)(c).

As it stands, section 42AC(3)(c) of the Bill provides that a court may only make a home detention order if the offender has not committed a relevant drug offence which is defined to include manufacturing, cultivating, trafficking or selling illicit drugs. Further, the Bill provides that home detention cannot be imposed if "the premises at which the offender would reside during the ... [home detention] order are premises that were used in relation to the commission of the relevant drug offence".

In our opinion, section 42AC(3)(c) of the Bill is inconsistent with the Government's purpose to "allow for the punishment of an offender through restrictions on their liberty, *while incorporating conditions to protect the public and aid an offender's rehabilitation*" (our emphasis).¹

We strongly believe that the ability of judicial officers to impose home detention and enable an offender "to attend a rehabilitative or re-integrative activity or program"² should fundamentally be about whether the offender has a history of illicit drug use and that drug use contributed to the commission of the

¹ Second Reading Speech, The Honourable Matthew Groom MP. As found at http://www.parliament.tas.gov.au/bills/Bills2017/pdf/notes/55_of_2017-SRS.pdf (Accessed 21 November 2017).

² Section 42AD(4)(c)(iv) of *Sentencing Amendment (Phasing Out of Suspended Sentences Bill) 2017* Bill.

imprisonable offence.³

It is unclear why the Bill would seek to distinguish between offenders sentenced under Part 3A of the *Sentencing Act 1997* (Tas) to a drug treatment order and who were convicted of manufacturing, cultivating, trafficking or selling illicit drugs but not allow the same judicial officers to impose home detention and attendance in a drug treatment rehabilitative program. This is particularly important when it is acknowledged that despite increased resources, court mandated diversion in some regions continue to operate at capacity. It is also worth noting that a sentence to court mandated diversion does not automatically exclude the offender's continued residence in premises that were used in relation to the commission of the relevant drug offence. Finally, we note that some offenders subject to home detention are likely to be subject to greater levels of surveillance than persons sentenced to court mandated diversion including random police searches of the premises, frisk searches and submitting to electronic monitoring.

For all of these reasons we do not believe that home detention should be restricted to persons not convicted of a relevant drug offence.

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

³ Also see section 27B(1)(b) of the *Sentencing Act 1997* (Tas) which provides that a court may make a drug treatment order if satisfied that the offender has a demonstrable history of illicit drug use; and illicit drug use contributed to the commission of the imprisonable offence.