

COMMUNITY LEGAL CENTRES TASMANIA

9 September 2016

The Honourable Vanessa Goodwin
Attorney-General
Level 10, 10 Murray St
Hobart TAS 7000

Dear Dr Goodwin,

Re: Funding for Drug Treatment Orders and Deferred Sentencing

We are writing to commend you on the Government's draft *Sentencing Legislation Amendment Bill 2016* which, when enacted, will allow Supreme Court judges to sentence offenders to drug treatment orders and allow judicial officers in both the Magistrates and Supreme Courts to sentence offenders to a deferred sentence.

We strongly support the expansion of sentencing options that will be made available to judicial officers. These reforms are crucial in seeking to address offender behaviour, providing the courts and professional staff in the government and non-government sectors with an opportunity to be actively involved in addressing the factors underpinning offending behaviour, and thereby increase the likelihood of rehabilitation.

However, we are very concerned at the Government's intention to provide no additional funding in the 2016-17 financial year¹ for the introduction of a reform that the Sentencing Advisory Council has described as a 'resource intensive order'.²

Research carried out by Community Legal Centres Tasmania as part of the consultation process for this Bill and provided to the Department of Justice demonstrates that there are a significant number of offenders who will be eligible for drug treatment orders in the Supreme Court. As the data in the following table sets out, even after the eligibility criteria set out in the *Sentencing Act 1997 (Tas)*³ is applied to restrict the number of offenders who may be eligible for a drug treatment order, there remain around 72 offenders each year who may be suitable for the order.

¹ Attorney-General Vanessa Goodwin, Legislation to implement new sentencing options, Media Release 23 August 2016.

² Sentencing Advisory Council, *Phasing out of suspended sentences* (Final Report No. 6, March 2016), paragraph 6.1.5.

³ Section 27B of the *Sentencing Act 1997 (Tas)*.

Supreme Court of Tasmania			
Year	No. of offenders sentenced with an acknowledged drug-problem	No. of offenders excluding ineligible offences	No. of offenders excluding ineligible offences + alcohol, youth and other sentences*
2008	105	74	57
2009	127	87	68
2010	120	80	69
2011	153	108	86
2012	122	88	72
2013	127	92	65
2014	133	98	82
2015	120	92	79
TOTAL	1007	719	578

*Other sentences include fines, community service orders and probation

If the reform is to be an effective replacement for suspended sentences it is essential that it be properly funded. The required funding will be necessary for a number of services and programs including assessment, drug treatment programs, other programs and services that address the criminogenic needs of the offender as well as the monitoring of compliance with conditions imposed, such as drug testing.

According to data provided in the report *Exploring the Costs of Alternatives to Suspended Sentences* drug treatment orders cost \$26,000.00 per participant per annum meaning that an additional \$1,872,000.00 will need to be made available annually.⁴ It should also be noted that if drug treatment orders were extended to all persons wanting to access the program in the Magistrates Court, the numbers would be much higher, particularly given the program's current restriction to 80 participants and its inaccessibility to persons who solely misuse pharmaceuticals or alcohol.⁵

In light of these figures it is vitally important that the State Government at the very least match the funding made available through the Federal Government's Illicit Drug Diversion Initiative to ensure that all offenders sentenced in the

⁴ The figure of \$26,000 per participant per annum is outlined in a report prepared for the Sentencing Advisory Council as part of their paper on phasing out suspended sentences: John Walker and Lorana Bartels, *Exploring the Costs of Alternatives to Suspended Sentences* (November 2015). The report is available at <http://www.sentencingcouncil.tas.gov.au> (Accessed 5 September 2016).

⁵ Section 27B(1)(b)(i) of the *Sentencing Act 1997* (Tas) provides that the court may only make a drug treatment order if "satisfied on the balance of probabilities that the offender has a demonstrable history of *illicit* drug use" [emphasis added]. This would exclude persons who misuse pharmaceuticals and/or alcohol.

Supreme Court assessed as both eligible and suitable are able to access the treatment they require to address their underlying drug problem.⁶ Or, in the words of the Chief Justice of the Supreme Court of Tasmania:⁷

I think it is very unfortunate that the authorities do not have the funding to make available as many places as are needed for these programs. We would be a lot better off if more people were able to undertake them and be rehabilitated by means of these programs.

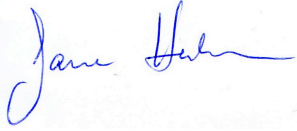
As well as appropriate funding for drug treatment orders, it is vital that deferred sentences are also properly funded, particularly if the principle of equality before the law is to be upheld. As it stands, the Bill allows for the deferral of a sentence whilst the offender is assessed for their capacity to rehabilitate or participation in a reintegration program. It is essential that these services are available to all offenders and not just those with financial means. It would be extremely concerning if a paucity of funding resulted in the wealthy having the means to access assessment or participation in a reintegration program and thereby avoid imprisonment while the financially disadvantaged were sentenced to imprisonment due to their impecuniosity.

In summary, given the Government's commitment to addressing offender behaviour through the introduction of these reforms we do not want them to fail. We therefore call on you to ensure that both drug treatment orders and deferred sentencing are properly resourced.

Signed by

⁶ According to the most recent data, in 2014-15 the Court Mandated Diversion received approximately \$1,540,000 for 80 participants including both offenders on a CMD order and those being assessed for suitability for the order. As found in Sentencing Advisory Council, Phasing out of Suspended Sentences (Final Report) at paragraph 6.1.5.

⁷ Supreme Court Sentencing Remarks, *State of Tasmania v Joshua John Atkinson* (6th February 2015).



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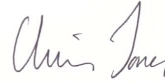
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