

# COMMUNITY LEGAL CENTRES TASMANIA

12 October 2021

Department of Justice  
Office of the Secretary  
GPO Box 825  
Hobart TAS 7001  
attn: Brooke Craven

via email: [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

Dear Brooke,  
**Re: *Family Violence Reforms Bill 2021***

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Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to respond to the *Family Violence Reforms Bill 2021*.<sup>1</sup> We support the Government's intent to introduce legislation to reduce levels of family violence in Tasmania and to improve the way our justice system deals with perpetrators of family violence.

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.

Awareness of family and domestic violence has increased significantly over the last few decades, and was heightened following the announcement of Rosie Batty as Australian of the Year in 2015. Nevertheless, rates of family and domestic violence remain high. According to the most recent *Australian Bureau of Statistics* data, there were 145 victims of family and domestic violence related homicide recorded in 2020, an increase of 12 per cent from the previous year. Nationally, almost two in five homicide and related offences (37 per cent or 145 victims) recorded by state and territory police were family and domestic violence related.<sup>2</sup> As well, almost half of all assaults (46.9 per cent) in Tasmania in 2020 were family and domestic violence related, a 1 per cent increase on 2019.<sup>3</sup>

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<sup>1</sup> CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

<sup>2</sup> Australian Bureau of Statistics, 'Recorded Crime – Victims'. As found at <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020#victims-of-family-and-domestic-violence-related-offences> (Accessed 12 October 2021).

<sup>3</sup> Australian Bureau of Statistics, 'Recorded Crime – Victims'. As found at <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020#victims-of-family-and-domestic-violence-related-offences> (Accessed 12 October 2021).

Sentences for contraventions of Family Violence Orders or Police Family Violence Orders in Tasmania remain high with the Sentencing Advisory Council's sentencing database noting that between 1 July 2015 - 16 April 2021 there were 726 sentences for breach of a family violence order, an interim family violence order or a police family violence order.<sup>4</sup>

We are also concerned at the lack of transitional housing for survivors wanting to escape abusive relationships. Family and domestic violence is the most common reason provided by people seeking support from specialist homelessness services in Australia.<sup>5</sup> The current lack of transitional housing means that some survivors of domestic and family violence feel that they have no choice but to remain in violent and abusive relationships. As the following data demonstrates, the number of people seeking housing because of family and domestic violence in Tasmania has remained relatively stable over the last three years:<sup>6</sup>

**Family violence indicated as a reason for seeking assistance**

<b>Family Violence Reason</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Yes	1 590	1 553	1 560
No	4 918	5 070	4 884
<b>Total</b>	<b>6 508</b>	<b>6 623</b>	<b>6 444</b>

The data also demonstrates that Tasmanian survivors of family and domestic violence who are homeless when they request assistance with housing has increased by 8 per cent over the last three years:

**Housing status (first reported) - family violence clients**

<b>Homelessness Status</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Primary homeless: <ul style="list-style-type: none"> <li>• No shelter or improvised/inadequate dwelling</li> <li>• Other homeless</li> </ul>	147	152	159
Other	1 443	1 401	1 401
<b>Total</b>	<b>1 590</b>	<b>1 553</b>	<b>1 560</b>

<sup>4</sup> Sentencing Advisory Council, *Sentencing statistics*. The data relates only to cases where a single sentence was imposed for the charge. The data excludes cases where a global sentence was imposed (a single sentence for several charges) as well as offenders sentenced under the *Youth Justice Act 1997* (Tas), Supreme Court cases and breaches of court orders or applications. As found at <https://www.sentencingcouncil.tas.gov.au/statistics/magistratescourt> (Accessed 13 October 2021).

<sup>5</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services Annual Report 2019-20*. As found at <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/summary> (Accessed 12 October 2021).

<sup>6</sup> Correspondence received from Kylie Fidanza, Principal Performance Advisor with Communities Tasmania on 5 July 2021.

Most worryingly, survivors of family and domestic violence who remain homeless after requesting assistance has risen from one third (34 per cent) to almost half (49 per cent). And, the number of survivors who are housed in either a social housing or private rental property has dropped by 37 per cent.

**Housing status (last reported) - family violence clients**

<b>Homelessness Status</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>
Primary homeless: <ul style="list-style-type: none"> <li>• No shelter or improvised/inadequate dwelling</li> <li>• Other homeless</li> </ul>	50	83	78
Secure accommodation: <ul style="list-style-type: none"> <li>• Public or community housing</li> <li>• Private or other housing</li> </ul>	1 178	725	744
Other	362	745	738
<b>Total</b>	<b>1 590</b>	<b>1 553</b>	<b>1 560</b>

It is imperative that a whole of Government approach is taken to addressing family and domestic violence including investing in transitional housing and community education as well as legislative reform.

In relation to the Bill, we make the following observations.

**Serial family violence perpetrator**

The principal reform introduced by the Bill is the ability of a court or judge to declare an offender a serial family violence perpetrator. In order for the declaration to be made the offender must be at least 18 years of age and have at least two indictable offences or three indictable or summary family violence offences that have been recorded on separate days. Anecdotally, we are aware that assault is often tried as indictable offences but that other forms of abuse including economic and emotional abuse are often tried summarily. We do not believe that in making the declaration there should be any distinction between indictable and summary offences. We therefore recommend that the number of indictable or summary offences is consistent. Although there is a concern that unintentional breaches of Police or Family Violence Orders may result in some survivors being declared a serial family violence perpetrator, we believe that there are appropriate safeguards in place, with section 29A(3) providing discretion in the making of the declaration and section 29(4) requiring the court or judge to consider “the nature and circumstances of the family violence offences” and “any other matter that the court or judge considers relevant”.

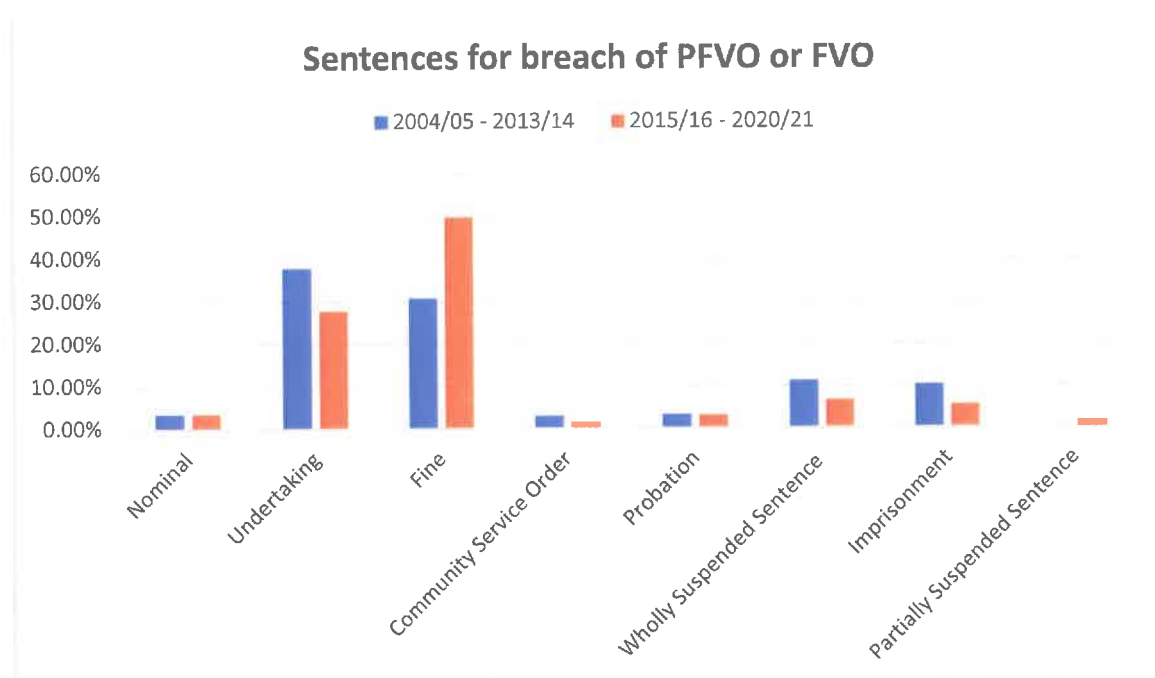
**Behaviour change programs**

The Sentencing Advisory Council reviewed breaches of family violence orders and police family violence orders in its 2015 report *Sentencing of Adult Family Violence Offenders*.<sup>7</sup>

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<sup>7</sup> Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders* (Final Report No. 5: October 2015). As found at [https://www.sentencingcouncil.tas.gov.au/data/assets/pdf\\_file/0018/333324/SAC\\_family\\_violence\\_report\\_-\\_corrected\\_accessible\\_version\\_for\\_web.pdf](https://www.sentencingcouncil.tas.gov.au/data/assets/pdf_file/0018/333324/SAC_family_violence_report_-_corrected_accessible_version_for_web.pdf) (Accessed 12 October 2021).

The data collected in that report was from 2004/05 – 2013/14 and can be contrasted with more recent sentences imposed in the period 2015/16 – 2020/21 as the following graph demonstrates:



The graph demonstrates that whilst Magistrates are now more likely to sentence offenders more harshly for minor breaches of a family violence order by imposing a fine instead of a good behaviour bond, they are less likely to impose imprisonment for serious breaches with 14 per cent sentenced to imprisonment over the last five years compared with 21 per cent between 2004/05 - 2013/14. However, as the Sentencing Advisory Council has observed "the imposition of sanctions alone is not bringing about a change in offender behaviour" and "it may be that a greater investment in rehabilitative interventions and the adoption of a more therapeutic approach to sentencing should be considered".<sup>8</sup>

The data does not detail how many offenders sentenced to a good behaviour bond were ordered to participate in a rehabilitation program. As well, although section 8(4) of the *Sentencing Act 1997* provides that offenders sentenced to a fine may also be required to participate in a rehabilitation program, it is unclear from the data whether this occurs in practice. The proposed amendment to section 16 of the *Family Violence Act 2004* (Tas) to order participation in a rehabilitation program will ensure that the court is addressing the cause of the offending at the same time as allowing for monitoring and/or punishment.

Participation in a rehabilitation program as a condition of a Family Violence Order is a reform we strongly support. However, participation is futile if the perpetrator is unsuitable. The additional requirement that an assessment be undertaken to ensure eligibility and suitability is supported. Some offenders may be better suited to alternative

<sup>8</sup> Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders* (Final Report No. 5: October 2015) at 31.

forms of rehabilitation to group programs such as the Family Violence Offender Intervention Program (FVOIP) and we therefore recommend that the definition of 'rehabilitation program' is broadened to include one-on-one counselling as is the case in the Australian Capital Territory.<sup>9</sup>

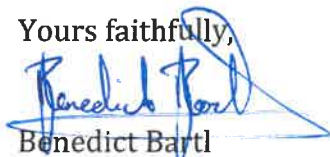
According to the Department of Justice's most recent Annual Report there were 44 participants who commenced the Family Violence Offender Intervention Program (FVOIP) in 2019/20 compared to 80 participants in 2017/18.<sup>10</sup> We strongly recommend that the Department of Justice undertake some modelling on the projected increase in persons found to be both eligible and suitable for a behaviour change program. In the event that an increase in participation numbers is likely, additional resources must be made available.

We also note that drug treatment orders are one of the rehabilitation programs recommended by the Sentencing Advisory Council with the research demonstrating a correlation between substance abuse and family violence.<sup>11</sup> According to the Sentencing Advisory Council the current eligibility requirement that illicit drug use contributed to the commission of the offence (s27B(1)(b)) "means that a large proportion of offenders who have problems with alcohol abuse are ineligible".<sup>12</sup> We strongly support extending the eligibility criteria for drug treatment orders to also include offenders who abuse legal drugs including alcohol.<sup>13</sup>

Finally, we note that section 13(b) of the *Family Violence Act 2004* (Tas) currently provides that in determining the sentence for a family violence offender the court or judge is to "take into account the results of any rehabilitation program assessment undertaken in respect of the offender". It is our understanding that enrolment or mere attendance is used by some defence lawyers as a mitigating factor. We strongly recommend that section 13(b) is amended so that reference is made to participants having "genuinely and actively engaged" in the rehabilitation program.

If you have any queries, or would like to discuss our submission further, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl  
Policy Officer

**Community Legal Centres Tasmania**

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<sup>9</sup> Section 38(2)(n) of the *Family Violence Act 2016* (ACT).

<sup>10</sup> Department of Justice Annual Report 2019/20 at 33. As found at [https://www.justice.tas.gov.au/data/assets/pdf\\_file/0004/588064/doj\\_annualreport20\\_V4.pdf](https://www.justice.tas.gov.au/data/assets/pdf_file/0004/588064/doj_annualreport20_V4.pdf) (Accessed 13 October 2021).

<sup>11</sup> Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders* (Final Report No. 5: October 2015) at 42.

<sup>12</sup> Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders* (Final Report No. 5: October 2015) at 42.

<sup>13</sup> Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders* (Final Report No. 5: October 2015) at 42.