

COMMUNITY LEGAL CENTRES TASMANIA

3 September 2018

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

via email: haveyoursay@justice.tas.gov.au

To Brooke Craven,
Re: *Family Violence Reforms Bill 2018*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Family Violence Reforms Bill 2018*.¹

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.

We strongly support the intent of the Bill to adopt the recommendations contained in the Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse and strengthen family violence laws. In particular, we support the introduction of a new offence of persistent family violence, the clarification of the law following the High Court's decision in *Chiro v The Queen* [2017] HCA 37 and the guarantee that self-represented defendant's will not be permitted to cross-examine a witness who is alleged to be the victim of family violence.

- ***Amendments to s125A of Criminal Code***

We support an amended section 125A of the *Criminal Code Act 1924* (Tas) to clarify that members of a jury do not need to be satisfied that the same three unlawful sexual acts were committed on the same three occasions. Whilst we strongly support the right of an accused to know the case against them and thereby ensure their right to a fair trial, the Royal Commission into Institutional Responses to Child

¹ CLC Tas would like to acknowledge Suddathcharige Manoj Fernando and Lena Lashin who assisted in the preparation of this response.

Sexual Abuse outlined the particular difficulties of child sexual abuse survivors. These difficulties include:²

- young children may not have a good understanding of dates, times and locations or an ability to describe how different events relate to each other across time;
- delay in reporting may cause memories to fade or events to be (wrongly) attributed to a particular time or location when they in fact occurred earlier or later, or at another location;
- the abuse may have occurred repeatedly and in similar circumstances, so the victim or survivor is unable to describe specific or distinct occasions of abuse.

Similar concerns have also been expressed in case law with two members of the South Australian Court of Criminal Appeal observing that a requirement that particular acts be identified may “produce the perverse paradox that the more extensive the sexual exploitation of a child, the more difficult it can be proving the offence”.³

As a result of the expert evidence presented to the Royal Commission and the concerns outlined by senior members of the Judiciary we support the adoption of an amended section 125A of the *Criminal Code Act 1924* (Tas).

We also support the clarification of section 125A of the *Criminal Code Act 1924* (Tas) that judicial officers are not required to ask the jury of the nature or character of the sexual relationship maintained in sentencing an offender for the crime of maintaining a sexual relationship with a young person.⁴

- ***Persistent Family Violence Offence***

As outlined in our response to the Department of Justice *Family Violence – Strengthening Our Legal Responses Consultation Paper* we support the creation of an offence of persistent family violence. The advantages of the new offence are the recognition that family violence often takes place over a prolonged period of time and conviction should allow for expeditious identification in future family violence and other legal proceedings.

The requirement that the Director of Public Prosecutions provide written authority before a prosecution for persistent family violence is commenced is an important safeguard to ensure that the charge is only made in appropriate cases. Nevertheless, we strongly believe that the circumstances justifying a prosecution of persistent family violence should be publicly available. In our opinion, successful completion of a rehabilitation program and/or the length of time between offences are considerations that should be taken into account by the Director of Public Prosecutions. We therefore recommend that the Director of Public Prosecutions

² Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse at 10.

³ *R v Johnson* [2015] SASCF 170 at [10] per Sulan and Stanley JJ.

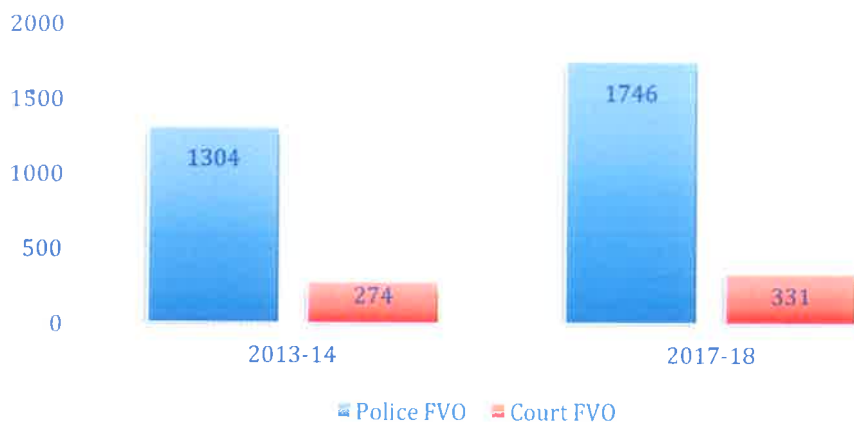
⁴ *Chiro v The Queen* [2017] HCA 37 at [43] per Kiefel CJ, Keane and Nettle JJ.

publicly release guidelines outlining the considerations taken into account in determining prosecution of persistent family violence.

Whilst the creation of an offence of persistent family violence is welcome, it is equally important that appropriate funding is provided for rehabilitation programs that address the underlying cause/s of the offender's behaviour. In 2013-14 for example, 47 offenders commenced the Family Violence Offender Intervention Program (FVOIP) with 39 offenders completing the program.⁵ Unfortunately, as the Sentencing Advisory Council noted at the time "the numbers represent only a very small proportion of the total number of offenders".⁶

Since 2013-14 there has been a significant increase in family violence orders issued by both the police and courts with Tasmania Police data (below) noting a 33 per cent increase in police family violence orders and a 20 per cent increase in court family violence orders over the last four years.⁷

No. of Family Violence Orders in Tasmania



With most family violence offenders likely to either remain in the community after being sentenced, or to be released back into the community after serving a term of imprisonment, it is imperative that there is appropriate funding for rehabilitation programs for both medium and high risk family violence offenders. This funding must be guaranteed regardless of whether the offender has been convicted of a persistent family violence offence.

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

⁶ Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders* (Final Report No. 5: October 2015) at 42.

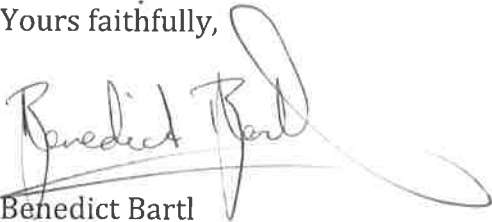
⁷ Tasmania Police, *Annual 2017-18*, Corporate Performance Report and Tasmania Police, *Annual 2013-14*, Corporate Performance Report. As found at <https://www.police.tas.gov.au/about-us/our-performance/> (Accessed 31 August 2018).

- ***Evidence (Children and Special Witnesses) Act 2001***

We support amending the *Evidence (Children and Special Witnesses) Act 2001* (Tas) to be clear that a self-represented defendant is not permitted to cross-examine a witness who is the alleged victim of family violence. After consultation with members of the legal assistance sector, it is clear that additional funding will need to be provided to pay for the additional resources required. Anecdotally, we have been told that around 8 out of 10 defendants who have matters heard in the Magistrates Court for family violence related offences are represented. Based on the Tasmania Police data provided above, a lack of additional funding is likely to leave hundreds of cases stalled in the Magistrates Court.⁸ Additionally, a failure to provide funding at the commencement of the proceedings is likely to result in increased delays and cost as counsel is required to review the file, request transcripts of the part-heard hearing and take instructions. In the interests of a fair and expeditious hearing we strongly believe that legal representation must be provided for the entire hearing and not just the cross-examination.

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

⁸ The table included above notes that there were 2,077 family violence orders issued by the police or the Magistrates Court. If 20 per cent are unrepresented, this leaves 200 unrepresented defendants. As well, there may be other matters where the defendant will require representation.