

Department of Justice  
Office of Strategic Legislation and Policy  
GPO Box 825  
Hobart TAS 7001

14<sup>th</sup> October, 2016

Email: [legislation.development@justice.tas.gov.au](mailto:legislation.development@justice.tas.gov.au)

### **Submission to consultation on the Sentencing Amendment (Assaults on Frontline Workers) Bill 2016**

TasCOSS acknowledges that Ambulance Service, corrections staff, and Child Protection staff working with families in the child protection system are at times working in environments of considerable stress and that workers can be subjected to verbal and physical aggression.

We also acknowledge that there are some instances where this aggression and threatening behaviour escalates to cause serious bodily harm, and that when this occurs an appropriate response is called for. TasCOSS also supports the view that there are certain forms of employment which place workers in positions of vulnerability, and that the courts should view seriously assaults on people when they are engaged in the work associated with these forms of employment.

However, TasCOSS does not support the extension of mandatory imprisonment for offences that cause serious bodily harm to further categories of workers.

Our reasons for this follow.

TasCOSS is also concerned by the intervention of the Parliament in relation to sentencing. We cannot argue strongly enough for the importance of the courts having discretion in imposing penalties for crimes.

It is an essential principle of human rights that a penalty suffered by an offender fits the crime. In considering what punishment fits a crime a judge is required to consider both the harm caused by the crime and the level of culpability of an offender. The imposition of one size fits all responses leads to injustices and a denial of proper consideration of common law sentencing principles such as proportionality (a sentence must be proportionate to the gravity of the offence, having regard to the particular circumstances of the case) and that a sentence of imprisonment is a sentence of last resort. Mandatory imprisonment puts at risk achieving a just outcome in a particular case and puts at risk our ability to maintain our human rights obligations.

We are very concerned that this proposed extension of mandatory sentencing extends the number of potential offenders who will be imprisoned regardless of the circumstances of their case. Grave concerns have been expressed by TasCOSS members about the Amendment Bill. The concern is that this legislation puts people who may at times act violently for reasons beyond their control (such as an episode of severe mental illness, the consequences of acquired brain injury, dementia, intellectual disabilities or other cognitive issues) at unfair risk of imprisonment. In fact, anecdotal information from the Royal Hobart Hospital suggests that, apart from the problems experienced in the obstetric and paediatric units around

child protection cases, the main groups who are aggressive with staff are patients affected by drugs and alcohol, *aggressive psychiatric patients* and *patients suffering from dementia*<sup>1</sup>.

We do not have confidence that the current provisions are enough to reflect the complexity of situations which can lead to assaults. It appears to be assumed that the public interests test exercised by the Department of Public Prosecutions (DPP) and the provision in the *Sentencing Act 1997 (Tas)* that an offender can be exempted from mandatory imprisonment if there are 'exceptional circumstances' will protect vulnerable people acting for reasons beyond their control. But the evidence of mandatory sentencing elsewhere has demonstrated that mandatory imprisonment impacts disproportionately on vulnerable groups.<sup>2</sup>

It is to be assumed that the Government hopes that adopting a simplistic approach will provide a simple deterrent to potential offenders. The Government has access to the research which establishes that such measures are not effective deterrents. This is well understood, expressed, for example, by both the Law Society of Tasmania<sup>3</sup> and Australian Law Council that

*there is a lack of persuasive evidence to suggest that the justifications often given for mandatory sentences – retribution, effective deterrence, incapacitation, denunciation and consistency – achieve the intended aim. Instead, mandatory sentencing regimes can produce unjust results with significant economic and social costs without a clear and directly attributable corresponding benefit in crime reduction. Further, mandatory sentencing schemes undermine community confidence in judges to administer justice and deliver appropriate sentences.*<sup>4</sup>

While we acknowledge that paramedics and child protection workers work in stressful environments it does not appear that serious assaults on emergency service workers in Tasmania are an issue which merits this heavy handed response; the proposal to introduce it appears to be a populist response to media stories. While there is no doubt that workers in these professions report being subjected to verbal abuse, research conducted by Tasmania's Sentencing Advisory Council (SAC) in 2013 found there 'are very few serious assaults on emergency service workers in Tasmania'<sup>5</sup>. The SAC supported the findings of the Drug and Crime Prevention Committee of the Parliament of Victoria, that 'media reporting tends to sensationalise the issue of violent crime, generating fear among the general population that does not match the actual level of risk faced'.<sup>6</sup>

Perhaps the intention of the Bill is to be a clear and simple deterrent. In our view the proposed amendment only adds complexity and confusion. The Bill creates an artificial category of workers who will apparently be protected by these mandatory sanctions. This is in addition to a different set of workers who are specifically

---

<sup>1</sup> Interview with senior RHH staff cited in Sentencing Advisory Council, *Assaults on Emergency Service Workers, Final Report No. 2*, March 2013.

<sup>2</sup> Law Council of Australia 'The mandatory sentencing debate' < <http://www.lawcouncil.asn.au/lawcouncil/index.php/law-council-media/news/352-mandatory-sentencing-debate>>

<sup>3</sup> The Law Society of Tasmania 'Law Society opposes Sentencing Amendment (Assaults on Police Officers) Bill, Media Release – 26 November, 2014 < <http://lst.org.au/media-release-26-november-2014/>>

<sup>4</sup> Ibid

<sup>5</sup> SAC 2013, Op cit,

<sup>6</sup> Drugs and Crime Prevention Committee, cited in SAC 2013 pv

mentioned in other legislation<sup>7</sup>, and a range of workers who actually, statistically, are more likely to be assaulted but who are not covered by any specific legislation but who, like the rest of the community, are covered by the provisions of the criminal code. (According to WorkCover statistics professions other than police officers most affected by assaults serious enough to merit workers compensation claims are: teachers, teacher aides, taxi drivers, disability support workers and other welfare workers).<sup>8</sup>

Nurses and midwives have been included in the definition of ‘frontline workers’. No information has been provided to tell us *which* nurses are covered by the Amendment Bill; it is to be assumed it is anyone employed in any workplace as a nurse. Enrolled and registered nurses are employed in a range of workplaces, including in community sector organisations providing residential aged care and disability services. Are these nurses covered by the Bill? If they are, the Government has failed to communicate with key stakeholders in the disability, mental health and residential aged care service sectors about these proposed changes.

But is a nurse working in a residential aged care service what the community would call a ‘frontline worker’? Definitions of frontline, or emergency service, workers generally suggest that they work at the point of contact with an emergency. Community discussions around the Amendment Bill and the consultations conducted by the Sentencing Advisory Council also suggest that working in residential aged care would not be considered frontline, or emergency service, work. In these discussions ‘frontline workers’ have been thought generally of as state service employees, engaged directly in the provision of emergency and primary health care in stressful hospital or emergency environments.

The inclusion of nurses and midwives in the discussion highlights the confusion about who we are seeking to protect with this legislation. The Liberal Party’s pre-election statement said that it would create a new crime of serious assault committed on *police officers, child protection workers, fire officers, hospital workers, prison officers, child protection workers, community corrections staff and youth justice workers*. The Sentencing Advisory Council in its community consultation defined emergency services workers as ‘*any person engaged, whether for remuneration or voluntarily, in the Tasmanian Police Service, the SES, the TFS, Ambulance Tasmania, or any person providing rescue, resuscitation or medical treatment including, but not exclusively people employed in hospitals*’. In this Bill the Government has settled on a list which includes correctional staff, child protection staff, ambulance officers, nurses – and for the first time apparently in any discussions, midwives. In 2013 the SAC advised the Attorney-General that an appropriate definition of emergency service worker would need to be developed. Presumably the list of occupations in the Amendment Bill are the Government’s response to this, but the Bill does not provide a definition. It simply provides a confusing and inconsistent list.

Is change necessary at all, or a current protections for workers enough?

---

<sup>7</sup> For example, this proposed amendment will sit alongside the *Police Offences Act 1935 (Tas)* under which it is an offence to assault, resist, intimidate or wilfully obstruct a public officer (which has been judged to cover government-employed ambulance and fire officers). There is also the *Child Care Act 2001(Tas)* the *Animal Health Act 1995 (Tas)* and the *Food Act 2003 (Tas)* which all make it an offence to assault inspectors or officers; the *Sex Industry Offences Act 2005 (Tas)* which makes it an offence to assault a sex worker; and the *Emergency Management Act 2006 (Tas)* which makes it an offence to assault emergency management workers or volunteers.

<sup>8</sup> WorkCover Tasmania, cited in SAC 2013, p34

In their submission to the SAC's consultation in 2013, the DPP said that a review of the cases before the Supreme Court suggested that the court already had a philosophically consistent way of dealing with assaults on various categories of workers. The DPP pointed out that previous judgements showed that appropriate recognition is given to the occupation of victims of assault in accordance with their vulnerability to such assaults (for example, the vulnerability of taxi drivers.)<sup>9</sup>

It should also be noted that the Supreme Court already considers it an aggravating factor if the victim of an assault was at his or her workplace at the time of the offences.

In the lightning consultation period given to the community to respond to this Amendment Bill (eight working days) it has not been possible for stakeholders such as TasCOSS to get clarity from the Department of Justice as to the meaning of other parts of the proposed Bill. For example, section 16A of the *Sentencing Act 1997 (Tas)* says that mandatory imprisonment for an assault on a police officer will occur if the policeman is seriously assaulted *while on duty*. If the Amendment Bill is passed this will also be the case for these new 'frontline workers'. Section 16A of the *Sentencing Act 1997 (Tas)* doesn't specify that the assault must occur at the place of employment or while someone is undertaking the duties of their employment. Possibly this was thought to make sense in relation to police - a profession identified by a distinctive uniform. But what is the intention of the Bill with this broad range of professions? If a child protection worker who is on duty and en route to a client's house is assaulted by a stranger in a road rage incident, will the offence incur a mandatory sentence? And if so, surely this creates inconsistency with similar cases – similar assaults against other citizens whose professions don't happen to be on the 'frontline worker' list?

It must be stated again that our concerns about the confusion created by the proposed amendment have been amplified by the inadequate consultation period.

Any queries about this submission, please contact

Kym Goodes  
CEO  
TasCOSS

Ph: 62310 755  
Email: [kym@tascoss.org.au](mailto:kym@tascoss.org.au)

---

<sup>9</sup> DPP submission, cited in SAC 2013, p36