



Tasmanian Council of Social Service Inc.

Sentencing Amendment (Presumptive Sentencing for Assaults on Frontline Workers) Bill 2024

March 2024



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About TasCOSS

TasCOSS's vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to Tasmanians on low incomes or living in vulnerable circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

TasCOSS welcomes the opportunity to make a submission on the consultation draft *Sentencing Amendment (Presumptive Sentencing for Assaults on Frontline Workers) Bill 2024* (the Draft Bill). Our submission reflects the expertise of our members, as well as evidence-based research on sentencing in Australia.

If enacted, the Draft Bill will amend the *Sentencing Act 1997* to impose a minimum sentencing presumption of six months for assaults and other offences which cause serious bodily harm to frontline workers.

This submission uses the language of minimum mandatory sentence and presumptive sentence. Minimum mandatory sentences “generally set a minimum or fixed penalty for an offence”.¹ Presumptive sentences are similar to minimum mandatory sentences in that they provide a fixed minimum sentence to be imposed by a court in sentencing offenders, but also grounds upon which the court may rebut this presumption and proceed to exercise full discretion over sentencing.²

Key Issues

TasCOSS strongly supports workers’ rights, which include the right to feel safe at work and in the exercise of workplace responsibilities. Whilst we condemn actions which compromise the safety and wellbeing of workers, we are also concerned about the effectiveness of presumptive sentencing as a safety measure. Given the research on mandatory sentencing and its impacts on communities experiencing marginalisation (explored further below), we are concerned the Draft Bill may be more likely to perpetuate the perverse consequences of punitive sentencing measures than it is to decrease incidents of assault.

Evidence against mandatory sentencing

TasCOSS opposes the use of mandatory and presumptive sentencing legislation and has raised concerns about such measures in previous submissions.³ These concerns are consistent with the statements and views of various legal academics and organisations who have consistently opposed the imposition of mandatory sentences regimes for a wide range of offences. For example, the Law Council of Australia notes:

...[t]here 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.⁴

¹ Law Council of Australia, [Mandatory Sentencing Factsheet](#), pp. 1.

² Sentencing Advisory Council, [Sentencing Matters: Mandatory Sentencing](#), pp. 6.

³ TasCOSS submission to the *Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017*; TasCOSS submission to the [Inquiry into Tasmanian Adult Imprisonment and youth Detention Matters 2023](#).

⁴ Law Council of Australia, [Policy Discussion Paper on Mandatory Sentencing](#), 2014, pp. 46.

Issues with the Draft Bill

In relation to the Draft Bill, we note the following:

- **There is insufficient evidence that a mandatory or presumptive sentencing scheme for assaults against frontline workers will make people safer**

Whilst the Tasmanian Government has promoted presumptive sentencing as a part of a ‘tough on crime’ approach to policy designed to make communities safer, there is little evidence to suggest that these types of laws operate as a successful deterrent. Legal organisations (including the Law Institute of Victoria) note that minimum sentencing regimes “do not reduce crime rates”,⁵ while the Law Society of Western Australia argues there is no evidence that it works to deter criminal behaviour and is more likely to result in harsh and disproportionate sentences.⁶ Similarly, there is little evidence (for example, from jurisdictions with mandatory penalties for similar offences) that the introduction of mandatory sentencing against emergency service workers has resulted in a reduction in this type of offence.

- **The definition in the Draft Bill is inconsistent with other jurisdictions**

The Draft Bill includes an expanded definition of ‘frontline workers’, which means that particular offences committed against this cohort of workers (which includes ambulance officers, retail workers, hospitality workers or transport workers) will carry a presumed minimum sentence of six months’ imprisonment. Although other Australian jurisdictions have mandatory sentencing regimes for offences committed against certain classes of emergency workers, the definition contained in the Draft Bill is much broader than other jurisdictions – for example, the relevant legislation in NSW relates to police officers, correctional staff, youth justice officers, emergency services workers and health workers,⁷ and the Victorian legislation definition of ‘emergency workers’ (for the purpose of the mandatory sentencing provisions) also does not include retail or hospitality workers.⁸

- **The sentencing regime proposed in the Draft Bill will have a disproportionate impact on groups already marginalised within the criminal justice system**

TasCOSS is concerned at the impact of the Draft Bill on vulnerable members of the community, who are more likely to engage with the frontline workforce. For example, recent research demonstrates higher rates of mental illness and drug/alcohol use amongst people charged with this type of offence.⁹ Understanding extenuating circumstances would usually be a key consideration for a sentencing decision-maker, but this is restricted (or prohibited) under mandatory sentencing regimes, which can lead to perverse legal outcomes. For example, a person who is being apprehended by police for health-related reasons under the *Mental Health Act 2013*, who causes serious bodily harm to that police

⁵ Parliament of Victoria, [Inquiry into Victoria’s criminal justice system](#), Vol.1, pp. 541.

⁶ The Law Society of Western Australia, [The Law Society Strongly Opposes Mandatory Sentencing](#).

⁷ Crimes Act 1900 No 40 (NSW), Division 8A.

⁸ Sentencing Act 1991 (Vic), Section 10AA.

⁹ Sentencing Council of New South Wales, ‘Assaults on Emergency Workers’ (2020), accessed at <https://sentencingcouncil.nsw.gov.au/documents/our-work/assaults-on-emergency-services-workers/Report%20AESW.pdf>

officer, may be charged and then subject to the provisions of the presumptive sentencing regime, even though they may have been acutely unwell at the time of their alleged offending.

- **The sentencing regime will likely impact Aboriginal individuals and communities**

Recent research from other jurisdictions also highlights the impact of these laws and sentencing regimes on Aboriginal communities. A recent report from Queensland notes that, Aboriginal and Torres Strait Islander peoples are overrepresented among those sentenced for serious assault of a public officer, with men being sentenced at a rate 16 times greater than their non-Indigenous counterparts, and women being sentenced at a rate 12 times greater than non-Indigenous women.¹⁰ Similarly, a recent report from NSW notes that in relation to assaults against emergency workers, Aboriginal people are significantly over-represented among people charged and sentenced for these offences.¹¹

Aboriginal and Torres Strait Islander people represent 5% of Tasmania's population, yet they make up 23% of Tasmania's prison population.¹² While crime rates in Tasmania have remained relatively stable over the last decade, the incarceration of Aboriginal and Torres Strait Islander people increased by 111%, while the incarceration rates of non-Indigenous Tasmanians increased by 20% in that same time.¹³ The most recent Closing the Gap data further demonstrates that Tasmania is not on track to reach targets relating to systemic inequalities, including the incarceration rates of Aboriginal and Torres Strait Islander adults, and the overrepresentation of Aboriginal and Torres Strait Islander children in out of home care.¹⁴ Expanding Tasmania's presumptive sentencing legislation will not address the systemic drivers of rising imprisonment rates, but will continue to funnel those experiencing disadvantage into cycles of imprisonment.

Alternatives to mandatory sentencing

The Queensland Human Rights Commission has drawn together a number of international examples which highlight the need to consider whether non-legislative measures would achieve better outcomes than increased penalties. They note that the UK College of Paramedics advocates for worker de-escalation training to reduce risks of harm, and that Liverpool John Moores University representatives have called for public education to reduce incidents of assault and to better protect health care workers.¹⁵ These positions are aligned with those raised by paramedics cross 13 countries who identified the *"need for better training, improved communication and advanced warning, improved public education, better situational awareness and improved inter-agency cooperation"* as appropriate responses to risks of assault.¹⁶

Rather than promoting mandatory sentencing, we should be diverting people from the criminal justice system. Diversion allows offences to be dealt with away from the formal justice system. Its benefits include reducing recidivism if programs effectively address underlying behaviours and/or give offenders an

¹⁰ Queensland Sentencing Advisory Council, 'Penalties for assaults on public officers: Final Report' (August 2020), pp. 19.

¹¹ New South Wales Sentencing Advisory Council, 'Assaults on emergency workers' (July 2021), pp. 3.

¹² Tasmanian Aboriginal Legal Service, [First Nations people trapped by stacked system](#), May 2023.

¹³ Justice Reform Initiative, [Jailing is Failing](#), pp. 3.

¹⁴ Australian Government, Productivity Commission, [Closing the Gap Dashboard](#), Targets 10 and 12.

¹⁵ Queensland Human Rights Commission, [Penalties for assaults on police and other frontline workers](#), pp. 12.

¹⁶ *Ibid*, pp. 12.

opportunity to take responsibility their actions and engage in rehabilitation. An example of a diversionary program which has been recommended in other Australian jurisdictions for this type of offence is restorative justice conferencing,¹⁷ a diversionary option which already exists in Tasmania for children,¹⁸ but does not apply to adults. In relation to sentencing regimes for offences against public officers, the Queensland Sentencing Advisory Council notes:

'...there is substantial merit in the Queensland Government investigating the expanded use and availability of adult restorative justice conferencing as part of a broader criminal justice response to assaults on public officers and others who are assaulted at work. This program, which gives victims the ability to meet face-to-face with the offender in a supportive environment, was viewed very positively by a wide range of stakeholders during consultations and in submissions. Although restorative justice conferencing may not be an option all victims wish to pursue, many stakeholders commented on its potential to improve victim satisfaction by giving victims a role as active participants in the process and allowing them to communicate the harm that has been caused by the offender's actions other than through the making of a victim impact statement. It may also provide victims with greater confidence in the outcome'.¹⁹

TasCOSS strongly supports the development of further diversionary programs, which would provide opportunities for early intervention and divert offenders away from the criminal justice system. Studies demonstrate that diversionary options are both extremely cost-effective²⁰ and reduce recidivism rates.²¹

Address drivers of offending

Minimum mandatory and presumptive sentencing provisions assume that assaults on frontline workers are premeditated, however, increased violence toward frontline workers should be considered within the context of the drivers of offending, including poverty, homelessness, mental ill-health, childhood trauma and structural inequality, which may be aggravating factors in assaults. These drivers are exacerbated by government decisions to inadequately resource health, education, child protection and youth justice services, the community services industry and a lack of safe, accessible and affordable housing. These structural issues increase vulnerability and create undue stress for both community members and frontline workers as they engage at points of crisis.

Without adequate resourcing to support trauma informed practice, or investment in prevention and early intervention services, community members and frontline workers will continue to experience the outcomes of system failures through exposure of frontline workers to acts of violence. Presumptive sentences do not

¹⁷ Discussed in Queensland Sentencing Advisory Council, 'Penalties for assaults on public officers: Final Report' (August 2020), pp. 291-297.

¹⁸ For example, community conferences are a type of restorative justice conference – see Division 3 of Youth Justice Act 1997 (Tas).

¹⁹ [final-report-assault-public-officers.pdf](https://www.sentencingcouncil.qld.gov.au/final-report-assault-public-officers.pdf) ([sentencingcouncil.qld.gov.au](https://www.sentencingcouncil.qld.gov.au)) pp. 296

²⁰ See, for example, Baker, J and Goh, D (2004), 'The Cannabis Cautioning Scheme Three Years On: An implementation and outcome evaluation', accessed at <https://www.bocsar.nsw.gov.au/Publications/General-Series/r54.pdf>, pp. 35-37.

²¹ Payne, J, Kwiatkowski, M and Wundersitz, J (2008), 'Police drug diversion: a study of criminal offending outcomes', Australian Institute of Criminology, pp. 40-46.

address the causes of violence, and penalties for offenders are enforced *after* a worker has been seriously assaulted.

Conclusion

There is a volume of evidence that demonstrates mandatory sentencing is not an effective deterrent and will do little to protect frontline workers from harm. Due to the insufficient evidence that mandatory or presumptive sentencing makes frontline workers safer, TasCOSS opposes the Draft Bill and recommends it be withdrawn.

Rather than promoting mandatory sentencing, to increase frontline worker and community safety, policy and legislative reform must be informed by evidence-based alternatives. Better training and improved public education are advanced as appropriate responses to reduce risks of assault and achieve better outcomes than increased penalties. Greater use of diversionary options and investment in addressing the drivers of offending will also be more cost-effective and reduce recidivism, as presumptive sentences do not address the causes of violence, and penalties for offenders are enforced *after* a worker has been seriously assaulted.

System failures such as inadequate resourcing to support trauma informed practice, or investment in prevention and early intervention services, will ensure that frontline workers and community members continue to be at higher risk to acts of violence.

Recommendations

1. The Tasmanian Government withdraws this Draft Bill to prevent unjust sentencing provisions.
2. The Tasmanian Government works proactively to reduce contact with the criminal justice systems by increasing investment to: expand diversionary options; adequately resource prevention and early intervention services; and address the drivers of offending.