

COMMUNITY LEGAL CENTRES TASMANIA

24 September 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

via email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Re: Crimes Amendment (Remission of Sentences) Bill 2021

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Crimes Amendment (Remission of Sentences) Bill 2021* (the draft Bill). Our response is focused on three significant concerns with the Bill, namely the failure to take into account the Closing the Gap recommendations, the retrospectivity provisions and the acknowledgment that a safer community is built on addressing the causes of crime not increased imprisonment.

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.

Tasmania was the last State or Territory to abolish remissions for most prisoners with the passing of the *Corrections Amendment (Prison Remission) Bill 2018*. Prior to that, the *Corrections Act 1997* (Tas) expressly provided that the Director of Corrective Services had the discretion to grant remissions “as an incentive, or reward for, good conduct”.¹

- ***Failure to acknowledge the Closing the Gap Targets***

We are concerned that the explanatory materials provided with the Bill fail to address the *National Agreement on Closing the Gap*.² According to a 2018 Australian Law Reform Commission report, the Aboriginal and Torres Strait Islander population constitutes just 2 per cent of the Australian adult population

¹ Section 90(2)(d) of the *Corrections Act 1997* (Tas).

² Australian Government, *National Agreement on Closing the Gap* (July 2020). As found at <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap> (Accessed 24 September 2021).

but comprises 27 per cent of the national adult prison population.³ The overrepresentation of Aboriginal and Torres Strait Islander people in Australia's prison system and the impact of abolishing remissions should be considered before any further debate on the Bill takes place, particularly given the Closing the Gap target of reducing the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031.

- ***Investment in rehabilitation programs***

According to the Productivity Commission's *Report on Government Services 2020*⁴ the number of adults returning to prison within two years has increased in most Australian jurisdictions. In Tasmania, the recidivism rate increased by 18 per cent between 2014/15 and 2018/19, followed by an 11 per cent increase in Western Australia, a 9 per cent increase in Queensland and the Australian Capital Territory and a 5 per cent increase in NSW.⁵ According to the same data, the most significant drop in recidivism was Victoria with a 1.8 per cent decline, followed by South Australia with a 1.5 per cent decline and the Northern Territory with a 0.16 per cent decline.⁶

In the Government's second reading speech it was noted that "[t]he Australian Government's most important responsibility is to keep Australians safe".⁷ In our opinion, the safest way to keep Australians safe is not by abolishing remissions for good behaviour but by investing in rehabilitation programs that address the cause of the offending behaviour.

Sentencing offenders to imprisonment does protect the community. But if Government's -at a State and Commonwealth level- genuinely believe in making our communities safer, they should be investing significantly in rehabilitation programs within prison, because most offenders will return to the community at the end of their custodial sentence. In other words, treating the cause of offending reduces recidivism and results in a safer community. Targeting alcohol and other drug offenders is particularly important with recent research demonstrating that 46 per cent of detainees who had used drugs attributed their detention to alcohol and/or other drug use.⁸

³ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133). Figure 3.1. As found at <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/3-incidence/over-representation/> (Accessed 24 September 2021).

⁴ Productivity Commission, *Report on Government Services 2020*, Table CA.4. As found at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice> (Accessed 24 September 2021).

⁵ Productivity Commission, *Report on Government Services 2020*, Table CA.4.

⁶ Productivity Commission, *Report on Government Services 2020*. As found at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice> (Accessed 24 September 2021).

⁷ Senator Anne Ruston, *Hansard*, Second Reading Speech, *Crimes Amendment (Remission of Sentences) Bill 2021*, 25 August 2021 at 76.

⁸ Australian Institute of Criminology, *Drug use among police detainees 2020* (AIC Statistical Report 35) at 2. As found at https://www.aic.gov.au/sites/default/files/2021-06/sr35_drug_use_monitoring_in_australia-2020.pdf (Accessed 24 September 2021).

We do not have Australia wide data, but if the data from Tasmania over the last five years is representative of most of Australia then a significant investment in rehabilitation programs is urgently needed.

In 2017, Tasmania's Sentencing Advisory Council found treatment programs lacking with "demand for treatment programs is outstripping the ability of Corrective Services to deliver programs".⁹

In 2018, the Custodial Inspector of Tasmania's *Report into Care and Wellbeing* found:

- There are two Alcohol and Drug Counsellors in the Tasmanian Prison Service for over 600 prisoners;
- There is a waiting list of over 100 prisoners for alcohol and other drug support, which has remained steady since October 2015;
- There is inadequate physical resourcing with not enough rooms available for treatment and programs;
- There are large numbers of prisoners being released back into the community without ever receiving any alcohol and other drug treatment or support;
- There is no alcohol and other drug 'residential' treatment unit for women prisoners and no plans to establish one.

The Custodial Inspector concluded that "the reality is there are a number of prisoners that enter custody and request support for alcohol and drug related issues but cannot access it due to staffing limitations".¹⁰

Finally, in June 2021 the Tasmanian Attorney-General conceded that "the alcohol and drug therapeutic program known as Apsley was suspended in February 2020.¹¹ The Apsley Alcohol and Drug Treatment Unit ('Apsley') had been a twelve-week ten-bed facility located within maximum security and focused on offenders "who have struggled with drug abuse for a long time".¹²

We strongly recommend that rather than abolishing remissions the Commonwealth Government should be working with State and Territory Governments to invest in rehabilitation programs within custodial environments. We would also have no objection to the draft Bill being amended so that the grant

⁹ Sentencing Advisory Council, *Mandatory Treatment for Alcohol and Drug Affected Offenders* (Research Paper No. 2: September 2017) at 20. As found at https://www.sentencingcouncil.tas.gov.au/_data/assets/pdf_file/0016/400147/SAC-Research-Paper-No.-2-Mandatory-treatment-for-alcohol-and-drug-affected-offenders.pdf (Accessed 24 September 2021).

¹⁰ Custodial Inspector of Tasmania, *Inspection of Adult Custodial Services in Tasmania 2017 - Care and Wellbeing Inspection Report* (October 2018) at 106.

¹¹ Tasmanian Parliament, House of Assembly, *Hansard*, 29 June 2021.

¹² Sentencing Advisory Council, *Mandatory Treatment for Alcohol and Drug Affected Offenders* (Research Paper No. 2: September 2017) at 20.

of remissions was conditional on active participation in rehabilitation or educative programs

- ***Retrospectivity***

We are also concerned that the Government intends to introduce legislation that is retrospective on the grounds of "community safety". As we have noted, abolishing remissions without addressing the causes of offending will not improve community safety. Nevertheless, in the event that the Government intends to pass this Bill into law we recommend removing its retrospectivity.

If you have any queries or we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,

Benedict Bartl
Policy Officer
Community Legal Centres Tasmania
