

COMMUNITY LEGAL CENTRES TASMANIA

24 March 2025

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

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

To the Department of Justice,
Re: *Sentencing Amendment (Aggravating Factors) Bill 2025*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Sentencing Amendment (Aggravating Factors) Bill 2025* ('the Bill').¹ Legislative recognition that hateful, prejudicial and opportunistic offending are aggravating factors in the sentencing process is supported on the basis that such conduct must be denounced. However, law reform cannot occur in isolation with public awareness, police training and alternative sentencing options also needed.

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.

Background

Offences that are motivated by hatred or prejudice ('hate crimes') often cause a greater level of harm both because the victim suffers more physical, mental and emotional trauma and because a targeted attack on an individual because of their identity affects groups who share the same characteristic. This ripple effect may lead to increased levels of fear and vulnerability as acts that are motivated by prejudice against minority or other groups can also have a community impact and lead to or reinforce damaging stereotypes.

In 2011 the Tasmania Law Reform Institute ('the TLRI') published a report entitled *Racial Vilification and Racially Motivated Offences*² which considered the adequacy of Tasmanian laws in relation to racial vilification and racially motivated offences and recommended the introduction of a sentence aggravation provision.³ Whilst the TLRI acknowledged that

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

² Tasmania Law Reform Institute, *Racial Vilification and Racially Motivated Offences* (Final Report No. 14).

³ Tasmania Law Reform Institute, *Racial Vilification and Racially Motivated Offences* (Final Report No. 14), Recommendation 5.

racially motivated offences are already recognised as a relevant sentencing consideration in common law,⁴ law reform was recommended because “this alone does not necessarily have the same symbolic value or denunciative effect that a specific provision would”.⁵

In 2017, Tasmania’s Parliament amended the *Sentencing Act 1997* (Tas) with the introduction of section 11B which provides that a motivation of racial hatred or prejudice is a relevant aggravating factor in sentencing:

11B. Racial motivation to be taken into account in sentencing offenders

In determining the appropriate sentence for an offender, the court is to take into account, as an aggravating circumstance in relation to the offence, whether the offence was motivated to any degree by –

(a) hatred for or prejudice against, on racial grounds, any victim of the offence; or

(b) hatred for or prejudice against, on racial grounds, a person or group of persons with whom at the relevant time any victim of the offence was associated or believed by the offender to have been associated.

Importantly, whilst section 11B requires Courts to take into account racial hatred as an aggravating factor, there is no mandatory requirement to increase the sentence, with the court continuing to retain the discretion as to the ultimate sentence imposed.

Following a request from the Tasmanian Attorney-General in January 2023, the Sentencing Advisory Council considered whether section 11B of the *Sentencing Act 1997* (Tas) should be expanded to include other forms of prejudicially motivated offending. The final report released in February 2024 recommended that section 11B of the *Sentencing Act 1997* (Tas) be expanded to include other forms of prejudicially offending as aggravating factors in sentencing.⁶

The Bill

We support clause 5 of the Bill which will expand section 11B of the *Sentencing Act 1997* (Tas) to include other forms of prejudicially motivated offending including race, religion, sexual orientation, gender and disability.⁷ Whilst all prejudicially motivated offending is able to be taken into account in sentencing,⁸ as the Sentencing Advisory Council recently recommended, the codification of a specific provision reflects “the importance of symbolically denouncing certain conduct... even if the technicalities of the offending are covered by existing law”.⁹ The amendment set out in Clause 5 provides an illustrative list of groups and attributes against whom prejudicial offending is directed. The use of the phrase ‘include, but is not limited to’ ensures that further legislative reform should not be required in the future when other groups or attributes are identified as requiring protection.

⁴ *Tasmania v Bigwood* (unreported, Supreme Court of Tasmania, Evans J, 31 May 2010).

⁵ Tasmania Law Reform Institute, *Racial Vilification and Racially Motivated Offences* (Final Report No. 14), Recommendation 5.

⁶ Sentencing Advisory Council, *Prejudice and Discrimination as Aggravating Factors in Sentencing* (Final Report: February 2024).

⁷ Clause 5 of Bill.

⁸ Section 80(2)(a) of the *Sentencing Act 1997* (Tas).

⁹ Sentencing Advisory Council, *Prejudice and Discrimination as Aggravating Factors in Sentencing* (Final Report: February 2024) at 15.

As the law currently stands, section 11B of the Act requires the court to be satisfied that the offending was “motivated to any degree” by hatred or prejudice. This threshold is supported on the basis that convictions have proven difficult in jurisdictions such as NSW which do not recognise part motivation.¹⁰ As the Tasmanian Aboriginal Legal Service notes in its response to the Sentencing Advisory Council, the recognition of part motivation as a test “is particularly relevant in cases where there is a possibility of multiple motives, or where attributes are assumed by the perpetrator - for example, an attack motivated by prejudice against homosexuals directed at an individual who the perpetrator assumes is homosexual based on dress alone”.¹¹

We strongly support the Bills focus on ‘hostility, malice or ill-will’ rather than ‘hatred’ or ‘prejudice’ on the basis that it requires the satisfaction of a lower threshold. We also support the Bill’s use of the term *demonstrate* hostility, malice or ill-will rather than having to satisfy the high evidentiary bar of proving that prejudicial motivation was the sole cause of the offending. Both of these amendments were recommended by the Sentencing Advisory Council.¹²

However, the expansion of section 11B of the *Sentencing Act 1997* (Tas) to include other forms of prejudicially motivated offending cannot be introduced in isolation. Comprehensive reform must include improved police education, training and reporting mechanisms to identify prejudice motivation and support victims. We endorse the findings of the Tasmanian Prejudice Related Violence Working Group who recommended:¹³

Tasmania Police allocate time and resources during recruit training to provide an overview of:

- (1) All forms of targeted violence;*
- (2) The barriers to reporting such crimes;*
- (3) The additional harms caused by these crimes; and*
- (4) The additional support that may be required by victim survivors.*

However, in our opinion, there is no reason why this work should be limited to new recruits, and we call on this police education to be mandatory across Tasmania Police. There also needs to be support for educational resources including training and public awareness campaigns to reduce prejudice and support victims of hate crimes.

Finally, we also strongly believe that all judicial officers should be required to undertake ongoing education and professional development as is currently required in Victoria and New South Wales.¹⁴ This training should include anti-discrimination training and the impact

¹⁰ Section 21A(2) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) provides that “the offence was motivated by hatred for or prejudice...” In the case of *R v Aslett* [2006] NSWCCA 49 at para. [124] the NSW Court of Criminal Appeal held that the test in NSW required clear proof of hatred or prejudice felt by the perpetrator towards the victim group.

¹¹ Tasmanian Aboriginal Legal Service, *Amendment of s11B of the Sentencing Act 1997 (Tas)* submission.

¹² Sentencing Advisory Council, *Prejudice and Discrimination as Aggravating Factors in Sentencing* (Final Report: February 2024), recommendation 3.

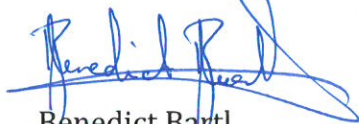
¹³ Sentencing Advisory Council, *Prejudice and Discrimination as Aggravating Factors in Sentencing* (Final Report: February 2024) at Appendix B.

¹⁴ The Judicial College of Victoria notes that it “is where the Victorian judiciary come for ongoing education and professional development. The Judicial Commission of New South Wales provides “a

of hate crimes on minority groups. The importance of this training is that judicial officers may choose to impose alternative sentencing options such as a 'rehabilitation program order' in appropriate cases.

If you have any queries, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

continuing education and training program for NSW judicial officers". As found at <https://www.judicialcollege.vic.edu.au/about-us> and <https://www.judcom.nsw.gov.au/about-the-commission/> (accessed 28 September 2023).