DRAFT SECOND READING SPEECH

HON. GUY BARNETT MP

Sentencing Amendment Bill 2016

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Madam Speaker, this Bill is the first legislative step in delivering on the Government's election commitment to progressively phase out suspended sentences of imprisonment and increase the range of sentencing options available to address criminal behaviour in Tasmania.

The *Sentencing Act 1997* provides for the sentencing of offenders in Tasmania. It currently provides a limited number of sentencing options for the courts ranging from fines to imprisonment. Other options include probation orders, community service orders and suspended sentences. Drug treatment orders are currently only available in the Magistrates Court.

In 2014, the Attorney-General asked the Tasmanian Sentencing Advisory Council to examine options for phasing out suspended sentences of imprisonment in Tasmania and introducing alternative sentencing options. In March 2016, the Sentencing Advisory Council (SAC) publicly released its Final Report: *Phasing Out of Suspended Sentences* (the Report).

The SAC Report confirmed that Tasmania's use of suspended sentences is higher than in all other Australian jurisdictions, partly due to the limited range of sentencing options currently available. The Report also revealed that around 45% of Supreme Court offenders who breached their suspended sentence were not subject to any breach action.

The Government believes that the high usage of suspended sentences, coupled with the failure to act on many breaches of suspended sentences has contributed to the lack of community confidence in this sentencing option. It is a confusing and controversial sentencing option which has been abolished in Victoria and New Zealand.

The SAC Report proposed a new sentencing model, recommending that the Government's reforms to abolish suspended sentences and introduce new sentencing options be phased in over a five-year period. The Government has released an implementation plan outlining when the new options will be introduced and the phasing out of suspended sentences will be commenced.

The Bill implements the first new alternative sentencing options, namely extending drug treatment orders to the Supreme Court and providing courts with the ability to defer sentencing so that an offender's rehabilitation and demonstrable capacity for change can be assessed and taken into account by the court prior to determining a final sentence.

Madam Speaker, I will now address specifically drug treatment orders, their current place in our sentencing regime, and the valuable amendments that this Bill will make to improve the sentencing options in relation to drug-related crime.

Drug treatment orders are a valuable sentencing option and are now used as a sentencing option in courts throughout Australia. Drug treatment orders have been available as a sentencing option in Tasmania since 2007, but have been restricted to summary offences or indictable crimes that were able to be determined by the Magistrates Court.

Madam Speaker, many consider that drug treatment orders have been effective in managing offenders whose risk of re-offending relates to illicit substance abuse. The aim of these orders is to break the cycle of drug-crime and provide an intensive intervention treatment option for offenders who would otherwise have been sent to prison for their offending.

An offender subject to a drug treatment order is intensively supervised. The offender may be required to submit to drug testing, individual counselling sessions, group counselling, and case management meetings with a Court Diversion Officer.

The court oversees an offender's compliance with the program through regular court attendances. The court has the power to immediately sanction an offender who fails to comply with the program's conditions by requiring the offender to perform community work or by imposing short periods of imprisonment.

By completing the program an offender has demonstrated they are able to live a drug-free life without crime.

Drug treatment orders have been administered by Community Corrections since July 2010 and funding for the orders is provided by the Commonwealth.

Since the introduction of drug treatment orders in 2007, the program has been refined to maximise the chances of success for program participants, and consequently benefit the community through reduction in crime.

Drug treatment orders play an important role in rehabilitating offenders whose offending relates to illicit drug dependence and protecting the community against drug-fuelled crime.

This Bill extends the use of drug treatment orders as a sentencing option to indictable crimes determined by the Supreme Court.

The Bill provides that once an order is made in the Supreme Court, an offender's compliance with the order is to be supervised by a magistrate including the requirement that the offender regularly appears before a magistrate to ensure that the conditions of the order are being complied with.

One of the central features of drug treatment orders is that the magistrate plays an important part in facilitating change by monitoring and encouraging the progress of the offender. The approach to an offender's attendances at court is more informal than other types of court proceedings.

Given the experience of magistrates in supervising offenders on drug treatment orders and that resources already operate in the Magistrates Court it has been decided that the Magistrates Court is best placed to supervise drug treatment orders made in the

Supreme Court. This has been the subject of extensive consultation between the Attorney-General, Chief Justice and Chief Magistrate.

In addition to extending drug treatment orders to the Supreme Court, this Bill makes several specific changes to the current law relating to drug treatment orders following consultation on the operation of the orders with the Tasmanian Magistrates.

The procedural aspects of drug treatment orders have essentially remained unaltered since the introduction of drug treatment orders in 2007. Those who deal with these provisions on a regular basis are of course in an ideal position to advise the Government on the need for procedural changes.

At present, a magistrate who finds the offender guilty of an offence is also the magistrate who sentences the offender. This usual sentencing practice is not efficient or necessary for an offender who is going to be sentenced to a drug treatment order.

This Bill allows a magistrate who has found an offender guilty of an offence to refer the offence to another magistrate for sentencing.

Secondly, the Bill allows the courts to consider staffing and resourcing in determining whether to make a drug treatment order.

Thirdly, the Bill introduces a specific power for courts to refuse bail in relation to an offender who has failed to attend court in relation to their drug treatment order. If the offender does not attend court, the court may issue a warrant for the offender's arrest. However, there is currently no power to remand such an offender in custody which can be problematic where the magistrate or justice of the peace dealing with the offender who has been arrested is not the magistrate supervising that offender's drug treatment order.

Finally, the Bill allows courts more flexibility to deal with offenders who breach conditions of their drug treatment order. The Bill will permit a court to impose imprisonment where the court is satisfied that it would be more likely to achieve the purposes of the drug treatment order.

The Bill provides that if a court is satisfied that there is therapeutic value in activating imprisonment as a sanction, the court will only have to be satisfied on the balance of probabilities that there was a breach of a condition.

Madam Speaker, the drug treatment order scheme is an important sentencing option for our courts and extending the operation of those orders to the Supreme Court helps to ensure that criminal activity relating to illicit drugs is properly addressed and reduces the risk of similar offending in our community.

The other important reform contained in this Bill is to provide in the *Sentencing Act 1997* for sentencing to be deferred.

Deferred sentencing allows a court to postpone sentencing for a period of time so that an offender's capacity and prospects for rehabilitation can be assessed, so that the offender can demonstrate rehabilitation, or so that an offender can participate in a pre-sentence program.

It is common to hear in courts before an offender is sentenced that the offender intends to do something to address their criminal behaviour, or intends to stop committing offences.

Deferred sentences will allow offenders to demonstrate actual progress towards rehabilitation over a fixed period of time. Where the offender has made progress towards rehabilitation by not committing offences, or by completing a program demonstrating rehabilitation, the court will be able to take that into account when the offender comes back to court for sentencing.

Deferred sentencing is already an option available to courts when sentencing youths under the *Youth Justice Act 1997*. It is an option in other courts throughout Australia and interstate courts have observed the benefits of such sentencing.

There will be some circumstances in which a court cannot defer sentencing. A sentence cannot be deferred if the offender is serving a term of imprisonment for another offence. The court must also be satisfied that it can admit an offender to bail before deferring sentencing.

If an offender's sentencing is deferred, the offender will be subject to bail conditions. Courts can impose a broad range of conditions on an offender who is on bail. For example, a court may impose a condition that the offender appears back before the court on a specified date, so that the court can consider the offender's compliance with any bail conditions. This will ensure that where a court is uncertain about whether an offender will comply with bail conditions, the court can actively oversee the offender's compliance. If an offender breaches a condition of bail, he or she can be arrested and brought back before a court where bail can be reconsidered.

The Bill may also alter the date for sentencing an offender whose sentencing had previously been deferred. This will allow a court to extend the date for sentencing an offender for a maximum period of 30 months to enable an offender to complete a pre-sentence program.

Similarly, the Bill provides the courts with the flexibility to sentence an offender at an earlier date. This may be appropriate if the offender is not complying with conditions of bail, or is not making any progress towards rehabilitation.

The Government conducted public consultation on the Bill including targeted consultation with a number of key stakeholders across government and the legal profession.

The Chief Justice of the Supreme Court and the Acting Chief Magistrate have considered and commented on the Bill. Their comments have informed the legislative changes to the sentencing law and procedure.

Madam Speaker, the Government considers the introduction of deferred sentencing and the extension of drug treatment orders to the Supreme Court to be significant steps in improving sentencing in Tasmania.

The amendments contained in this Bill will increase the sentencing options available to courts in respect to all offenders and provide opportunities for people to rehabilitate

and address the underlying factors relating to their offending behaviour. Ultimately, this will benefit the community as a whole.

I commend the Bill to the House.