



Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:

Sentencing Amendment (Aggravating Factors) Bill 2025

March 2025

INTRODUCTION

As an advocate for law reform, justice and equity for all Tasmanian Aboriginal peoples, the Tasmanian Aboriginal Legal Service (“TALS”) welcomes the opportunity to provide feedback on the *Sentencing Amendment (Aggravating Factors) Bill 2025* (‘the Bill’).

TALS is an Aboriginal and Torres Strait Islander Legal Service (ATSILS) that specialises in criminal, civil and family law matters for Aboriginal Tasmanians. As an Aboriginal Community Controlled Organisation incorporated under the Office of the Registrar of Aboriginal Corporations (ICN 9283), TALS is committed to improving the life outcomes of Aboriginal peoples.

In this submission, any reference to Aboriginal peoples is understood to encompass Torres Strait Islander peoples.

On all standard indicators Aboriginal and Torres Strait Islander peoples emerge as the most socially and economically deprived, making them the most disadvantaged and marginalized group in Australia.¹ TALS recognise that the impact of animosity and prejudice on Aboriginal peoples and communities, who already experience disproportionate structural disadvantage and disadvantage, is deeply felt.

TALS strongly support and initiatives that promote equity and respect while addressing inequality in the community. This submission aims to provide insight on the impact that the Bill will have on Aboriginal people in Tasmania and the wider community.

THE BILL

The Bill proposes two amendments to the *Sentencing Act 1997* (‘the Act’) and builds upon a 2023 review of section 11B of the Act. Via these amendments the Bill seeks to enact four recommendations offered in the 2024 report *Prejudice and Discrimination and Aggravating Factors in Sentencing* from the Sentencing Advisory Council.²

The Bill proposes new sections 6A and 11B in an aim to expand the courts’ ability to consider prejudice or hate as an aggravating factor sentencing, to broaden the range of factors considered as aggravating, and to make it easier for prosecution to argue the application of 11B, which would enable an objective demonstration or expression of hostility or malice to be used to make out the aggravating factor.³

Sentencing Principles

The Bill proposes a new section 6A to be added to the general sentencing principles of the Act. This would allow courts to consider whether a person subject to sentencing intentionally targeted a victim due to a broad range of

¹ Tasmanian Government - Department of Justice, *Prisoners, detainees and community-based offenders output data* (23 October 2024).

² Sentencing Advisory Council Tasmania, *Prejudice and Discrimination and Aggravating Factors, 2024*.

³ Office of Parliamentary Council, *Sentencing Amendment (Aggravating Factors) Bill 2025, 2025*.

perceived or existing attributes or circumstances.⁴ If it is found that the person being sentenced intentionally targeted their victim, based on any one of the broad circumstances, this can be considered an aggravating factor in sentencing.⁵

This amendment seeks to address community concerns over ‘opportunistic targeting’ where a victim is intentionally selected due to their vulnerability, such as age, disability or relationship to the offender.⁶

Broadening Aggravating Circumstances

Currently the Act allows for consideration as to whether an action was motivated by racial hatred or prejudice.⁷ However the proposed new section 11B aims to expand beyond racial motivation and codify other forms of prejudicially motivated offending, including but not limited to race, religion, sexual orientation, gender and disability.⁸

The Bill also introduces a ‘motivation test’, where a person who has committed an offence is deemed to have been motivated by a hatred or prejudice against a person or group due to a specific attribute if at any time during the commission of the offence (or just prior or after) they demonstrated ‘hostility, malice or ill-will in respect of that attribute’.⁹

TALS RESPONSE

TALS has previously supported proposed amendments to section 11B (2023). TALS’ position in their 2023 response was that any amendment should encompass the motivation of hatred or prejudice towards groups or people beyond race and include other protected groups or attributes. Additionally, TALS recommended that an amendment to section 11B should substitute or add the term ‘hostility’ alongside ‘hatred or prejudice’, arguing that ‘hostility’ was a lower threshold to satisfy while still capturing the significant impact on victims.¹⁰

In their 2023 response, TALS also argued that the Bill should not provide an exhaustive list of groups that may experience hostility, hatred or prejudice, preferring an amendment that broadly covered all groups. However, it was accepted that in practice an illustrative list should be provided, so long as it was clear that it was non-exhaustive and to be used as a guide in identifying certain characteristics.¹¹

Given that the current Bill proposes amendments consistent with TALS’ previous recommendations, generally TALS are supportive of both amendments proposed. TALS feedback on each amendment is as per below.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Tasmanian Government, *Sentencing Act 1997*, (accessed 24 March 2025).

⁸ Office of Parliamentary Council (n 3).

⁹ Ibid.

¹⁰ Tasmanian Aboriginal Legal Service, *Amendment of s11B of the Sentencing Act 1997 (Tas)*, 2023.

¹¹ Ibid.

Section 6A

TALS are supportive of this amendment as its inclusion will acknowledge the impact of opportunistic targeting vulnerable people. As an organisation that advocates for justice and equity, TALS agree that a court must consider as to whether an offender intentionally selected a victim due to their vulnerability and then consider this as an aggravating factor in sentencing.

It is critical that social structures, and the wider community, protect those most vulnerable from exploitation or targeting, particularly those who rely on others for safeguarding.¹²

Section 11B

TALS are supportive of the new section 11B which will codify a broader range of prejudicially motivated offending.¹³ As an advocate for all Tasmanian Aboriginal peoples, TALS are well versed regarding the significant impacts that racial discrimination has had the Aboriginal community and a supportive of measures that denounce any form of hatred or prejudice toward a particular group, person or attribute.

The introduction of a second legal test, where a person who has committed an offence is deemed to have been motivated by a hatred or prejudice against a person or group due to a specific attribute if at any time during the commission of the offence (or just prior or after) they demonstrated ‘hostility, malice or ill-will in respect of that attribute’, is also strongly supported. This will make it easier prosecution to argue the application of 11B, which would enable an objective demonstration or expression of hostility or malice to be used to make out the aggravating factor. This is particularly important to Aboriginal peoples, for whom racism and racial discrimination continues to be an ongoing source of significant trauma and disempowerment.¹⁴

Unfortunately, racism, whether implicit or explicit, appears entrenched in Australian culture, with 92% of young Aboriginal peoples reporting they have experienced racism.¹⁵ The *Call it Out Racism Register 2022-2023* collated reports of racist incidents towards Aboriginal peoples and found that 51% of these incidents were experienced ‘in person’.¹⁶

‘In person’ experiences of racism have significant impacts on a person’s mental, emotional and spiritual wellbeing and result in a person questioning their identity and reduce cultural pride.¹⁷ Aboriginal people must be protected from these racist attacks, and the subsequent impacts, even more so when it is amplified by being the stimulus for them being targeted in a crime.

¹² Australian Government – Australian Charities and Not-for-profits Commission, *Governance Toolkit: Safeguarding Vulnerable People*, (accessed 24 March 2025).

¹³ Office of Parliamentary Council (n 3).

¹⁴ Australians for Native Title and Reconciliation, *Impact of Racism*, 2024.

¹⁵ Australians for Native Title and Reconciliation, *Racism in Australia*, 2025.

¹⁶ University of Technology Sydney – Jumbunna Institute for Indigenous Education and Research, *The Call it Out Racism Register 2022-2023*, 2023.

¹⁷ Australians for Native Title and Reconciliation (n 14).

RECOMMENDATIONS

While TALS are supportive of the Bill, our position is that the issues stemming from hatred or prejudice towards groups, people or particular attributes require further measures to be properly addressed. TALS encourages the Tasmanian Government to ensure communities are provided with legal education on this issue and that Tasmania Police engage in appropriate education and training to better identify prejudicially motivated offending and provide stronger support to victims. This same position was offered by the *Tasmanian Prejudice Related Violence Working Group*, who recommended that time be allocated during police recruit training that focuses on targeted violence, the harms caused and supporting victims.¹⁸

Additionally, the availability rehabilitation and education programs to the perpetrators of prejudicially motivated offending should be prioritized to provide a mechanism for them to learn from and address their conduct.¹⁹ This response will work to prevent future harmful behaviours are restore the perpetrators moral balance, as it accepted that punitive measures alone are ineffective at facilitating behavioural change.²⁰

CONCLUSION

Aboriginal and Torres Strait Islander peoples have long experienced racism and racial discrimination and many others in the community have faced prejudice due to their race, religion, sexual orientation, gender and disability. TALS condemn any form of hostility, hatred or prejudice and are supportive of any initiatives or legislative amendments that seek to address this.

TALS are generally supportive of the amendments proposed in the Bill, however, maintain the position that changes to the Act alone should not be relied upon to drive change. To truly drive change and address discrimination and prejudice at its core, education, training and rehabilitation are of paramount importance.

If you have any questions regarding the contents of this report, please reach out to me directly.

Warmest regards,



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¹⁸ Sentencing Advisory Council Tasmania, *Prejudice and Discrimination and Aggravating Factors*, 2024.

¹⁹ Australian National University – Gender Institute, *Responding to hate incidents on university campuses: benefits and barriers to establishing a restorative justice programme*, 2020.

²⁰ Australian Association for Restorative Justice, *Restorative Justice*, (accessed 24 March 2025).