

Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017

Legislative Council briefing - Wednesday 21 June 2017

Commissioner's Speaking Points

1. Mr President and Honourable Members, thank you for the opportunity to brief you in relation to the Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017.
2. I was not consulted on this Bill before it was introduced.
As this Bill has the potential to impact on child victims of serious sexual assault, it is a matter that that is firmly within my mandate as Commissioner for Children and Young People. I am grateful for the opportunity to speak to you today.
3. I am not a lawyer and, as such, I am unable to comment on the technical legal aspects of the Bill. Consistent with my functions, my comments focus on the wellbeing of children and young people in Tasmania.

Before talking about the Bill, I make the following points:

4. It is every child's right to live free from violence. Unfortunately, we know that children are not always safe from harm and, despite the difficulties involved in measuring prevalence, it is clear that child abuse, including child sexual abuse, occurs at significant levels within our community.¹
5. Sexual offending against children is a serious and grave issue. It has long-term social and emotional cost to children, their families and our community at large and we must do all we can to prevent and respond to it.
6. I acknowledge and welcome the Government's commitment to further strengthening our responses to this issue. It is, however, very important that initiatives to prevent or respond to sexual offending against children are supported by evidence that they will have the desired effect and do not lead to unintended and undesirable consequences.
7. This is a highly emotive issue, as one would expect.

¹ <https://aifs.gov.au/cfca/publications/prevalence-child-abuse-and-neglect>



8. Those supporting mandatory minimum sentences say they are in line with community expectations, that they will deter future offending and that they provide for greater consistency around how Courts sentence those convicted of a serious sexual offence against a child.
9. **But**, having considered the Report of the Sentencing Advisory Council (the Council) into this issue², I am not convinced of these arguments. I am certainly not convinced that by introducing mandatory minimum sentences, we are promoting and protecting the rights and wellbeing of children who are victims of serious sexual abuse.
10. The Council is acknowledged to be the expert advisory group on matters such as this – and I am advised that the views expressed by the Council are consistent with the views expressed by other such expert bodies.
11. The Council has very clearly expressed the view that mandatory minimum sentencing is inherently flawed; that mandatory sentences will create injustice by unduly fettering judicial discretion and **should not be introduced in Tasmania** (page *vi* of the Council's report).
12. It is important to note that a Joint Select Committee of the Parliament of NSW on Sentencing of Child Sexual Assault Offenders³ also reached the conclusion that mandatory minimum sentencing should not be introduced for child sexual assault offences in that State. In reaching that view it relied on evidence it heard from the NSW Ombudsman, the NSW Bar Association and the Director of Criminal Law Review of the NSW Department of Police and Justice among others.
13. Our Sentencing Advisory Council described 6 objections to the introduction mandatory minimum sentences in its Report.

I will focus on the objection that arises in relation to pleas of guilty – that is, it is generally agreed by those who oppose mandatory minimum sentences that it may **reduce the incentive to plead guilty**.

If this is a correct assumption, then a clear consequence will be that matters such as this are more likely to go to trial and a child victim of a serious sexual offence will be forced to undergo the traumatic process of a criminal trial.

²http://www.sentencingcouncil.tas.gov.au/_data/assets/pdf_file/0009/360999/2016_SAC_Mandatory_Sentencing_Final_Report-Web.pdf

³<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5741/Final%20Report%20of%20the%20Joint%20Select%20Committee%20on%20Sent.PDF>



I acknowledge the introduction of special measures for child witnesses - for example, the provision for evidence to be given by video link⁴ - however the fact remains that a child still has to go through the process of reliving a traumatic event, the uncertainty of a trial, and enduring a potentially traumatic cross examination – and at the end of it all, a very real possibility of acquittal.

As we are well aware, child sex abuse is notoriously difficult to prosecute. The Council discusses this in more detail from p48 in its Report.

14. It is important to note that the Council **does not recommend** that a guilty plea should be a specific exception to the mandatory minimum penalty scheme, however the Council does express the view that, if an offender pleads guilty, a sentencing discount from the specified minimum mandatory sentences should be provided (p50 of the Council's report).
15. I am advised there are various ways of implementing this. The Council has also made it clear that further research and feedback is needed because, as I understand the situation, an in depth consideration of the issue of guilty pleas in a mandatory minimum scheme was beyond the scope of the Council's Report.

Conclusion

While I commend the Government's commitment to addressing this issue, we must be very cautious of the potential unintended consequences that could follow for child victims of serious sexual offences as a consequence of this Bill.

- A) I do not agree with mandatory minimum penalties, particularly where their introduction has the potential for adverse impacts on children and young people. I am informed in my views by those with expertise in this complex area – the Council and the Law Society to name just two.
- B) If we go ahead and introduce mandatory minimum penalties for child sex offences, we must ensure that the special measures or supports available to support child witnesses are appropriate.

⁴ Tasmanian *Evidence (Children and Special Witnesses) Act 2001*



- The *Royal Commission into Institutional Responses to Child Sex Offences* has engaged in a detailed and wide ranging research program considering criminal justice responses to child sex offences; included in this is an evaluation of how evidence is elicited from complainants of child sex abuse.⁵
 - Clearly the work of the Royal Commission can inform us on this important issue.
- C) We must also take account of any future recommendations made by the Council regards pleas of guilty within the context of the mandatory minimum scheme set out in the Bill.

Thank you for allowing me to address you on this Bill.

Mark Morrissey
Commissioner for Children and Young People

⁵ <http://childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/how-evidence-is-elicited-from-complainants-of-chil>