

DRAFT SECOND READING SPEECH

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Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2018

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Madam Speaker, the *Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2018* makes a number of amendments to the *Sentencing Act 1997* that will introduce mandatory minimum sentences of imprisonment for serious sexual crimes perpetrated against children in Tasmania.

This Bill fulfils the Government's election commitment to reintroduce the 2017 Bill of the same name requiring Courts to impose a minimum sentence of imprisonment for perpetrators who commit serious child sexual offences.

This is the second tranche of sentencing reform in this area, following the commencement of the *Sentencing Amendment (Sexual Offences) Act 2016*. That Act amended the *Sentencing Act 1997* to define aggravating circumstances to be taken into account in sentencing for certain sexual offences, and prevent an offender's good character or lack of prior convictions from being taken into account where those matters were of assistance to the offender in committing the offence.

The Government believes that offenders of sexual violence against children deserve significant sentences of imprisonment in recognition of the appalling, and in many cases, lifelong effects of their serious criminal conduct on their child victims.

By introducing mandatory minimum sentences for serious child sexual offences, the Government is also promoting consistency in sentencing and improving public confidence in the courts by ensuring that sentences reflect community views for such heinous crimes.

The Government recognises that changes to sentencing law require careful consideration. For that reason the Sentencing Advisory Council was asked to investigate how a mandatory minimum sentencing scheme in relation to child sexual offences could be implemented in Tasmania. Specifically, the Council was asked to consider what child sexual offences should be included, the level of the minimum sentence to be applied to offenders and any exceptions that should operate.

In 2016, the Sentencing Advisory Council released its report *Mandatory Sentencing for Serious Sex Offences Against Children*. In their Report the Sentencing Advisory Council identified the following serious crimes as appropriate to include in a mandatory minimum sentence scheme:

- Rape where the complainant is under 17;
- Maintaining a sexual relationship with a young person in circumstances of aggravation;
- Sexual intercourse with a young person in circumstances of aggravation; and
- Aggravated sexual assault (in circumstances of aggravation) where the complainant is under 17.

This Bill seeks to include those crimes in a mandatory minimum sentencing scheme, with the exception of aggravated sexual assault.

In 2017, Parliament passed the *Criminal Code Amendment (Sexual Assault) Act 2017*. That Act extended the definition of 'sexual intercourse' so that the crime of rape applies to all forms of non-consensual sexual penetration.

By including these forms of sexual penetration into the crime of rape, the existing crime of aggravated sexual assault is no longer required and has been repealed.

The Royal Commission into Institutional Responses to Child Sexual Abuse has increased the community's awareness of the disturbing levels of prevalence of institutional child sexual abuse both historical and contemporary, and the devastating long-term and often life-long impacts of child sexual abuse affecting our community.

The Government has carefully monitored the work of the Royal Commission and participated in a number of formal and informal consultations with the Royal Commission in relation to the appropriateness of current criminal justice responses to institutional child sexual abuse and options for reform, to assist victims of child sexual abuse.

While the work of the Royal Commission focused on child sexual abuse that occurs in institutions, their work still provides guidance in relation to criminal justice responses to all types of child sexual abuse, regardless of context.

The Royal Commission observed that community members are still often dissatisfied with the length of sentences given to convicted child sexual abuse offenders.

These reforms are an important part of the Government's ongoing commitment to protect vulnerable Tasmanians and send a strong message to offenders that there will be zero tolerance for heinous sexual crimes committed against Tasmania's children.

Coming to a conclusion about the appropriate level for a mandatory sentence is a complex task and one that the Government asked the Sentencing Advisory Council to consider through research and their collective knowledge and experience. The Sentencing Advisory Council also consulted widely in relation to this issue.

The Government has adopted the Sentencing Advisory Council's advice in relation to the levels of the mandatory minimum sentences to be applied in Tasmania. The Bill amends the *Sentencing Act 1997* to introduce mandatory minimum terms in relation to adult offenders as follows:

- 4 years' imprisonment for the crime of rape (section 185 of the *Criminal Code*) where a victim is under 17 years at the time of the offence;
- 4 years' imprisonment for the crime of maintaining a sexual relationship with a young person (section 125A of the *Criminal Code*) where there are circumstances of aggravation and at least one of the unlawful sexual acts is an offence of rape;
- 3 years' imprisonment for the crime of maintaining a sexual relationship with a young person (section 125A of the *Criminal Code*) where there are circumstances of aggravation and none of the unlawful sexual acts is an offence of rape; and

- 2 years' imprisonment for the crime of sexual intercourse with a young person (section 124 of the *Criminal Code*) where there are circumstances of aggravation.

The circumstances of aggravation that attract mandatory minimum terms of imprisonment in relation to the crimes of maintaining a sexual relationship and sexual intercourse with a young person are those that were introduced in the first tranche of these reforms. They are outlined in section 11A of the *Sentencing Act 1997* and include:

- the victim being under the care, supervision or authority of the offender;
- the victim being a person with a disability;
- the victim being under the age of 13 years;
- the offender committing the offence in whole or in part in the presence of any other person or persons, besides the victim;
- the offender subjecting the victim to violence or the threat of violence;
- the offender supplying the victim with alcohol or drugs with the intention of facilitating the commission of the offence;
- the offender making forced or uninvited entry into the victim's home or other premises; and
- the offender doing, in the course of committing the sexual offence, an act likely to seriously and substantially degrade or humiliate the victim.

It is important to note that these amendments do not require courts to impose mandatory minimum sentences in relation to offenders who are under the age of 18 years at the time the offence was committed, or in relation to offenders who have impaired mental functioning that is causally linked to the offence.

The Bill also provides the following additional safeguards in relation to the introduction of these mandatory minimum sentences:

- the court retains a discretion not to impose the mandatory minimum term of imprisonment where there are exceptional circumstances in relation to the offence or the offender;
- the introduction of mandatory minimum terms of imprisonment operates as a sentencing floor and does not inflate all sentences in relation to an offence; and
- the court may make an order for parole eligibility of an offender to whom a mandatory minimum term of imprisonment applies in accordance with the existing parole framework.

The Government believes that sentences for child sexual offences should clearly denounce the abhorrent sexual abuse of children and appropriately punish offenders of sexual violence against children.

The mandatory minimum sentence scheme contained in this Bill will provide Tasmania's children with protection and, where sexual abuse has occurred, ensure that victims receive appropriate justice for the atrocious crimes perpetrated against them.

I commend the Bill to the House.