SENTENCING AMENDMENT (AGGRAVATING FACTORS) BILL 2025 (No 41)

Second Reading

[6.54 p.m.]

Mr BARNETT (Lyons - Minister for Justice, Corrections and Rehabilitation) - Honourable Speaker, I move -

That the bill now be now read the second time.

The Sentencing Amendment (Aggravating Factors) Bill 2025 makes important amendments to the *Sentencing Act 1997*. These amendments will strengthen the ability of the criminal justice system to respond to hateful, prejudicial or targeted offending, offending against people because of their background or identity, or because they are vulnerable, or perceived to be easy targets. Offences motivated by hate are completely unacceptable and have no place in our state.

To all Tasmanians, I would like to say, this is your home, this is where you belong. Our government wants Tasmania to be safe and inclusive, where all members of the community are secure, valued and supported.

While this bill enhances the criminal justice system's response to crimes motivated by hate or prejudice, importantly, this bill does not limit the judicial discretion of the court in the sentencing process.

This bill responds to the recommendations made by the Sentencing Advisory Council in its 2024 report, 'Prejudice and discrimination as aggravating factors in sentencing'.

The former attorney-general referred this matter to the Sentencing Advisory Council following consultation with community groups, and I thank her for her initiative in setting these important reforms in motion. I am pleased to be bringing a bill to the House that enacts all four of the Sentencing Advisory Council recommendations made in the 2024 report.

Three of these recommendations relate to section 11B of the *Sentencing Act*. Our government introduced section 11B in 2017 to provide that where hatred or prejudice on racial grounds is a motivating factor for the commission of an offence, that is to be taken into account as an aggravating circumstance when the offender is being sentenced. This includes hatred or

prejudice directed towards any victim of the offence, or perhaps a person or group with whom the victim was associated, or believed by the offender to be associated.

This bill broadens the scope of section 11B by providing, in addition to race, a non-exhaustive illustrative list of other attributes as relevant attributes when considering the application of this section. This change reflects that prejudicial or hateful offending can be directed at persons or groups on various grounds other than race. Examples of such offending include assaults against people because of their religion, disability or sexual orientation.

Extending the scope of section 11B is necessary to ensure that societal groups that often face prejudicial offending are adequately protected and the offenders are appropriately condemned. The list of attributes that this bill inserts into the news section 11B is largely based on the list contained in recommendation 2 of the Sentencing Advisory Council report.

Importantly, the bill clarifies disability as a broad term, using the contemporary language of the *Disability Rights, Inclusion and Safeguarding Act 2024*, which received royal assent on 8 November 2024 and is expected to commence in the coming months.

The list of relevant attributes in section 11B is non-exhaustive and illustrative. The court is not limited to considering hateful or prejudicial offending against attributes that are included in this list, and may use its discretion to apply this aggravating factor to other forms of hatred or prejudice. The listed attributes are intended to guide the court in order to prevent the extension of the aggravating factors to attributes or groups that society would not reasonably expect to be covered by this section.

To ensure that this section can efficiently respond to new forms of discrimination in the future, a power to prescribe additional attributes is also included.

The bill further includes an alternative test that can be used to prove the presence of hateful or prejudicial motivation without having to prove the subjective state of mind of the offender.

Sadly, we are all aware that hateful or prejudicial offending occurs in our community. In our thriving multicultural society, there is a small minority who continue to act in an anti-social and despicable manner by offending against people because they are different from themselves. The inclusion of an alternative test makes it easier for the prosecution to prove that an offence has a prejudicial element to it so that this can be appropriately captured at sentencing.

The alternative test is framed as a deeming provision that can be used to make out motivation. The new subsection 11B(2) provides that a demonstration or expression of hostility, malice or ill will can be used to prove that the offending was hateful or prejudicial. It allows the prosecution to set out the facts of what the offender did or said around the time of offending to support the presence of these motivations without having to prove the offender's subjective state of mind. Experience in other states demonstrates that proving a subjective motivation for offending can otherwise be difficult, especially where there may be multiple motivations for an offender to commit the offence.

For a demonstration or expression of hostility, malice or ill will to be taken into account, it must occur during the offence, or immediately before or after the offence. These temporal restrictions are used in several other jurisdictions, such as the United Kingdom. Their aim is to

ensure that the evidence provided has a causal link to the offending. Procedural fairness requires that a person's words or actions from an unrelated time or incident are not carried over to apply to new offending.

The bill additionally inserts a new aggravating factor into the *Sentencing Act*. Section 11B(a) requires the court to take into account whether the offender selected their victim because of the victim's vulnerability or personal circumstances, whether these actually existed or were perceived to exist by the offender. The inclusion of this aggravating factor addresses the final recommendation in the Sentencing Advisory Council report. This section addresses offending that is not hateful or prejudicial in nature but is, nonetheless, reprehensible as it takes advantage of vulnerable people or those whom the offender thinks would be vulnerable. It also captures instances where an offender repeatedly targets members of a particular community group because they perceive them to be more attractive targets.

The Sentencing Advisory Council notes in its report offending that involves discriminatory targeting of a particular community group can lead to an increased psychological and emotional effect even if it was not motivated by hate or prejudice.

Section 11BA includes a non-exhaustive and illustrative list that includes all the same attributes listed in section 11B, including the ability to prescribe additional attributes. This list was expanded to include these attributes following stakeholder feedback. Additionally, the list in this section includes the personal relationship between the victim and the offender. This provides that the aggravating factor will apply in cases where the offender selects their victim because the offender is in a position of authority over the victim or the victim is relying on the offender.

Finally, this bill includes a provision for a review to be conducted after the new sections have been in force for five years. This will provide an opportunity to ensure that the aggravating factors are being utilised appropriately in sentencing prejudicial or targeting offending.

I sincerely thank the stakeholder groups and members of the public who contributed to the development of this bill in the consultation process. I note that several amendments to the bill were made as a result of stakeholder feedback. I thank all members of the Sentencing Advisory Council for their work in this area, as well as the Tasmanian Prejudice Related Violence Working Group, the Multicultural Council of Tasmania and Equality Tasmania in particular for their support and input on this reform.

The community rightly expects hateful and prejudicial offending or offending that targets people based on their real or perceived vulnerability to be appropriately punished and denounced. There is simply no place for this behaviour in Tasmania. I'm pleased to present this bill as a strong response to community concerns improving the way in which our justice system deals with these crimes.

I commend this bill to the House.

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