

DRAFT SECOND READING SPEECH

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Sentencing Amendment (Sexual Offences) Bill 2016

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Madam Speaker, I move that the Bill now be read a second time.

The main purpose of this Bill is to introduce a new section into the *Sentencing Act 1997*. The new section will set out matters that courts are and are not to take into account when determining an appropriate sentence for offenders convicted of certain sexual offences.

The Bill defines aggravating circumstances that a court is to take into account in determining an appropriate sentence for an offender convicted of a sexual offence.

The Bill also inserts a requirement that a court is not to take into account an offender's good character or lack of previous convictions where those factors assisted the offender in the commission of the sexual offence.

The proposed amendments to the *Sentencing Act 1997* follow consideration of the recommendations contained in the Tasmanian Sentencing Advisory Council's Final Report Number 4 into Sex Offence Sentencing (the SAC Report) published in August 2015.

The SAC Report recommended that the *Sentencing Act 1997* be amended to include a list of aggravating and mitigating factors.

The aggravating circumstances defined in the Bill were inserted after careful consideration of laws in other jurisdictions.

Setting out a definition of aggravating circumstances in legislation will provide greater transparency in the sentencing process and will enhance the community's understanding of the factors courts take into account when sentencing offenders for sexual offences.

A further recommendation in the SAC Report was that a specific provision should be introduced that limits the use of an offender's good character where that was of assistance to the offender in the commission of the offence. This recommendation recognised the unfortunate fact that sometimes offenders only gain access to a victim because the offender has no relevant prior convictions and is thought to be of good character. The community places trust in people whose employment or volunteer status allows them access to vulnerable people. This Bill will modify the existing law so that where alleged good character or lack of previous convictions was of assistance to an offender in committing an offence, the court will not take that into account in the offender's favour.

That is the background to this Bill and I now turn to some specific provisions of the Bill.

Subclause 11A(1) of the Bill defines 'aggravating circumstance' and 'sexual offence'.

Aggravating circumstances are circumstances that are taken into account by a court that result in a more severe penalty than would otherwise have been the case.

Subclause 11A(1) of the Bill will apply to serious sexual offences contained in the *Criminal Code Act 1924*.

The specific aggravating circumstances in subclause 11A(1) include circumstances relating to the victim, the offender and the offence.

This Bill recognises that certain victims of sexual offences are particularly vulnerable and it makes offending against those victims an aggravating circumstance. The Bill provides that where a victim is under 13 years of age, has a disability, or is under the supervision, care or authority of the offender, it will be an aggravating circumstance.

The Bill also recognises that acts by offenders can make a sexual offence aggravating. Subjecting a victim to violence, making forced or uninvited entry into a victim's home, or doing an act likely to seriously and substantially degrade or humiliate a victim are examples in this Bill of aggravating circumstances resulting from acts by an offender.

Where an offender causes another person to carry out certain acts that are aggravating, the offender will still be liable because of paragraph 11A(1)(i). For example, if an offender causes another person to threaten a victim with violence, the offender will still be caught by these provisions.

It is important to note that these amendments will not prevent courts taking into account any other aggravating circumstance it considers appropriate in the circumstances of an individual case. For example, a court might consider the victim being elderly, or an offender's filming of a victim during a sexual offence, to be an aggravating circumstance. A court will still be able to take into account such aggravating circumstances and any other aggravating circumstance in addition to those contained in this Bill.

The objective of paragraph 11A(2)(b) is to prevent a court from taking into account an offender's good character or lack of previous convictions in certain circumstances. An offender's position in the community, occupation or volunteer status may allow access to vulnerable groups such as children, people with disabilities, or the elderly. Generally, access to these groups will only be available to people who are of good character and who have no relevant previous convictions. Where an offender's good character assisted him or her in the commission of the sexual offence, for example by giving the offender access to the victim, the court will not be able to take the offender's good character into account in mitigation.

Good character is usually a mitigating circumstance, meaning that it counts towards a lower sentence than would otherwise be imposed. Good character is not usually given much weight where an offender is being sentenced for sexual offences against children; however this Bill modifies the existing law to ensure that courts do not give *any* weight

to an offender's good character or lack of previous convictions where one or both of those assisted an offender in committing a sexual offence.

There was wide consultation on this Bill. A draft Bill was made available for public consultation and draft versions of the Bill were sent to stakeholders across government and the legal profession. Comments received during the consultation process have assisted in the development of this law reform.

Madam Speaker, the Government takes sexual offences against vulnerable victims very seriously. The protection of victims and the community as a whole from sex offenders is of great importance. The Government remains committed to introducing mandatory minimum sentences for serious child sexual offences, and we look forward to receiving the Sentencing Advisory Council's report on this reform shortly.

This Bill will increase the transparency of the sentencing process for serious sexual offences and will limit the circumstances in which good character and lack of previous convictions can be used in mitigation. These are important steps towards reassuring the public that sex offenders are being appropriately sentenced for their offending.

I commend the Bill to the House.