

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Sentencing Amendment (Mandatory Sentencing) Bill 2022

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

Our Government has now been elected twice with policies designed to further protect some of Tasmania's most vulnerable, namely our children and young people.

This Bill fulfils our Government's commitment to introduce strong mandatory minimum imprisonment penalties for serious sexual crimes perpetrated against children and young people.

This Bill will amend the *Sentencing Act 1997* to introduce mandatory minimum sentences, based on recommendations made by the Sentencing Advisory Council on what would be appropriate mandatory minimum levels of imprisonment for these indictable offences.

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

This Bill ensures that an appropriate sentence of imprisonment is imposed and also preserves judicial discretion to impose above the mandatory minimum, to enable the Court to sentence according to the gravity of the offence in each case for these indictable crimes, under the *Criminal Code Act 1924* (the *Criminal Code*).

Our Government has already updated inappropriate terminology in the *Criminal Code* through the *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020*.

For example, the previous terminology for the crime of 'maintaining a sexual relationship with young person under the age of 17 years' is now known as the 'persistent sexual abuse of child or young person'. Those changes properly reflect the true nature and gravity of this offending.

The references in the *Criminal Code* to child or young person now also allow the prosecuting authority discretion to more accurately represent the nature of the charge, such as child for a pre-teen, or young person for a teenager.

Mr Speaker, introducing this Bill to provide for mandatory minimum sentences for serious child sexual offences is a very important and substantial step forward. These measures will promote consistency in sentencing and improve public confidence in the courts by ensuring that sentences reflect community views for these heinous crimes.

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

- section 185, being rape, where the complainant is under 17;
- section 125A, being 'persistent sexual abuse of a child or young person';
- section 124, being 'penetrative sexual abuse of a child or young person'; and
- section 127A, being 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 the crime of aggravated sexual assault, as the conduct forming that crime is now captured by the crime of rape following amendments in 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.

Since the Council's report in 2016, 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 victim-survivors.

In addition, the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings is required to submit its report by May 2023 and will recommence hearings in May 2022.

Our 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 victim-survivors of child sexual abuse.

While the work of the Royal Commission focused on child sexual abuse that occurs in institutions, its work still provides strong 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.

Our Government rejects any argument that Parliament should not set mandatory minimum sentences or penalties for these abhorrent and heinous crimes against children, or that it would undermine the judiciary. It is the role of the Legislature or Parliament, as Tasmania's law-making body, to make our laws – including sentencing laws – and it is the courts who apply such laws.

Of course the Court has the discretion to impose a higher sentence for these crimes, as it has for all other indictable offences under the *Criminal Code*, that is appropriate and commensurate to the seriousness of the offence in each individual case.

Mr Speaker, coming to a conclusion about the appropriate minimum 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 Council also consulted widely in relation to this issue.

The Government has adopted the Council's advice in relation to the levels of the mandatory minimum sentences for serious sexual offences against children in Tasmania.

The Bill provides for the following mandatory minimum terms:

- 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 persistent sexual abuse of a child or a young person (section 125A of the *Criminal Code*) where at least one of the unlawful sexual acts is an offence of rape;
- 3 years' imprisonment for the crime of persistent sexual abuse of a child or 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 penetrative sexual abuse of a child or 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 certain sexual offences 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;
- the offender doing, in the course of committing the sexual offence, an act likely to seriously and substantially degrade or humiliate the victim; and
- the offender causing any other person or persons to carry out any of these before mentioned acts.

Research by the Sentencing Advisory Council clearly shows offenders continue to receive sentences below the levels imposed by this Bill.

To be clear, both of the lowest sentences for the crime of raping a child imposed between 2015 and 2018 were below the minimum of four years' imprisonment imposed by this Bill.

The lowest penalty being imposed, namely three years' imprisonment, remains unchanged from the minimum imposed during the Council's past research covering 2008 to 2014.

In short, what this Bill seeks to ensure is appropriate sentences for such atrocious crimes against children.

Mr Speaker, importantly, there are safeguards included in the Bill.

The mandatory minimum sentencing provisions proposed in the Bill will not apply where there are exceptional circumstances.

The provisions will also have no application to offenders who are under the age of 18 years at the time the offence was committed or, in certain circumstances, to offenders who have impaired mental functioning that is causally linked to the offence.

Mr Speaker, this is an extremely important Bill, especially since the work of the Royal Commission and our current Commission of Inquiry in Tasmania.

The mandatory minimum sentences contained in this Bill will provide Tasmania's children and young persons with better protection and will help to ensure that victim-survivors receive appropriate justice for the heinous crimes perpetrated against them.

The community expects our children and young persons to be protected, and our Government will do all that is within our power to protect those who are most vulnerable in our community.

Mr Speaker, I commend the Bill to the House.