

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Justice Legislation (Mandatory Sentencing) Bill 2019*

*\*check Hansard for delivery\**

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

The *Justice Legislation (Mandatory Sentencing) Bill 2019* makes a number of amendments to the *Sentencing Act 1997* to introduce mandatory minimum sentences of imprisonment for serious sexual crimes perpetrated against children based on recommendations made by the Sentencing Advisory Council on what would be appropriate mandatory minimum levels of imprisonment for these indictable offences. Consistent with the Government's commitment the Bill also introduces a minimum of six months' imprisonment for serious assaults on certain frontline workers.

I will deal firstly with aspects of the Bill that are relevant to frontline workers.

#### ***Serious assaults on frontline workers***

Offending that results in serious bodily harm to frontline workers is unacceptable. Frontline workers provide essential services to our community and the community as a whole has an interest in ensuring their safety at work carrying out the important work they do in our community.

Frontline workers are routinely confronted with dangerous situations from which they cannot walk away. They often deal with people who are affected by alcohol and drugs and who are experiencing heightened emotions.

The physical and psychological harms created by violence to individuals and to the community more broadly, are well-documented. Frontline workers are not immune to the serious harms that result from violence. Physically, serious violence can result in severe pain and temporary or permanent disability. Psychologically, victims of violence are at an increased risk of depression, anxiety, post-traumatic stress disorder and suicidal behaviour. There are also social and economic costs associated with such violence. Victims may be unable to return to their work. There are costs associated with the medical treatment of victims of violence and the investigation and prosecution of offences.

Sentencing laws must, as far as they can, serve to denounce violence and provide protection for frontline workers who are routinely placed in dangerous and potentially violent situations.

Mandatory minimum sentences of six months' imprisonment already apply, because of section 16A of the *Sentencing Act 1997*, to offenders convicted of an offence that results in serious bodily harm to a police officer while the police officer is on duty, unless there are exceptional circumstances which I will address later in this contribution.

Section 16A has been in force since 2014 and it has been considered and applied in the Supreme Court of Tasmania.

The new section 16B, contained in the Bill, will mean that an offender convicted of an offence that results in serious bodily harm to an on duty frontline worker will be subject to a mandatory minimum sentence of six months' imprisonment.

The Bill provides that frontline worker means a person who is:

- employed, or engaged to provide, on behalf of the State, services relating to the health or safety of persons; and
- a member of a prescribed class of persons who provide, on behalf of the State, services relating to the health or safety of persons.

New subsection 16B(2) defines the circumstances in which frontline workers are taken to be on duty.

The mandatory minimum sentence will only apply when an offence has resulted in serious bodily harm to a frontline worker. It is important to note that the new section 16B will not apply when harm caused to a frontline worker by an offence is relatively minor.

### ***Serious sexual crimes against children***

The Bill also provides for mandatory sentences for serious sexual crimes against children.

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.

Offenders of sexual violence against children deserve significant sentences of imprisonment in recognition of the appalling, and in many cases, lifelong effects of their 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 justice system by ensuring that sentences reflect community views for such heinous crimes.

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 importantly, any exceptions that should operate.

In 2016, the Sentencing Advisory Council released its report *Mandatory Sentencing for Serious Sex Offences Against Children*. In this Report the Sentencing Advisory Council identified the following crimes as appropriate to be included 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.

As previously foreshadowed in this House and publicly, the Government is developing a Bill to update the language used in the crime of 'maintaining a sexual relationship with a young

person'. That Bill, which will introduce language that more properly reflects the true nature of such offending, will be introduced in the next session of Parliament.

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

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 to sexual offences against children in Tasmania, and taken into account the evidence of survivors of child sexual abuse provided to the Royal Commission into Institutional Responses to Child Sexual Abuse. The Government has listened to their concerns and is responding to them in this Bill.

The Bill introduces mandatory minimum terms 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 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 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.

Of course, the Court still has the ability to impose a higher sentence as with all other indictable offences under the *Criminal Code Act 1924*.

Recent research by the Sentencing Advisory Council, however, 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, 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 heinous crimes against children.

#### ***Exceptional circumstances***

It is important to note that 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.

This applies in instances of serious assaults on frontline workers as well as sexual crimes perpetrated against children.

The mandatory minimum sentence scheme contained in this Bill will provide both frontline workers and Tasmania's children with protection and will help to ensure that victims receive appropriate justice for the crimes perpetrated against them.

The community expects our children to be protected and our frontline workers to be able to carry out their duties safely without serious injuries inflicted on them.

Madam Speaker, I commend the Bill to the House.