

Legislative Council
HANSARD
Thursday 21 November 2024

The President, **Mr Farrell**, took the Chair at 11 a.m., acknowledged the Traditional People and read Prayers.

[excerpt...]

**SENTENCING AMENDMENT (PRESUMPTION OF MANDATORY
SENTENCING) BILL 2024 (No. 30)**

Second Reading

[12.01 p.m.]

Ms WEBB (Nelson) - Mr President, I am similarly frustrated to be rising to speak on this bill, as was just expressed by the member for Murchison and the member for Mersey in his contribution. This is a situation we have been in before and it remains just as inappropriate, actually, as it always has been every other time this place has debated this issue.

I will repeat some matters that have been mentioned already, because I do want to put my view clearly on the record here - not least because, as the member for Murchison has pointed out, this is an issue that is politically weaponised against people running for parliament and members of parliament. I want to be very clear and accountable to my community about why I am voting the way I will be voting, which is against this bill; absolutely squarely against it. That may well be weaponised against me at some point, given I am facing election in the early months of next year, but so be it. My positions here are unfailingly based on evidence, unlike the government's, and on this the evidence is absolutely crystal clear, 100 per cent crystal clear.

Before I get into the bulk of my contribution, I want to recognise this touches on topics that are sensitive because we are talking about offences against children. Of course, we would all recognise for many that is a difficult thing for us to be talking about in the public domain and can be traumatic both for people who are here or watching online. I want to acknowledge that from the outset and remind people that Lifeline is available for assistance on 13 11 14 and we also have 1800 RESPECT for people who may have experienced sexual assault or domestic violence. I tag that here in my contribution.

We have the government bringing this back to us with very tired, trite, inaccurate statements in the second reading speech presented, which is incredibly sad and in fact has misleading statements in many instances; the ones that I find particularly quite abhorrent are the near verballing of the Sentencing Advisory Council. The Sentencing Advisory Council, as the members for Murchison and Mersey pointed out, was asked and has done quite extensive work on this topic. It has maintained unfailingly an opposition to mandatory sentencing of any kind; it has been very clear on that.

I want to be very sure that we are acknowledging that this bill is not endorsed by the Sentencing Advisory Council - not to my knowledge, unless the government can present us with some clear statement from the Sentencing Advisory Council to the opposite. I want to make that very clear because the Sentencing Advisory Council's Mandatory Sentencing for Serious Sex Offences Against Children Final Report No. 7 from September 2016, in the

executive summary on page vi said:

The Council has previously indicated that it does not recommend the introduction of mandatory sentencing in Tasmania.

and further down it says:

The suggested legislative responses did not include a recommendation to include mandatory minimum sentences.

Accordingly, in Part A of the report, the council elaborates on its reservations about a broad-based mandatory sentencing scheme for sexual offences:

However, to respond to the Government's stated intention to introduce a mandatory sentencing scheme, Part B of the paper sets out a model for a mandatory minimum sentencing scheme in Tasmania. The proposed elements of this scheme should be understood as the Council's 'preliminary advice', as requested in its terms of reference, and should not be taken as its endorsement of such a scheme. Part B should be read in light of its of its views expressed in Part A.

To be very clear, in the executive summary here, same page, the summary of the views expressed in Part A by the Sentencing Advisory Council, includes this:

... the Council has identified objections to the implementation of the scheme.

That being a mandatory minimum mandatory sentencing scheme and it goes on to say in relation to those objections:

These are that:

- (1) mandatory minimum sentences provide an incomplete guidance system to the courts;
- (2) mandatory minimum sentences may lead to unrealistic expectations in the community that changes to sentencing policy will deter potential offenders when there is no evidence to suggest that increased penalty levels act as a deterrent;
- (3) mandatory minimum sentences may reduce the incentive to enter a plea of guilty;
- (4) mandatory minimum sentences reduce transparency and consistency because discretion is transferred from judges to prosecutors;
- (5) mandatory minimum sentences will result in significant financial costs;
and
- (6) that it may be prudent to wait until the Supreme Court has had an opportunity to respond to the significant changes in sentencing practice resulting from the government's proposed sentencing reforms.

The Council also notes that examination of recent sentencing practice reveals a change in judicial attitudes to (and an increase in the sentences imposed on) those who commit serious sexual offences against children.

It goes on to say:

After consideration of these concerns, and as a result of the process of conceptualising the principles that should guide the introduction of a mandatory minimum sentencing scheme, the Council's view remains that mandatory sentencing is inherently flawed. The Council has grave concerns that the introduction of mandatory minimum sentencing for sexual offences in Tasmania will create injustice by unduly fettering judicial discretion. Accordingly, the Council reiterates its previous recommendation that mandatory sentencing not be introduced in Tasmania.

That was a long quote, but I want it to be very clear here in the parliamentary record given the government trying to suggest somehow that the Sentencing Advisory Council endorses this. It does not.

Ms Forrest - They went to great lengths, so they did not.

Ms WEBB - Great lengths, so it was not advised by the Sentencing Advisory Council.

It is also not a situation or an approach advised by any legal bodies or representative bodies. I have that most recently confirmed by an email from the Law Society of Tasmania. I wrote to check in with them in an updated way on their view on this bill and received an email in reply on Monday 28 October - so just in recent weeks - from Luke Rheinberger, who is the Executive Director of the Law Society of Tasmania and in reply to my seeking their view, this is what was written:

Thanks for your email. The Society has opposed this bill in its previous forms and opposes the current bill. Mandatory sentencing wrongly deprives the judiciary of its independence. It leads to bad outcomes for the very reason that individual circumstances cannot be taken into account. Mandatory sentencing has not been demonstrated to have an effect on the rate of offending and for that reason must be seen as a political response to a perceived problem rather than a genuine attempt to make a difference to the criminal justice system. In that regard, when the government says it is responding to community expectations, the society's response is that on some issues the government needs to lead to educate the community as to what works rather than to follow.

That is telling. I know the government is going to try to say there is still some judicial discretion in this bill, but it takes away a large part of judicial discretion, even if it leaves some in the limited specified circumstances. I do not believe it is going to be a valid riposte for the government to make.

In addition to the Law Society, I also had recent correspondence from Tasmania Legal Aid, which also remains opposed to mandatory sentencing. It too has provided its extensive outline of why it is opposed to that, which I will not read in here because I have more material I would like to move on to. I am noting here two of our local legal entities do not support this bill. I would be interested to see if the government can produce any legal representative body

or entity that does support this bill. Perhaps they would like to confirm who that might be, if there is someone that they can point to.

In addition to not being recommended or supported by legal bodies, it is also not recommended or supported, I believe, by service providers. We have correspondence from TasCOSS to that effect. In correspondence from TasCOSS in August of this year, it wrote, and others may read this in more detail, I do not know, but they mentioned in their correspondence they write again 'to raise TasCOSS' significant concerns with mandatory sentencing regimes'. This was not just in relation to this bill, but the other one that egregiously passed this place this morning.

Adrienne Picone, the Chief Executive Officer at TasCOSS goes on to say:

While I understand the Tasmanian Government is committed to improving the safety and wellbeing of Tasmanian children and frontline workers, these Bills may in fact have detrimental outcomes for those very people the Government is intending to protect and support.

Research demonstrates mandatory sentencing regimes are ineffective in deterring against future crime - that is, they are not an effective tool to provide better support for Tasmanian families, children and workers.

Then TasCOSS also goes on to note the Law Society's opposition to such regimes. It also makes particular note in this correspondence that, and I will read this in:

It must also be noted the introduction of a mandatory sentencing regime was **not** a recommendation of the recent *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*.

I note the government tried to somehow imply that there was a connection between the commission of inquiry and the bill before us by mentioning it in a contextual way in their second reading speech. We must be careful not to mislead anyone, and be very clear here on the record. Absolutely no recommendation came out of the commission of inquiry to point us towards this course of action in this bill. None.

There are no legal entities supporting it. Civil society groups and service providers are against it. It is not recommended by the commission of inquiry. The government tells us that they consulted. It was mentioned in the second reading speech. It would be very good to hear a bit more about exactly who was consulted - not just who was consulted, but who they can point to who said this was the right way to go. Who did they consult who supported this as a course of action, other than vague claims about community sentiment, which I will get to in a minute.

I note, in the government's second reading speech, the comment:

By introducing a presumption of mandatory minimum sentencing in the bill, the government will provide Tasmania's children and young people with better protection.

Well, wrong, utterly wrong. They have literally no evidence to present to us that that is true. None. It is a baseless claim. And in fact, we have heard from experts in some of the things

I have just quoted that it may well impose further harm. Not only is it a factually wrong claim, it may actually be the opposite of what is true.

I am going to turn again to the Sentencing Advisory Council in its report, the same report I quoted earlier, final report No. 7 from September 2016, to see what it had to say about that on the matter of protection and whether such an approach as this would provide greater protection. There is a paragraph at the bottom of page vi in the executive summary of this report, and after the Sentencing Advisory Council has just categorically stated it does not recommend mandatory sentencing, the bit I quoted before, it says:

This should not be taken to mean that Council considers that sexual offences committed against children are not serious or that serious sex offenders ought not to receive appropriate sentences. Instead, the Council's view is that the introduction of mandatory minimum sentences will create unjustified unfairness without achieving its stated aims of deterring offenders and increasing transparency. Further, any attempt to ameliorate the injustices of a mandatory sentencing scheme by restricting its operation to deserving cases (as the Council outlines in Part B) creates difficulties and introduces undue complexity in the sentencing process.

The Sentencing Advisory Council recognises it does not act as a deterrent. There is no protective factor in introducing these sorts of regimes. In fact, it could be seen that pursuing this sort of discredited, non evidence-based approach, which the government persistently brings here, is a distraction from and displacement of genuine action that should and could be taken instead to genuinely provide better protection. It is quite offensive to continually bring something back that has no evidence base to support it, when what the community clearly wants to see is genuine outcomes and results. That needs to be delivered through something that evidence tells us will work and is advised.

In the government's second reading speech, it mentioned:

It is important that victim/survivors know and understand the court's reasoning when sentencing their abusers.

That is absolutely true. There are a range of ways that could be better achieved in our court system, no doubt. We absolutely do not need this bill to do that. Any sense of fettering the judicial discretion being utilised here risks that being done as effectively and meaningfully as possible. We could look to the courts and request that they provide more detailed or more fulsome explanations of their sentencing. There is evidence to say they are doing that. There is evidence to say that sentences are increasing in this space naturally within the court processes, without the need for a bill of this sort.

This leads to the government's claim that community expectations are driving this, to make our laws guided by community expectations. That is a simplistic claim. What exactly are the community's expectations? Let us be clear here. How have they been measured? How can we say that this is the best way to meet those expectations? I do not believe the government has made that case. They are offering us trite comments about community expectations without meaningfully drilling down into what that means. Noting that this is an area of significant hurt and trauma for many in the community, it certainly is not responsible to utilise that for trite comments.

We know from research, even that done in this state, that when the full circumstances of a case and the sentencing provided are explained and shared with community members, they tend to

agree with the sentences provided or think they should have been lesser. This is quite telling. It is quite telling that our judiciary is doing well with its sentencing, if that is the case, when an evidence-based approach to engage community members and educate them about that shows that community members agree.

We also know that sentencing is trending up. We were told that in our briefing this morning. That is acknowledged in the Sentencing Advisory Council reports as well. Sentencing on offences of this sort have been trending up for a reasonable amount of time. This is interesting to think about. Perhaps the court is actually responding well to what the community around it is regarding as important.

Ms Forrest - They do not need to be told by us.

Ms WEBB - Exactly. Community expectation may well be given effect to by the courts as we speak and might have been for quite some time.

I refer here to another of the Sentencing Advisory Council's reports. This one is Sentencing for Serious Sex Offences Against Children: Research Paper 3 from November 2018, so two years after that previous paper I quoted from. Looking at the Executive Summary, page v the Sentencing Advisory Council says this:

The Council's view is that sentencing for sexual offences involving children in the Supreme Court has clearly increased. Acknowledging that it is not possible to rule out the role played by the particular circumstances of a case and acknowledging the limitations of sentencing ranges, after examining sentencing data for serious child sex offences for the period 1 January 2015 to 30 September 2018 ... in comparison with sentencing data for the period 1 January 2008 to 31 December 2014 ..., it is clear that there is a decided upward trend in the sentences imposed.

In particular, the council goes on to note that in more detail. An upward trend and then further when you look into the body of the report, page 2, under the heading 'The council's previous observations in relation to the upward trend in sentencing for serious sex offences against children', we see this comment:

In 2016, the Council reported that there were indications suggesting that the Supreme Court had increased sentencing for serious sex offences, particularly those involving children. The Council observed that, generally, not only were sentences longer than they had been, but that it may be that they had not yet plateaued.

So they are still on their way up. Further down from that:

The Council noted that, to date, this has been the longest sentence imposed for sexual offending against children ...

It talked about that having potential to have a flow-on effect on future sentencing for the same crimes.

What we see there is that natural organic movement in sentencing practice when certain sentences, higher sentences, are imposed. It becomes a precedent and that is why you could get that upward trend, things moving and potentially in the context of community sentiment.

It goes on to note other particular cases that were giving an indication of that increase in sentencing. The Council further said on page 3:

The Council also noted that there had been powerful statements from the Court about the psychological impact of sexual abuse that reflect a contemporary understanding of the harms caused by such offending.

That is really important, because this is the Sentencing Advisory Council, our expert group that tells us about this topic. They are noting the court is evolving and growing on this topic over time, showing and demonstrating a contemporary understanding of what we know to be the trauma and harms of these crimes that is also reflected then in the upward trend in sentencing.

There is plenty of evidence in this report that tells us the court has already moved in this direction. It is particularly important for us to ask to what extent is the current sentencing practice of the courts already in line with what is in this bill. If it is already in line with it, or in fact it may have gone well past it and be putting in place imposing higher sentences, all this bill can do is potentially fetter the judiciary in inappropriate ways. Although it does provide for some exceptions where a court can explain itself for imposing a lower sentence, it only does that in those four particular ways. We are still fettering, even though it is not a blanket mandatory sentencing regime in the bill.

If the court is already there we do not need this bill. Maybe the government can confirm on the latest data available exactly where we are at with sentencing in our courts in terms of alignment with this bill. If we are in alignment with this bill, we do not need this bill. All it can do is potentially do more harm.

Another argument provided by the government is that apparently this bill will assist in consistency of sentencing. There is a nonsense to that sentence if you do not explain what you mean by it. The government certainly has not explained what it means by it, has not provided any data or evidence about it to us. It is just a sentence that sounds good and it sounds like it supports what they are doing. It does not. In fact, the Sentencing Advisory Council speaks about this and makes a very interesting point in its November 2018 report, research paper 3; in the Executive Summary, page v, there is a very pithy dot point that says:

- Consistency in sentencing requires consistency in the application of principle rather than numerical equivalence.

That is highly important when we are talking about delivering justice through our justice system. Consistency is not just about three years for that person, three years for that person. Consistency is about the fundamental principles of justice being applied consistently to the individual circumstances presenting in each case before the court. The consistent application of those principles then informs where the court lands in delivering its sentencing and meting out justice in those circumstances.

Perhaps the government would like to explain why it thinks that numerical equivalence is the delivery of consistency when clearly the Sentencing Advisory Council, their expert advisers on this, have noted otherwise. Perhaps the government can explain why any form of mandatory sentencing regime assists with consistency of the application of principle in these circumstances, because it certainly does not. It constrains the application of the fundamental principles of justice; it does not assist with it.

The government, in its second reading speech, also says that 'it is apparent that many members of our community are still often dissatisfied with the length of sentences given to convicted child sexual abuse offenders'. I believe that is absolutely true as a statement. However, this bill does nothing to ameliorate that. For a start, again, we have a broad anecdotal statement with no evidence presented to us about it, no further information provided about how this bill delivers or addresses that concern. I believe, very understandably, for many in the community who are affected by these crimes, whether as victims or family members of victims, there is literally no sentence that would be long enough from their perspective to punish the person who committed those crimes against them or their family member. There is literally no sentence that would be long enough. They would remain dissatisfied, if not appalled, by any sentence given and it being too short. There is nothing to say the minimums prescribed in this bill would satisfy those members of the community who the government says are apparently often dissatisfied with the length of sentences given.

This bill is not answering that concern. It is a valid concern in the community and it speaks to the hurt surrounding these crimes. Of course, we need to find all sorts of ways to better support that and the people who are affected by these crimes, their families and others around them. This bill cannot do that. It is likely the court is already doing what this bill is supposedly about. There is certainly no indication that the minimums expressed in this bill will further satisfy or indeed answer any dissatisfaction in the community on length of sentences.

This is such an awful position for this place to be in yet again. As has been discussed, this is a topic that is used for political purposes. It has no place in an evidence-based approach to justice in our state. It has no place in a compassionate approach to victim/survivors in this state. That is why it has not been recommended by the commission of inquiry, it is not recommended by service providers and civil society, it is not recommended by the legal establishment or entities representing it. This is a bill that is designed to be a political weapon, not to deliver any meaningful outcome in the community. It is an offensive thing to bring this bill to this place again and, unfortunately, it looks to be a political weapon that may well have been deployed effectively this time. It would be an utter tragedy to see members in this place cowed before such blatant political self-interest, weaponised in this way on a topic that is rolled out at election times for simplistic political self-interest to stir things up in the community in an ill-informed way and hurtful way.

I am incredibly sad if we see this bill passed today, that we will have failed in our job to deliver excellent legislation to the Tasmanian community because this bill is not that. It is the opposite of that. It is not evidence-based. It is not supported by experts. It will do more harm than good in the delivery of justice and I can only say shame on the government for bringing it to us again. I do not support this bill.

[end of excerpt]