Legislative Council

Hansard

Wednesday 7 August 2024

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

[excerpt…]

SENTENCING AMENDMENT (PRESUMPTIVE SENTENCING FOR ASSAULTS ON FRONTLINE WORKERS) BILL 2024 (No. 23)

Second Reading

[5.15 p.m.]

Ms WEBB (Nelson) – - Mr President, here we go again. An undignified stagger to the bottom of the legislative responsibility heap again.

At the outset, I do not understand this government's obsession with attempting to usurp the role of our judicial courts. Why must they insist on inserting themselves and telling other professionals how to do their job? The government could do with focusing a bit more stringently on how it executes its own roles and responsibilities, rather than inserting itself into our judicial responsibilities and roles. It would be a fair call for those in the judicial fraternity to tell the government to focus on its own job instead of meddling in theirs.

Whatever the impetus for this bill, it must be acknowledged there was a public consultation process on the draft bill conducted by the Department of Justice, and I have a bit to say about that. The consultation period opened on 10 February this year. It spanned the early state election period and it closed on 29 March - the election period. The election was called 16 February, I believe, and was held 23 March, so virtually the whole period.

Eight public submissions were made in that consultation period and those have been published on the Department of Justice's website. Of those eight received submissions, only one presented the views of the legal fraternity and that was from the Community Legal Centres, which I will discuss in further detail a little later.

I am surprised, and I suspect the department was surprised, that there were not more submissions from the legal fraternity and legal bodies representing that fraternity received during that public consultation stage. It is interesting to ask why; I did ask why in the briefing. Normally what would happen, we were given to believe when we discussed this during the briefing, when the Department of Justice puts an exposure draft out for comment, there would be an automatic email go to 50 stakeholders, or thereabouts, inviting them or making them aware of the consultation. In the case of this bill, that is not what happened, because before that could happen, the caretaker period kicked in and advice from DPAC was given that it would not be appropriate to send that email out as part of this consultation period. So the usual invitation did not occur.

One has to wonder, then, to what degree relevant stakeholders were not aware that it was occurring, given all the other political activity across an election period called early and being held. It is probably not surprising, then, that apparently, close to the end of that

consultation period, just after we were out of caretaker period, there was a quick reach-out to a couple of legal fraternity people - apparently the Law Society and Tasmania Legal Aid - that was confirmed. That was right near the end of the period, and did not result in submissions, not surprisingly. It is hard to turn around a submission on short notice for those bodies.

This is utterly unacceptable. I do not know why, if a consultation period was begun, and then almost immediately a caretaker period was entered into, which meant that usual processes of connecting with stakeholders could not be undertaken, why was that not paused and then done fully after the election was held? That is utterly unacceptable.

I am disturbed that we have not had more formal submissions on this during that consultation period from the legal fraternity. No doubt they would have echoed what we have heard time and time again in other instances on similar bills relating to mandatory sentencing. Yes, this is presumptive sentencing, but it is virtually the same principles being applied and the same objections would be applied, and I suspect we would have heard exactly those same objections brought by the legal fraternity on this bill.

The other possibility is, I guess - because I have had this put to me by stakeholders in relation to engaging in consultations on bills and issues of this sort with this government - some stakeholders simply get tired of investing time and energy stating their respective cases in submissions, putting time and effort into it, providing evidence-based submissions, making reasonable requests for changes to be considered based on those evidence-based presentations, only to be ignored. No changes made.

It is not surprising that there would be stakeholders making this case to me that they see it as absolutely pointless to engage with this government on any legislation, this one probably included, when anything that they put forward as experts in their field, as people with valuable policy advice to provide, with evidence-based submissions made, absolutely no response. No taking on of any of that expert advice from community stakeholders, except the ones the government intended to take on in the first place.

I am not surprised that we seem to have submissions here in this consultation process from very interested stakeholders who support the government's position. Did they get a communication to alert them to the consultation? I wonder. Perhaps the government can provide an answer to that in the summing up. Did a communication go out to any stakeholders, including the ones who made submissions in support of the bill, to those stakeholders from the Department of Justice prior to being told not to, during the caretaker period, reach out to other stakeholders, or did the government, or members of the government, or then, once the election was called, candidates for the government, send alerts out to those stakeholders? That would be interesting to know.

Yes, there were submissions received from certain stakeholders who perceived that they will benefit from this bill and, my goodness, how mistaken are they. It is sad the degree to which we are seeing a misleading approach here from the government.

I asked the government what expectations they had given stakeholders for this bill. Had they led people to believe that a bill of this sort would address their valid concerns about safety of staff in various industries and various positions? None of us are going to disagree that there are some people in roles in certain industries that may well be subject to risk in their interactions with the public. Did the government tell people, stakeholders, that they could expect that a bill

of this sort would better protect their workers? That it would result in a decrease in risk and or tangible assaults occurring?

I asked in the briefing if they gave that expectation to stakeholders. It came back to me that no, they had not They had not told them that there would be that impact from the bill and that is because they could not because all evidence says it will not cause an improvement in those things. I think those stakeholders may well have been led to believe that talking tough means something tangible will happen and there will be an improvement in safety and in the number of assaults occurring. How sad that they may have been misled by that bluff: that talking tough actually means results because, with this government, that is certainly not what the evidence tells us.

I am going to reflect on the submission from Community Legal Centres Tasmania, which was the only legal fraternity body that sent something through during the consultation process. The submission was very useful in that it provides an evidence-based argument regarding the assertion that mandatory sentencing provides an effective deterrent. I am going to say mandatory sentencing/presumptive sentencing because the same principles are behind both.

The CLC submission provides a graph presenting Tasmania Police data following the 2014 amendment to section 16A of the Sentencing Act 1997, which introduced minimum mandatory sentences of six months when an offender is convicted of an assault which causes serious bodily harm to a police officer on duty, unless there are exceptional circumstances. The graph in the submission shows that over the last decade, the number of police officers in Tasmania has increased by 15 per cent whilst the number of assaults against police officers has increased by 27 per cent. Minimum mandatory sentencing is not quite the effective deterrent, then.

However, since 2020, the data shows the number of serious assaults against police officers has reduced. The CLC contends that may be explained by the introduction of bodyworn cameras in July 2020, citing the fact that, when introducing the reform, the then minister for Police, Fire and Emergency Management acknowledged that body-worn cameras provide significant operational benefits, including positively influencing the behaviours of people interacting with police and reducing the number of assaults against police.

Look at that, evidence-based initiative and reform that resulted in an expected and anticipated positive impact, reducing the number of assaults occurring. That is what happens when you use evidence to inform where you are going with these sorts of reforms, it makes a nonsense of 'tough on crime'. 'Tough on crime' is 'dumb on crime', what we need is 'smart on crime', which means evidence-based.

To suggest to the community that 'tough on crime' is going to make them safer is a lie. That is what this government engages in when it suggests to the community that they are tough on crime and their non-evidence-based measures are going to make the community safer. They are lying.

The CLC puts a strong case based on the data. It is clear the introduction of section 16A of the Sentencing Act 1997 has had no significant deterrent effect on police officer assaults in Tasmania and, further, this submission points to academic research examining minimum mandatory sentencing offences in other Australian jurisdictions, which has also concluded that

minimum mandatory sentencing is not an effective deterrent. TasCOSS also provided a submission in which it states that peak organisations oppose the use of mandatory and presumptive sentencing legislation.

TasCOSS draws our attention to the following statement by the Law Council of Australia, and I quote:

> … [t]here is a lack of persuasive evidence to suggest that the justifications often given for mandatory sentences - retribution, effective deterrence, incapacitation, denunciation, and consistency - achieve the intended aim. Instead, mandatory sentencing regimes can produce unjust results with significant economic and social costs without a clear and directly attributable corresponding benefit in crime reduction. Further, mandatory sentencing schemes undermine community confidence in judges to administer justice and deliver appropriate sentences.

That is a fascinating quote that makes it clear that a non-evidence-based, lying tough-oncrime approach undermines community confidence in our judicial system. Instead of building it, it undermines it. We could take different actions to build it up, but we do not.

Further, TasCOSS cites other legal organisations such as the Law Institute of Victoria, which have stated that minimum sentencing regimes do not reduce crime rates. The Law Society of Western Australia argues that there is no evidence that it deters criminal behaviour and is more likely to result in harsh and disproportionate sentences. Similarly, there is little evidence from jurisdictions with mandatory penalties for similar offences to show that the introduction of mandatory sentencing against emergency service workers has resulted in a reduction in this type of offence.

Another serious concern is the known disproportional impact that mandatory sentencing has upon our Tasmanian Aboriginal community and other vulnerable sectors of the community. The CLC submission points to the fact that mandatory and prescribed minimum sentences disproportionately affect Aboriginal and Torres Strait Islander community members. In Tasmania, 23 per cent of the prison population is Aboriginal and Torres Strait Islander, who comprise only 5 per cent of the broader Tasmanian population. Furthermore, over the last decade, Tasmania's prison population has increased by 30 per cent, while the Aboriginal and Torres Strait Islander prisoner population has almost doubled, a 98 per cent increase. Community Legal Centres warns that the introduction of a prescribed minimum sentence is likely to disproportionately impact Aboriginal Tasmanians and contribute to increased incarceration rates as documented in other jurisdictions.

We are already failing in our efforts to close the gap. We are failing in that when it comes to our criminal justice system. This will make it worse. This is counter to our commitments and responsibilities to close the gap. TasCOSS also reiterates and stresses its concern about the disproportionate impact upon Aboriginal individuals and communities. In this context, TasCOSS warns:

> Expanding Tasmania's presumptive sentencing legislation will not address the systemic drivers of rising imprisonment rates, but will continue to funnel those experiencing disadvantage into cycles of imprisonment.

We should not take that warning lightly. It is incumbent on us to heed this warning as a serious matter of social justice and human rights.

TasCOSS's submission highlights the need for us, as a parliament and a community, to investigate alternatives to mandatory sentencing or presumptive sentencing and seek to divert people from the criminal justice system instead. There is merit to that argument because evidence demonstrates that diversionary options are extremely cost-effective and assist in reducing recidivism rates.

TasCOSS states emphatically that, instead of promoting mandatory and presumptive sentencing, if we are serious about increasing frontline worker and community safety, it will prioritise policy and legislative reform and ensure it is informed by evidence-based initiatives. Such alternatives, it has said, include better training and improved public education to reduce risks of assault and to achieve better outcomes than increased penalties. We need greater use of diversionary options and investment in addressing the drivers of offending, as evidence tells us that will be cheaper and more effective in reducing recidivism.

In contrast, presumptive sentences do not address the causes of violence and authorities for offenders are enforced after a worker has already been seriously assaulted. It is a post fact effort, not preventative. It does not increase safety.

TasCOSS emphasises that system failures such as inadequate resourcing to support trauma informed practise or investment in prevention and early intervention services will ensure that frontline workers and community members continue to be at higher risk to acts of violence.

Hence, it is not surprising that TasCOSS submission recommends, very bluntly, two things:

> (1) The Tasmanian Government withdraws this Draft Bill to prevent unjust sentencing provisions.
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> (2) The Tasmanian Government works proactively to reduce contact with the criminal justice systems by increasing investment to: expand diversionary options; adequately resource prevention and early intervention services; and address the drivers of offending.

What a shame, those two very worthwhile recommendations from TasCOSS, that are evidence based and smart on crime, were utterly ignored by this government. Hence, we have this incredibly flawed bill before us.

As has been stated by the CLC and reiterated on the public record in the other place, there is a strong assessment that this bill will not deliver its stated intent. It will not help protect those selected designated groups of workers listed in it. The CLC submission points to data indicating that since 2014 and the passing of section 16 A of the Sentencing Act, legislating minimum mandatory sentences of six months when an offender is convicted of an assault which causes serious bodily harm to a police officer on duty, unless there are exceptional circumstances, the expected correlation of reduced assaults on that category of front-line work has not eventuated. Certainly not from that effort, but we have tackled it in other ways that appear to be significantly more effective. The CLC submission goes on to say:

> We strongly believe that the Bill will not protect either frontline workers or emergency service workers. The evidence demonstrates that the mandatory sentence provision already in place for assaults against police officers has not seen any decrease in assaults against police officers and there is no evidence that introducing presumptive minimum sentences for other occupations will have any deterrent effect.

It does not make people safer. It is as simple as that.

The other unnecessary and offensive aspect of this bill is the fact we already have assault and causing bodily harm provisions in our statutes. During the department's briefing, we discussed the fact we already have grievous bodily harm. We already have bodily harm. We have been given to believe that although it is not definitively defined, serious harm is going to fall somewhere between those two. Is it needed? There is not a case that has been made squarely that it is needed to add this extra and new understanding.

The government has form in duplicating for the special few statutes. For example, the draconian protest laws which sadly passed this parliament: despite the fact we already had trespass provisions in our statutes and other ways to deal with lawful protest and people undertaking their rights to protest. This kind of duplication of provisions and offences already available in our statutes is quite ironic, particularly when it occurs under the auspices of a party which prides itself on anti-red tape.

There are some matters that came up in the briefing I will touch on briefly that I thought were worth reflecting on regarding this bill. We always should start with the principle of what the problem is we are trying to solve. What information do we have about the effect we are trying to have here and what we want to change? Have we reviewed previous mandatory sentencing laws in this state, the one that related to police officers that has been mentioned in my contribution already? No, we have not reviewed that, apparently because there was not enough data. It has not been used enough for us to be able to review it.

There is no baseline data on the groups included in this bill of the sort of assaults that would be captured by this bill. We do not have a baseline data set to tell us what the situation is now. Even though there is a review in this bill, we are going to be in a position in five years asking ourselves what impact this bill had. What changed after we introduced it? We are going to be scratching our heads, because we did not start from a position of a baseline to which we could then compare. When we discussed it in the briefing, it was pointed out that the reviewer at that time may well have to go back themselves to try to scrape together some form of baseline for this point in time, at the start of this bill's life - this act's life, if it passes - to be able to compare changes over time. How ridiculous. If a reviewer has to do that in five years, why did the government not bother to do it now before bringing this bill? Put together the evidencebased, baseline data so we know what this looks like for the groups described and listed in the bill. What does it look like in terms of serious assaults or serious harm as a result of assaults that would be captured by this bill? We simply do not have it there as evidence.

We are told stakeholders have been approaching the government with concerns about safety for workers. Those are justifiable concerns; everybody wants people to be safe at work and to be able to go home safe at the end of a work day. When stakeholders and industries have come to the government with those concerns, has the government given them the expectation

that this bill is going to help? Apparently not. I wonder what they have said to them about the expected impact of this bill.

When I have asked what the expectation was on the impact of this bill, apparently it will have an educative function on the community at large. It will indicate how seriously we take the safety of frontline workers listed in this bill. Now, that is fine, but we do not hold those particular groups above all other Tasmanian workers in terms of their safety. As the member for Launceston so correctly pointed out, there is absolutely no need to make a list because as soon as you do that, it is exclusive rather than inclusive and we put some above others and, of course, our concern is extended to all Tasmanian workers.

If this bill should pass and become law, how will we know whether it has reduced assaults? Do we expect it to reduce assaults? The short answer is: we will not know if it has because we do not have the baseline data.

The other basic information we needed from the government to make the case for this bill is whether the court is currently sentencing in line with this. Is this going to ask the court and judicial officers to do anything different from what they already do in circumstances that would be captured by this bill that are occurring right now?

We have not put that information together to tell us that. We could very well have a situation where our judicial officers are sentencing exactly in line with what is asked in this bill, that this is business as usual right now in our courts. In which case it is thoroughly unnecessary, but we do not have the data to tell us that because the government has not bothered to go back through and put together a case for whether this is needed and warranted. That is ridiculous and is poor public policy. It is ridiculous to bring us legislation that has literally no evidence base to support it.

When we start bandying about statements about meeting community expectations when it comes to our criminal justice system, I find it ironic because here are the facts about this. We would probably all have heard this, and I think it is true, there is often a community perception that sentencing by our judicial officers is too light. That is not just limited to Tasmania; that is common in other jurisdictions and globally. Community perception often thinks judges let people off too lightly.

Here is what has happened when academic researchers have looked into that and examined it in more detail. When researchers research members of the public who think sentencing is too light they take those members of the public and familiarise them with actual case examples. They walk them through the full information of the case and the explanation for why the judicial officers gave the sentences they gave in those cases. Do you know what happens at the end of it? The community members largely either agree with the judicial officers or think the sentence should have been lighter. That is what has come out of the research. I wish I could quote it to you. I will have to look it up so that next time I can quote the specific research that indicates this.

That tells me that when there is community perception that our judicial system is sentencing too lightly, the solution to that is education, not inflammation. This sort of bill inflames that perception. It is a false perception. When people are educated, they typically change their mind. That builds confidence in the public for our judicial system, and for our judicial officers and the decisions they are making with their expert role in sentencing people

in that system. Education builds public confidence in our judicial system. Education helps quiet and quell community concern and perceptions about sentencing.

This kind of bill is running in the opposite direction. It is inflammation. It is politically self-interested inflammation by this government of community fears and concerns. How utterly disgraceful.

Before I close, I place on the record my deep concern and disquiet regarding the sudden proliferation of mandatory/presumptive sentencing legislation coming through this parliament. Previous parliaments certainly had attempts placed before them, but at the time common sense and respect for the separation of parliamentary and judicial powers had been, in the main, upheld by the opposition parties, particularly in the other place.

Recently and inexplicably, the Tasmanian Labor Party appears to have abandoned its long-held practice of standing firm against mandatory minimum sentencing/presumptive sentencing of all sorts. It has not gone unnoticed that despite abandoning its former in principle evidence-based position more often than not the Labor Party takes great pains to state it does not believe the mandatory sentencing bill will deliver its stated intended aims, and that it is going to be ineffectual and it will not deliver. Specifically, that argument was prosecuted for this particular bill in the other place. That is no excuse for facilitating the passage of bad law.

No matter whether we are party-affiliated or independent, all of us in this parliament have a fundamental responsibility to deliver to the best of our ability good, fair, and functioning laws. Traditionally, this is pertinent to a core responsibility of this Chamber as a designated House of review. We are charged to scrutinise proposed legislation, not solely for delivery of policy aims, but also so that the legislation is workable and is good law. I urge the members here to seriously consider the fact that, despite the majority consensus as expressed during the debate in the other place, this bill will be ineffective, and will not deliver the stated intent due to the evidence-based recognition that mandatory sentencing is wildly ineffective as a deterrent tool. Despite all that being placed on the public record, a flawed and bad piece of proposed law has been placed before this place to consider because it was passed despite all those things being expressed in the other place by the majority of members there.

In any other professional capacity, the recipients of a flawed, principally wrong and bad proposal would be justified in thinking, 'How dare they?' But, not wishing to reflect on the other place, I shall instead merely shake my head with no small degree of frustration. I urge members that if you do not believe proposed laws will be effective or functional then do not vote for them. If something is fundamentally bad law, then do not facilitate its progress. That is the fundamental principle of serving in the public interest and delivering good governance.

In closing my second reading contribution on this incredibly flawed bill, I fundamentally and in principle oppose the premise of mandatory or presumptive sentencing as do all experts and evidence-based positions on this principle. I particularly oppose this interference in the court's jurisdiction in such a manner which asserts that assault on one group of workers within our community is more unacceptable and egregious than if the same assault was inflicted on another Tasmanian in another line of employment.

I need to ask, does that turn on its head in the sense of egalitarian and equitable society? It just does not make sense. For example, consider the proposal for the introduction of industrial manslaughter laws. The premise of that campaign is that all workers have a right to go home

unmaimed at the end of their work day. I have long been on the public record supporting that premise. That is about enshrining an egalitarian fair principle across all employees. It is not saying only one group of select workers are entitled to the presumption of going home at the end of the day. It is about ensuring our legal framework restores a balance and protects human rights in an equitable, egalitarian manner. Imagine if we were to pass legislation that created different classes of workers and limited the offence of industrial manslaughter to only one class of workers. That would not wash and rightly so.

Adding more employment types and categories to the list we have in this bill, designated frontline workers, is not the solution. In this context, lists become exclusive by their very existence rather than inclusive. They are unfair and unequitable.

Mr President, this is a bad law. It is wrong in intent and bad in practice. I cannot support the bill.