
Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017

Sexual Assault Support Service Inc. (SASS) Submission

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Sexual
Assault
Support
Service

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Introduction

Sexual Assault Support Service (SASS) is a free and confidential service for people of all ages who have been affected by any form of sexual violence, including intimate partner sexual violence. We also provide counselling to children and young people who are displaying problem sexual behaviour (PSB) or sexually abusive behaviour (SAB), along with support and information for their family members and/or carers.

The range of support options available at SASS includes counselling, case management (including safety planning) and advocacy. We also provide information and support to professionals, and deliver training workshops and community education activities in a range of settings including schools and colleges.

SASS appreciates the opportunity to provide feedback on the *Sentencing Amendment (Mandatory Sentencing for Serious Sexual Offences Against Children) Bill 2017* (the Bill).

Comments on the Bill

SASS strongly supports this Bill. We feel that mandatory sentencing for serious sexual offences against children provides an effective deterrent and enables greater consistency in sentencing. We also agree with Tasmania Police that offender incarceration can provide “...an opportunity for concerted targeting of individuals for rehabilitation.”¹ We note that aggregate sentence lengths for sexual assault and related offences are lower in Tasmania than in any other jurisdiction, with the mean aggregate sentence in Tasmania being 5.7 years, compared with 7.9 years for Australia as a whole.² We also note that incarceration for certain sexual offences against children, for example sexual intercourse with a young person, is utilised much less frequently in Tasmania (26%) than in other jurisdictions such as Victoria (43% for sexual penetration of a child aged 12-16, and 75% for sexual penetration of a child under the care, supervision or authority of the adult, where the child is aged between 10 and 16).³ SASS is also concerned that suspended sentences are used far more frequently in Tasmania for cases of maintaining a sexual relationship with a young person. The Sentencing Advisory Council noted in a recent report that 100% of offenders in New South Wales received a sentence of imprisonment, 93% in Victoria, 72% in Queensland and 64.8% in Tasmania. Tasmania also utilised fully suspended sentences to a much greater degree (27%) than in other jurisdictions (2% in Queensland and Victoria).⁴

We agree with the Sentencing Advisory Council that sentencing for the crimes of maintaining a sexual relationship with a young person in circumstances of aggravation and sexual intercourse with a young person have been unreasonably lenient to date,⁵ and should be increased to better reflect the seriousness of the crimes. SASS therefore supports the Government’s proposal to insert a new section 16B into the *Sentencing Act 1997*. We appreciate the

consideration given by the Sentencing Advisory Council to the proposed new time periods for mandatory sentencing, and support their reasoning in this area.

With regard to the proposed Section 16B. (6) (c), SASS agrees with the capacity for some residual judicial discretion, but feels that it is important that this is tempered. We endorse the following advice given by the Sentencing Advisory Council:

19. That the exceptions to the mandatory minimum scheme should be a non-exhaustive list of ‘special reasons’ that reflect circumstances which significantly reduce the culpability of the offender.
20. That there should be a general provision in the legislation that allows a court to find special reasons if there are substantial and compelling circumstances that justify doing so.⁶

Finally, SASS notes the issue of dangerous criminal declarations and preventative detention. Five of the seven offenders currently under dangerous criminal declarations and detained in Tasmania are sex offenders.⁷ SASS shares the Sentencing Advisory Council’s concern that there is currently no provision in Tasmania for preventative supervision in the community beyond the term of an offender’s sentence, and accordingly that the dangerous criminal legislation should be modernised by the introduction of supervision and detention orders.⁸ We note and endorse the following comments from the Sentencing Advisory Council’s report:

...the Council’s view is that a preventive supervision order scheme would address the lack of supervision currently available post-discharge for dangerous criminals. It may also address community concerns in relation to a very small number of high risk serious sex offenders who, approaching the time of release, present an unacceptable risk of reoffending. It is also preferable to the current approach because the assessment of risk is likely to be more accurate being made closer to the time of release rather than at the time of sentencing (which may be many years prior to the offender’s anticipated release).⁹

SASS strongly supports legislative reform in this area, and recommends that the Government propose appropriate changes to the *Criminal Code Act 1924* accordingly.

Finally, we also draw attention to the following points we made in a 2016 response to the draft research paper commissioned by the Sentencing Advisory Council on mandatory treatment for sex offenders.

Lack of post-release supervision for high-risk offenders

We agree with Dr. Bradfield’s statement that “a clear gap in Tasmania’s legal response to sex offenders is the inability to impose supervision or treatment on high-risk offenders who are released without parole either at the end of their sentence or following the discharge of a dangerous criminal declaration.”¹⁰ We also agree that “the lack of supervision for high-risk offenders who have not been declared [a dangerous criminal] at the time of sentencing and who will be released unconditionally at the end of their sentence” is problematic.¹¹ In our 2015 submission, we noted that:

Smallbone and McHugh [2010] [...] highlight the importance of post-release supervision, which, in the Queensland context, may take the form of either ‘standard’ supervision (for example, parole) or “more stringent supervision and monitoring provisions of the Dangerous Prisoners (Sexual Offenders) Act (DPSOA).” In their study, the authors found that being released without supervision was one of two factors that were “significantly and uniquely related to sexual recidivism”.¹²

We recommended that the *Corrections Amendment (Treatment of Sex Offenders) Bill 2015* “be expanded to include post-release supervision provisions for high-risk sex offenders, to complement and support ongoing treatment arrangements.”¹³ We fully support the Sentencing Advisory Council’s call for “the introduction of supervision and detention orders based on the unacceptable risk posed by the offender at the time of release”¹⁴ and agree with Dr. Bradfield that the Harper Review in Victoria may provide useful guidance for the Tasmanian government, with regard to the implementation of appropriate legislation.¹⁵

Pro-social support initiatives

In SASS's view, options for a pro-social model of support to complement post-release treatment and/or supervision arrangements should be considered by Government. We are particularly interested in Victoria's Support and Awareness Group (SAAG) model, given that it does not rely on the availability of volunteers in the community.¹⁶ Given Tasmania's relatively small population, finding a pool of suitable volunteers to participate in a support program for post-release sex offenders may be challenging; however, we believe that both the Circles of Support and Accountability (COSA) and SAAG models are worthy of further exploration.

¹ Sentencing Advisory Council (2016). *Mandatory Sentencing for Serious Sex Offences Against Children*. Final Report No. 7, p.13.

² Sentencing Advisory Council (2015). *Sex Offence Sentencing*. Final Report, p.50.

³ Ibid, p.49.

⁴ Sentencing Advisory Council (2016), p.73.

⁵ Ibid.

⁶ Ibid, p.46.

⁷ Sentencing Advisory Council (2015), p.x.

⁸ Ibid.

⁹ Ibid.

¹⁰ Bradfield, R. (2016). Draft Research Paper: *Mandatory treatment for sex offenders*. Commissioned by the Sentencing Advisory Council, p.5.

¹¹ Ibid, p.44.

¹² Smallbone, S., & McHugh, M. (2010), cited in Sexual Assault Support Service (SASS). (2015). Submission in response to *Corrections Amendment (Treatment of Sex Offenders) Bill (2015)*, p. 3. The other identified factor was "higher assessed static risk".

¹³ Ibid, p.3.

¹⁴ Bradfield, R. (2016), p.44.

¹⁵ Ibid.

¹⁶ Ibid, p.47. See also Braden, M. (2016). Evidence at Royal Commission into Institutional Responses to Child Sexual Abuse Public Hearing - Criminal Justice Roundtable (Day 2 - Adult sex offender treatment programs), p.24 2-3. Transcript available at: <https://www.childabuseroyalcommission.gov.au/getattachment/ed8120f7-497d-4515-b5cc-0fad075fe0b/Transcript>