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Parliament should not interfere with judicial discretion

Mandatory sentencing for Commonwealth child sex offences would undermine court discretion in determining appropriate punishment and would not act as a deterrent, says the Law Council of Australia.

Law Council President, Arthur Moses SC, said child sex offending was abhorrent and while such offending deserved the full force of the law, mandatory sentencing opened the door to other unintended consequences.

“Child sex offences are the most heinous of crimes and deserve the most serious punishment,” Mr Moses SC said.

“The Law Council in principle opposes mandatory sentences as there are risks this may produce injustice in some circumstances. Mandatory sentencing risks triggering unintended consequences that are at odds with the intention of the laws and fundamental principles which underpin the administration of justice.

“Whatever the crime, judges always must retain discretion to ensure sentences are appropriate to the facts of a case. If judges make mistakes or are not applying accepted sentencing principles then their decisions can be appealed.

“Furthermore, the Australian Law Reform Commission has previously recommended against the mandatory sentences in relation to federal offenders.”

Mr Moses SC said courts need to be able to take into account all the factors of the offending and mitigating circumstances and also protection of the community in each individual case.

“Rhetoric in this distressful area for victims of these heinous crimes and their families is unhelpful,” he said.

“We all agree these are heinous crimes that should be subject to severe sentences. The community is not interested in cheap law and order politics but solutions that prevent harm.

“We need to provide more resources and powers to law enforcement to deal with the problem at its source, not deal with the consequences after victims have already been harmed.

“Sentencing is not a one-size-fits-all exercise, but this is the effect mandatory sentencing has. For this reason court determinations in such matters – which take into account all the factors of the offending and mitigating circumstances – are vital.

“Judges should not be reduced to being the rubber stamps of predetermined sentences.”

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