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Mandatory sentencing risks unintended consequences

Mandatory minimum sentencing could force judges to “rubber stamp” lengthy prison terms regardless of the facts of a case, says Law Council of Australia President, Arthur Moses SC.

Appearing at yesterday’s Senate Legal and Constitutional Affairs Legislation Committee hearing into the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019*, Mr Moses SC said the Law Council supported the policy objectives of the bill. This includes provisions which protect child complainants from being cross examined by unrepresented defendants.

But he raised serious concerns about mandatory minimum sentencing provisions included in the proposed legislation.

“We all agree that sexual offences against children are heinous. Such offending is serious and offenders should always receive sentences that reflect the severity of the criminal conduct which constitutes the offence,” Mr Moses SC said.

“The Law Council notes the purported rationale for the inclusion of mandatory minimum penalties for certain Commonwealth child sex offences appears to be the unfair assertion that judges are delivering inadequate sentences.

“That is a broad justification for the proposed legislation. Judges are not out of touch with the pain caused by such offending – it is a reality they hear often.

“Mandatory minimum sentencing does not account for the potential factual issues which arise on a case-by-case basis. Part of a judge’s role is to mould a sentence – taking into account aggravating and mitigating factors – to ensure it is proportionate to the particular offending. This helps ensure there are no unintended consequences. In submissions, the Law Council highlights a number of examples where there would be unintended consequences in relation to mandatory minimum sentencing.”

Mr Moses SC noted studies in both Australia and the United States had demonstrated mandatory sentencing would not have a deterrent effect and could result in an increase in the number of contested hearings. This would further delay cases being heard, compound the impact on victims and further strain the already under-resourced criminal justice system.

Mr Moses SC said such matters had to be dealt with “in accordance with the rule of law and the administration of justice in terms of how one imposes sentences”.

“Judges should not be made instruments of injustice by being forced to impose sentences that do not reflect the facts in a particular case,” he said.

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