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Politicians should recognise mandatory sentencing will not make children safer

The Law Council of Australia is calling on all federal parliamentarians to not support the Federal Government's misconceived mandatory sentencing provisions in the *Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019*.

Law Council President Arthur Moses SC said all Australians agreed that any crime against a child is abhorrent and worthy of the community's condemnation by the imposition of significant sentences.

But in a dissenting report on the Bill to the Senate Legal and Constitutional Affairs Committee, Labor Party senators rightly concluded "the introduction of mandatory sentencing is likely to create significant new problems – both for children who are victims of sexual abuse as well as for the effective and just operation of the courts".

Law Council President, Arthur Moses SC, said this conclusion is supported by domestic and international evidence that demonstrated that mandatory sentencing does not make our children safer but leads to more defendants not pleading guilty and delays in trial courts hearing matters. This prolongs stress and anxiety for victims and their families.

"Introducing mandatory sentencing sounds like getting tough on crime but it is pure rhetoric," Mr Moses SC said.

"The actual evidence demonstrates more resourcing for police and community services to detect children at risk is more effective to keep children safe than mandatory sentencing which deals with the tragic consequences after a heinous crime has been committed. The federal government needs to provide more funds to the states and territories to tackle this scourge not using the same old law and order rhetoric.

"There is no evidence that suggests mandatory sentencing reduces crime. The US and other jurisdictions are winding back mandatory sentencing regimes because they don't work."

Mr Moses noted that Labor's national platform stated the party opposed mandatory sentencing as it has not proved effective in reducing crime or criminality.

"On behalf of Australia's legal community, I urge Labor to remain clear about its values and adhere to these as it did the last time this legislation was introduced by the Government in 2017."

In 2018, Centre Alliance also opposed mandatory sentences stating they are "inappropriate" and "depart from the fundamental principle that the punishment should fit the crime".

Mr Moses SC said: "The government should recognise that looking tough on crime is not the same as being tough on crime and withdraw this legislation. Parliamentarians should not be wedged into supporting measures that won't work but will throw up a range of unintended consequences."

"The Law Council supports a comprehensive review of Commonwealth sentencing practices for child sex offences, but mandatory sentencing is a hoax on Australian families who want the Government to contribute resources for our police and community service workers to detect and prevent offending. "

The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.

Media Release



In its submission to the inquiry, the Law Council raised several key concerns, including that:

- proposed mandatory minimum sentences could apply to consensual conduct between teenagers, which is not uncommon in the digital age;
- proposed mandatory minimum sentences do not allow the court full discretion in cases of individuals with significant cognitive impairment or mental illness;
- mandatory minimum sentencing may result in outcomes which are unjust.

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