



Review of life sentences in Tasmania: Sentencing Advisory Council

Consultation background paper

Background

The [Criminal Code Act 1924 \(Tas\)](#) (the Code) sets out the maximum penalty for all offences in Tasmania as 21 years, except where expressly provided. Currently, only two offences carry a maximum sentence of life in prison: [murder](#) (s 158) and [treason](#) (s 56). The Tasmanian Government has asked the Tasmanian Sentencing Advisory Council (TSAC) to review whether life sentences should be available for a broader range of serious offences.

Objectives of the review

The Terms of Reference for the review are as follows:

1. Examine the operation of sentencing for crimes that attract a maximum penalty of life imprisonment in Tasmania.
2. Undertake an analysis of the availability and use of life imprisonment in sentencing in other Australian jurisdictions.
3. Examine which serious offences in Tasmania attract the longest terms of imprisonment in sentencing.
4. Consider whether life imprisonment should be applied as a maximum sentence for additional serious crimes in Tasmania, including:
 - a. What serious crimes should life sentences be available for; and
 - b. Whether life sentences should be available for aggravated forms of certain offences.
5. Any other related matters the Council recommends.

Scope of the review

The review is examining sentencing principles and purposes of life imprisonment in Tasmania and other jurisdictions in Australia, as well as data on sentencing outcomes for offences that attract a maximum penalty of life imprisonment.

A primary component of the review is consultation with a small set of key stakeholders to identify views on whether the availability of life imprisonment should be expanded to include other serious crimes, including aggravated forms of certain offences.

A final report will be delivered to TSAC with recommendation(s) about possible reform, informed by the legal and statistical analyses and consultations.

Consultation process

Each consultation will take the form of a semi-structured interview, with the questions identified below acting as prompts to guide – but not limit – the conversation. Interviews will take place remotely via Zoom or Teams (based on stakeholder preference). They will not be recorded so as to facilitate free and frank discussion, but notes will be taken to support subsequent thematic analysis. These notes will be destroyed once the review has been completed.

The final report for this review will include information drawn from the thematic analysis. Quotes from interview participants will be included where applicable, but they will be de-identified. That is, the quote will not be attributed to a named individual. However, a category of stakeholder will be identified, such as ‘legal practice’, ‘government’ or ‘criminal justice system’. Each participant will be asked to select the classification they feel is most appropriate for their role.

The final report from the review will be made available to the public via the TSAC website. A copy will be circulated to all consultation participants.

Interviews will be undertaken by the primary researcher, Director of Karen Gelb Consulting, Dr Karen Gelb. She will be supported by the Research Assistant, Ms Saskia Teale from the Australian National University.

Consultation questions

The maximum penalty for all offences in Tasmania is 21 years, except murder and treason that carry a maximum sentence of life in prison. This is very different to all other jurisdictions in Australia, where offences such as large-scale drug trafficking and serious sex offences also carry a maximum penalty of life (see Table 1 below, for information).

1. Is it problematic that only these two offences attract the highest possible maximum penalty? If so, in what ways does it affect you, your organisation or the Tasmanian justice system?
2. Do you think the current situation reflects contemporary community expectations and public attitudes?
3. Do you think the current situation reflects the expectations of victims of serious crimes?
4. Does the current situation allow all the purposes of sentencing to be fulfilled for other serious offences not subject to a life imprisonment maximum penalty?
5. Should the availability of life imprisonment be expanded to include other serious crimes? If so, on what basis/principles should these other offences be identified?
6. Which offences do you view as high priority for amendment of their maximum penalty, and why?
7. What do you see as the potential consequences (both intended and unintended) of imposing sentences of life imprisonment on (a) people who are found guilty or plead guilty; (b) victims of crime; (c) members of the community; and (d) the justice system more generally?
8. Are there offences that you would be concerned about if they were to be included in any reforms?
9. Is there anything else you think the TSAC should consider when formulating its recommendations?

Table 1: Cross-jurisdictional comparison of offences that attract a maximum penalty of life imprisonment (mandatory penalty denoted by *)

TAS	ACT	NSW	NT	QLD	SA	VIC	WA
Murder	Murder	Murder*	Murder *	Murder *	Murder	Murder	Murder *
Treason	Trafficking in controlled drug	Murder of a police officer*	Manslaughter	Demands with menaces upon agencies of government (aggravated)*	Treason	Treason	Manslaughter
	Manufacturing controlled drug for selling	Drug offences involving commercial quantities or cultivation for a commercial purpose (excluding cannabis leaf)	Attempt to murder	Repeat serious child sex offences*	Conspiring or soliciting to commit murder	Conspiracy to murder or commit treason s	Attempt to unlawfully kill
	Cultivating controlled plant for selling	Drug offences involving manufacture or production in presence of children or procuring children to supply prohibited drugs	Terrorism	Riots which cause grievous bodily harm to a person, causes an explosive substance to explode or destroys or starts to destroy a building, vehicle or machinery	Manslaughter	Incitement	Perjury (where committed for convict a person for an offence punishable by life imprisonment)
	Selling controlled plant	Aggravated sexual assault in company	Perjury (to procure the finding of guilty of another person for an offence punishable with imprisonment for life)	Crime of piracy	Criminal neglect where the victim dies	Unintentional killing in the course or furtherance of a crime of violence	Procuring etc suicide
	Supplying controlled drug to child for selling	Persistent sexual abuse of a child	Forcibly rescues a person in custody sentenced for murder or terrorism	(Serious) Perjury	Causing death or harm by dangerous use of vehicle or vessel (aggravated)	Trafficking in a drug of dependence (large commercial quantity)	Preventing the birth of a live child
	Procuring child to traffic in controlled drug	Sexual intercourse-child under 10	Assisting and encouraging suicide	Conspiracy to bring false accusations	Leaving accident scene etc after causing death or harm by careless use of vehicle or vessel (aggravated)	Trafficking in a drug of dependence (large commercial quantity for a criminal organisation	Robbery involving an offensive weapon or instrument

TAS	ACT	NSW	NT	QLD	SA	VIC	WA
			Killing an unborn child when it is about to be delivered	Engaging in penile intercourse with a child under 16	Rape	Cultivation of narcotic plants (large commercial quantity)	Aggravated assault with intent to rob
			Disabling (choke, suffocate, strangle) a person in order to commit an indictable offence	Abuse of person with an impairment of the mind (engaging in unlawful penile intercourse)	Triggering child sex offences*		Criminal damage where property destroyed by fire
			Stupefying in order to commit an indictable offence	Obtaining commercial sexual services from person who is not an adult – child under 12 years	Unlawful sexual intercourse with a person under the age of 14		Possesses with intent to sell, manufactured or sells a trafficable quantity of meth.
			Acts intended to cause serious harm or prevent apprehension	Incest	Sexual abuse of a child		
			Preventing escape from ship or aircraft that is in distress in wrecked	Repeated sexual conduct with a child	Sexual servitude (commercial) where child under the age of 14		
			Intentionally endangering safety of persons travelling by railway or roadway	Attempted murder	Use of child under the age of 14 in commercial sexual acts		
			Intentionally endangering safety of persons while travelling by aircraft or ship	Accessory after the fact to murder	Arson by fire or explosives that damages property		
			Assault with intent to steal, using firearm and injuring victim by discharging it	Manslaughter	Use of a computer to commit, or facilitate a commission of an offence outside the state		
			Causing sexual servitude of a child under age 12	Aiding suicide	Robbery (aggravated)		
			Conducting business involving sexual servitude of a child under age 12	Killing unborn child when a person is about to deliver a child	Sacrilege (breaks and enters place of worship and engaged in an offence		

TAS	ACT	NSW	NT	QLD	SA	VIC	WA
					to which the section applies)		
			Sexual intercourse – without consent	Unlawfully assaults pregnant person and kills or seriously harms unborn child	Serious criminal trespass (aggravated)		
			Compelling sexual intercourse or penetration- without consent	Unlawful striking causing death (<i>Indefinite detention s314(6)(b)- to come back to</i>)	Piracy		
			Sexual intercourse- child under 10 years of age	Endangering the safety of a person in a vehicle with intent	Attempts to commit murder or treason		
			Causing sexual intercourse or penetration- child under 10 years of age	Disabling (e.g. chokes) in order to commit indictable offence	Trafficking controlled drug- large commercial quantity		
			Repeated sexual abuse- child under 16 years	Stupefying in order to commit an indictable offence	Trafficking commercial quantity where offender is a serious drug offender or aggravated offence		
			Robbery (aggravated)	Acts intended to cause grievous bodily harm or other malicious acts	Manufacturing controlled drug- large commercial quantity which they are intending to sell		
			Burglary (aggravated)	Rape	Manufacturing controlled drug- commercial quantity which they are intending to sell where offender is a serious drug offender or aggravated offence		
			Sabotage (involving major disruptions)	Obstructing rescue or escape from unsafe premises	Sale, manufacture etc of controlled drug – large commercial quantity where offender is serious		

TAS	ACT	NSW	NT	QLD	SA	VIC	WA
					drug offender or aggravated offence		
			Arson	Endangering the safety of a person in a vehicle with intent	Cultivation and sale of controlled plants for sale-large commercial quantity		
			Endangering operation of aircraft	Sexual assault (aggravated incidences)	Cultivation and sale of controlled plants for sale-commercial quantity where offender is a serious drug offender or aggravated offence		
			Conspiracy to lay a false charge that is punishable by life imprisonment	Armed or aggravated robbery	Sale or possession of controlled plants- large commercial quantity		
			Supply of a schedule 1 drug to a child - commercial quantity	Attempted armed or aggravated robbery	Sale or possession of controlled plants-commercial quantity where offender is a serious drug offender or aggravated offence		
			Supply of a schedule 1 drug to a child – less than commercial quantity	Extortion	Sale, supply or administration of controlled drug to a child		
			Cultivation of prohibited plant in presence of child-commercial quantity	Taking control of aircraft (aggravated)	Sale, supply or administration of controlled drug in a school zone		
			Manufacture dangerous drug – commercial quantity	Burglary (aggravated)	Procuring a child to commit an offence against Part 5 of the Act		
			Manufacturing dangerous schedule 1 drug in the presence of a child	Entering or being on a premise and committing indictable offences (aggravated)			

TAS	ACT	NSW	NT	QLD	SA	VIC	WA
			Procuring a child to commit an offence under s43BG or s 43BH	Arson			
				Endangering the safe use of vehicles and related transport infrastructure			
				Wilful damage- destroying or damaging by explosion 1, Sea Walls and other property [punishment in special cases]			
				Communicating infectious diseases to animals			
				Attempts to commit indictable offences punishable by mandatory life imprisonment			
				Accessory after the fact to indictable offences punishable by mandatory life imprisonment where no other punishment provided			
				Trafficking dangerous drugs			
				Supplying dangerous drugs			