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Sentencing Amendment (Emergency Workers) Bill 2014

Liberty Victoria has serious concerns about the *Sentencing Amendment (Emergency Workers) Bill* 2014 ("the Bill"). In summary:

(1) The Bill introduces mandatory immediate imprisonment and mandatory minimum non-parole periods for certain offences against emergency workers on duty (Cl 4); intentionally causing serious injury (ICSI) in circumstances of gross violence, recklessly causing serious injury (RCSI) in circumstances of gross violence, ICSI, and RCSI;

(2) Emergency workers are defined to include police (Cl 4);

(3) Mandatory minimum non-parole periods range from 2 years to 5 years;

(4) The Bill introduces mandatory minimum term of imprisonment (head sentence) of 6 months for intentionally causing injury (ICI) and recklessly causing injury (RCI) against emergency workers on duty (Cl 4); and

(5) There is an exception for "special reasons" (Cl 4).

Liberty Victoria strongly opposes the enactment of mandatory sentencing (whether with regard to head sentences or non-parole periods).

While supporting the need to protect emergency workers, these provisions will:

(1) Prevent judicial officers from exercising mercy in cases that do not fit within one of the prescribed "special reasons" (for example, where an offender without a prior criminal history may have acted out of character and/or when drug affected, and is

otherwise a law-abiding citizen in gainful employment and a provider for his or her family);

(2) Provide a disincentive for offenders to plead guilty (and also provide an incentive for offenders to appeal), which will only put further pressure on Courts which are stretched to breaking point, and see emergency workers having to be drawn into protracted court proceedings as witnesses;

(3) Further crowd prisons which are also stretched to breaking point (when other significant punitive sanctions may be preferable, such as a lengthy Community Correction Order with significant community work, supervision and treatment, alcohol restriction, curfew, non-association condition and/or electronic tagging); and

(4) Change the key decision making from the judiciary to the executive, whereby the decision will rest with police and prosecutors as to whether to proceed with charges that have mandatory sentences or proceed with (and/or resolve matters to) some lesser alternative charge that does not result in mandatory gaol. This may well result in inconsistent, personality driven decision-making.

The Bill constitutes yet another step towards mandatory and baseline sentencing as enacted or proposed to be enacted by the *Crimes Amendment (Gross Violence Offences) Act* 2013, the *Sentencing Amendment (Baseline Sentences) Bill* 2014, and the *Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Bill* 2014.

Taken together, that Act and those Bills constitute a significant and radical shift in the role of the legislature and the courts when it comes to criminal punishment.

Liberty Victoria respectfully adopts the recent criticisms of mandatory sentencing from former NSW Director of Public Prosecutions Nicholas Cowdery AM QC.[1]

When the public is fully informed of relevant sentencing facts, the research confirms that sentencing standards of judicial officers are not out of step with the community.[2]

The Court of Appeal has an important role in ensuring that current sentencing practices are commensurate with community standards, and it fulfils this role well. For example, the Court of Appeal has held that current sentencing practices were inadequate, and lifted the sentencing tariff, in cases of "glassings" in in *Winch v The Queen* (2010) 27 VR 658, and in cases of

[1] www.justinian.com.au/storage/pdf/Cowdery_Mandatory_Sentencing.pdf
[2] "Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study", http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi407.html).

"confrontational aggravated burglary" in *Hogarth v The Queen* [2012] VSCA 302. This has had a significant effect in practice.

There are other ways to ensure that sentencing standards reflect community values, such as guideline judgments and/or crown appeals.

However, Liberty Victoria supports the Bill's amendment of Community Correction Orders (CCOs). The Bill amends the CCO regime so that:

(1) CCOs can be combined with up to 2 years' immediate imprisonment (increased from 3 months presently permitted by s 44(1)(b) of the *Sentencing Act* 1991), not including pre-sentence detention (Cl 18); and

(2) Expressly provides that a CCO can be used in matters that would have called for a wholly suspended sentence prior to that sentencing option being abolished (Cl 17).

That provides greater flexibility to judicial orders to craft appropriate sentences and confirms the important role of CCOs in the sentencing hierarchy.

However, paradoxically, the Bill would then place certain offences outside the scope of CCOs (including RCI against an emergency worker, which could be a person causing a bruise or cut to a police officer when lashing out while resisting arrest.

While emergency workers should obviously be protected, that punishment (of at least 6 months' imprisonment) is disproportionate (and again consider the example of an offender with no prior criminal history, who is in good employment and has dependents).

Liberty Victoria calls for the Government, and indeed for all sides of the political spectrum, to protect the traditional role of the Courts and not engage in a populist law and order auction in an election year by expanding mandatory sentencing.

Please contact Liberty Victoria President Jane Dixon QC or Liberty Victoria Vice President Michael Stanton if we can provide any further information or assistance. This is a public submission and is not confidential.

Liberty Victoria

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