



THE LAW SOCIETY
OF NEW SOUTH WALES

26 May 2011

Mr Paul Lynch, MP
Shadow Attorney General
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Lynch,

Crimes Amendment (Murder of Police Officers) Bill 2011

The Law Society of NSW has always strongly opposed mandatory sentences and in particular mandatory life sentences. The Law Society's Criminal Law Committee (Committee) has reviewed the Bill and urges you to oppose it.

Mandatory sentences have been considered and rejected by sentencing law reviews conducted by the Australian Law Reform Commission¹, and the NSW Law Reform Commission². It is widely recognised that mandatory sentences do not deter offenders. The Government has provided no objective research or other evidence in support of its proposal.

Mandatory sentencing legislation removes the discretion of courts to decide a penalty which fits the individual circumstances of the crime and the offender. Mandatory sentences remove the experience, wisdom and balance of the judiciary from the sentencing process. The Committee agrees with the observation made by the NSW Law Reform Commission that "being in effect a sentence passed by Parliament, mandatory minimum sentences remove judicial discretion and amount to an unwarranted intrusion on judicial independence."³

A standard non-parole period of 25 years already applies to an offender convicted of murdering a police officer or other public officials. The standard non-parole period of 25 years is well and truly sufficient as a starting point for sentencing. A Judge in exercising his or her sentencing discretion is not bound by the standard non-parole period and may increase it following a trial. Murder of an on-duty police officer is already one of the most serious murders that it is possible to commit. Judges can currently impose a life-means-life sentence in an appropriate case.

The Minister for Police and Emergency Services justifies the legislation on the basis of the need to deter offenders. However, there have been no murders of police officers in NSW since 2002. It does not appear that general deterrence requires extra attention as it is not a prevalent offence. The current sentencing regime already provides ample room for the courts to signal the need for general deterrence by a discretionary life sentence.

¹ ALRC, Report 44 'Sentencing' 1988

² NSW Law Reform Commission, Report 79 'Sentencing', 1996

³ Ibid, para 9.11

The Bill is counter-productive from a law enforcement and prosecution perspective. The legislation demonstrates a lack of thought as to unintended consequences, including the following:

- it provides powerful disincentives to plead guilty, with attendant acquittal risk, and resource allocation issues for courts, the Crown and Legal Aid;
- there will be no effective incentive possible for a co-accused to co-operate and give evidence, there being no possibility of a discount for such assistance, or alternatively the Crown will be forced to charge manslaughter to get accomplice evidence;
- it would be well-known to juries and may of itself influence acquittal rates;
- there may be greater difficulty in apprehending suspects because of the prospect of life in prison if caught, and more casualties than otherwise would occur during apprehension, due to desperate steps which might be taken to avoid apprehension. Short of a death penalty, life in prison is the maximum sentence anyone can receive, so once someone has killed one police officer, they have nothing to lose by killing anybody else present, including any other police officers - an offender cannot spend more than one lifetime in prison, and
- mandatory life sentences remove any incentive for a prisoner to be of good behaviour during the sentence, to rehabilitate, educate or improve him or herself or to be actively involved in the improvements of fellow prisoners. Life prisoners can pose a security problem in the prison system and a threat to good order, discipline, rehabilitation and education initiatives.

The legislation is unnecessary, it undermines the proper role of the judiciary, it will not deter offenders and may have serious consequences from a law enforcement and prosecution perspective.

Please do not hesitate to contact me if you would like to discuss this matter further.

Yours sincerely,


Stuart Westgarth
President