



Criminal Code Amendment (Sexual Crimes Against Children in Community Protection Measures) Bill 2019

Submission to the Senate Legal and Constitutional
Affairs Legislation Committee

25 September 2019

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Crimes Legislation Amendment (Sexual Crimes Against Children in Community Protection Measures) Bill 2019 ('the Bill').
2. The sole focus of this submission is the imposition of mandatory minimum sentencing under Schedule 6 of the Bill. The ALA strongly opposes minimum mandatory sentencing and the associated implication (which is false in our experience) that it is necessary because of judicial incompetence.

Mandatory minimum sentences under Schedule 6

3. It is asserted that mandatory minimum sentencing is necessary because there have been a substantial number of appeals from sentencing decisions by judges in Commonwealth cases. However the Government has not provided any evidence as to the number of cases in which sentences on appeal are found to be inadequate, or on whether this number has significantly increased.
4. The fact that head sentences are simultaneously being increased, in that the maximum sentence will be greater, suggests that the real problem was not the judges, but the failure of the Commonwealth to ensure the availability of an adequate range of sentences for judges to implement.
5. The simultaneous provision of mandatory minimum sentences removes judicial discretion and shows a manifest want of trust and faith in the competence of the judiciary. If maximum sentences are increased, then the message of gravity of wrongdoing and the need for deterrence is clear but there will always be cases where flexibility needs to be available to judges in sentencing and the imposition of minimum sentences removes all useful discretion. Minimum sentences are offensive to our system if they imply that judges are not properly applying the existing law. The increase in maximum sentences suggests that it was the existing law which was the problem; not the judges. The ALA strongly submits that sentencing should ultimately be a discretionary matter and judges' hands should not be tied so that there is an unjust result in particular and unusual circumstances.

Conclusion

6. The Australian Lawyers Alliance welcomes the opportunity to have input into the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Crimes Legislation Amendment (Sexual Crimes Against Children in Community Protection Measures) Bill 2019. The ALA would welcome the opportunity to appear before the Committee to further explain its views.

Andrew Christopoulos

President

Australian Lawyers Alliance