

**Mr Stephen Farrow**  
Chief Executive Officer  
Sentencing Advisory Council  
Level 4, 436 Lonsdale Street  
Melbourne VIC 3000

1 July 2011

**By email: [contact@sentencingcouncil.vic.gov.au](mailto:contact@sentencingcouncil.vic.gov.au)**

### **Statutory minimum sentences for gross violence**

Dear Mr Farrow

The Federation of Community Legal Centres (Victoria) welcomes this opportunity to comment on the government proposal to introduce statutory minimum sentences for gross violence.

#### **About the Federation**

The Federation is the peak body for fifty community legal centres (CLCs) across Victoria. The Federation leads and supports CLCs in pursuing social equity and access to justice.

The Federation:

- provides information and referrals to people seeking legal assistance;
- works for law reform to develop a fairer legal system that better responds to the needs of the disadvantaged;
- works to build a stronger and more effective community legal sector;
- provides services and support to CLCs; and
- represents CLCs' priorities and interests.

CLCs are independent community organisations that work daily with communities interacting with our criminal justice system. They draw on the work of volunteers to provide free legal services to the public. CLCs provide free legal advice, information and representation to more than 100,000 Victorians each year.

#### **Our opposition to mandatory sentencing**

The Federation strongly opposes the government's policy to introduce statutory minimum sentences. The government's policy, which requires a court to impose a mandatory minimum sentence which can only be departed from in exceptional circumstances, can accurately be described as mandatory sentencing.

Mandatory sentencing disproportionately affects marginalised communities.<sup>1</sup> Rather than reducing crime, it may actually increase crime which ultimately harms

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<sup>1</sup> Sallmann, 'Mandatory sentencing: a bird's-eye view' (2005) 14(4) *Journal of Judicial Administration* 177, 189-90; Sheldon & Gowans, *Dollars Without Sense: A Review of the NT's Mandatory Sentencing Laws, (1999)* North Australian Aboriginal Legal Aid Service.

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rather than protects our community.<sup>2</sup> Mandatory sentencing undermines a fundamental principle of the rule of law which requires that judges be independent of our government - it significantly impairs a judge's ability to tailor the most appropriate sentence for the unique circumstances in each case. Giving our judges this discretion maximises the chances of imposing a sentence which will address the causes of the offending and reduce the chance of reoffending. It enables judges to ensure that the punishment fits the crime.

### **Terms of reference**

The terms of reference for this consultation do not extend to the merit of introducing statutory minimum sentencing. In relation to the terms of reference we endorse the submission to the Sentencing Advisory Council (Council) from the Law Institute of Victoria (LIV), particularly in relation to:

- framing gross violence as a discrete offence;
- a high injury threshold being severe injury; and
- the special circumstances exception.

We also refer the Council to the submissions from our specialist member centres Victorian Aboriginal Legal Service Co-operative Limited and Youthlaw. The submission from YouthLaw addresses the potential impact of this proposal on young people. We have read a draft version of that submission which expresses its strong opposition to mandatory minimum sentencing for young people aged 16-17 and we endorse those views.

### **Other matters which are relevant**

We are concerned this proposal will exacerbate delays in our criminal justice system. A fixed minimum penalty will discourage accused persons from pleading guilty to gross violence. This will increase the number of trials and increase the workload of courts and court delays. It will increase the stress on victims who may have to wait longer for an outcome and may have to give evidence and be cross-examined at a trial before a jury.<sup>3</sup>

We are also concerned that the proposed legislation will be incompatible with the *Charter of Human Rights and Responsibilities Act (2006)*<sup>4</sup> (Charter) and will violate Australia's international human rights obligations.<sup>5</sup> We understand that the Council is a public authority under the Charter and accordingly must properly consider and act compatibly with human rights (section 38(1) of the Charter) in conducting this review.

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<sup>2</sup> For example, as cited in Smart Justice 2010, 'Mandatory Sentencing', above n. 1, in the Northern Territory, property crime increased during the mandatory sentencing regime, and decreased once it was repealed.

<sup>3</sup> This is set out in detail in the LIV submission to SAC, 5-6.

<sup>4</sup> Specifically in relation to sections 17(2) and 19(2) and 23(3).

<sup>5</sup> Pritchard, 'International Perspectives on Mandatory Sentencing' (2001) 7(2) Australian Journal of Human Rights 51.

**Conclusion**

We hope that Council will consider our comments and endorsements when it makes recommendations in relation to this reference. Please do not hesitate to contact me on 03 9652 1507 or [michelle.mcdonnell@fclc.org.au](mailto:michelle.mcdonnell@fclc.org.au) if you wish to clarify any points in this submission.

Sincerely

A handwritten signature in black ink, appearing to read 'Michelle McDonnell', written in a cursive style.

Michelle McDonnell  
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