

Your Ref:

Our Ref: Criminal Law Section: 21000339/165

30 May 2011

The Hon Michael Gallacher MLC
Minister for Police and Emergency Services
Level 33 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

By Post and Email: office@gallacher.minister.nsw.gov.au

Dear Minister

PROPOSED LEGISLATION - MANDATORY LIFE SENTENCES FOR PERSONS WHO MURDER POLICE OFFICERS IN NSW

We understand that your Government intends to introduce legislation into Parliament making life sentences compulsory for people who murder police officers. We note that this proposed legislation has been condemned by the NSW Law Society and other eminent legal commentators. The Queensland Law Society joins in the rejection of such legislation.

The Society opposes the proposed legislation on the grounds that it unduly fetters judicial discretion. The removal of judicial discretion by the proposed mandatory sentencing scheme will greatly hinder the courts ability to bring about justice in individual cases. All cases consist of discreet facts and circumstances. There may be any number of contributing factors that lead to a police officer's death in every individual case. A mandatory sentencing scheme would be unable to take these factors into account. Mandatory sentencing laws are arbitrary, contravening the principles of proportionality and necessity because they do not allow consideration of either the seriousness of the offence or the circumstances of the offender. They have the potential to lead to serious miscarriages of justice, exacerbated by virtue of the fact that mandatory sentences, by definition, are not reviewable on appeal. It is our strong view that judges are in a better position to administer justice through judicial reasoning and comprehensive understanding of the offence and the circumstances surrounding its commission.

Mandatory sentencing laws may also have implications for Australia's international legal obligations. The United Nations has released a legal opinion which advises that Australia's mandatory sentencing laws violate the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. This is because our obligations under international treaty law and custom mandate that individual cases be considered on their merits. This case by case consideration is not possible in offences that attract mandatory sentences. Therefore, enacting this proposed legislation has the potential to damage Australia's reputation internationally.

With respect to the intent of the legislation, we note there is no cogent data to suggest that harsher penalties for persons who murder police officers will act as a deterrent or correlate to a reduction in police deaths. Therefore we question whether this legislation is appropriately adapted to achieving its aims. Furthermore, while we acknowledge the important work of police officers and the role they play in our community, we do not consider that this is adequate justification to introduce specific legislation that seemingly holds the lives of police officers above the lives of ordinary citizens.

We strongly urge you to reconsider your decision to enact the proposed legislation.

If you have any questions regarding the contents of this letter, please do not hesitate to contact Ms Binny De Saram, a Policy Solicitor with our office on (07) 3842 5885 or b.desaram@qls.com.au

Yours faithfully

Bruce Doyle
President

Cc: *Mr Stuart Westgarth*
President, Law Society of NSW
170 Phillip Street
Sydney NSW 2000
DX 362 Sydney
lawsociety@lawsociety.com.au