



AUSTRALIAN  
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## Media release

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### Justice and human rights under attack in NSW

The O'Farrell government has announced its intention to recall Parliament next week in order to pass legislation which would impose mandatory minimum sentences for a range of crimes including assault and affray.

Nathan Kennedy, Vice President of Australian Lawyers for Human Rights (ALHR), said "The deaths due to recent "one-punch" attacks in NSW are tragic and the Government has a responsibility to protect the right to life of the people of NSW. However, the proposed minimum sentences for more minor crimes will do nothing to prevent such attacks and will violate Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR). Such violations include:

- the prohibition of arbitrary detention (article 9);
- the right to have a sentence reviewed by a higher court (article 14); and
- the right to take part in public affairs including the opportunity to comment on such drastic legislation (article 25), which has been denied to the community by the O'Farrell government."

The proposed laws will remove judicial sentencing discretion which breaches the separation of powers doctrine, a cornerstone of Australian democracy. The lack of judicial discretion will result in punishments which are not proportionate to the crime committed. ALHR is concerned about mandatory minimum jail terms for relatively minor crimes such as assault occasioning actual bodily harm which can apply to assaults resulting in bruises and scratches.<sup>1</sup> A two-year jail term would clearly be a disproportionate punishment for such a crime.

ALHR is also concerned that the proposed two year sentence for assaulting police will disproportionately impact Aboriginal people in NSW, the offence having been recognised as one of the "trifecta" of charges which arise from "provocative policing"

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<sup>1</sup> McIntyre v R [2009] NSWCCA 305 (18 December 2009) at [44].

of Indigenous Australians.<sup>2</sup> This offends Article 26 of the ICCPR which stipulates that all persons are equal before the law and are entitled to the equal protection of the law.

The proposed laws will have serious implications for our already stretched justice and corrections system. In a state where funding for legal services is being slashed, the proposed new laws would impose a massive burden on the DPP, Legal Aid, community legal centres, the courts and correctional centres. Existing funding and infrastructure will be woefully insufficient to give effect to the proposed laws, yet the Premier has provided no indication of where the additional funding will come from.

Mandatory minimum sentences deter those accused of crimes from pleading guilty, leading to more trials, in higher courts, with the attendant expenses incurred in prosecution, defence and jury trials.

In a 2011 study on sentencing of convicted assault offenders, the NSW Bureau of Crime Statistics and Research found that in serious assaults involving injury (50% of which were assaults occasioning actual bodily harm), 18.6% of offenders were imprisoned.<sup>3</sup> If 100% of offenders were imprisoned, the implications for the prison system would be catastrophic. It costs more than \$200 a day to keep an offender in prison.<sup>4</sup> A conservative estimate of the additional cost of keeping all those convicted of assault occasioning actual bodily harm in prison for two years is more than \$550 million.

Further increasing our prison population is a backward step, emphasised by the recent acknowledgment by the Commonwealth Senate Standing Committee on Legal and Constitutional Affairs that “incarceration should be seen as a last resort and only for serious offenders”.<sup>5</sup> Government resources should be directed towards well targeted preventative measures rather than expensive approaches such as mandatory sentencing which are not backed up by empirical evidence. It is nonsense to think that persons engaged in irrational actions would be rationally considering the likely consequences for their liberty at the time of any assault. There is an underlying issue about treating alcohol abuse that the Premier is putting in the “too hard basket”.

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<sup>2</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Justice Under Scrutiny: Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, November 1994, p.222

<sup>3</sup> NSW Bureau of Crime Statistics and Research, *Sentencing snapshot: Assault*, Isabel Taussig, Crime and Justice Statistics Bureau Brief, Issue Paper no. 68 September 2011 [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/bb66.pdf/\\$file/bb66.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/bb66.pdf/$file/bb66.pdf)

<sup>4</sup> NSW Bureau of Crime Statistics and Research, *Prison populations and correctional outlays: The effect of reducing re-imprisonment*, Don Weatherburn, Gary Froyland, Steve Moffatt & Simon Corben, Contemporary Issues in Crime and Justice, Number 136, December 2009 [http://lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/CJB138.pdf/\\$file/CJB138.pdf](http://lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB138.pdf/$file/CJB138.pdf)

<sup>5</sup> Commonwealth Senate Standing Committees on Legal and Constitutional Affairs, *Value of a justice reinvestment approach to criminal justice in Australia*, Chapter 8, 20 June 2013 [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/justicereinvestment/report/c08](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/c08)

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ALHR (Australian Lawyers for Human Rights) is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 3000 people, with active National, State and Territory committees.