

**Statement by the Judicial Conference of Australia on the
*Vicious Lawless Association Disestablishment Act 2013***

One controversial element of this new law is its provision for mandatory sentencing.

The sentencing of offenders is a core judicial function and the judiciary can therefore speak about it with expertise and experience.

This Act will require Queensland courts, in relevant cases, to impose at least two sentences for the one offence. The first is the sentence which, but for this Act, the court would impose in all the circumstances for that offence. The second is a mandatory further sentence of 15 years, where the offence was committed as a participant in what the Act defines as “an association”. That fixed term of 15 years must be imposed, regardless of the seriousness of the offence and even in a case where, absent this Act, the offence would not warrant imprisonment.

Similarly, that term of 15 years must be imposed regardless of the relative seriousness of the affairs of the relevant “association”. The Act is not limited to associations which are bikie gangs.

A law which removes a court’s discretion in punishing an offender is not on that account invalid. But mandatory sentencing laws are relatively unusual and can often be undesirable. Mandatory sentencing has the practical inevitability of arbitrary punishment, as offenders with quite different levels of culpability receive the same penalty.

The JCA’s response to this mandatory sentencing regime is its response to mandatory sentencing in general, as instanced by its submission to the Commonwealth Parliament last year on mandatory sentencing in cases of so called people smuggling.

The JCA accepts that the legislature is entitled to take the view that the commission of some offences in some circumstances is so serious as to warrant a fixed term of imprisonment, no matter that a judge might not share that view. Recognising this, and the proper limitations upon judicial power, the JCA does not seek to participate in the debate about the appropriate policy response to breaches of the criminal law which have given rise to this new law. It is for the parliament to decide whether the inevitability of arbitrary punishment is a price which must be paid if the desired policy is to be implemented.

Justice Philip McMurdo
President
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