

Smarter is better than tougher. We should be aiming for sentences that reduce crime and reoffending, not help facilitate it. The Greens are committed to restoring the independence of the judiciary to make better sentences and reduce reoffending.

The Greens are committed to restoring evidence-based policy to criminal sentencing to reduce the criminal cycle of reoffending, and lower the social and economic costs of mass imprisonment.

OUR PLAN

The Greens will restore the power of the judiciary to apply a sentence based on *all* of the facts of *every* individual case.

We will:

- **Repeal mandatory sentencing laws for criminal offences, leaving the independent courts to decide sentences.**
- **Reinstate all sentencing options available to the courts, including suspended sentences and home detention where appropriate.**
- **Continue to encourage the use of proven specialist court programs for accused whose offending is related to health issues, or social or cultural disadvantage.**

MANDATORY SENTENCING

Changes to the criminal justice system should be proven to reduce crime and make us safer. In contrast, mandatory sentencing is a costly form of 'law and order' politics that the evidence shows simply doesn't work.

Mandatory Sentencing is way for politicians to falsely claim that they will reduce crime by determining that some criminal offences must be punished with a minimum term of imprisonment.

Since the Coalition Government introduced mandatory minimum sentences in 2013, both the Labor and Liberal parties have sought to broaden these laws.

A sentence imposed by a court is required to apply considerations of punishment, deterrence, rehabilitation, public denunciation and community protection to the individual offender and the circumstances of each case.

In contrast, mandatory sentences are effectively pre-determined sentences that prevent courts from considering all of the circumstances relating to a matter. Imprisonment is arbitrarily determined as the most suitable sentence, regardless of whether it is reasonable, necessary or proportionate in the individual case.ⁱ

Some crimes are very serious and it is entirely appropriate for these offenders to serve long prison sentences. However, prison is just one of a range of sentencing options that should be considered based on all of the facts in each case, and what is best for the community in the long-term.

DETERRENT MYTH

Supporters of mandatory sentencing say the threat of mandatory prison time for certain offences acts as a deterrent and keeps the community safe.

The reality is that the threat of imprisonment or harsh penalties does very little, if anything, to deter offending which is very often impulsive, and from offenders unfamiliar with the specific laws and punishments relating to their offence.

In fact, Victoria's Sentencing Advisory Council found that imprisonment actually increases reoffending, '*...because it places prisoners in a learning environment for crime, reinforces criminal identity and fails to address the underlying causes of crime.*'ⁱⁱ

Recent data shows just how little deterrence the threat of going to prison has. 51 percent of prisoners in Victoria have been in prison before and 44 percent will reoffend



within two years of release. The youth recidivism rate is a massive 80 per cent for young offenders who serve a custodial sentence.^{iii iv v}

Moreover, recent data both from Victoria and overseas appears to confirm that putting more and more people in jail has little effect on the overall level of crime. There are now close to three times the number of people in prison in Victoria than in 1990, but there has been no sizeable reduction in the crime rate or feelings of greater security in the community.^{vi}

Despite expanding mandatory minimum sentencing regime this year, the Attorney-General acknowledged the failure of mandatory sentencing as a deterrent back in 2013: *“Going by American experiences and experiences in the Northern Territory, mandatory sentencing has not had any impact and has not reduced crime.”*^{vii}

The evidence is clear. If you do nothing to stop the underlying causes of crime, people will offend, and then reoffend in an endless cycle, regardless of the threat of prison.

THE COSTS

Experience shows that mandatory sentencing can act as a disincentive to offenders pleading guilty, as they believe they will go to prison regardless of their plea.

Guilty pleas often provide victims with a signal of remorse as well as sparing witnesses from the uncertainty and pressure of having to give evidence and being cross-examined about an offence. They also save the police, the courts and the community the significant financial and resourcing costs of a trial.

Mandatory custodial sentences also add to the record number of prisoners in Victoria. The financial costs of housing more prisoners, many of whom have complex needs due to psychological or disabilities, continues to increase. It now costs \$127,100 to house a single prisoner in Victoria each year, and over 1.5 billion dollars in total.^{viii}

While prison is appropriate for serious criminals who pose a risk to the community, it is inappropriate for a large number of people whose offending is related to social disadvantage, trauma, mental health issues or other vulnerabilities.

Alternative options, such as community corrections orders, cost around one-tenth of the price of prison sentences.^{ix} Focussing on mandatory sentencing dictates that more

funds must be diverted into prisons, and out of programs that have proven more effective at lowering crime and rehabilitating offenders.

But the real price of growing incarceration rates is not just the cost to taxpayers, but the long-term damage imprisonment has on some prisoners and their families, entrenching the cycle of criminal behaviour across generations.

This is particularly the case in regards to the disproportionate incarceration of Aboriginal and Torres Strait Islander people. Mandatory sentencing contributes to the high number of these Australians first coming into the criminal justice system, and then remaining in it. For this reason the *United Nation’s Committee Against Torture* recommended Australia abolish mandatory sentencing laws.^x

THE SMARTER ALTERNATIVE

Imprisonment doesn’t work if the causes of crime are ignored because when a prisoner is released, the data shows there is a good chance that without support they will simply offend again and again.

Getting serious about law and order is not about being either “soft” or “tough” on crime. It’s about what’s fair and just, and what actually works to lower the costs of crime in the long term.

For this to occur sentencing must balance all relevant considerations: punishment, deterrence, rehabilitation, public denunciation and community protection.

Prison is sometimes the best sentence, but other options including fines, bonds, community corrections orders, suspended sentences, home detention, or any combination of these may be more effective.

An independent judiciary without political interference is essential for a free, fair and democratic society. Only independent courts have the necessary experience and expertise to consider in detail the aggravating and mitigating circumstances and determine the best overall sentence.



ⁱ Law Council of Australia (2014) *Discussion Paper on Mandatory Sentencing*. <https://www.lawcouncil.asn.au/docs/f85f3e2-ae36-e711-93fb-005056be13b5/1405-Discussion-Paper-Mandatory-Sentencing-Discussion-Paper.pdf>

ⁱⁱ Sentencing Advisory Council of Victoria (2011) *Does Imprisonment Deter? A Review of the Evidence*, Sentencing Matters, April 2011. <https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Does%20Imprisonment%20Deter%20A%20Review%20of%20the%20Evidence.pdf>

ⁱⁱⁱ Armytage P & Ogloff J (2017) *Youth Justice Review and Strategy – Meeting needs and reducing offending*, Executive Summary, July 2017. https://assets.justice.vic.gov.au/justice/resources/c92af2a1-89eb-4c8f-8a56-3acf78505a3a/report_meeting_needs_and_reducing_offending_executive_summary_2017.pdf

^{iv} Department of Justice & Regulation – Corrections Victoria *Annual Prisoner Statistical Profile 2006-07 to 2016-17*. <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/annual+prisoner+statistical+profile+2006-07+to+2016-17>

^v Victoria State Government (2018) *Victorian Budget 18/19 - Getting Things Done* Budget Paper No.3.

<https://s3-ap-southeast-2.amazonaws.com/budgetfiles201819.budget.vic.gov.au/2018-19+State+Budget+-+Service+Delivery.pdf>

^{vi} Australian Bureau of Statistics (2017) *Prisoners in Australia*, Cat. No. 4517.0 <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>

^{vii} Parliament of Victoria *Parliamentary Debates (Hansard)* Legislative Council Fifty-Seventh Parliament First Session Tuesday 19 February 2013 (Extract From Book 2). https://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2013/Council_Daily_Extract_Tuesday_19_February_2013_from_Book_2.pdf

^{viii} Auditor General (2018) *Safety and cost effectiveness of private prisons*. <https://www.audit.vic.gov.au/sites/default/files/2018-03/20180328-Private-Prisons.pdf>

^{ix} Victoria State Government, Justice and Regulations Corrections, *Prisons and Parole Corrections Statistics: quick reference*. Accessed on 2 October 2018. <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/corrections+statistics+quick+reference>

^x Law Council of Australia (2014) *Discussion Paper on Mandatory Sentencing*.