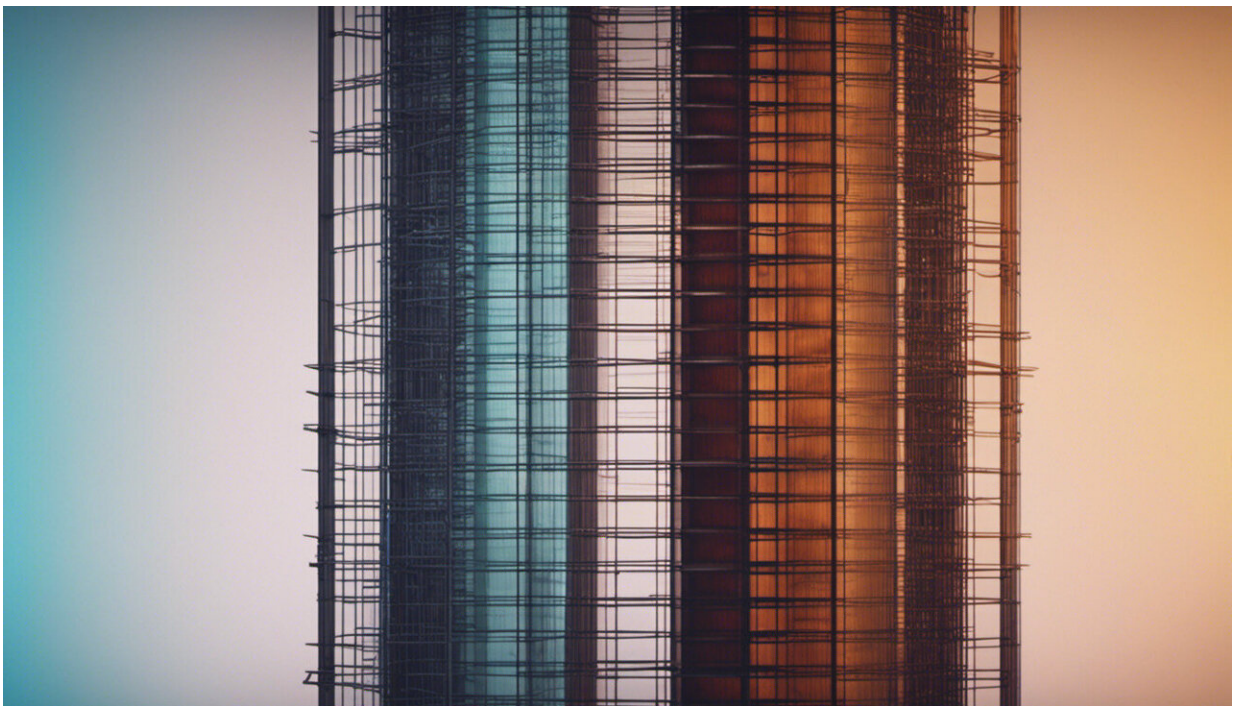


Mandatory minimum sentences and populist criminal justice policy do not work—here's why

April 19 2017, by Kate Fitz-Gibbon And James Roffee



Credit: AI-generated image ([disclaimer](#))

The Victorian Liberal Party [recently announced](#) that, if elected in November 2018, it would introduce mandatory minimum sentences for repeat violent offenders as part of its crackdown on crime.

Heralded as a ["two-strike" approach](#), the proposal applies specifically to repeat offenders and 11 violent crimes, including murder, rape and armed robbery. Shadow Attorney-General John Pesutto claimed the proposed new sentencing laws were "unprecedented" in Victoria and "will be certainly among the toughest measures that anyone has sought to introduce in our criminal justice system".

Although obviously intended to improve community safety, mandatory minimum sentencing policies run counter to the significant [body of evidence](#) indicating that this approach to sentencing is costly, unlikely to improve [public safety](#) nor effective in deterring future offending.

Despite this, such political promises are neither new nor unique to Victoria.

Mandatory minimum sentencing across Australia

Mandatory maximum and minimum sentencing policies have been introduced to varying degrees across other Australian states and territories. Western Australia, the Northern Territory, Queensland, New South Wales and Victoria have each introduced minimum terms of imprisonment for a variety of different offences.

At the Commonwealth level, the [Migration Act](#) imposes mandatory minimum terms of imprisonment for aggravated people-smuggling offences.

The widespread uptake of such policies should not, however, be considered an indicator of their success in practice. Successive [reviews and inquiries](#) have revealed that mandatory sentences fail to achieve their stated aims and have unintended consequences in practice, particularly for marginalised and diverse communities.

Failure to enhance public safety

The limits and dangers of mandatory sentencing schemes are well-established in Australian and international research.

Importantly, [we know](#) the threat of a mandatory minimum term of imprisonment does little to deter future offending. Therefore, the approach fails to achieve its aim of reducing offending and increasing public safety.

While policies that promise definite and lengthy terms of imprisonment for repeat violent offences may appear attractive within populist politics, they undermine long-established principles of proportionality and individualised justice.

In sentencing offenders for serious violent crime, senior members of the judiciary are in an expert position to determine the appropriate sentence to be imposed. Politicians lack the qualifications and experience to determine sentences, though they can pass legislation that reflects public concern and gives the judiciary the power to determine sentences for punishment, deterrence and rehabilitation.

By weighing up the individual facts of a case, a person's offending and their individual circumstances, a judge works to apply a just sentence. Such a complex act of sentencing should not be used by politicians as a response to populist concerns.

The cost of mandatory sentencing

The failure of mandatory sentencing to achieve its stated aims also comes at a significant cost to public money. By their very nature, such policies divert more people into the prison system and for lengthier

periods of time. The result is greater cost.

Take the recent Victorian [policy](#) announcement for example. In 2015, [the Productivity Commission found](#) that it cost A\$103,000 annually to imprison one person in a secure Victorian prison facility. Victorian Opposition Leader Matthew Guy estimated the proposed sentencing laws would impact 3-4,000 people "[over a period of time](#)".

On this basis, over the government's four-year term, if 3,000 additional people were imprisoned for one year, the opposition's proposed policy would cost – at minimum – an estimated \$309 million. If this cost were repeated each year for the four-year term of government, the cost of the policy would be a minimum of \$1.236 billion.

From a purely economic perspective, the cost of this approach is staggering. That \$309 million will not be spent on tackling the underlying causes of crime or implementing evidence-based criminal justice policies.

And, at a time when Victoria – and many Australian jurisdictions – is imprisoning more people than ever, any policies that increase prisoner numbers must be seriously reconsidered.

'Political' responses to crime

Policies such as that announced by the Victorian Liberals are commonplace in the lead-up to state elections, when parties often mount "law and order" campaigns.

Politicians will often promise tougher criminal justice policies, usually in the form of longer terms of imprisonment, or [zero-tolerance policing](#). This is all sold as taking action to "keep the community safe".

The political nature of such reforms was evident in 2014. Following a series of high-profile "one-punch" homicide deaths, NSW [introduced](#) a minimum term of eight years' imprisonment for offenders who were intoxicated while committing such a crime. Championed by then-premier Barry O'Farrell and later introduced by Mike Baird, the harsh approach to sentencing was touted as a response to public outrage over increasing levels of alcohol-fuelled violence.

Over two years on, the Law Council of Australia [has appealed](#) for the abolition of the law, noting that mandatory minimums "[create greater law and order problems](#)" than they solve.

Why we must learn from our mistakes

Since the Victorian Liberals' announcement, the proposal for mandatory minimum [sentencing](#) has been met with [significant criticism](#) from the legal and academic community. Their concerns are well founded.

Australian states and territories must move away from populist, ineffective "law and order" policies in favour of evidence-based and individualised responses to serious [criminal justice](#) concerns.

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