

Sentencing Amendment (Emergency Workers) Act 2014

No. 69 of 2014

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Victoria

Sentencing Amendment (Emergency Workers) Act 2014[†]

No. 69 of 2014

[Assented to 23 September 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to amend the **Sentencing Act 1991** and the **Crimes Act 1958** to provide a custodial sentence for certain violent offences committed against emergency workers; and

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- (b) to amend the **Crimes Act 1958** to fix a baseline sentence for murder of an emergency worker; and
 - (c) to amend the **Crimes Act 1958** and the **Summary Offences Act 1966** to expand certain existing assault offences to include emergency workers; and
 - (d) to amend the **Sentencing Act 1991** in relation to community correction orders and to expand the list of arson offences in Schedule 1; and
 - (e) to amend the **Children, Youth and Families Act 2005** in relation to the release on parole of persons in respect of whom a youth justice centre order has been made in accordance with section 10AA(2) of the **Sentencing Act 1991**.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
 - (2) If a provision referred to in subsection (1) does not come into operation before 1 July 2015, it comes into operation on that day.
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**PART 2—MINIMUM SENTENCES FOR VIOLENT
OFFENCES AGAINST EMERGENCY WORKERS**

Division 1—Sentencing Act 1991 amendments

**3 Custodial sentence must be imposed for gross
violence offences**

In section 10(2) of the **Sentencing Act 1991**,
before paragraph (a) **insert—**

"(aa) an offender to the sentencing of whom
section 10AA(1) applies; or".

See:
Act No.
49/1991.
Reprint No. 15
as at
30 September
2013
and
amending
Act Nos
32/2013,
46/2013,
70/2013,
77/2013,
7/2014,
15/2014,
17/2014;
26/2014 and
37/2014.
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4 New section 10AA inserted

After section 10 of the **Sentencing Act 1991**
insert—

**"10AA Custodial sentence for certain offences
against emergency workers on duty**

- (1) Subject to subsection (2), in sentencing an
offender (whether on appeal or otherwise)
for an offence against a section of the
Crimes Act 1958 specified in column 1 of
Table 1 committed against an emergency
worker on duty, a court must impose a term
of imprisonment and fix under section 11 a
non-parole period of not less than the period
specified in column 2 of that Table in
relation to that offence unless the court finds

under section 10A that a special reason exists.

TABLE 1

<i>Column 1 Offence</i>	<i>Column 2 Minimum non-parole period</i>
Section 15A	5 years
Section 15B	5 years
Section 16	3 years
Section 17	2 years

Note

Section 11(3) requires that a non-parole period must be at least 6 months less than the term of the sentence.

- (2) In the circumstances described in subsection (3), in sentencing a young offender for an offence against a section of the **Crimes Act 1958** specified in column 1 of Table 2 committed against an emergency worker on duty, a court is not required to impose a term of imprisonment and fix a non-parole period in accordance with subsection (1) but, if it decides not to impose such a term and fix such a period, it must make a youth justice centre order for a term not less than the term specified in column 2 of that Table in relation to that offence.

TABLE 2

<i>Column 1 Offence</i>	<i>Column 2 Minimum youth justice centre term</i>
Section 16	3 years
Section 17	2 years

-
- (3) The circumstances are that the court—
- (a) has not made a finding under section 10A that a special reason exists; and
 - (b) has received a pre-sentence report and believes—
 - (i) that there are reasonable prospects for the rehabilitation of the young offender; or
 - (ii) that the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.
- (4) In sentencing an offender (whether on appeal or otherwise) for an offence against section 18 of the **Crimes Act 1958** committed against an emergency worker on duty, a court must impose a term of imprisonment of not less than 6 months unless the court finds under section 10A that a special reason exists.
- (5) Subsections (1), (2) and (4) apply to a court in sentencing an offender for the offence only if it is satisfied beyond reasonable doubt that—
- (a) a victim of the offence was an emergency worker on duty; and
 - (b) at the time of carrying out the conduct the offender knew or was reckless as to whether the victim was an emergency worker.
-

(6) Subsections (1), (2) and (4) do not apply to an offender—

(a) who aids, abets, counsels or procures the commission of the offence; or

Note

See section 323 of the **Crimes Act 1958**.

(b) who is under the age of 18 years at the time of the commission of the offence.

(7) Subdivision (4) (except section 32(1), (2), (2A) and (2B)) applies in relation to a youth justice centre order made under subsection (2).

(8) In this section—

emergency treatment means unplanned or unexpected treatment of a patient that may be necessary, as a matter of urgency—

- (a) to save the patient's life; or
- (b) to prevent damage to the patient's health; or
- (c) to prevent the patient from suffering or continuing to suffer pain or distress;

emergency worker means—

- (a) a police officer or protective services officer within the meaning of the **Victoria Police Act 2013**; or
- (b) an operational staff member within the meaning of the **Ambulance Services Act 1986**; or

-
- (c) a person employed or engaged to provide, or support the provision of, emergency treatment to patients in a hospital; or
 - (d) a person employed by the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958** or a member of a fire or emergency service unit established under that Act; or
 - (e) an officer or employee of the Country Fire Authority under the **Country Fire Authority Act 1958**; or
 - (f) an officer or member of a brigade under the **Country Fire Authority Act 1958**, whether a part-time officer or member, a permanent officer or member or a volunteer officer or member within the meaning of that Act; or
 - (g) a casual fire-fighter within the meaning of Part V of the **Country Fire Authority Act 1958**; or
 - (h) a volunteer auxiliary worker appointed under section 17A of the **Country Fire Authority Act 1958**; or
 - (i) a person employed in the Department of Environment and Primary Industries with emergency response duties; or
-

- (j) a registered member or probationary member within the meaning of the **Victoria State Emergency Service Act 2005** or an employee in the Victoria State Emergency Service; or
- (k) a volunteer emergency worker within the meaning of the **Emergency Management Act 1986**; or
- (l) any other person or body—
 - (i) required or permitted under the terms of their employment by, or contract for services with, the Crown or a government agency to respond (within the meaning of the **Emergency Management Act 2013**) to an emergency (within the meaning of that Act); or
 - (ii) engaged by the Crown or a government agency to provide services or perform work in relation to a particular emergency;

hospital means—

- (a) a public hospital or denominational hospital within the meaning of the **Health Services Act 1988**; or
- (b) a private health care facility within the meaning of the **Private Health Care Facilities Act 2014**.

- (9) For the purposes of this section an emergency worker is on duty if—
- (a) in the case of a police officer or protective services officer within the meaning of the **Victoria Police Act 2013**, the officer is performing any duty or exercising any power as such an officer; or
 - (b) in the case of an operational staff member within the meaning of the **Ambulance Services Act 1986**, the staff member is providing, or attempting to provide, care or treatment to a patient; or
 - (c) in the case of a person employed or engaged to provide, or support the provision of, emergency treatment to patients in a hospital, the person is providing, or supporting the provision of, or attempting to provide or support the provision of, such treatment; or
 - (d) in any other case, the person is performing any duty or exercising any power in response to an emergency within the meaning of the **Emergency Management Act 2013**."

5 Special reasons relevant to sentencing

- (1) In the heading to section 10A of the **Sentencing Act 1991**, after "offences" insert "or violent offences against emergency workers".
- (2) In section 10A(2) of the **Sentencing Act 1991**, after "section 10" insert "or 10AA".

(3) After section 10A(2) of the **Sentencing Act 1991** **insert**—

"(2A) Without limiting subsection (2), in the case of an offence against section 18 of the **Crimes Act 1958** committed by a young offender against an emergency worker on duty, a court may make a finding that a special reason exists if—

- (a) it believes that there are reasonable prospects for the rehabilitation of the young offender; or
- (b) it believes that the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison."

(4) For section 10A(3)(a) of the **Sentencing Act 1991** **substitute**—

- "(a) the Parliament's intention that a sentence of imprisonment should ordinarily be imposed for an offence covered by section 10(1) or, subject to section 10AA(2), for an offence covered by section 10AA(1) and that a non-parole period of not less than the length specified in section 10(1) or 10AA(1) (as the case requires) should ordinarily be fixed in respect of that sentence; and
- (ab) the Parliament's intention that a sentence of imprisonment should ordinarily be imposed for an offence covered by section 10AA(4); and"

(4) In section 10A(3)(b) of the **Sentencing Act 1991**, after "and" **insert** ", where relevant,".

6 New section 154 inserted

At the end of Part 12 of the **Sentencing Act 1991**
insert—

"154 Transitional provisions—Sentencing Amendment (Emergency Workers) Act 2014—general

- (1) The amendments made to this Act by Division 1 of Part 2 of the **Sentencing Amendment (Emergency Workers) Act 2014** only apply to the sentencing of an offender on or after the commencement of that Division for an offence alleged to have been committed on or after that commencement.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of Division 1 of Part 2 of the **Sentencing Amendment (Emergency Workers) Act 2014**, it is alleged to have been committed before that commencement.
- (3) The amendments made to this Act by Part 5 of the **Sentencing Amendment (Emergency Workers) Act 2014** apply to the sentencing of an offender on or after the commencement of that Part, irrespective of when the offence was committed or the finding of guilt was made."

7 Clarification of reference

In section 5(2AA)(b) of the **Sentencing Act 1991**
after "expiry" **insert** "on 22 April 1997".

Division 2—Crimes Act 1958 amendments

8 Legislative notes

See:
Act No.
6231.
Reprint No. 24
as at
1 July 2013
and
amending
Act Nos
16/2004,
27/2011,
60/2013,
70/2013,
72/2013,
77/2013,
7/2014, 8/2014,
17/2014,
25/2014,
26/2014,
36/2014 and
37/2014.
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- (1) For note 2 at the foot of sections 15A and 15B of the **Crimes Act 1958 substitute**—

"2 Section 10 of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 15A and that a non-parole period of not less than 4 years be fixed under section 11 of that Act unless the court finds under section 10A of that Act that a special reason exists. If, however, a victim is an emergency worker on duty, section 10AA(1) of the **Sentencing Act 1991** requires that a non-parole period of not less than 5 years be fixed unless the court finds under section 10A of that Act that a special reason exists."

- (2) In note 3 at the foot of sections 15A and 15B of the **Crimes Act 1958**, after "section 10" insert "or 10AA(1)".

- (3) At the foot of section 16 of the **Crimes Act 1958 insert**—

"Notes

- 1 Section 10AA(1) of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 16 and that a non-parole period of not less than 3 years be fixed under section 11 of that Act if a victim is an emergency worker on duty unless the court finds under section 10A of that Act that a special reason exists.
- 2 However, section 10AA(2) of the **Sentencing Act 1991** allows a youth justice centre order for a term of 3 years to be made in certain circumstances in respect of a young offender for an offence against section 16 if the victim is an emergency worker on duty.
- 3 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10AA(1) or (2) of that Act do not apply and the court has full sentencing discretion."

(4) At the foot of section 17 of the **Crimes Act 1958**
insert—

"Notes

- 1 Section 10AA(1) of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 17 and that a non-parole period of not less than 2 years be fixed under section 11 of that Act if a victim is an emergency worker on duty unless the court finds under section 10A of that Act that a special reason exists.
- 2 However, section 10AA(2) of the **Sentencing Act 1991** allows a youth justice centre order for a term of not less than 2 years to be made in certain circumstances in respect of a young offender for an offence against section 17 if the victim is an emergency worker on duty.
- 3 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10AA(1) or (2) of that Act do not apply and the court has full sentencing discretion."

(5) At the foot of section 18 of the **Crimes Act 1958**
insert—

"Notes

- 1 Section 10AA(4) of the **Sentencing Act 1991** requires that a term of imprisonment of not less than 6 months be imposed for an offence against section 18 if a victim is an emergency worker on duty unless the court finds under section 10A of that Act that a special reason exists.
- 2 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10AA(4) of that Act do not apply and the court has full sentencing discretion."

**Division 3—Children, Youth and Families Act 2005
amendments**

9 Release on parole from youth justice centre

See:
Act No.
96/2005.
Reprint No. 4
as at
27 March
2013
and
amending
Act Nos
51/2006,
9/2013,
30/2013,
52/2013,
63/2013,
67/2013 and
74/2013.
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After section 458(1) of the **Children, Youth and Families Act 2005** insert—

"(1A) Despite subsection (1), the Youth Parole Board must not release on parole a person in respect of whom a youth justice centre order has been made in accordance with section 10AA(2) of the **Sentencing Act 1991** before the expiry of the minimum term applicable under that section."

10 Transfer to prison

(1) In section 469(4) of the **Children, Youth and Families Act 2005**, for "A" substitute "Subject to subsection (4A), a".

(2) After section 469(4) of the **Children, Youth and Families Act 2005** insert—

"(4A) A person in respect of whom a youth justice centre order has been made in accordance with section 10AA(2) of the **Sentencing Act 1991** who is transferred to a prison under section 467 or 468 becomes, on transfer, subject to the jurisdiction of the Adult Parole Board as if the minimum term of that order applicable under section 10AA(2) of that Act had been a non-parole period."

**PART 3—BASELINE SENTENCE FOR MURDER OF
EMERGENCY WORKER ON DUTY**

**11 Baseline sentence for murder of emergency worker
on duty**

For section 3(2) of the **Crimes Act 1958**
(including the note at the foot of that section)
substitute—

"(2) The baseline sentence for murder is—

- (a) 30 years if the court, in determining sentence, is satisfied that the prosecution has proved beyond reasonable doubt that—
 - (i) the person murdered was an emergency worker on duty; and
 - (ii) at the time of carrying out the conduct the accused knew or was reckless as to whether that person was an emergency worker; and
 - (b) in any other case, 25 years.
- (3) In subsection (2)(a) *emergency worker on duty* and *emergency worker* have the same meanings as in section 10AA of the **Sentencing Act 1991**.

Note

See section 5A of the **Sentencing Act 1991** as to baseline sentences."

12 New section 623 inserted

At the end of Part 7 of the **Crimes Act 1958**
insert—

**"623 Transitional provision—Sentencing
Amendment (Emergency Workers)
Act 2014**

- (1) The amendments made to this Act by section 11 of the **Sentencing Amendment (Emergency Workers) Act 2014** only apply to the sentencing of an offender on or after the commencement of that section for an offence alleged to have been committed on or after that commencement.
 - (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of section 11 of the **Sentencing Amendment (Emergency Workers) Act 2014**, the offence is alleged to have been committed before that commencement."
-

**PART 4—ASSAULT OFFENCES AGAINST EMERGENCY
WORKERS ON DUTY**

13 Assaults

(1) For section 31(1)(b) of the **Crimes Act 1958**
substitute—

"(b) assaults or threatens to assault, resists or
intentionally obstructs an emergency worker
on duty, knowing or being reckless as to
whether the person was an emergency
worker; or

(ba) assaults or threatens to assault, resists or
intentionally obstructs a person lawfully
assisting an emergency worker on duty,
knowing or being reckless as to whether the
person was an emergency worker; or".

(2) After section 31(2) of the **Crimes Act 1958**
insert—

"(2A) In subsection (1)—

emergency worker on duty and *emergency
worker* have the same meanings as in
section 10AA of the **Sentencing Act
1991**".

14 New section 51 substituted

See:
Act No.
7405.
Reprint No. 11
as at
27 April 2012
and
amending
Act Nos
27/2011,
5/2012,
26/2012,
27/2012,
32/2013,
70/2013,
77/2013,
15/2014,
26/2014 and
37/2014.
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For section 51 of the **Summary Offences Act 1966 substitute—**

"51 Assaulting, etc. emergency workers or local authority staff on duty

(1) In this section—

emergency worker on duty and *emergency worker* have the same meanings as in section 10AA of the **Sentencing Act 1991**.

(2) A person must not assault, resist, obstruct, hinder or delay an emergency worker on duty.

Penalty: 60 penalty units or imprisonment for 6 months.

(3) A person must not assault, resist, obstruct, hinder or delay a member of staff of a local authority in the execution of the member's duty under this Act.

Penalty: 60 penalty units or imprisonment for 6 months.

(4) A person must not assault, resist, obstruct, hinder or delay a person lawfully assisting an emergency worker on duty.

Penalty: 60 penalty units or imprisonment for 6 months.

(5) In addition to imposing a penalty under this section, the court may order and award a sum sufficient to cover any damage which an emergency worker or a member of staff of a local authority or a person lawfully assisting an emergency worker has sustained by the assault, resistance, obstruction, hindrance or delay.

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- (6) A sum awarded under subsection (5) may be recovered in the same manner as the penalty."

15 Besetting premises

- (1) **Insert** the following heading to section 52 of the **Summary Offences Act 1966**—
"Besetting premises".
- (2) Section 52(1) of the **Summary Offences Act 1966** is **repealed**.
- (3) Section 52(2) of the **Summary Offences Act 1966** is **repealed**.
-

PART 5—COMMUNITY CORRECTION ORDERS

16 Sentencing guidelines

After section 5(4B) of the **Sentencing Act 1991**
insert—

"(4C) A court must not impose a sentence that involves the confinement of the offender unless it considers that the purpose or purposes for which the sentence is imposed cannot be achieved by a community correction order to which one or more of the conditions referred to in sections 48F, 48G, 48H, 48I and 48J are attached."

17 Purpose of community correction order

At the end of section 36 of the **Sentencing Act 1991** **insert—**

"(2) Without limiting when a community correction order may be imposed, it may be an appropriate sentence where, before the ability of the court to impose a suspended sentence was abolished, the court may have imposed a sentence of imprisonment and then suspended in whole that sentence of imprisonment."

18 Imprisonment and a community correction order

(1) For section 44(1) of the **Sentencing Act 1991**
substitute—

"(1) When sentencing an offender in respect of one, or more than one, offence (other than an offence to which clause 5 of Schedule 1 applies), a court may make a community correction order in addition to imposing a sentence of imprisonment only if the sum of all the terms of imprisonment to be served (after deduction of any period of custody that under section 18 is reckoned to be a period

of imprisonment or detention already served) is 2 years or less.

(1A) When sentencing an offender in respect of one, or more than one, offence to which clause 5 of Schedule 1 applies, a court may make a community correction order in addition to imposing any sentence of imprisonment."

(2) In section 44(3) of the **Sentencing Act 1991**, after "from imprisonment" **insert** "or, if the offender is released on parole, on the completion of the parole period (as defined in section 55(1) of the **Corrections Act 1986**)".

(3) After section 44(3) of the **Sentencing Act 1991** **insert**—

"(4) A reference in this section to a sentence of imprisonment does not include a sentence that has been suspended."

19 Schedule 1—Serious offender offences

In clause 5 of Schedule 1 to the **Sentencing Act 1991**—

(a) after paragraph (b) **insert**—

"(ba) an offence against section 66 of the **Forests Act 1958** (placing inflammable material for the purpose of causing fire);

(bb) an offence against section 39C of the **Country Fire Authority Act 1958** (causing fire in a country area with intent to cause damage);"; and

(b) in paragraph (c), for "or (b)" **substitute** "(b), (ba) or (bb)".

PART 6—REPEAL OF AMENDING ACT

20 Repeal of amending Act

This Act is **repealed** on 1 July 2016.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

[†] *Minister's second reading speech—*

Legislative Assembly: 26 June 2014

Legislative Council: 21 August 2014

The long title for the Bill for this Act was "A Bill for an Act to amend the **Sentencing Act 1991** and the **Crimes Act 1958** to provide a custodial sentence for certain violent offences committed against emergency workers, to amend the **Crimes Act 1958** to fix a baseline sentence for murder of an emergency worker, to amend the **Crimes Act 1958** and the **Summary Offences Act 1966** to expand existing assault offences to include emergency workers, to amend the **Sentencing Act 1991** in relation to community correction orders, to amend the **Children, Youth and Families Act 2005** in relation to the release on parole of certain offenders and for other purposes."