

Crimes Amendment (Gross Violence Offences) Act 2013

No. 6 of 2013

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Victoria

Crimes Amendment (Gross Violence Offences) Act 2013[†]

No. 6 of 2013

[Assented to 26 February 2013]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to amend the **Crimes Act 1958**—
 - (i) to substitute definitions of *injury* and *serious injury*; and

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- (ii) to insert offences of causing serious injury intentionally in circumstances of gross violence and causing serious injury recklessly in circumstances of gross violence; and
- (b) to amend the **Sentencing Act 1991** to provide for sentences with a minimum non-parole period for those offences.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 30 January 2014, it comes into operation on that day.
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PART 2—AMENDMENT OF THE CRIMES ACT 1958

3 Definitions

In section 15 of the **Crimes Act 1958**—

(a) for the definition of *injury substitute*—

"*injury* means—

- (a) physical injury; or
- (b) harm to mental health—

whether temporary or permanent;"

(b) for the definition of *serious injury substitute*—

"*serious injury* means—

- (a) an injury (including the cumulative effect of more than one injury) that—
 - (i) endangers life; or
 - (ii) is substantial and protracted; or
- (b) the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any other harm;"

(c) **insert** the following definitions—

"*firearm* has the same meaning as in the **Firearms Act 1996**;

harm to mental health includes psychological harm but does not include an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm;

imitation firearm has the same meaning as in section 77(1A);

See:
Act No.
6231.
Reprint No. 23
as at
1 April 2012
and
amending
Act Nos
16/2004,
49/2010,
65/2010,
27/2011,
43/2012 and
48/2012.
LawToday:
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legislation.
vic.gov.au

offensive weapon has the same meaning as in section 77(1A);

physical injury includes unconsciousness, disfigurement, substantial pain, infection with a disease and an impairment of bodily function;"

4 New sections 15A and 15B inserted

After section 15 of the **Crimes Act 1958** insert—

"15A Causing serious injury intentionally in circumstances of gross violence

- (1) A person must not, without lawful excuse, intentionally cause serious injury to another person in circumstances of gross violence.

Penalty: Level 3 imprisonment (20 years maximum).

- (2) For the purposes of subsection (1), any one of the following constitutes circumstances of gross violence—

(a) the offender planned in advance to engage in conduct and at the time of planning—

(i) the offender intended that the conduct would cause a serious injury; or

(ii) the offender was reckless as to whether the conduct would cause a serious injury; or

(iii) a reasonable person would have foreseen that the conduct would be likely to result in a serious injury;

(b) the offender in company with 2 or more other persons caused the serious injury;

- (c) the offender participated in a joint criminal enterprise with 2 or more other persons in causing the serious injury;
- (d) the offender planned in advance to have with him or her and to use an offensive weapon, firearm or imitation firearm and in fact used the offensive weapon, firearm or imitation firearm to cause the serious injury;
- (e) the offender continued to cause injury to the other person after the other person was incapacitated;
- (f) the offender caused the serious injury to the other person while the other person was incapacitated.

Notes

- 1 See section 422(1) for an alternative verdict.
- 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.
- 3 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10 of that Act do not apply and the court has full sentencing discretion.

15B Causing serious injury recklessly in circumstances of gross violence

- (1) A person must not, without lawful excuse, recklessly cause serious injury to another person in circumstances of gross violence.

Penalty: Level 4 imprisonment (15 years maximum).

- (2) For the purposes of subsection (1), any one of the following constitutes circumstances of gross violence—
- (a) the offender planned in advance to engage in conduct and at the time of planning—
 - (i) the offender intended that the conduct would cause a serious injury; or
 - (ii) the offender was reckless as to whether the conduct would cause a serious injury; or
 - (iii) a reasonable person would have foreseen that the conduct would be likely to result in a serious injury;
 - (b) the offender in company with 2 or more other persons caused the serious injury;
 - (c) the offender participated in a joint criminal enterprise with 2 or more other persons in causing the serious injury;
 - (d) the offender planned in advance to have with him or her and to use an offensive weapon, firearm or imitation firearm and in fact used the offensive weapon, firearm or imitation firearm to cause the serious injury;
 - (e) the offender continued to cause injury to the other person after the other person was incapacitated;
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- (f) the offender caused the serious injury to the other person while the other person was incapacitated.

Notes

- 1 See section 422(2) for an alternative verdict.
- 2 Section 10 of the **Sentencing Act 1991** requires that a term of imprisonment be imposed for an offence against section 15B 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.
- 3 If a court makes a finding under section 10A of the **Sentencing Act 1991** that a special reason exists, the requirements of section 10 of that Act do not apply and the court has full sentencing discretion.

15C Other offenders need not be prosecuted

A person may be found guilty of an offence against section 15A or 15B whether or not any other person is prosecuted for or found guilty of the offence."

5 New section 422 inserted

After section 421 of the **Crimes Act 1958**
insert—

"422 Alternative verdict on charge of causing serious injury in circumstances of gross violence

- (1) If on the trial of a person charged with an offence against section 15A the jury are not satisfied that the person is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 16, the jury may acquit the accused of the offence charged and find the person guilty of an offence against section 16 and the person charged is liable to punishment accordingly.

- (2) If on the trial of a person charged with an offence against section 15B the jury are not satisfied that the person is guilty of the offence charged but are satisfied that he or she is guilty of an offence against section 17, the jury may acquit the accused of the offence charged and find the person guilty of an offence against section 17 and the person charged is liable to punishment accordingly."

6 New section 618 inserted

After section 617 of the **Crimes Act 1958**
insert—

**"618 Transitional provision—Crimes
Amendment (Gross Violence Offences)
Act 2013**

- (1) This Act as amended by Part 2 of the **Crimes Amendment (Gross Violence Offences) Act 2013** applies to offences alleged to have been committed on or after the commencement of that Act.
- (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 the **Crimes Amendment (Gross Violence Offences) Act 2013**, the offence is alleged to have been committed before that commencement."

7 Schedule 8 amended

In item 4 of Schedule 8 to the **Crimes Act 1958**,
before paragraph (a) **insert—**

- "(aa) section 15A (causing serious injury intentionally in circumstances of gross violence);
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Part 2—Amendment of the Crimes Act 1958

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(ab) section 15B (causing serious injury
recklessly in circumstances of gross
violence);".

PART 3—AMENDMENT OF THE SENTENCING ACT 1991

8 Definition amended

See:
Act No.
49/1991.
Reprint No. 14
as at
14 November
2012
and
amending
Act Nos
65/2011 and
49/2012.
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In section 3(1) of the **Sentencing Act 1991**, in the definition of *serious offence*, before paragraph (c)(i) **insert—**

- "(iaa) section 15A (causing serious injury intentionally in circumstances of gross violence);
- (iab) section 15B (causing serious injury recklessly in circumstances of gross violence);".

9 New sections 10 and 10A inserted

After section 9 of the **Sentencing Act 1991** **insert—**

"10 Custodial sentence must be imposed for gross violence offences

- (1) In sentencing an offender for an offence against section 15A or 15B of the **Crimes Act 1958** (whether on appeal or otherwise), a court must impose a term of imprisonment and fix under section 11 a non-parole period of not less than 4 years unless the court finds under section 10A that a special reason exists.

Note

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

- (2) Subsection (1) does not apply to—
- (a) a person who aids, abets, counsels or procures the commission of the offence; or

Note

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

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

10A Special reasons relevant to sentencing for gross violence offences

- (1) In this section—

impaired mental functioning means—

- (a) a mental illness within the meaning of the **Mental Health Act 1986**; or
- (b) an intellectual disability within the meaning of the **Disability Act 2006**; or
- (c) an acquired brain injury; or
- (d) autism spectrum disorder; or
- (e) a neurological impairment, including but not limited to dementia.
- (2) For the purposes of section 10, a court may make a finding that a special reason exists if—
- (a) the offender has assisted or has given an undertaking to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence; or

Notes

- 1 Section 5(2AB) also applies.
- 2 If an offender fails to fulfil an undertaking, the Director of Public Prosecutions has a right under section 291 of the **Criminal Procedure Act 2009** to appeal against the less severe sentence imposed.

- (b) the offender—
 - (i) is of or over the age of 18 years but under 21 years at the time of the commission of the offence; and
 - (ii) proves on the balance of probabilities that he or she has a particular psychosocial immaturity that has resulted in a substantially diminished ability to regulate his or her behaviour in comparison with the norm for persons of that age; or
 - (c) the offender proves on the balance of probabilities that—
 - (i) at the time of the commission of the offence, he or she had impaired mental functioning that is causally linked to the commission of the offence and substantially reduces the offender's culpability; or
 - (ii) he or she has impaired mental functioning that would result in the offender being subject to significantly more than the ordinary burden or risks of imprisonment; or
 - (d) the court proposes to make a hospital security order or a residential treatment order in respect of the offender; or
 - (e) there are substantial and compelling circumstances that justify doing so.
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- (3) In determining whether there are substantial and compelling circumstances under subsection (2)(e), the court must have regard to—
- (a) the Parliament's intention that a sentence of imprisonment should ordinarily be imposed and that a non-parole period of not less than 4 years should ordinarily be fixed for an offence against section 15A or 15B of the **Crimes Act 1958**; and
 - (b) whether the cumulative impact of the circumstances of the case would justify a departure from that sentence and minimum non-parole period.
- (4) If a court makes a finding under subsection (2), it must—
- (a) state in writing the special reason; and
 - (b) cause that reason to be entered in the records of the court.
- (5) The failure of a court to comply with subsection (4) does not invalidate any order made by it."

10 Schedule 1 amended

- (1) In clause 2 of Schedule 1 to the **Sentencing Act 1991**, before paragraph (c)(i) **insert**—
- "(iaa) section 15A (causing serious injury intentionally in circumstances of gross violence);
 - (iab) section 15B (causing serious injury recklessly in circumstances of gross violence);"

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Part 3—Amendment of the Sentencing Act 1991

(2) In clause 3 of Schedule 1 to the **Sentencing Act 1991**, before paragraph (b)(i) **insert—**

"(iaa) section 15A (causing serious injury intentionally in circumstances of gross violence);

(iab) section 15B (causing serious injury recklessly in circumstances of gross violence);".

PART 4—REPEAL OF AMENDING ACT

11 Repeal of amending Act

This Act is **repealed** on 30 January 2015.

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: 13 December 2012

Legislative Council: 7 February 2013

The long title for the Bill for this Act was "A Bill for an Act to amend the **Crimes Act 1958** and the **Sentencing Act 1991** to insert new offences of causing serious injury intentionally or recklessly in circumstances of gross violence, to provide for a minimum non-parole period in certain circumstances for those offences, to amend certain definitions of injury and serious injury and for other purposes."