

PARLIAMENT OF VICTORIA

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**Sentencing Amendment (Emergency Workers) Bill  
2014**

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# PARLIAMENT OF VICTORIA

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Introduced in the Assembly

## **Sentencing Amendment (Emergency Workers) Bill 2014**

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.

**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

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sentence for certain violent offences committed against emergency workers; and

5 (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

10 (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

15 (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**.

20 **2 Commencement**

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

25 (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.

**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**

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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**

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(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

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s. 4

Part 2—Minimum Sentences for Violent Offences against Emergency Workers

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

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- 10
- 15
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- 25
- 30
- (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



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- (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

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(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

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(k) a volunteer emergency worker within the meaning of the **Emergency Management Act 1986**; or

15

(l) any other person or body—

20

(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

25

(ii) engaged by the Crown or a government agency to provide services or perform work in relation to a particular emergency;

*hospital* means—

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(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**.

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- (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**

- 30
- (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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legislation.  
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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**

- 5                   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  
10                    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  
15                    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  
20                    not apply and the court has full sentencing discretion."

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

**"Notes**

- 25                   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.
- 30                    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**

5 See:  
Act No.  
96/2005.  
Reprint No. 4  
as at  
27 March  
2013  
and  
amending  
10 Act Nos  
51/2006,  
9/2013,  
30/2013,  
52/2013,  
63/2013,  
67/2013 and  
74/2013.  
LawToday:  
www.  
legislation.  
vic.gov.au

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**

15 (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—

20 "(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."  
25



**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**

- 5
- 10
- 15
- 20
- (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."
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**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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www.  
legislation.  
vic.gov.au

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.

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

**15 Besetting premises**

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(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**.

10

(3) For section 52(2) of the **Summary Offences Act 1966** **substitute**—

15

"(2) In addition to imposing a penalty under this section, the court may order and award a sum sufficient to cover any damage which the person has sustained by the assault, resistance, obstruction, hindrance or delay.

(3) A sum awarded under subsection (2) may be recovered in the same manner as the penalty."

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**PART 5—COMMUNITY CORRECTION ORDERS**

**16 Sentencing guidelines**

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

5           "(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  
10           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—**

15           "(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  
20           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—**

25           "(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  
30           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  
35           under section 18 is reckoned to be a period

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

5 (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."

10 (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)**".

15 (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

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

(a) after paragraph (b) **insert**—

25 "(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

30 (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**).

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**ENDNOTES**

By Authority. Government Printer for the State of Victoria.

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