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### **Comment on Recent Amendments to Parole Law in Victoria**

1. Liberty Victoria is strongly opposed to the amendments to the *Corrections Act 1986* (Vic) (the Act) made by the *Corrections Amendment (Parole) Act 2018* (Vic) (the amendments).
2. The purpose of the amendments is to ensure that any person who has murdered a police officer in the execution of their duty or because of their role as a police officer, with intent to harm a police officer, not be released on parole, except in circumstances where the Adult Parole Board is satisfied that the prisoner:

- (a) is in imminent danger of dying or is seriously incapacitated and, as a result, the prisoner no longer has the physical ability to do harm to any person; and
  - (b) has demonstrated that the prisoner does not pose a risk to the community; and
  - (c) because of those circumstances, the making of the order is justified.
3. In reality it is difficult to see how a given prisoner, even in circumstances of terminal illness, could satisfy the Adult Parole Board that they do not have “the physical ability to do harm to any person”.
  4. Liberty Victoria accepts that any person who is convicted of murder, including of a police officer, must face a lengthy sentence of imprisonment.
  5. However, the substantive effect of such provisions is that a category of prisoners will serve mandatory life sentences, whether or not an independent judicial officer has determined that a given offender (for example, a youthful offender sentenced to life imprisonment) should have an opportunity to demonstrate rehabilitation and potentially be supervised on parole after having served a lengthy term of imprisonment.
  6. A sentence of life imprisonment without parole is the most severe form of punishment in Australia. It results in a prisoner not having any incentive towards rehabilitation, and, for those prisoners who have rehabilitated, it results in people remaining in custody even in circumstances where they pose no risk to the safety of the community.
  7. The Government has itself accepted that the new laws fail to comply with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the

Charter), in particular the human rights of protection against cruel, inhumane and degrading treatment (s 10(1) of the Charter) and humane treatment of people deprived of liberty (s 22(1) of the Charter).

8. It is extraordinary that the Government should pass such laws, which on its own analysis breach fundamental human rights, and which pursuant to s 7(2) of the Charter cannot be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.
9. This is the first time that legislation in Victoria has been accompanied by both a statement of incompatibility and an override declaration.
10. When the Charter was introduced in 2006, the then-Attorney-General Rob Hulls stated that “the override power should only be used in such circumstances where it can be shown that the public interest would be served by doing so”. The Government in introducing these amendments has not explained why they are necessary or how the public interest is served in this case – only that it has included the override so that human rights considerations are made irrelevant when it comes to interpreting the legislation.
11. This sets a worrying precedent that human rights protections can and will be discarded when such a course is politically expedient.
12. Section 74AAA of the Act now applies to any offender who has been convicted of murdering a police officer. The section states that the Adult Parole Board must not make a parole order for a prisoner who has been convicted and sentenced for the murder of a police officer, if the Adult Parole Board is satisfied that the prisoner, at the time of the offence:

- (a) Intended to cause the death of, or really serious injury to, a police officer (whether or not a particular police officer); or
- (b) Knew that the person whose death was caused was a police officer; or
- (c) Knew that it was probable that the death of, or really serious injury to, a police officer would be caused by the conduct.

13. As a result of the amendments, a person need not have been convicted on the basis of intentionally murdering a person because they were a police officer. The Adult Parole Board is empowered to decide whether it is satisfied that a person seeking parole held the relevant intent to harm a police officer at the relevant time. That is in circumstances where the person will not be legally represented, and the Adult Parole Board is not bound by the rules of evidence or to give due consideration to the human rights of persons as protected by the Charter.

14. However, because of the High Court of Australia's recent judgment in *Minogue v Victoria* [2018] HCA 27, this new section would likely be difficult to apply to Dr Minogue's case. Therefore, the Government has also introduced a separate specific section in the Act which only applies to Dr Minogue and which also, in substantive effect, results in him never being able to be granted release on parole.

15. In summary, Liberty Victoria opposes the amendments for the following reasons:

- a. The amendments are unnecessary. The Courts already punish murder, and murder against police officers, severely. The Adult Parole Board

is already entitled to take the seriousness of offending into account before granting parole.

- b. The effective imposition of imprisonment for life without parole constitutes cruel, inhuman and degrading punishment and breaches fundamental human rights norms. People can rehabilitate. These amendments deny a class of offenders the basic human dignity of mercy, individual justice, and rehabilitation.
- c. The Government's *Statement of Incompatibility* concluded the amendments are inconsistent with the Charter. The Government has made an override declaration under the Charter. The override declaration means the amendments operate despite the fact they cannot be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. This is the first-time that legislation in Victoria has been accompanied by both a statement of incompatibility and an override declaration. Liberty Victoria opposes the override declaration because the Government has not demonstrated exceptional circumstances.
- d. Further, the reality for a prisoner currently serving a relevant sentence is that the legislation has a retrospective effect. For an offender who has had a non-parole period fixed by an independent judicial officer, and who has been working towards rehabilitation, it results in the goal-posts being shifted mid-sentence.
- e. The amendments include a specific law targeting an individual, Dr Minogue. This follows similar provisions previously being introduced in relation to Mr Julian Knight. This results in the law with respect to parole operating unequally between individuals, and that is inherently unfair. Further, human rights should apply to every person,

including those convicted of the most serious crimes – we should not pick and choose who is deserving of those rights.

- f. The Adult Parole Board should have its independence respected by the legislature and be allowed to apply a test for parole that applies to all prisoners equally. It should be for the Adult Parole Board to determine whether any prisoner has been sufficiently rehabilitated that they are suitable for release on parole. As we have previously submitted, the Adult Parole Board should itself be bound by the Charter.
16. The amendments are another example of the State Government, in an election year, increasing the severity of the criminal justice system with little or no evidence to suggest the changes will improve community safety, and scant regard for long-standing principles of due process and just punishment.