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14 September 2016

**LIBERTY VICTORIA SUBMISSION ON**

**CRIMES AMENDEMENT (CARJACKING AND HOME INVASION) BILL 2016**

## I. Introduction

1. Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty Victoria is actively involved in the development of Australia's laws and systems of government. Further information may be found at www.libertyvictoria.org.au.

2. The members and office holders of Liberty Victoria include persons from all walks of life, including legal practitioners who appear in criminal proceedings for the prosecution and the defence.

3. As an organisation Liberty Victoria is deeply concerned about the gradual erosion of judicial discretion in sentencing and the move towards mandatory and/or more prescriptive models of sentencing. Part of that concern stems from the need for the legislature to carefully protect the separation of powers so that a strong and independent judiciary is able to ensure that justice is done in the individual case.

## II. The *Crimes Amendment (Carjacking and Home Invasion) Bill 2016*

4. The *Crimes Amendment (Carjacking and Home Invasion) Bill 2016* ("the Bill") is presently before the Legislative Assembly of the Victorian Parliament. The Second Reading Speech for the Bill took place on 1 September 2016, and the debate has been adjourned to 15 September 2016.

5. The Bill contains a number of significant amendments. Liberty Victoria is particularly concerned with the proposed creation of four new offences under the *Crimes Act 1958*, namely:

    a. Section 77A Home Invasion;

    b. Section 77B Aggravated Home Invasion;

    c. Section 79 Carjacking; and

    d. Section 79A Aggravated Carjacking.

6. Liberty Victoria is also concerned with two proposed amendments to the *Sentencing Act 1991*, which have the effect of mandating a custodial sentence, and minimum mandatory terms, for the proposed offences of Aggravated Home Invasion and Aggravated Carjacking. They are:

    a. Section 10AC, which provides that a custodial sentence must be imposed for offence of Aggravated Home Invasion, with a non-parole period of not less than 3 years)[1]; and

    b. Section 10AD, which provides that a custodial sentence must be imposed for offence of Aggravated Carjacking, with a non-parole period of not less than 3 years[2].

7. In the sections that follow, each amendment of concern is dealt with in turn.

**A. New Offence of Home Invasion**

8. Clause 3 of the Bill proposes to insert a new offence of Home Invasion into the *Crimes Act 1958*, and relevantly provides as follows:

> "**77A Home invasion**

[1] Unless the Court finds special reasons exist under s 10A of the *Sentencing Act 1991*.
[2] Ibid.

(1) A person commits a home invasion if—

(a) the person enters a home as a trespasser with intent—

(i) to steal anything in the home; or

(ii) to commit an offence, punishable by imprisonment for a term of 5 years or more—

(A) involving an assault to a person in the home; or

(B) involving any damage to the home or to property in the home; and

(b) the person enters the home in company with one or more other persons; and

(c) either—

(i) at the time the person enters the home, the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; or

(ii) at any time while the person is present in the home, another person (other than a person referred to in paragraph (b)) is present in the home.

(2) For the purpose of subsection (1)(c)(ii), it is immaterial whether or not the person knew that there was, or would be, another person present in the home.

(3) A person who commits a home invasion commits an offence and is liable to level 2 imprisonment (25 years maximum).

(4) A person may be found guilty of an offence against this section whether or not any other person is prosecuted for or found guilty of the offence.

(5) In this section—

***explosive***, ***firearm***, ***imitation explosive***, ***imitation firearm***, and ***offensive weapon*** have the same meanings as in section 77;

***home*** means any building, part of a building or other structure intended for occupation as a dwelling and includes the following—

(a) any part of commercial or industrial premises that is used as residential premises;

(b) a motel room or hotel room or other temporary accommodation provided on a commercial basis;

(c) a rooming house within the meaning of the **Residential Tenancies Act 1997**;

(d) a room provided to a person as accommodation in a residential care service, hospital or any other premises involved in the provision of health services to the person;

(e) a caravan within the meaning of the **Residential Tenancies Act 1997** or any vehicle or vessel used as a residence."

9. It is important to note that this proposed offence is very similar to the current offence of Aggravated Burglary (presently s 77 of the *Crimes Act 1958*). There are, however, some important and problematic differences.

10. First, by virtue of proposed sub-ss 77A (1)(c)(ii) and (2), to establish that an accused person has committed the new offence the prosecution would not need to prove that an accused *knew* that there was or would be a person present in the home at the time of entry. The amendments, in effect, therefore introduce an element of strict liability into the offence. In the Second Reading Speech for the Bill, the Attorney-General, Mr Pakula relevantly said:

> The bill specifically introduces an element of strict liability into the offence of home invasion, so that an offender's knowledge of the presence of another person is irrelevant. This is deliberate and is a response that properly recognises the traumatic effect on victims. If two or more individuals decide to enter a residence as a trespasser to commit a burglary and there is someone present, they should face a serious charge. Whether they knew someone was present or whether they turned their minds to that possibility is irrelevant. Anyone who targets a residence for burglary takes the risk that a person will be inside and should face the consequences of that risk.

11. Liberty Victoria is strongly of the view that an offence of this seriousness, and punishable by such a severe penalty, is not one that should have an element of 'strict liability' as to the question of knowledge of the presence of a person inside a home. Liberty Victoria is of the opinion that whether a person 'knew that someone was present or whether they turned their mind to that possibility' is, in fact, a highly relevant consideration in any assessment of the gravity and nature of that person's conduct. A person who commits a burglary whilst being aware of, or reckless as to, a person being present, commits a more serious act than a person who does not have such knowledge. That has been recognised, for example, through the offence of burglary as opposed to aggravated burglary, both of which have been a part of Victorian law for many years.

12. The second main difference between the existing offence of Aggravated Burglary and the proposed new offence is that the latter requires proof that the accused person entered the home in the company of one or more other persons. Liberty Victoria is of the view that this further element is an unnecessary addition to the elements of the existing offence of Aggravated Burglary. Indeed, whether a person commits a home invasion in company with others, or whether such a person acts alone, is already a matter that would be taken into due account by a sentencing judge for the offence of Aggravated Burglary.

13. A person who pleads guilty or is found guilty of an aggravated burglary which was committed with another or others will generally have that fact treated as an aggravating factor for sentencing purposes.

14. The proposed new offence is punishable by the same maximum penalty as the current offence of Aggravated Burglary. Therefore, there is nothing to be gained, in the way of sentencing, by adding this offence to the statute books. Furthermore, in circumstances where certain conduct could be charged under either the new proposed offence or the existing offence of Aggravated Burglary, the process of charging might lead to inconsistent prosecutorial practises, and unreasonably variable sentencing outcomes.

## B. New Offence of Aggravated Home Invasion

15. Clause 3 of the Bill also proposes to insert a new offence of Aggravated Home Invasion into the *Crimes Act 1958*, and relevantly provides as follows:

> **77B Aggravated home invasion**
>
> (1) A person commits an aggravated home invasion if—
>
> (a) the person enters a home as a trespasser with intent—
>
> (i) to steal anything in the home; or
>
> (ii) to commit an offence, punishable by imprisonment for a term of 5 years or more—
>
> (A) involving an assault to a person in the home; or
>
> (B) involving any damage to the home or to property in the home; and
>
> (b) the person enters the home in company with 2 or more other persons; and
>
> (c) at the time the person enters the home—
>
> (i) the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; and
>
> (ii) the person knows or is reckless as to whether there is or will be another person (other than a person referred to in paragraph (b)) present in the home while the person is present in the home; and
>
> (d) at any time while the person is present in the home, another person (other than a person referred to in paragraph (b)) is present in the home.
>
> (2) A person who commits an aggravated home invasion commits an offence and is liable to level 2 imprisonment (25 years maximum).

(3) A person may be found guilty of an offence against this section whether or not any other person is prosecuted for or found guilty of the offence.

(4) In this section—

***explosive***, ***firearm***, ***imitation explosive***, ***imitation firearm***, and ***offensive weapon*** have the same meanings as in section 77;

***home*** has the same meaning as in section 77A.

16. This offence is also similar to the existing offence of Aggravated Burglary, but contains more necessary elements – namely that the accused person acted with two or more other persons, that the accused entered the home with a weapon, *and* that the accused did so with the knowledge that a person is present or being reckless as to that fact. Unlike the proposed offence of Home Invasion, this proposed offence requires proof that the accused knew that a person was or would be present in the home or was otherwise reckless as to that fact.

17. Liberty Victoria is again strongly of the view that there is simply no need for this proposed offence to be added to the statue books. The offence of Aggravated Burglary already properly and comprehensively deals with the very kind of conduct at which the proposed offence is directed. A sentencing judge will already, as a matter of course, deal with and address factors in home invasions such as that an accused acted with two or more persons, that an accused entered a home both carrying a weapon, and/or that an accused did so while aware or reckless as to the fact that a person would be present. These are generally considered to be aggravating factors for sentencing purposes. There is no need for this further offence. Current offences adequately deal with the behaviour sought to be addressed in the proposed offences.

18. Clause 5 of the Bill also proposes to insert a new provision into the *Sentencing Act 1991* in relation to the proposed offence of Aggravated Home Invasion, and provides as follows:

"**10AC Custodial sentence must be imposed for offence of aggravated home invasion**

(1) In sentencing an offender (whether on appeal or otherwise) for an offence against section 77B of the **Crimes Act 1958**, a court must impose a term of imprisonment and fix under section 11 a non-parole period of not less than 3 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 an offender who is under the age of 18 years at the time of the offence.

19. Liberty Victoria is concerned with the introduction of provisions into the *Sentencing Act* that effectively establish a mandatory sentencing scheme and which derogate from and undermine the integrity and discretion of the judiciary.

20. The proposed reforms fail to acknowledge that the Courts have been increasing current sentencing practices for the offence of aggravated burglary, particularly in circumstances of "home invasion" and confrontation.

21. The Court of Appeal is already active in providing guidance as to what are appropriate sentencing practices for Courts dealing with such offences.[3]

22. In the 2012 judgment of *Hogarth v The Queen*[4] ("*Hogarth*") the Court of Appeal held that current sentencing practices for confrontational aggravated burglary were inadequate, particularly having regard to the increase in 1997 of the maximum penalty from 15 to 25 years' imprisonment.

23. In *Hogarth* the Court of Appeal held:[5]

> It follows, in our view, that current sentencing for this form of aggravated burglary can no longer be treated as a reliable guide, and sentencing judges should no longer regard themselves as constrained by existing practice. The necessary change in sentencing practice for confrontational aggravated burglary will evolve over the course of decisions in individual cases. The director will play an important role in this process, by assisting judges through the making of submissions on sentencing range.
>
> By way of general guidance, we would add the following. As stated earlier, the director's submission to the sentencing judge was that, if the constraints of current sentencing practice were removed, the applicable range for the sentencing of AH would be a total effective sentence of six to eight years, with a non-parole period of four to six years. Having regard

[3] See, for example, *Hogarth* (2012) 37 VR 658; and *Meyers* (2014) 44 VR 486. See further *Filiz v The Queen* [2014] VSCA 212, *Gale v The Queen* [2014] VSCA 168, *Anderson v The Queen* [2014] VSCA 255 and *Saxon v The Queen [*2014] VSCA 296 in the context of a former intimate partner.
[4] (2012) 37 VR 658, 660 [6] (Maxwell P, Neave JA and Coghlan AJA).
[5] Ibid, 674 [62]-[63] (Maxwell P, Neave JA and Coghlan AJA).

to the circumstances of this offence and this offender, we consider that that was an appropriate identification of the indicative range.

24. It is notable that the statistics for sentences imposed in cases of Aggravated Burglary over 2014 and 2015 show that the Courts did, in 83% of cases, give offenders an immediate custodial sentence.[6] The average term of imprisonment handed down for such offences was 2 years and 8 months.[7] The average total effective sentence was 3 years and 3 months, and the average non-parole period was 2 years and 5 months.[8] These statistics show that the Courts, post *Hogarth*, are already handing down substantial periods of imprisonment for offences of Aggravated Burglary.

25. This is the appropriate way for current sentencing practices to be adjusted and increased in a manner that respects the independence of the judiciary and the separation of powers.

26. Recently, in *DPP v Salih*,[9] the Court of Appeal (Coghlan JA, with whom Ashley and Ferguson JJA agreed) allowed an appeal by the Director of Public Prosecutions with regard to an aggravated burglary and false imprisonment matter, holding that a 5 year community correction order with 500 hours of community work was outside the range of available sentences. The offender was re-sentenced to a total effective sentence of 4 years' imprisonment with a non-parole period of 2 years.

27. This demonstrates that, where inadequate sentences are imposed, the Director of Public Prosecutions can (and does) appeal against sentence. This is the appropriate mechanism to ensure that inadequate sentences are remedied whilst ensuring that justice is done in the individual case.

28. Further, as recommended by the Sentencing Advisory Council in its recent and comprehensive report on Sentencing Guidance, pursuant to Part 2AA of the *Sentencing Act 1991* the Court of Appeal has the power to issue guideline judgments on certain categories of offending. Rather than proceed with such a blunt instrument as the current Bill, it would be much better if the executive arm of Government utilised the tools that are already at its disposal and which still protect the separation of powers.

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[6] See Sentencing Advisory Council, *Sentencing Trends in the Higher Courts of Victoria 2010-2011 to 2014-15*, Snapshot No. 184, June 2016.
[7] Ibid.
[8] Ibid.
[9] [2016] VSCA 107.

29. Liberty Victoria is of the view that the requirement of an effective mandatory minimum sentence (save where 'special reason' exists) is unnecessary and undermines a judge's ability to impose a proper sentence in the circumstances of the case. The need for such a mandatory minimum sentence has not been established.

30. As Liberty Victoria has previously argued,[10] the problem with mandatory sentencing is that it removes the discretion from the sentencing judge to impose a sentence that is appropriate having regard to the circumstances of the particular instance of the offence. It is contrary to the fundamental sentencing principle that the punishment should be proportionate to the seriousness of the offence having regard to the circumstances of the offender.

31. The central problem caused by mandatory sentences was eloquently described by Mildren J in *Trenerry v Bradley*:[11]

> Prescribed minimum mandatory sentencing provisions are the very antithesis of just sentences. If a Court thinks that a proper just sentence is the prescribed minimum or more, the minimum prescribed penalty is unnecessary. It therefore follows that the sole purpose of a prescribed minimum mandatory sentencing regime is to require sentencers to impose heavier sentences than would be proper according to the justice of the case.

32. Liberty Victoria shares the Law Council of Australia's concerns that mandatory sentencing regimes:[12]

    (1) Undermine the fundamental principles underpinning the independence of the judiciary and the rule of law;

    (2) Are inconsistent with Australia's international obligations, particularly Australia's obligations with respect to the prohibition against arbitrary detention as contained in Article 9 of the International Covenant on Civil and Political Rights (ICCPR); and the right to a fair trial and the provision that prison sentences must in effect be subject to appeal as per Article 14 of the ICCPR;

    (3) Increases economic costs to the community through higher incarceration rates;

    (4) Disproportionately affect vulnerable groups within the community, including Indigenous Australians and persons with a mental illness or intellectual disability.

[10] (See https://libertyvictoria.org.au/content/sentencing-guidance-reference).
[11] (1997) 6 NTLR 175, 187.
[12] Law Council of Australia, Policy Discussion Paper on Mandatory Sentencing, May 2014.

(5) Potentially result in unjust, harsh and disproportionate sentences where the punishment does not fit the crime;

(6) Fails to deter crime;

(7) Increases the likelihood of recidivism because prisoners are placed in a learning environment for crime whereby inhibiting rehabilitation prospects;

(8) Wrongly undermines the community's confidence in the judiciary and the criminal justice system as a whole; and

(9) Displaces discretion to other parts of the criminal justice system, most notably law enforcement and prosecutors, and thereby fails to eliminate inconsistency in sentencing.

33. Such concerns have been echoed by the Law Institute of Victoria's comprehensive submission on mandatory sentencing dated 30 June 2011, which noted *inter alia*:

> The overwhelming evidence from Australia and overseas… demonstrates that mandatory sentencing does not reduce crime through deterrence nor incapacitation, and may lead to increased crime rates in the long run, as imprisonment has been shown to have a criminogenic effect.

34. In addition, when faced with a mandatory minimum periods of imprisonment (whether with regard to the head sentence or non-parole period), accused persons are much less likely to plead guilty to offences. Accordingly, mandatory sentencing reforms are bound to see an increase in contested committals and trials which places further pressure on a Court system that is already strained and suffering from serious delays. Those delays also have a huge impact on complainants and their families and friends.

35. Further, under such regimes it will fall upon prosecutors and informants to determine whether to proceed on offences that attract a mandatory minimum term. Mandatory sentencing reforms transfer the burden of decision-making from the judiciary to the executive, where there is less transparency and greater room for arbitrary and inconsistent decision-making without recourse to judicial review or consideration by an appellate court.

36. This Bill follows the pattern of the introduction of mandatory and prescriptive sentencing mechanisms through the *Crimes Amendment (Gross Violence Offences) Act 2013*, the *Sentencing Amendment (Emergency Workers) Act 2014*, the *Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Act 2014*, the *Sentencing Amendment*

*(Baseline Sentences) Act 2014* and the *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016.*

37. This Bill further entrenches a model of prescriptive sentencing which will be continually "ratcheted up" over time with longer standard periods of imprisonment, or (as this Bill demonstrates) broader categories of offences. The kind of model is very susceptible to politicised decision making as part of "law and order auction" campaigning. It ignores that the Courts can and do provide sentencing guidance and can uplift sentencing practices.

38. While the Government seems to regard the "special reasons" exception as preserving judicial discretion, this Bill just further entrenches a system where over time exceptions can be whittled away and the test made more difficult to satisfy.

39. The Bill should be recognised for what it is – a significant threat to judicial discretion, the separation of powers and the rule of law.

### C. New Offence of Carjacking

40. Clause 4 of the Bill introduces a new offence of carjacking, and relevantly provides as follows:

> **79 Carjacking**
>
> (1) A person (A) commits a carjacking if—
>
> (a) A steals a vehicle; and
>
> (b) immediately before or at the time of doing so, and in order to do so, A—
>
> (i) uses force on another person; or
>
> (ii) puts or seeks to put another person (B) in fear that B or anyone else will then and there be subjected to force.
>
> (2) A person who commits a carjacking commits an offence and is liable to level 4 imprisonment (15 years maximum).
>
> (3) In this section—
>
> ***vehicle*** includes—
>
> (a) a motor vehicle;
>
> (b) a vessel within the meaning of the **Marine Safety Act 2010**.

41. This offence contains essentially the same elements, and is punishable by the same maximum penalty, as the present offence of Robbery in s 75 of the *Crimes Act 1958*. Liberty

Victoria is of the opinion that the inclusion of this offence is unnecessary and without a proper basis.

### D. New Offence of Aggravated Carjacking

42. Clause 4 of the Bill also introduces a new offence of Aggravated Carjacking, and relevantly provides as follows:

> **79A Aggravated carjacking**
>
> (1) A person commits an aggravated carjacking if the person commits a carjacking and—
>
> (a) at the time the person has with them a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive; or
>
> (b) in the course of the carjacking the person causes injury to another person.
>
> (2) A person who commits an aggravated carjacking commits an offence and is liable to level 2 imprisonment (25 years maximum).
>
> (3) In this section—
>
> ***explosive***, ***firearm***, ***imitation explosive***, ***imitation firearm***, and ***offensive weapon*** have the same meanings as in section 77
>
> ***injury*** has the same meaning as in section 15.

43. This proposed new offence has substantial overlap with the existing offence of Armed Robbery in s 75A of the *Crimes Act 1958*. It is of particular concern that proposed s 79A(1)(a) essentially duplicates the elements of the offence of Armed Robbery, and thus a person accused of having committed such conduct in relation to motor vehicle would be in the vulnerable position of being exposed to one of two alternative offences. Prosecutors would be left to decide between charging such a person under existing s 75A (and thereby not expose them to mandatory sentencing), or charging them under new s 79A(1)(a) (and thereby expose them to mandatory sentencing). This would also lead to disparate and inconsistent prosecutorial practices as well as sentencing practices in the courts in cases of armed robbery and aggravated carjacking, in circumstances where the gravamen of the offending may often be essentially the same.

44. In respect of the offence under s 79A(1)(b) … under the existing laws, if injury is caused in the course an armed robbery, an accused person can be charged with an assault or an offence of intentionally or recklessly causing an injury.

45. Furthermore, clause 5 of the Bill also proposes to insert a new provision into the *Sentencing Act 1991* in relation to the proposed offence of Aggravated Carjacking, and provides as follows:

> **10AD Custodial sentence must be imposed for offence of aggravated carjacking**
>
> (1)In sentencing an offender (whether on appeal or otherwise) for an offence against section 79A of the **Crimes Act 1958**, a court must impose a term of imprisonment and fix under section 11 a non-parole period of not less than 3 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 an offender who is under the age of 18 years at the time of the offence.".

46. Liberty Victoria repeats the concerns raised above in respect of the proposal for mandatory sentencing for aggravated home invasion. In addition, it is also worth noting that persons charged with carjacking are often youthful. Imposing a mandatory sentencing regime on young persons will often lead to the Courts having to impose inappropriate and damaging sentences of incarceration.

47. In *DPP v Tokava*,[13] the Court of Appeal cited with approval the observations of Fox J in *R v Dixon*:[14]

> When… a court has to consider whether to send a young person to gaol for the first time, it has to take into account the likely adverse effects of a gaol sentence. A distinct possibility, particularly if the sentence is a long one, is that the person sent to gaol will come out more vicious, and distinctly more anti-social in thoughts and deed than when he went in. His own personality may well be permanently impaired in a serious degree. If he could be kept in gaol for the rest of his life, it might be possible to ignore the consequences to society, but he will re-enter society and often while still quite young. His new-found propensities then have to be reckoned with. A substantial minority of persons who serve medium or long gaol sentences soon offend again.[15]

[13] [2006] VSCA 156, [22] (Maxwell P).
[14] (1975) ACTR 13.).
[15] Cited with approval by the Court of Appeal in *DPP v Anderson* (2013) 228 A Crim R 128, [64]-[65] (Maxwell P, Neave and Kaye AJA

48. That passage was also cited with approval in *Azzopardi v The Queen* where Redlich JA held:[16]

> …courts sentencing young offenders are cognisant that the effect of incarceration in an adult prison on a young offender will more likely impair, rather than improve, the offender's prospects of successful rehabilitation.[17] While in prison a youthful offender is likely to be exposed to corrupting influences which may entrench in that young person criminal behaviour, thereby defeating the very purpose for which punishment is imposed.[18] Imprisonment for any substantial period carries with it the recognised risk that anti-social tendencies may be exacerbated. The likely detrimental effect of adult prison on a youthful offender has adverse flow-on consequences for the community.[19]

### E. Amendments to the Bail Act

49. Clause 7 introduces amendments to *Bail Act 1977*, as follows:

> (1)After section 4(4)(bb) of the **Bail Act 1977 insert**—
>
> "(bc)with an offence of aggravated burglary under section 77 of the **Crimes Act 1958**, an offence of home invasion under section 77A of that Act, an offence of aggravated home invasion under section 77B of that Act or an offence of aggravated carjacking under section 79A of that Act; or".
>
> (2)In section 4(4)(c) of the **Bail Act 1977**—
>
> (a)for "with an offence of aggravated burglary under section 77 of the **Crimes Act 1958** or any other indictable offence" **substitute** "with any indictable offence";
>
> (b)for "the said section 77" **substitute** "section 77 of the **Crimes Act 1958**".

50. As Liberty Victoria is opposed to the substantive amendments in the Bill, it follows that Liberty Victoria is also opposed to these consequential proposed amendments to the *Bail Act*.

51. Should you wish to discuss any aspect of this submission further, please contact Liberty Victoria on info@libertyvictoria.org.au. This is a public submission and is not confidential.

George A Georgiou SC

President, Liberty Victoria

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[16] (2011) 35 VR 43, 54 [36].
[17] *R v McGaffin* [2010] SASCFC 22, [69].
[18] *R v Lam & Ors* [2005] VSC 495, [8].
[19] *R v Hatfield* [2004] VSCA 195, [10] (Chernov JA).