
Suspended sentences are hanging swords not judicial gifts

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Calls, this week, for sweeping changes to the way South Australian hands down suspended sentences, shows misunderstanding about the nature of such punishments and what they effectively achieve, the Australian Lawyers Alliance said today.

Alliance director, Greg Barns was discussing comments made by SA Director of Public Prosecutions, Stephen Pallaras QC, who has asked the attorney-general to review sentencing legislation to ensure criminals were jailed for their crimes.

“Mr. Pallaras’ calls for reforms to suspended sentences miss the point. A suspended sentence is not a ‘gift’ to an offender, but rather a sword of Damocles that hangs over a person’s head for 12 months or more,” Mr Barns said.

“The vast majority of persons who receive suspended sentences, in South Australia and around Australia, generally comply with them for that very reason. Having the prospect of a long jail term hanging over your head tends to be a very useful tool in ensuring a person does not commit further offences,” he said.

Mr Barns said to suggest that a person should have to plead guilty before being eligible for a suspended sentence would encourage innocent people to plead to offences they had not committed.

“A person should not be punished simply for exercising their fundamental human rights – in this case to make the prosecution prove the case against them beyond reasonable doubt,” he said.

“If Mr Pallaras’ views were to see the light of the legislative day, they would result in even more prison overcrowding in South Australia. He well knows that prison terms, particularly for young offenders, are counterproductive so why would he want to force courts to just that?”

Mr Barns said Mr Pallaras failed to recognize what he and all who practiced in the criminal justice system knew to be the case – that the judge or magistrate was best placed to decide on a sentence that was effective for the offender, the victim and the community and his or her discretion should not be limited.

“When a sentence is suspended the judge, or magistrate, gives the sentence, but suspends it if the offender agrees to enter into a good behaviour bond for a certain period. That bond may have extra conditions. So, if the person keeps out of trouble and obeys bond conditions they will not have to go to jai. But the sentence hangs over their head, for the term of the bond, and if the bond is breached they can be called to serve the suspended sentence. If the breach involves another crime they face the sentence for that offence as well,” Mr Barns said.

He said good behaviour was always a condition of a bond, but sometimes it was appropriate to have other conditions such as supervision by a community corrections officer, living at a specified address, undergoing medical treatment or performing community service.

“Some crimes are so serious that there can be no question of suspending the prison sentence and guidelines have been laid down by parliament and developed by courts through the years.

The Criminal Law (Sentencing) Act allows the court to suspend a sentence if there is "good reason" to do so. Examples of matters that may point towards suspending a sentence are:

- A young person who has not committed any other serious crime and would be likely to respond positively
- Previous good character
- The long term effect of someone losing employment if they are sent to prison
- Good prospects for rehabilitation

The Australian Lawyers alliance is a peak, non-profit legal body which promotes access to justice and the rights of individuals.

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