

Title: - *Labelling 'life' as a mandatory sentence: effective denunciation or misleading populism?*

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ABSTRACT

The sentence of life imprisonment is universally either the maximum or mandatory penalty for the crime of murder in the various states and territories of Australia. It is also provided as a maximum or mandatory sentence for some other serious crimes. It is the most severe punishment available in jurisdictions where capital punishment has been abolished. In its 'truthful' form it means that the person will serve imprisonment for the term of their natural life. In practice, however, sentences of life imprisonment even when expressed in mandatory terms rarely exist without the eventual possibility of the offender being released.

Using the label of 'life sentence' can therefore be misleading and rather than being an effective form of denunciation of crime it may be reflective only of populist sentiment for extreme retribution. It will be argued that in those Australian jurisdictions where a mandatory life sentence applies upon conviction for murder it does not provide a mechanism for reflecting, in a transparent and equitable manner, the different levels of culpability that exist between the conduct constituting murder and the offenders responsible for such conduct. The early release of prisoners subject to a 'mandatory' life sentence demonstrates that such a sentence was not necessarily an appropriate disposition in the first instance. Thus it is simply being used as a populist 'law and order' device rather than a transparent and equitable sentencing option.

In other jurisdictions where a life sentence is the maximum penalty, there are no clear criteria for imposition of the sentence which will result in the offender being incarcerated for the term of his or her natural life. In NSW, the life sentence is mandatory for murder and serious heroin and cocaine trafficking where the community interest in retribution, punishment, community protection and deterrence can only be met through the imposition of a life sentence. This legislative formulation adapted from the common law of sentencing does little to ensure an equitable distribution of this most severe form of punishment. It will be argued that there needs to be significant reforms if the 'life imprisonment' label is to continue being used in Australian sentencing.