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Dear Chair,

Thank you for the opportunity to consider the *Criminal Code (Looting in Declared Areas) Amendment Bill 2013* (Qld) presented by Carl Judge MP.

I have reviewed the Bill and the proposed addition of a new offence of stealing in a disaster or declared area to be inserted into the Criminal Code.

Generally, I do not favour the proliferation of aggravated offences for crimes committed in this type of situation. This approach lacks flexibility since crimes committed in a declared area during disasters are not usually confined to looting. Looting per se is a significant harm but should not be singled out as the sole offence suitable for an aggravated penalty.

I therefore propose that the Bill be amended to enact a general sentence enhancement power that empowers judges with a defined discretion to increase penalties for a range of specific offences committed during a disaster taking into account a range of matters.

In support of my position, I draw the Committee's attention to the fact that another Australian jurisdiction has recently extended its general sentence aggravation provision to offences committed during bushfires. South Australia recently enacted the *Criminal Law Consolidation (Looting) Amendment Act 2012* (SA), which inserted a specific provision into the general sentence aggravation provision in section 5AA of the *Criminal Law Consolidation Act 1935* (SA):

5AA Aggravated offences

...

(ha) in the case of an offence against Division 2 or 3 of Part 5, or Part 6A—the offender committed the offence in a place in relation to which, at the time of the offence—

(i) there was in force a declaration under Part 4 of the Emergency Management Act 2004; or

(ii) —

*(A) residents and others in the place, or in the vicinity of the place, had been advised (by radio broadcast) by the CFS that, as a result of a severe, extreme or catastrophic fire danger rating in respect of the place, they should activate their bushfire survival plan; and*

*(B) that advice had not been withdrawn or ceased to apply;*

or

*(iii) residents and others had not been able to return to the place after leaving in response to a declaration referred to in subparagraph (i) or the provision of advice referred to in subparagraph (ii),*

*and the offender knew, ought reasonably to have known, or was reckless with respect to, that fact;*

The amended provision increases the punishment for those who commit offences relating to theft/robbery/trespass (Div 2 or 3 of Part 5 or 6A) during bushfire emergencies. This is a more principled approach, and would catch a wider range of criminal conduct perpetrated during disasters.

I thank the Committee for the opportunity to consider and comment on the proposed legislation.

I would draw to your attention that prior to moving to Queensland in 2010 to take up my current role, I served as an ad hoc Legal Advisor to the NSW Legislation Review Committee, offering my expertise on various bills pertaining to criminal law and procedure, an area of expertise developed over the previous two decades teaching and researching at ANU Faculty of Law in Canberra.

Yours Sincerely



Professor Simon Bronitt  
Director  
Centre of Excellence in Policing and Security

Cc: Mr Carl Judge MP (Yeerongpilly)