Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

www.atsils.org.au

Criminal Law
Amendment Bill 2012
Submission 005

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Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

BY EMAIL: lacsc@parliament.qld.gov.au

Dear Colleagues,

RE: CRIMINAL LAW AMENDMENT BILL 2012

We thank you for the opportunity to provide a submission on the abovementioned Bill.We do however note that due to time constraints (relating to the very minimal amount of time afforded within which to provide feedback), that it is entirely possible that important considerations might have gone unidentified (or insufficiently fleshed-out).

Summary of our Views

1. Increasing non-parole period for multiple murders from 20 to 30 years.

Our Organisation would not oppose the logic of increasing the non-parole period for multiple murders – but would suggest an increase to 25 years, not 30.

2. Non-parole period of 25 years for the murder of an on-duty police officer.

Whilst recognizing the often extreme difficulties that police officers face – we could not upon principle support such an amendment. We take the view that all lives,

irrespective of occupation, should be valued equally. Further, police officers are aware of the risks entailed with their occupation and whilst they are to be commended for their courage (much as with a member of our armed forces) – such risks are assumed by virtue of the role itself. Importantly, given the factual matrix in which such offences are generally committed – the proposed amendment would not act as any form of deterrent. If we thought otherwise, we would support the proposal.

3. Increased penalty for serious assault police offence.

Whilst again acknowledging the difficult role of a police officer – and admiring them for same – we would respectfully submit that the current maximum penalty for such an assault (7 years imprisonment) is already adequate. An increase to 14 years would also be disproportionate in relation to other offences – including those committed against civilians. Again, given the context in which such occur – we submit that there would be no deterrent value. Further, it is non uncommon in our experience for an officer with poor people management skills to initiate circumstances such that an assault ensues. Such would generally be no excuse for an assault, but is none-the-less of relevance to penalty.

4. Increase non-parole period for murder from 15 to 20 years.

Our Organisation would not oppose the increase. However, we have long been opposed to mandatory sentencing (for a variety of very good reasons). Accordingly, we would submit that the legislation should be framed such that in the absence of sufficient extenuating circumstances, a non parole period of 20 years imprisonment must be imposed - but that discretion should remain with a sentencing judge to provide for a 15-year non parole term in appropriate circumstances. Should would also obviate against the problem of accused insisting upon taking matters to trial in circumstances where there is no opportunity to mitigate a likely penalty.

5. Abolishing the Queensland Sentencing Advisory Council.

Whilst we acknowledge the need for government cost-cutting – we would comment

that we feel that the abolition of this Council is highly regrettable (please see below).

6. Evading Police – section 754.

Whilst we acknowledge that police pursuits can lead to tragic consequences, we would question as to whether such an amendment would reduce the number of pursuit scenarios. Indeed, there is logical argument to suggest such could potentially have the exact opposite effect. We have long maintained that the key to such situations is a saturation public awareness campaign. Community awareness is crucial – and without same, there is no deterrent value. Such would need to be coupled with specific training for police officers. Overall, given the potential for "agony of the moment", and possible very temporary/fleeting actions by a member of the public - such a mandatory penalty is unjustified in our view. Community and police education is none-the-less required. The maximum (discretionary) pecuniary penalty could be increased – the issue is the "mandatory" nature.Nor would we oppose a mandatory license disqualification. The sentence should be equitable in light of all surrounding facts.

Background of our Organisation – preliminary consideration

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd ("ATSILS") provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for almost four decades has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our submission is of assistance.

Increasing non-parole periods for murder, multiple murders and murder where the victim is a police officer for adult and youth offenders.

The focus on lengthy periods of incarceration on its own for the different categories of murder is unlikely to assist offenders with their rehabilitation while in prison and reintegration post-release. Punishment is but one part of incarceration and may protect the community during the person's sentence, however, if the community is to be protected in the longer term (i.e., once a person is released) there needs to be a focus upon placing that person in a position where they can function as a law abiding citizen once released.

Quality training, counseling, rehabilitation, education and reintegration services for prisoners are more likely than lengthier sentences, in assisting a person's return to the community. It is well settled that once released those convicted of murder are highly unlikely to reoffend.[1] It is also unlikely that longer sentences will deter people from committing these particular offences.

Practical issues likely to arise from increasing already lengthy mandatory sentences for offences such as these in the murder category are:

- A lack of any incentive for a person to plead guilty. Therefore trials are more likely to proceed for these charges at a high cost in time and resources,[2] as well as emotions suffered by the victims' family and friends;
- A larger amount of appeals,[3] as the person charged, has nothing to lose;
- A higher cost in terms of housing people in prisons for longer periods; and
- That such a response alone does not place the community is a safer position in the longer term.

It is also especially concerning that youth are being treated in the same manner as adults. There is an utter failure to acknowledge and allow for the lower maturity levels and lack of life experience. There is a failure to acknowledge the general

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[1] Baldry, E., *Recidivism and the role of social factors post-release*, School of Social Science and International Studies, University of NSW, p. 1. <http://www.sydneyshove.org/Social_Factors_Post_Release.pdf>

[2] Queensland Sentencing Advisory Council, September 2011, *Minimum standard non-parole periods: Final Report*, p. 5.

[3] Queensland Sentencing Advisory Council, September 2011, *Minimum standard non-parole periods: Final Report*, p. 5.

principle that considerations of punishment and general deterrence may be given less weight in favour of individual treatment aimed at rehabilitation, when sentencing a child.[4]

Young people convicted of murder will be incarcerated for even longer without any experience of life as an adult community member outside of a prison. This makes it extremely difficult for a person to integrate when they have never interacted in adult community life. Overall, it is suggested that lesser sentences with supervised release in the form of parole would be more appropriate than extended terms of imprisonment.

Increasing the maximum penalty for serious assault of a police officerfrom seven years imprisonment to fourteen years imprisonment…

While the difficult circumstances in which police at times work is acknowledged and the need to prevent offences against police in their duties, we are concerned that many of the people who commit such serious assaults are seriously disadvantaged members of the community. It is our experience that clients charged with this particular offence tend to be mentally ill, suffering from substance abuse and acting in desperation. It is unlikely that people in these categories will comprehend the increase in the penalty, or in fact intentionally behave in a manner to constitute a serious assault. Any increase in the existing penalty for people in these categories will only act to further disadvantage them.

Punitive measures such as imprisonment for the abovementioned also further isolates people from positive social experiences, increases a criminal identity and removes people from where they can best gain support and services to assist themself.[5]

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[4] *R v GDP* (1991) 53 A Crim R 112.

[5] Victorian Sentencing Advisory Council, April 2011, *Sentencing Matter: Does Imprisonment Deter? A Review of the Evidence*, p. 2.

The Victorian Sentencing Advisory Council have commented that deterrence theory is based on an assumption that a person is aware of the threat of a criminal sanction and that the person makes a rational choice in regard to whether to commit an offence based upon consideration of that knowledge. The people we have mentioned above are unlikely to be in a rational state at the time of offending and therefore able to make a rational choice.[6]

While the threat of imprisonment (per se) has been found to have a small general deterrent effect, research has not supported a corresponding increase in deterrence with increases in severity of penalties, such as increasing lengths of terms of imprisonment. Again, this is due to the state people tend to be in when they commit particular offences.[7]

We suggest that it would be far more productive to provide police with skills through training, to deal with people with mental health and substance abuse issues. Good people-skills can often diffuse emotionally-wrought situation. Conversely, poor people skills will invariably inflame the situation.

Amendment to introduce a mandatory minimum penalty of $5,000.00 and a two year licence disqualification period for the offence of evading police.

The setting of a minimum mandatory penalty and the imposition of a 2 year mandatory disqualification of licence period fails to understand or address the issues that have arisen in regard to this and other offences, such as 'Fail to stop for prescribed purposes'.[8] Several practical suggestions were made by the Crime and Misconduct Commission (CMC) in regard to this very provision which would make it more user friendly to the police and the court.[9]

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[6] Victorian Sentencing Advisory Council, April 2011, *Sentencing Matter: Does Imprisonment Deter? A Review of the Evidence*, p. 1.
[7] Victorian Sentencing Advisory Council, April 2011, *Sentencing Matter: Does Imprisonment Deter? A Review of the Evidence*, p. 2.
[8] Section 60 *Police Powers and Responsibilities Act 2000*.
[9] Crime and Misconduct Commission Queensland, June 2011, *An Alternative To Pursuit: A review of the evade police provisions*.

We acknowledge that although mandating a sentence in the above mentioned terms would be relevant and harsh for a person who has a license and money or a job, the imposition of such a sentence on a person who has neither, will be irrelevant for that person. These prescribed penalties are unlikely to be relevant to many people who engage in evade police offences. The penalties prevent the Court from imposing a sentence that would take each offender's circumstances into account. Our organisation, Legal Aid Queensland and the Chief Magistrate have previously voiced views in this regard, to the extent that there may be unintended adverse consequences of such penalties. These include added incentive to evade police, further endangering community safety.[10]

Amendment to abolish the Queensland Sentencing Advisory Council

We understand that the Queensland Sentencing Advisory Council has been defunded and therefore no longer exists. The wide range of backgrounds, qualifications and experiences of the Sentencing Advisory Council members could only be seen as value for money, in terms of their outputs in the context of such a small budget ($1.3 million for 2010-2011). We are disappointed with the dissolution of such a diverse and well qualified Committee who have produced high quality work. The Sentencing Advisory Council could have played a key role in regard to the present proposed amendments.

We note the speed with which these amendments are being progressed. We view this as being at the expense of more considered discussion and debate, which is valuable for obvious reasons, as well as ascertaining potential costs for such changes and for identifying any potential unintended consequences.

We wish you well in your deliberations and trust that our submissions are of assistance. I also acknowledge with appreciation the assistance from Ms Fiona Campbell of our Cairns' office in terms of the compilation of our initial draft.

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[10] Crime and Misconduct Commission Queensland, June 2011, *An Alternative To Pursuit: A review of the evade police provisions*, pp. 37-39 & 48-49.

Yours faithfully,

Shane Duffy

Chief Executive Officer