Criminal Law
Amendment Bill 2012
Submission 009

BAR ASSOCIATION OF QUEENSLAND

28 June 2012

Mr Peter Wellington MP
Deputy Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Deputy Chair,

Criminal Law Amendment Bill 2012

Thank you for your invitation to make written submissions on the following proposed legislative changes:

1. Amend the *Criminal Code of Queensland* to:

   - Increase the non-parole period for multiple murders under s 305 from 20 to 30 years imprisonment;

   - Insert a new minimum non-parole period under s 305 of 25 years imprisonment for the offence of murder where the victim was a police officer and the offender did the act or omission that caused the police officer's death either: when the police officer was performing their duties and the offender knew or ought reasonably to have known that the victim was a police officer; or because the victim was a police officer; or because of, or in retaliation for, actions undertaken by the victim, or any other police officer, in the performance of their duty; and

   - Increase the maximum penalty for the offence of serious assault of a police officer under s 340 from seven years' imprisonment to 14 years imprisonment where the assault: resulted in an injury amounting to bodily harm; involved the spitting on, biting or the application of a bodily fluid or faeces to the police officer; or involved the offender being, or pretending to be, armed with a dangerous or offensive weapon or instrument;

2. Amend the *Corrective Services Act 2006* to increase the non-parole period for murder from 15 to 20 years imprisonment;

3. Amend the *Penalties and Sentences Act 1992* to abolish Queensland's Sentencing Advisory Council;

4. Amend the *Police Powers and Responsibilities Act 2000* to introduce a mandatory minimum penalty of $5,000 and two year licence disqualification for the offence of evading police under section 754.

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The Bar Association of Queensland has no submissions to make regarding the proposed changes to the *Penalties and Sentences Act 1992* or to the *Police Powers and Responsibilities Act 2000*, however we oppose the amendments proposed with respect to the *Criminal Code of Queensland* and the *Corrective Services Act 2006* for the reasons that follow.

Proposed Increases to the Non-Parole Period for Certain Murders

Since 1922, the punishment for murder in this State has been life imprisonment, which cannot be mitigated or varied. It is pertinent to observe that only Queensland, South Australia and the Northern Territory have life imprisonment as the mandatory penalty for murder. In all other Australian jurisdictions the penalty for murder is left to the discretion of the Sentencing Judge, with the maximum being life imprisonment. It follows that Queensland already has a tougher sentencing approach to murder than does most other Australian jurisdictions.

The present position of course is that a person convicted of the murder of a single person is sentenced to the mandatory term of life imprisonment, and is not eligible to apply for parole until 15 years has been served. For those persons who commit two or more murders, they must serve at least 20 years before becoming eligible for release on parole and the Court may in fact increase the non-parole period beyond that mark. Further, it is the experience of our members that it is in practice rare for a convicted murderer to be released on attainment of the minimum non-parole period. Similarly, a person who has killed repeatedly is unlikely ever to be released, regardless of whether the minimum term to be served is 20 or 30 years.

That said, according to the Explanatory Notes:

> *"The offence of murder is the most heinous of criminal offences. The increased non-parole period will ensure that the punishment of murder fits the severity of the crime and will promote community safety and protection from these serious offenders.*
>
> *In particular, the amendments give effect to the Government's commitment that Queensland's criminal laws provide strengthened protection to police officers acting in the performance of their duties. The penalty increases for the murder of a police officer and the serious assault of a police officer reflect the important role performed by police officers in maintaining civil authority and the dangers faced by them in the discharge of their civic duties."*

It is cannot be doubted that there is no more serious offence known to our criminal law than murder. It is right that severe punishment is visited upon those convicted of that crime. However, it is quite erroneous to think that an increase to the minimum non-parole periods will promote community safety and protection. Nor will such an alteration offer police officers substantially greater protection than currently exists.

First, most murders are committed in the heat of the moment, whether that be a fit of passion, a drunken rage or some other highly, albeit temporarily, raised emotional state. The prospect of punishment rarely enters into the thinking of such offenders. Likewise, a statutory formula for the fixing of the non-parole period could not be further from their consciousness.

The alteration to the non-parole period that the proposed legislation seeks to achieve is therefore most unlikely to have the stated object of protecting the community from such offences. The position may of course be different in the case of premeditated murders, but that is not the focus of the proposed amendments.

Secondly, an attack on a police officer during the execution of his or her duty as such has long been recognised by the Courts as a particularly aggravating feature that, if present in any particular case, will result in a much more severe sentence than would otherwise be imposed with respect to an attack on someone not engaged in law enforcement. The Association accepts, and fully endorses, such an approach in order to protect the lives and safety of police officers. That is because of the important work that they do in the protection of our community and the substantial risks to their own safety over in carrying out that work. The Association notes, however, that other workers such as ambulance officers, nursing and medical staff in emergency rooms, security guards, mental health workers and such like are also at risk of death or serious injury.

There is therefore no need for the proposed changes. The current sentencing regime adequately caters for the aggravating features which the legislation targets. There is no evidence at all to suggest otherwise. Nor is it the case that convicted murderers are being released prematurely or that any such release has put the community at substantially increased risk.

Thirdly, and closely allied to the point just made, legislative interference with the current non-parole floors will further undermine the judicial sentencing discretion. There is no warrant for doing so and the absence of appeals by the Attorney General against the way in which that discretion has been exercised in the past underscores this point. If the Government wishes to legislatively entrench the importance that protection of police officers has to the sentencing of offenders, the appropriate way to proceed would be to introduce that feature as a formal circumstance of aggravation but, at the same time, preserving the Court's discretion to sentence the offender in accordance with the justice of the case, subject only to the existing non-parole provisions.

Serious Assault of a Police Officer

The proposed amendment to s 340 seeks to double the penalty (from seven to 14 years) for the serious assault of a police officer if any of the following circumstances are established:

- The offender bites or spits on the police officer or throws at, or any way applies to, the police officer a bodily fluid or faeces;
- The offender causes bodily harm to the police officer;
- The offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

As we stated above, the Association recognises the special vulnerability of police officers in the performance of their duties. But, without diminishing the force of that observation, police officers are not the only persons who are vulnerable to attacks during the course of their duty. In consequence, the proposed amendments would

appear to elevate the need for protection of police officers above the need to protect all other categories of persons engaged in potentially dangerous contact with members of the public.

That said, the current maximum for a serious assault of seven years' imprisonment is already a substantial penalty. The proposal to double that penalty would result in a situation where an offender convicted of that offence would be liable to the same penalty that currently exists for grievous bodily harm. That would be an absurd result given the significant disparity in the character of offending between those two offences.

To develop that point a little further, there needs to be quite serious injury to constitute grievous bodily harm. This is reflected in the definition of grievous bodily harm in s 1 of the *Criminal Code*:

> "*Grievous bodily harm means -*
>
> *(a) The loss of a distinct part of an organ of the body; or*
>
> *(b) Serious disfigurement; or*
>
> *(c) Any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health; whether or not treatment is or could have been available.*"

On the current proposal, the Parliament would rank an offence of bodily harm to a police officer at precisely the same level of seriousness in terms of offending as a grievous bodily harm to anyone else.

At the other end of the scale, if a person caused bodily harm to a police officer the maximum penalty would be 14 years but, if bodily harm was occasioned to anyone else, the maximum is half that period. Indeed, even if the offender in a non-police assault pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with one or more other persons, the maximum period of imprisonment that may be imposed is 10 years, still four years shy of the maximum now proposed under the Bill for objectively less serious offending.

It should go without saying that a rational and logical approach by the Parliament to the setting of maximum penalties should be taken at all times, and regard should in particular be had to penalties for comparable conduct. The new legislation abjectly fails to do this.

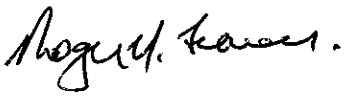
While it is important to protect police officers, it is also important to do so in a way that does not lead to incongruous results. It is also necessary to proceed in accordance with the principle that no one person in our community is more valuable or more worthy of protection than the other. As citizens we are all equal under the law. We urge you to do so.

Conclusion

The proposed amendments to the *Criminal Code of Queensland* to increase the non-parole floors for certain murders will not achieve the objectives set out in the Explanatory Notes. In any event, there is no proper justification for changing the current way in which such cases are disposed of by our Courts. Similarly, the proposal to double the existing penalty for certain serious assaults on police officers has, with respect, not be been properly thought through.

We are happy to expand on this submission in writing or orally if required.

Yours faithfully,



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