Legal Aid QUEENSLAND

Criminal Law Amendment Bill (No. 2) 2012
Submission 004

Your Ref:
Our Ref: AR: CM
Date: 8 February 2013

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Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
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Dear Sir/Madam

The Criminal Law Amendment Bill (No. 2) 2012

Legal Aid Queensland's (LAQ) Criminal Law Services division is one of the largest criminal law legal practices in Queensland, providing legal advice and representation in criminal matters under both state and Commonwealth law.

LAQ makes the following submission in relation to the Criminal Law Amendment Bill (No. 2) 2012.

Part 2 - Amendment of *Bail Act 1980*

Clause 4

It is submitted that consideration should be given to changing the wording of the proposed new section 11(9) from:

> "after having regard to –
> (a) the nature of the offence; and
> (b) the circumstances of the defendant may derive by participating in the program or course; and
> (c) the public interest"

to:

> "but shall not make the conditions for a grant of bail more onerous for the person than those that in the opinion of the court are necessary having regard to the nature of the offence, the circumstances of the defendant and the public interest".

It is submitted that this terminology is more consistent with the objectives of the amendment to provide greater flexibility for magistrates to refer defendants to any suitable program, and mirror the words used in sections 11(1) and 11(5). It would make the section consistent with the requirement in both subsections that the court consider whether the condition is too onerous. Without such an amendment it is possible that offenders may be required to attend intensive programs of a long duration that are more onerous than is warranted by the above factors.

Clause 5

It is submitted that consideration should be given to not making a breach of a bail condition to participate in a program an offence. With the removal of the requirement that programs be prescribed by regulation, there may be a wide range of ad-hoc programs which magistrates may require defendants to participate in. There is a risk that some program operators may require participants to do something unreasonable or inappropriate or impose some requirement with which participants cannot comply – or simply that program operators may not specify clearly what constitutes participation (eg how many attendances at a counselling based alcohol program might be required to have been regarded having participated, and when would non-attendance at one session of a program consisting of multiple sessions constitute non-attendance sufficient to constitute an offence). So there is risk of uncertainty and inconsistency around what constitutes offending behaviour.

The next issue is enforcement, as presumably program operators will be required to inform police about non-participation. This may undermine the therapeutic relationship between program operators and their clients – and may in fact reduce their willingness to report non-attendance as they would have previously done when it was not an offence.

Part 4 – Amendment of the Criminal Code

Clause 15

It is submitted that the distinction between graffiti offences involving obscene or indecent representations and those that do not, by way of a higher penalty, should be retained, and that the maximum penalty of 7 years imprisonment for obscene or indecent graffiti is sufficient. The higher penalty for obscene or indecent graffiti would be consistent with community standards, which would be to regard such graffiti as more offensive.

Clause 16

It is submitted that if there is to be provision for the forfeiture of a thing used to record, store or transmit an image of graffiti, there should also be provision to deal with the ownership of property by a third party, for example, a mobile phone service provider.

Part 5 - Amendment of the *Drug Court Act 2000*

Clause 32

It is submitted that provision needs to be made for the situation where it is not possible to finalise a drug court sentencing matter by 30 June 2013, for example, because of some unforeseen event such as the illness of the defendant.

Clause 34

The proposed new section 40A(5)(a), which applies the *Bail Act 1980* to an offender arrested under section 40 of the *Drug Court Act 2000*, appears to conflict with section 40(3) which provides that the Bail Act does not apply. It is submitted that either section 40(3) should be repealed, or, preferably, that a warrant under section 40(5)(a) should remain the mechanism to bring an offender before the Drug Court.

Part 8 - Amendment of the *Penalties and Sentences Act 1992*

Clause 42

It is submitted that a graffiti offence should not include "(b) an offence against the *Summary Offences Act 2005* section 17(1)" as a mandatory period of community service by way of a graffiti removal order may be considered an excessive penalty for a first time offender charged with possessing a graffiti instrument. Such an amendment may have the consequence of increasing the number of self-represented summary trials. In the alternative, it is proposed that a graffiti removal order should be discretionary rather than mandatory for section 17(1) offences.

Clause 47

It is submitted that the words "or any other circumstances that the court considers reasonable" should be inserted in the proposed new section 110A(2) after the word "disability", to allow for other circumstances that may cause the a graffiti removal order to be inappropriate.

It is submitted that the word "permanent" should be inserted before the word "residence" in the proposed new section 110C(1)(e) to prevent the provision having an unduly harsh effect on homeless persons.

Part 12 - Amendment of the *Victims of Crime Assistance Act 2009*

Clause 77

While Legal Aid Queensland is not opposed to this amendment, it is submitted that section 15 of the *Penalties and Sentences Act 1992* is sufficiently broad to allow for the reading aloud of victim impact statements during sentencing. The case of Singh [2006] QCA 71 illustrates the courts acceptance of the utility and function of the victim impact statement.

Part 13 - Amendment of the *Youth Justice Act 1992*

Clause 89

It is submitted that the words "or any other circumstances that the court considers reasonable" should be inserted in the proposed new section 194A(1) after the word "capacity" to allow for other circumstances that may cause the provision to have an unduly harsh effect on certain offenders.

It is submitted that the word "permanent" should be inserted before the word "residence" in the proposed new section 194B(1)(d) to prevent the provision having an unduly harsh effect on homeless youth.

It is submitted that in the interests of the safety, and rehabilitation, of child offenders, that child offenders should not perform graffiti removal service with adult offenders, and that the words "if practicable" should be removed from the proposed new section 194C(c).

Thankyou for considering this submission.

If you have any inquiries regarding this submission, please contact Mary Burgess, Director, Strategic Policy, Communication and Community Legal Education on 3238 3906 or at mburgess@legalaid.qld.gov.au.

Yours sincerely

Anthony Reilly
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Legal Aid Queensland