

Submission on the Queensland Government's Proposed Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012

Zig Zag Young Women's Resource Centre Inc.

June 2012

Zig Zag Young Women's Resource Centre Inc welcomes the opportunity to provide a written submission to the Legal Affairs and Safety Committee on the proposed *Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012*. Zig Zag Young Women's Resource Centre Inc acknowledges and appreciates the role of the Legal Affairs and Safety Committee in reviewing the sentences imposed on offenders convicted of child sexual offences in Queensland. It must be stated however that the timeframe provided to our organisation to respond to the proposed legislative amendments has been significantly constrained and does not permit us to provide a detailed, considered response. We are concerned by the introduction of substantive change to the sentencing of child sex offences in Queensland and we respectfully submit recommendations relating to specific areas of expertise based on Zig Zag's extensive knowledge and experience in providing sexual assault support and prevention services to young women who have been victims of violent crime, particularly child sexual offences.

Organisational Details

Zig Zag Young Women's Resource Centre Inc. (hereafter referred to as 'Zig Zag') was established in 1988 as an initiative of the Youth Advocacy Centre to respond to specific identified needs of young women, namely sexual violence, accommodation, and the provision of a safe and confidential place for young women to obtain information, advice, and support.

Zig Zag is an incorporated community managed organisation that currently receives funding to provide two core services to young women in the community:

1. Sexual Assault Support and Prevention Program:

This program provides direct support services to young women aged 12 years – 25 years who have experienced sexual assault at any time in their lives. Services include:

- Information, referral and advocacy;
- Individual counselling (including crisis support);
- Therapeutic group work; and
- Community education on issues relating to sexual violence.

2. Supported Accommodation and Assistance Program:

This program provides direct support services to young women aged 16 years to 25 years who are experiencing or at risk of experiencing homelessness. Services include:

- Information, referral and advocacy;
- Supported medium term accommodation; and
- Practical assistance to access accommodation / housing.

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Zig Zag has significant experience in providing direct therapeutic support services to young women who have been victims of violent crime specifically those child sexual offences that are included within the ambit of the proposed *Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012* (hereafter referred to as the 'Bill').

Zig Zag respectfully submits recommendations relating to the following specific areas:

- 1. Concerns relating to the primary objectives of the Bill;**
- 2. Factors relevant to the sentencing of child sexual offences in Queensland; and**
- 3. Formal reviews relating to the sentencing of child sexual offences in Queensland.**

Summary of Recommendations on the Proposed Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012

Recommendation 1.

Zig Zag strongly discourages the proposed introduction of a mandatory sentencing regime of life imprisonment under the Penalties and Sentences Act 1992. The Sentencing Court must be able to consider all factors relevant to the offence in sentencing.

Recommendation 2.

Zig Zag urges the Queensland Government to appropriately consider the unforeseen and unintended consequences of the proposed legislative amendments to the *Penalties and Sentences Act 1992* and the *Corrective Services Act 2006*.

Recommendation 3.

The Sentencing Court considers the introduction of existing longitudinal research on the long-term effects of child sexual offences on victims over the life-term when assessing harm to the victim. The Australian Centre for the Study of Sexual Assault at the Australian Institute of Family Studies has a register of current research relating to sexual violence.

Recommendation 4.

Professional and financial assistance be made available to *all* victims of crime including parent secondary victims in preparing victim impact statements for the Sentencing Court.

Recommendation 5.

Consideration and appropriate funding provided for the inclusion of professional reports prepared by Sexual Assault Support and Prevention Service workers *with* victims of crime in Queensland to be submitted to the Sentencing Court. Workers could assist victims to make decisions about what to include in a Court report regarding specific harms and/or general or potential harms to the victim based on specialist knowledge of the impact of child sexual offences on victims over the life-term. Consideration for the victim's choice to maintain privacy must be rigorously upheld with recognition to the Court's ability to reach a conclusion of an adverse impact of the offending conduct on the victim without evidence being directly provided by the victim to the Court.

Recommendation 6.

Development of appropriate and safe mechanisms to facilitate greater participation and inclusion of the victim in Sentencing Court proceedings; with recognition for alternative options and choice to be made available to victims of crime by the Prosecution.

Recommendation 7.

Development of a Sexual Assault Education Framework in Queensland to ensure appropriate education is consistently provided to judges, magistrates and tribunal members on issues relating to sexual offences. Currently funded Sexual Assault Support and Prevention Services should inform the development of judicial education in Queensland as key experts in this specialist area.

Recommendation 8.

The Sentencing Court formally adopt a position that recognises the offender's culpability to be high and child sexual offences to be inherently harmful where there is evidence of 'grooming' tactics used by the offender, and where the act is in any way coercive and exploitative.

Recommendation 9.

Improved assessment and communication of an offender's culpability to the Sentencing Court with particular attention to the following factors:

- The nature of the offence and whether it was committed by an adult against a child;
- The relationship between the offender and the victim, for example whether the offender was in a position of power or trust;
- The vulnerability of the victim not limited to the victims age; and
- Whether the offence is 'carefully or deliberately planned' and whether evidence of 'grooming' tactics was used by the offender to facilitate or procure a child for sexual activity.

Recommendation 10.

The Sentencing Court formally recognises the gendered nature of child sexual offences and adopts a gendered analysis as a best practice approach.

Recommendation 11.

Increased attention and consideration of harm and potential harm to the victim to be appropriately assessed and communicated to the Sentencing Court with recognition that individual victim responses may vary; and the nature of the offending behaviour/s do not have a simple correlation to the measure of harm or potential harm.

Recommendation 12.

Zig Zag urges the Queensland Government to consider introducing similar legislative restrictions on matters that can be taken into account in mitigation as found in the *Crimes (Sentencing Procedure) Act 1999* in New South Wales which provides special rules for the sentencing of child sexual offences, in particular the good character and lack of previous convictions of an offender should not be taken into account as a mitigating factor if the Court is satisfied that the factor concerned assisted the offender in the commission of the child sexual offence/s.

Recommendation 13

Zig Zag recognises the comprehensive work undertaken by the former Sentencing Advisory Council, in particular their review of sentencing of child sexual offences in Queensland. Zig Zag urges the Queensland Government to review previous reports and recommendations made by the former Sentencing Advisory Council.

Recommendation 14

Zig Zag encourages the Queensland Government to adopt approaches that enable appropriate community consultation in relation to any proposed legislative amendments applied to the sentencing of child sexual offences in Queensland. Key stakeholders must be provided with appropriate timeframes to appropriately consider various approaches and legal frameworks; and enable detailed comment and recommendations that enhance sentencing practices in Queensland.

1. Concerns Relating to the Primary Objectives of the Bill

1.1 The Introduction of Mandatory Sentencing

The introduction of a mandatory sentencing regime of life imprisonment is a dramatic amendment to Queensland's legislative response to child sex offences. It is not a move that should be taken without appropriate community consultation and consideration to the adequacy of existing approaches and legislation; and options for improving practices relating to the sentencing for offenders convicted of child sexual offences. Life imprisonment is the most serious penalty within the sentencing hierarchy. It should not be applied indiscriminately.

Zig Zag holds significant concerns for the introduction of a mandatory sentencing regime of life imprisonment for certain repeat child sex offenders that cannot be mitigated or varied as this removes the discretionary powers of the judiciary from considering factors relevant to the offence in sentencing. In particular, mandatory sentencing does not allow the Sentencing Court the opportunity to consider the following important elements related to the crime, such as:

- The nature of the sexual offences;
- The harm to the victim;
- Offender culpability; and
- Aggravating and/or mitigating factors.

Child sex offences include serious, heinous crimes against children that must be punishable under law. However we also ask that you consider situations where circumstances indicate a need for specific consideration of factors, for example, a 17 year old male who maintains an ongoing sexual relationship with his 15 year old girlfriend. In this instance he would also be subject to charges and possible conviction as a child sex offender. Magistrates must be allowed to appropriately consider the diversity of circumstances presented in cases before them.

Zig Zag advocates for improvement in Court procedures relating to the assessment of factors relevant to the sentencing of child sexual offences in Queensland, however Zig Zag does not support legislative change that removes the discretionary powers of the judiciary from considering factors relevant to the offence in sentencing. Zig Zag believes that principles of procedural fairness and proportionality must be maintained.

Recommendation 1.

Zig Zag strongly discourages the proposed introduction of a mandatory sentencing regime of life imprisonment under the Penalties and Sentences Act 1992. The Sentencing Court must be able to consider all factors relevant to the offence in sentencing.

1.2 Unintended Consequences Relating to Proposed Legislative Changes

Zig Zag remains concerned by the significant potential for unforeseen and unintended consequences of the proposed legislative amendments to the *Penalties and Sentences Act 1992* and the *Corrective Services Act 2006*. We believe it to be essential that prior to any significant legislative change there is appropriate consideration for specific groups of people who may be affected by such changes with particular attention to young people, women, people with intellectual and learning disabilities, and Aboriginal and Torres Strait Islanders who are significantly overrepresented in the Criminal Justice system.

Recommendation 2.

Zig Zag urges the Queensland Government to appropriately consider the unforeseen and unintended consequences of the proposed legislative amendments to the *Penalties and Sentences Act 1992* and the *Corrective Services Act 2006*.

2. Factors Relevant to the Sentencing of Child Sexual Offences in Queensland**2.1 Consideration of Harm to the Victim**

Zig Zag recognises that there are significant challenges in assessing and communicating to the Sentencing Court the harm to the victim caused by child sexual offences. In particular we note that there are developmental considerations for child victims of crime as the long-term harm, including physical, psychological, social, and financial harms, may be difficult to determine at the time of sentencing.

Zig Zag recognises that there is a significant interface between criminal law and social research, policy, and practice. We strongly contend that specific areas of law must be informed by social science, for example: existing social research into the long-term effects of child sexual offences on victims could be utilised when assessing and communicating harms and potential harms to the victim caused by child sexual offences in Sentencing Court proceedings.

Zig Zag also note the shortcomings regarding the use of victim impact statements especially in instances where the primary victim and/or parent secondary victim are not provided with appropriate professional/worker assistance to adequately prepare such statements. In particular some victims of crime may experience significant disadvantage during legal proceedings for example, women from non-English speaking backgrounds, and women with intellectual and/or learning disabilities. Zig Zag has frequently observed victim impact statements that do not reflect the offence seriousness or degree of harm caused by child sexual offences. Furthermore the harm to the parent secondary victim is often not included in the victim impact statements submitted to the Sentencing Court despite significant known negative impact for parents on becoming aware of the sexual offences made against their child. Child sexual abuse is not just a traumatic event for the child it is often a devastating and life changing experience for parents and other family members.

Zig Zag acknowledge that victims of child sexual offences may not wish for some or all aspects of their experience and the impacts of crime made known to the offender during Sentencing Court proceedings. Consideration for the victim's choice to maintain privacy must be upheld with recognition to the Court's ability to still reach a conclusion of an adverse impact of the offending conduct on the victim without evidence being directly provided by the victim to the Court.

Zig Zag strongly supports the development of a Sexual Assault Education Framework in Queensland to ensure appropriate education is provided to judges, magistrates and tribunal members on issues relating to sexual offences. Responding to criminal matters involving sexual violence is a specialist area requiring significant professional competencies to be met. The judiciary is unlikely to access education specific to sexual offences through university education alone.

We believe that currently funded Sexual Assault Support and Prevention Services are best placed to inform the development of judicial education as professional development and training modules and other major publications have been developed and delivered by the sector. The *'Right to Choose: Enhancing Best Practice in Responding to Sexual Assault in Queensland'* (2010) identified that Non-government Sexual Assault Support and Prevention Services are widely recognised as key experts in specialist sexual assault service provision,

with all services providing professional training and development activities. The vast majority provide education (at an undergraduate and postgraduate level) for universities and vocational training institutions. Additionally, Sexual Assault Support and Prevention Services provide continuing professional development and training for professionals across diverse government, non-government and private sectors including magistrates, lawyers, police officers, child safety officers, general practitioners, registered nurses, and teachers, to name a few.

Recommendation 3.

The Sentencing Court considers the introduction of existing longitudinal research on the long-term effects of child sexual offences on victims over the life-term when assessing harm to the victim. The Australian Centre for the Study of Sexual Assault at the Australian Institute of Family Studies has a register of current research relating to sexual violence.

Recommendation 4.

Professional and financial assistance be made available to *all* victims of crime including parent secondary victims in preparing victim impact statements for the Sentencing Court.

Recommendation 5.

Consideration and appropriate funding provided for the inclusion of professional reports prepared by Sexual Assault Support and Prevention Service workers *with* victims of crime in Queensland to be submitted to the Sentencing Court. Workers could assist victims to make decisions about what to include in a Court report regarding specific harms and/or general or potential harms to the victim based on specialist knowledge of the impact of child sexual offences on victims over the life-term. Consideration for the victim's choice to maintain privacy must be rigorously upheld with recognition to the Court's ability to reach a conclusion of an adverse impact of the offending conduct on the victim without evidence being directly provided by the victim to the Court.

Recommendation 6.

Development of appropriate and safe mechanisms to facilitate greater participation and inclusion of the victim in Sentencing Court proceedings; with recognition for alternative options and choice to be made available to victims of crime by the Prosecution.

Recommendation 7.

Development of a Sexual Assault Education Framework in Queensland to ensure appropriate education is consistently provided to judges, magistrates and tribunal members on issues relating to sexual offences. Currently funded Sexual Assault Support and Prevention Services should inform the development of judicial education in Queensland as key experts in this specialist area.

2.2 Offender Culpability

Zig Zag acknowledges that the culpability of the offender is recognised as a relevant sentencing factor in Queensland under the *Penalties and Sentences Act (1992)*.

It is essential to also acknowledge that in the vast majority of child sexual abuse cases the offender is known to the victim and the offender frequently holds a privileged position of power, relation, and trust. Secrecy, deception and/or threats employed by the offender are often what enable child sexual offences to occur and continue; and parents may also be actively or intentionally deceived and targeted by the tactics used by the offender. Child sexual offenders are often very skilled at exploiting a child's lack of power and position to ensure the child remains silent about the abuse; and reduce the likelihood of the offender being held accountable for their criminal actions.

Zig Zag remains concerned that attention to offender culpability is low in some instances of sentencing however we await comprehensive data analysis of the sentencing remarks and factors considered in sentencing of child sexual offences in Queensland to be published by the Sentencing Advisory Council.

Zig Zag endorses a position that recognises the offender's culpability to be high and child sexual offences to be inherently harmful where there is evidence of 'grooming' tactics used by the offender, and where the act is in any way coercive and exploitative. Factors that should be considered by the Sentencing Court in assessing culpability include:

- The nature of the offence and whether it was committed by an adult against a child;
- The relationship between the offender and the victim, for example whether the offender was in a position of power or trust;
- The vulnerability of the victim not limited to the victims age; and
- Whether the offence is 'carefully or deliberately planned' and whether evidence of 'grooming' tactics was used by the offender to facilitate or procure a child for sexual activity.

The Research Report on the Sentencing of Offenders Convicted of Child Sexual Offences published by the Sentencing Advisory Council identified that nearly all reference offenders in Queensland were male (98%) which is consistent with national and international research in this area. It is recognised internationally that good practice interventions require a gendered analysis of sexual violence against women and children.

Recommendation 8.

The Sentencing Court formally adopt a position that recognises the offender's culpability to be high and child sexual offences to be inherently harmful where there is evidence of 'grooming' tactics used by the offender, and where the act is in any way coercive and exploitative.

Recommendation 9.

Improved assessment and communication of an offender's culpability to the Sentencing Court with particular attention to the following factors:

- The nature of the offence and whether it was committed by an adult against a child;
- The relationship between the offender and the victim, for example whether the offender was in a position of power or trust;
- The vulnerability of the victim not limited to the victims age; and
- Whether the offence is 'carefully or deliberately planned' and whether evidence of 'grooming' tactics was used by the offender to facilitate or procure a child for sexual activity.

Recommendation 10.

The Sentencing Court formally recognises the gendered nature of child sexual offences and adopts a gendered analysis as a best practice approach.

2.3 Nature of Sexual Offences

Zig Zag remains concerned that the Courts may consider the nature of the sexual offences to be a strong indicator of the level of harm caused to the victim. This approach may unintentionally serve to trivialise or minimise the offence seriousness and/or harm caused to the victim. It is our professional opinion based on extensive experience in the provision of therapeutic trauma counselling with victims of child sexual abuse that the harm to the victim caused by such offences cannot be measured by the nature or range of the offending behaviour/s alone. For example, an instance of indecent treatment of a child where there

was no physical contact *does not* indicate a low level of offence seriousness or minimal impact on the victim.

Recommendation 11.

Increased attention and consideration of harm and potential harm to the victim to be appropriately assessed and communicated to the Sentencing Court with recognition that individual victim responses may vary; and the nature of the offending behaviour/s do not have a simple correlation to the measure of harm or potential harm.

2.4. Offender's Criminal History and/or Good Behaviour

Zig Zag acknowledges that the *Penalties and Sentences Act (1992)* outlines a range of aggravating and mitigating factors that can be taken into account in sentencing.

An offender's previous criminal history, especially known prior child sexual offences, may be considered as an aggravating factor in sentencing with particular attention to the need to protect a child or other children from the risk of the offender re-offending and to deter similar offending behaviour in the community. It is relevant to note that there are no reliable and valid risk assessments for measuring the risk of re-offending in child sexual offenders. Importantly it is impossible for the Court to establish that there is *no risk* of re-offending.

Sexual offences recidivism is primarily measured by examining the reconviction rates of sex offenders, a method that significantly underestimates the extent to which reoffending occurs. Furthermore Zig Zag recognises that the number of child sexual offences reported to the Queensland Police Service and prosecuted through the criminal justice system *do not* reflect the prevalence of such offences occurring in the community as child sexual offences are a) significantly underreported and b) have the highest rates of attrition of any offence progressing through the criminal justice system.

Zig Zag also acknowledges that it is difficult to accurately ascertain how many incidents of child sexual offending and how many victims an offender has offended against *prior* to being detected, charged, and convicted of a child sexual offence. An absence of prior convictions does not necessarily mean that there is an absence of prior offending behaviour. Some studies indicate that many adult sex offenders began offending in their adolescence suggesting the possibility of a significant number of prior offences.

Zig Zag remains concerned that the 'good character' of a child sexual offender is available for consideration as a mitigating factor in sentencing. In particular it has been recognised that this specific factor may assist the offender in committing the child sexual offence and reduce the likelihood of the victim to disclose or report the offences made against them.

Recommendation 12.

Zig Zag urges the Queensland Government to consider introducing similar legislative restrictions on matters that can be taken into account in mitigation as found in the *Crimes (Sentencing Procedure) Act 1999* in New South Wales which provides special rules for the sentencing of child sexual offences, in particular the good character and lack of previous convictions of an offender should not be taken into account as a mitigating factor if the Sentencing Court is satisfied that the factor concerned assisted the offender in the commission of the child sexual offence/s.

3. Formal Reviews Relating to the Sentencing of Child Sexual Offences in Queensland

The introduction of a mandatory sentencing regime of life imprisonment is a dramatic amendment to Queensland's legislative response to child sex offences. It is not a move that should be taken without appropriate community consultation and consideration to the adequacy of existing approaches and legislation; and options for improving practices relating to the sentencing for offenders convicted of child sexual offences. Life imprisonment is the most serious penalty within the sentencing hierarchy. It should not be applied indiscriminately.

Zig Zag welcomes and encourages formal reviews relating to the sentencing of child sexual offences in Queensland. Key stakeholders must be provided with appropriate timeframes to appropriately consider various approaches and legal frameworks; and enable detailed comment and recommendations that enhance sentencing practices in Queensland.

Recommendation 13

Zig Zag recognises the comprehensive work undertaken by the former Sentencing Advisory Council, in particular their review of sentencing of child sexual offences in Queensland. Zig Zag urges the Queensland Government to review previous reports and recommendations made by the former Sentencing Advisory Council.

Recommendation 14

Zig Zag encourages the Queensland Government to adopt approaches that enable appropriate community consultation in relation to any proposed legislative amendments applied to the sentencing of child sexual offences in Queensland. Key stakeholders must be provided with appropriate timeframes to appropriately consider various approaches and legal frameworks; and enable detailed comment and recommendations that enhance sentencing practices in Queensland.

Zig Zag acknowledges that this written submission has been developed within significant time constraints and invites opportunities to provide further comment to any recommendations made herein.

For further information or commentary please contact:
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