



**SUPREME COURT OF  
QUEENSLAND**

CHAMBERS OF THE CHIEF JUSTICE

**Criminal Law - Two Strike  
Child Sex Offenders  
Submission 005**

Your Ref: 11.1.3.c  
Our Ref: 1:192

28 June 2012

Mr Peter Wellington MP  
Deputy Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
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Dear Mr Wellington

**Criminal Law Amendment Bill 2012  
Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012**

Thank you for your letters of 21 June 2012 inviting submissions to the Committee about these Bills by Thursday 28 June, 2012.

Unfortunately, the short period of time within which to make a submission has not allowed me to discuss the Bills with all of the Judges of the Supreme Court. Some of the Judges are on leave and it has not been possible for the Judges to meet and provide their comments so as to enable me to formulate a more comprehensive response. As the Explanatory Memoranda note, the Bills have not been the subject of prior consultation with the courts

I appreciate that your Committee has been required to report to the Parliament by 6 July 2012, and this is why such a short period has been allowed for submissions.

**The scope of this submission**

The Judges adopt the position that it is generally inappropriate for them to comment on matters of policy. The determination of government policy and the content of legislation are the provinces of the executive and legislative branches respectively. It is inappropriate for the courts and their members to be involved in debates about the merits of legislation and executive action. However, on occasions I will make submissions to a Minister, Parliamentary Committee or Law Reform Commission where proposed legislation or executive action affects the institutional workings or integrity of the courts, or has implications for their resources.

The following submission is limited to such matters.

**Mandatory Sentences and Mandatory Non-Parole Periods**

The Judges recognize the constitutional power of the legislature to enact mandatory sentences and minimum non-parole periods. By their nature, such laws remove or limit the sentencing discretion of judges. They have other implications. For example, the increase in the non-parole period for murder from 15 to 20 years imprisonment may have resource implications for the



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Department of Community Safety. Mandatory life sentences will have resource implications. It is to be hoped that any additional resources required to accommodate prisoners for longer periods will not be at the expense of the courts and services which support the courts in the administration of the criminal justice system, such as probation and parole services which assist in the rehabilitation of offenders and thereby enhance community safety.

The Explanatory Memoranda for the Bills state, "Any costs in relation to the amendments will be met from existing agency resources". The Committee might recommend that such costs be not borne by the courts and agencies which directly support them in the administration of the justice system.

Mandatory sentences and mandatory non-parole periods have been the subject of debate and submissions on other occasions and in other contexts. Recently in a submission to the Sentencing Advisory Council I expressed reservations about the enactment of mandatory non-parole periods for certain offences. While recognizing the entitlement of the legislature to enact mandatory sentences and minimum non-parole periods, the courts and others have emphasised the importance of preserving the judicial discretion to ensure the punishment is just in all of the circumstances of the particular case.

I will not repeat what has been said on this important topic on other occasions.

Sometimes the objectives of legislation of the kind currently under consideration can be achieved by laws which include a residual discretion to depart from what would otherwise be a mandatory sentence or mandatory non-parole period, with such a discretion to be exercised in carefully-defined and truly exceptional circumstances.

#### **The abolition of the Sentencing Advisory Council**

The *Criminal Law Amendment Bill 2012* will dissolve the Council in the expectation that the provision of advice on sentencing matters and reviews of the law relating to sentences will be undertaken by existing agencies, including the Law Reform Commission.

I should record my appreciation of the research undertaken by the Sentencing Council in relation to sentencing for serious violent offences, and standard non-parole periods for such offences. Such research benefits the community in providing an informed basis to review current laws and practices. I trust that the Law Reform Commission and any other agency which undertakes research in this area will be adequately resourced to provide your Committee, the courts and the community with information that will enhance our collective understanding of how sentencing laws operate in practice, and how they might be improved.

#### **The consequences of a reduction in the number of guilty pleas**

One area requiring further research and the active consideration of your Committee are the implications of proposed changes in the law on the rate of guilty pleas.

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The introduction of a mandatory sentence of life imprisonment will affect the preparedness of individuals to plead guilty to such offences. Simply put, someone facing a life sentence is far less likely to plead guilty than would otherwise be the case. An increase in the rate of not guilty pleas for such offences will result in more trials. Additional judicial and other resources will be required to try cases which otherwise would have resulted in pleas of guilty and the early sentencing of offenders.

Unless those additional resources are provided there will be delays in the timely disposal of criminal cases in general. Such delays would have a number of unfortunate consequences. Innocent persons may remain in custody. The guilty will not be sentenced as soon as possible. The victims of crime will have to wait additional time to give evidence (if required to do so) and to see the offender duly punished.

These and other unintended consequences could be avoided by:

- (a) a careful assessment of the implications of the Bills on the rates of guilty pleas and the resource implications this would have for the courts, prosecuting authorities, legal aid and other agencies;
- (b) a commitment to provide the required resources.

If such a commitment were not provided, then delays in the disposition of criminal cases might be reduced by providing that the mandatory sentence of life imprisonment does not apply where the person has pleaded guilty to the offence. However, such a two-tiered sentencing regime may have other problems, including creating undue pressure on persons who have a good defence to a charge that carries a mandatory life sentence to plead guilty.

The proposed "two strike" sentencing regime for child sex offenders is intended to reflect the heinous nature of child sex offending, the need to protect children from such offences and the need to punish the guilty. It would be unfortunate if such well-intentioned laws had unintended consequences for the victims of crime and the courts, through delays in the disposition of such cases and criminal cases in general.

Issues requiring consideration in this regard include:

1. the number of cases that might be affected by the proposed "two strike" law;
2. the sentences currently imposed on such repeat offenders;
3. the application of the *Dangerous Prisoners (Sexual Offenders) Act 2003* to such offenders when they approach the end of their term of imprisonment;
4. if mandatory life sentences are to be imposed for certain categories of offences, whether the objectives of the legislation might be achieved by their imposition in cases of not guilty pleas, leaving courts to impose appropriate punishments and non-parole periods where offenders plead guilty.



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### **Court resources**

Timely pleas of guilty are to be encouraged. They spare the victim and the victim's family the ordeal of a trial. The guilty are punished sooner. They also have significant resource implications for the courts. Experience shows that timely pleas of guilty lead to significant resource savings.

Experience also shows that offences which attract mandatory sentences rarely result in guilty pleas. Recent experience with the "people smuggler" cases in which mandatory sentences apply, indicates that not to allow discounts for pleas of guilty leads to trials proceeding which probably would otherwise have resulted in guilty pleas.

### **Conclusion**

This submission is confined to the implications of the proposed legislation on the courts. No doubt your Committee will wish to consider many other matters, including the implications of the legislation on other institutions and agencies, and various issues of policy.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul de Jersey'.

The Hon P de Jersey AC  
Chief Justice