



commission for  
children and young people  
and child guardian

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**Criminal Law - Two Strike  
Child Sex Offenders  
Submission 009**

Telephone: 07 3211 6700  
Reference: SPRP/DN47605

28 JUN 2012

Mr Ray Hopper MP  
Chair  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Via Email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Mr Hopper

Thank you for the opportunity to provide comment on the Criminal Law (Two Strike Child Sex Offender) Amendment Bill 2012.

Please find attached a submission from the Commission for Children and Young People and Child Guardian (the Commission).

I note that the guidelines for making submissions to Parliamentary Committees provide that after the committee has authorised publication of a submission, submitters are welcome to include a link from their website to the submission on the Parliament's website.

The Commission would like to place a copy of its submission on its website, as making Commission work publicly available is one way of demonstrating accountability to the children and young people it represents. It would be greatly appreciated if you could advise if you are agreeable to the Commission placing a copy of our submission on the Commission's website.

Should your officers require any further information please contact Ms Susan Dwyer, Principal Advisor, on (07) 3211 6991 or [Susan.Dwyer@ccypcg.qld.gov.au](mailto:Susan.Dwyer@ccypcg.qld.gov.au).

Yours sincerely

Elizabeth Fraser  
Commissioner for Children and Young People  
and Child Guardian

# The Commission for Children and Young People and Child Guardian

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

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**Advice to:** Legal Affairs and Community Safety Committee  
**Topic:** Feedback on the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012  
**Date due:** 28 June 2012

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Thank you for providing the Commission for Children and Young People and Child Guardian (the Commission) with the opportunity to provide feedback on the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 (the Bill). The Commission has focused its feedback on issues specifically relating to or impacting upon children and young people.

The Commission notes that all of the offences encompassed in the Bill are disqualifying offences under the *Commission for Children and Young People and Child Guardian Act 2000* and, given the serious nature of the offences, it is not considered likely that the proposed regime would impact on the Commission's blue card administration or decision making processes.

## Summary of the Commission's recommendations:

### The Commission:

1. supports a strong approach to sentencing offenders who commit child sexual offences, particularly repeat offenders, and acknowledges the role appropriate sentencing plays in acting as both a punishment and a deterrent
2. strongly recommends that young offenders under 18 years of age be excluded from the operation of the Bill
3. recommends that judicial discretion in relation to sentencing be maintained as mandatory sentencing may have some unintended consequences, particularly in relation to child victims, and
4. recommends that if the proposed changes are introduced a comprehensive evaluation be undertaken to determine the effects of the changes, both intended and unintended.

- 1) The Commission supports a strong approach to sentencing offenders who commit child sexual offences, particularly repeat offenders, and acknowledges the role appropriate sentencing plays in acting as both a punishment and a deterrent

The Commission supports measures that may improve protection for the Queensland community, particularly vulnerable children and young people.

The Commission also recognises the difficulties involved in balancing the community's right to safety and the right of offenders who have served their sentence, however, in light of the inherent vulnerabilities of children and young people and the social,

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emotional, and financial costs of child sexual abuse<sup>1</sup>, the Commission is of the view that the emphasis needs to be on considering the rights, interests and wellbeing of the child victims, or potential child victims, of such offences.

The Commission therefore acknowledges the importance of appropriately punishing and deterring offenders from future offending conduct, especially offending at the most severe end of the child sex offending spectrum, such as those encompassed by the proposed Bill.

### **2) The Commission strongly recommends that young offenders under 18 years of age be specifically excluded from the operation of the Bill**

Although the proposals in the Bill specifically relate to offences committed by 'adults' the Commission is concerned that offences committed by 17 year olds will be included in the 'two strike child sex offences' count, and more particularly, that if the second conviction occurs while a young person is 17, the young person will be mandatorily sentenced to life in prison.

The Commission has been consistent in its advocacy for removing 17 year olds from the adult justice system over many years. The Commission's Policy Position Paper, *Removing 17 year olds from Queensland's adult prisons and including them in the youth justice system*, advocates for all young people under the age of 18 years to be dealt with in accordance with the *Youth Justice Act 1992* and its Charter of Youth Justice Principles. These include principles of accountability and responsibility, while at the same time promoting the young person's rights, safety, physical and mental wellbeing, and responsible and socially acceptable development. The Commission is strongly opposed and very concerned if the proposals in this Bill do not specifically exclude offences committed by 17 year olds, particularly as the 'second' offence.

### **3) The Commission recommends that judicial discretion in relation to sentencing be maintained as mandatory sentencing may have unintended consequences, particularly in relation to child victims**

The Commission cautions that imposing a mandatory sentence of life imprisonment for repeat offenders may have unintended consequences. For example:

- child victims may be unwilling to report, or may be persuaded by other family members not to report repeat offences committed by a family member if they know the person, if convicted, will be sentenced to life imprisonment
- juries may be unwilling to find a person guilty for the same reason
- the additional cost of mandated life sentences may result in a reduction in the provision of rehabilitation programs directed towards reducing sexual offending against children and young people

The Commission is of the view that judges should retain the discretion to be able to take into account a range of considerations when imposing a sentence. The Commission acknowledges that the offences encompassed in the Bill fall on the severe end of the

<sup>1</sup> Sexual abuse of children has a range of serious consequences, including depression, post-traumatic stress disorder, antisocial behaviours, suicidality, eating disorders, alcohol and drug misuse, parenting difficulties, sexual re-victimisation and sexual dysfunction: see Richards, 2011 for details. Further, it is well accepted that sexual offences that come to attention of police are only a small proportion of all sexual offences that occur in the community and the costs of sexual offending, including the emotional and financial costs, may therefore be even more significant than currently understood: Richards, 2011; Stathopoulos, 2010.

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offending spectrum and recognises that there is a clear need to deter potential offenders from engaging in offending behaviours. This is particularly so where they are in a position of trust, power or authority in relation to their victims, and even more so where those victims are young and/or vulnerable. Nevertheless, the Commission considers it preferable that judicial discretion is maintained so that appropriate sentences, which take into account a range of factors, can be handed down.

The Commission has a strong concern that children and young people may be less willing to report abuse against them if they know that the perpetrator will spend life in prison if found guilty. This is particularly likely to be the case if the person is a parent, relative or close friend. Children involved in child abuse matters where the abuser is a family member have often been reported as saying that they didn't want to get the person into trouble, they just want the abuse to stop. The Commission is concerned that children will feel less able to report abuse under the proposed changes and family members are much more likely to put pressure on children not to disclose abuse – leaving children nowhere to go but accept the abuse or take other actions such as leaving home.

The Commission is also concerned that juries may be less willing to find a person guilty if they know that the person will automatically be sentenced to life in prison. This could have the effect of a person, who would otherwise have been found guilty by a jury, being found not guilty through the jury's reluctance to sentence them to life in prison.

While the Commission acknowledges the importance of sentencing principles such as deterrence, punishment, and especially community protection, the Commission also is of the view that effective and appropriate services and programs are necessary for offenders to produce longer term reductions in recidivism. In this regard, the Commission has some concerns that any costs for the amendments contained in the Bill are intended to be met from existing agency resources. If the proposed amendments impact on a considerable number of offenders, it is unclear how existing resources would provide for the increased number of offenders imprisoned over a longer term, both in relation to imprisonment costs and rehabilitation options. The Commission is concerned that necessary resources will be drawn from existing rehabilitation programs.

As the Commission noted in its submission to the former Sentencing Advisory Council in response to the Council's review of sentencing of child sexual offences in Queensland<sup>2</sup>:

*"It must be acknowledged that offenders will be released from prison eventually, and research evidence indicates that it is likely to pose a greater risk to potential child victims in the community for such offenders to be released without having undertaken a rehabilitative program. Therefore, while the best interests of children is considered to be the priority consideration, there is also a strong need to consider the provision of effective and appropriate rehabilitation options for offenders, particularly young offenders, to assist in protecting the children and young people who may otherwise become victims of sexual offences."*

While it is understood that there is evidence to suggest that mandated participation in such programs may not lead to real behavioural change<sup>3</sup>, and reliable evaluation of the

<sup>2</sup> See <http://www.ccyvpcg.qld.gov.au/pdf/submissions/S331-Submission-to-Sentencing-Advisory-Council-re-sentencing-of-child-sexual-offences-issues-paper.pdf>

<sup>3</sup> Eg. McSherry, 2006; cited in Gelb, 2007.

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effect of sex offender treatment programs on rates of recidivism is difficult to achieve and mixed results have been reported<sup>4</sup> many studies have also demonstrated the effectiveness of treatments, especially those delivered in the community, in reducing sexual offence recidivism and mitigating the effects of prolonged imprisonment<sup>5</sup>.

The Commission considers it important for effective interventions and rehabilitation programs to continue to be made available to all offenders.

- 4) **The Commission recommends that if the proposed changes are introduced a comprehensive evaluation be undertaken to determine the effects of the changes, both intended and unintended**

In the event that the proposed changes are introduced the Commission recommends that the effects be evaluated across a range of areas including the intended beneficial outcomes the Bill is designed to achieve, and across any of the areas identified above by the Commission as potential negative and unintended consequences.

Please do not hesitate to contact Susan Dwyer, Principal Advisor, on 07 3211 6991 or email [susan.dwyer@ccypcg.qld.gov.au](mailto:susan.dwyer@ccypcg.qld.gov.au) should any aspects of this advice require clarification.

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<sup>4</sup> Schweizer & Dwyer, 2003.

<sup>5</sup> For example, cognitive behaviour therapy: Gelb, 2007; see also Macgregor, 2008; Lievore, 2004. It is also noted that research indicates that community-based treatment programs produce more long-term reductions in recidivism than institution-based treatment alone. For instance, "when the response is predominantly, or exclusively, a matter of offender surveillance and social control... and the treatment and service-related components are lacking or inadequate, the indication is that neither a reduction in recidivism nor an improvement in social, cognitive, and behavioural functioning is likely to occur", and "[s]pecialised treatment in the institution is likely of little long-lasting value if it is not relevant to pressing concerns in the daily lives of offenders in the community and not carefully and consistently reinforced in this setting."; see Altschuler, Armstrong, & MacKenzie, 1999.

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