



Penalties & Sentences &
Other Legislation
Submission 019

17 July 2012

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George St
BRISBANE Q 4000

By Email: lacs@parliament.qld.gov.au

Dear Research Director

Penalties and Sentences and Other Legislation Amendment Bill 2012

Introduction

Caxton Legal Centre Inc. (the Centre) is Queensland's oldest non-profit, community-based, legal service. Established in 1976, the Centre provides approximately 13,500 legal information and advice services each year. Over the last 3 year period, the Centre has given advice and information about criminal law on at least 944 occasions.

The majority of our clients are economically and/or socially disadvantaged in some way and over a third are in receipt of Centrelink benefits.

We have had the opportunity to review the Queensland Law Society's draft submission on the Penalties and Sentences and Other Legislation Amendment Bill (the Bill), prior to its lodgement with the Committee. We support and endorse the views stated therein.

Lack of consultation

It is regrettable that the Committee has been tasked to respond to the Bill within the unreasonable timeframe of 4 business days.

The anticipated and potentially unforeseen consequences of the proposed legislation are significant and there are fundamental principles of law and governance that the Bill appears to offend.

Further there does not appear to be any justification for the exceptionally urgent timeframe. In these circumstances, a more comprehensive consultation period is warranted.

Amendment of Preamble

We do not support the proposed amendment of the preamble:

'Society is entitled to recover from offenders funds to help pay for the cost of law enforcement and administration'.

Funding the administration of justice is a core function of responsible government and governments should not seek to defray this responsibility by the application of the user pays principle. Amongst other concerns, there is potential for the development of a perverse dependency relationship between courts and enforcement agencies and the cost recovery measures, such that incentives are created to maximise the number of convictions.

Clauses 34, 36, 44 and 46

We re-iterate the submissions of the Queensland Law Society and further note:

- the imposition of an additional penalty may incentivise defendants, otherwise intending to plead guilty in the Magistrates Court, to 'run the risk' of a summary hearing;
- some defendants may seek to commit further crimes to pay for the additional penalties;
- the ultimate cost to the State Government in administration of the penalty and responding to the downstream impacts of implementing the Bill, are likely to far exceed the revenue generated;
- the Bill appears to embed a form of legislative fining which may be unconstitutional, insofar it would require a Chapter III Court to impose a specific fine, contrary to the separation of powers doctrine; and
- the proposed penalties will disproportionately affect indigenous people as well as other groups who are disproportionately exposed to the enforcement of simple offences and do not possess the means of paying the penalties. Disturbingly, many of these penalties will be imposed upon these defendants in their absence, in circumstances where they have surrendered their cash bail.

Thank you for considering this submission. We look forward to the Committee's report in due course.

Yours faithfully



Scott McDougall

Director