Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

www.atsils.org.au

Level 5, 183 North Quay Brisbane Qld 4000
PO Box 13035, George Street Brisbane Qld 4003
T: 07 3025 3888 | F: 07 3025 3800
Freecall: 1800 012 255
ABN: 116 314 562

Mr Peter Russo MP,
Chair of The Legal Affairs and Community Safety Committee
Queensland Parliament,
Brisbane QLD 4000

By email:

lacsc@parliament.qld.gov.au

13th March 2019

Dear Mr Russo,

RE: Criminal Code and Other Legislation (Mason Jett Lee) Amendment Bill 2019

We welcome and appreciate the opportunity to make a submission in relation to the proposed Bill.

Preliminary Consideration: Our Background for Meaningful Comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout the entirety of Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which

include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by four and a half decades of legal practise at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

COMMENTS

We note the background to the Bill with its distressing factual circumstances and the "Sentencing for Criminal Offences Arising from the Death of A Child" report prepared by the Queensland Sentencing Advisory Council.

We note the proposed measures include the imposition of a mandatory non-parole period of 25 years imprisonment for the murder of a child and the imposition of a mandatory non-parole period of 15 years imprisonment for the new offence of child homicide.

There are difficulties comparing life sentences imposed in Queensland with those imposed in other states as Queensland's sentencing laws impose a mandatory life sentence for murder with no discretion for the sentence to be mitigated or varied, and there are also differences between states in how parole eligibility periods are set.

The minimum non-parole period for those serving life sentences in Queensland is set by legislation. The *Corrective Services Act* 2006 (Qld) s 181 currently provides for set non-parole periods as follows:

(a) [more than one offence of murder is being taken into account] —30 years or longer;

(b) [the killing was in relation to the performance of a police officer's duty] - 25 years or longer;

(c) the prisoner is currently serving life imprisonment for murder and paragraphs (a) and (b) do not apply—20 years;

(d) otherwise—15 years.

It is an important principle of sentencing that the offender is punished to the extent that is just in all the circumstances. In any sentencing process there is a great variety of factual circumstances surrounding the circumstances of the offence and a great variety of personal circumstances surrounding the offender(s). One example would be that an offender suffers from an intellectual disability or an impairment such as Foetal Alcohol Syndrome. For the punishment to fit the crime, it

is important to confer on judges a sufficient level of discretion in the imposition of sentences to avoid perverse or unduly harsh outcomes. It is for such reasons that our Organisation has long opposed 'mandatory sentencing', or perhaps, more properly put, opposed the erosion of judicial discretion.

Such an erosion means that judicial officers will not be placed to ensure that the punishment matches the crime. There will inevitably be cases where offenders receive excessively harsh sentences – coupled with the increased impost upon the public purse, via prison costs.

Further, there is ample evidence reinforcing the view that increasing penalties via the introduction of mandatory sentencing does not deter people from committing crime. Indeed, many such offences are committed irrationally or on the spur of the moment and such sentencing will on occasions attach to individuals who will never again reoffend.

Mandatory sentences can also lead to a greater inclination for an accused to test a matter at trial - rather than enter an early plea of guilty. This of itself can lead to an injustice should a 'not guilty' verdict be returned for someone who was in fact culpable.

We would support the imposition of a high head sentence and a lengthy non-parole period through the exercise of the discretion of a judge taking into account all the relevant circumstances of the case rather than an automatic sentence set by statute. The objective of a 'just' sentencing outcome can also be achieved via other mechanisms – including 'presumptive' sentencing laws. At the end of the day, those who have been appointed to the judiciary, should be considered worthy of exercising a discretion – such that fairness in all of the circumstances can be achieved. In the event of perceived over-leniency, an appeal process is of course still an option for the Crown.

We thank you for the opportunity to provide input and thank you for your careful consideration of our submission.

Yours faithfully,

Gregory M. Shadbolt

Principal Legal Officer